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PREFACE

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

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

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

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

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

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

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<u>ISSUE NUMBER</u>	<u>PRINTING SCHEDULE FOR IAB</u> <u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
21	Friday, March 31, 1989	April 19, 1989
22	Friday, April 14, 1989	May 3, 1989
23	Friday, April 28, 1989	May 17, 1989

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Iowa Administrative Bulletin

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Third quarter	January 1, 1989, to June 30, 1989	\$ 81.40 plus \$3.26 sales tax
Fourth quarter	April 1, 1989, to June 30, 1989	\$ 40.70 plus \$1.63 sales tax

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

Iowa Administrative Code

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

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(Subscription expires June 30, 1989)

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

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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. 6	Jan. 25	Feb. 14	Mar. 1	Mar. 22	Apr. 26	July 24
Jan. 20	Feb. 8	Feb. 28	Mar. 15	Apr. 5	May 10	Aug. 7
Feb. 3	Feb. 22	Mar. 14	Mar. 29	Apr. 19	May 24	Aug. 21
Feb. 17	Mar. 8	Mar. 28	Apr. 12	May 3	June 7	Sep. 4
Mar. 3	Mar. 22	Apr. 11	Apr. 26	May 17	June 21	Sep. 18
Mar. 17	Apr. 5	Apr. 25	May 10	May 31	July 5	Oct. 2
Mar. 31	Apr. 19	May 9	May 24	June 14	July 19	Oct. 16
Apr. 14	May 3	May 23	June 7	June 28	Aug. 2	Oct. 30
Apr. 28	May 17	June 6	June 21	July 12	Aug. 16	Nov. 13
May 12	May 31	June 20	July 5	July 26	Aug. 30	Nov. 27
May 26	June 14	July 4	July 19	Aug. 9	Sep. 13	Dec. 11
June 9	June 28	July 18	Aug. 2	Aug. 23	Sep. 27	Dec. 25
June 23	July 12	Aug. 1	Aug. 16	Sep. 6	Oct. 11	Jan. 8 '90
July 7	July 26	Aug. 15	Aug. 30	Sep. 20	Oct. 25	Jan. 22 '90
July 21	Aug. 9	Aug. 29	Sep. 13	Oct. 4	Nov. 8	Feb. 5 '90
Aug. 4	Aug. 23	Sep. 12	Sep. 27	Oct. 18	Nov. 22	Feb. 19 '90
Aug. 18	Sep. 6	Sep. 26	Oct. 11	Nov. 1	Dec. 6	Mar. 5 '90
Sep. 1	Sep. 20	Oct. 10	Oct. 25	Nov. 15	Dec. 20	Mar. 19 '90
Sep. 15	Oct. 4	Oct. 24	Nov. 8	Nov. 29	Jan. 3 '90	Apr. 2 '90
Sep. 29	Oct. 18	Nov. 7	Nov. 22	Dec. 13	Jan. 17 '90	Apr. 16 '90
Oct. 13	Nov. 1	Nov. 21	Dec. 6	Dec. 27	Jan. 31 '90	Apr. 30 '90
Oct. 27	Nov. 15	Dec. 5	Dec. 20	Jan. 10 '90	Feb. 14 '90	May 14 '90
Nov. 10	Nov. 29	Dec. 19	Jan. 3 '90	Jan. 24 '90	Feb. 28 '90	May 28 '90
Nov. 24	Dec. 13	Jan. 2 '90	Jan. 17 '90	Feb. 7 '90	Mar. 14 '90	June 11 '90
Dec. 8	Dec. 27	Jan. 16 '90	Jan. 31 '90	Feb. 21 '90	Mar. 28 '90	June 25 '90
Dec. 22	Jan. 10 '90	Jan. 30 '90	Feb. 14 '90	Mar. 7 '90	Apr. 11 '90	July 9 '90

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]

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
CORRECTIONS DEPARTMENT[291] Parole supervision, 45.2(1) IAB 3/22/89 ARC 9753	Conference Room 523 East 12th Street Des Moines, Iowa	April 12, 1989 1 p.m. to 4 p.m.
CULTURAL AFFAIRS DEPARTMENT[221] Museum property, ch 7 IAB 4/5/89 ARC 9789	Auditorium State Historical Bldg. Des Moines, Iowa	April 27, 1989 7 p.m.
EDUCATION DEPARTMENT[281] Extracurricular interscholastic competition, associate member school, 36.1, 36.3, 36.5, 36.14, 36.15 IAB 4/5/89 ARC 9768	Board Room Grimes State Office Bldg. Des Moines, Iowa	April 25, 1989 10 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567] General guidelines for determining cleanup actions and responsible parties, ch 133 IAB 3/22/89 ARC 9745	City Council Chambers 19 S. Delaware Mason City, Iowa	April 11, 1989 7:30 p.m.
	City Council Chambers 220 Clay Street Cedar Falls, Iowa	April 12, 1989 7:30 p.m.
	City Council Chambers Sixth and Douglas Clock Tower, Third Floor Sioux City, Iowa	April 18, 1989 7:30 p.m.
	Community Hall 205 Main Street Council Bluffs, Iowa	April 19, 1989 7:30 p.m.
	City Council Chambers 226 W. Fourth St. Davenport, Iowa	April 25, 1989 7:30 p.m.
	Auditorium, Main Floor Wallace State Office Bldg. 900 East Grand Ave. Des Moines, Iowa	April 26, 1989 10 a.m.
HISTORICAL DIVISION[223] Agency procedure for rule making, petitions for rule making, declaratory rulings, conflict of interest, award category selection, programs and services, chs 4, 5, 6, 13, 14 IAB 4/5/89 ARC 9790	Auditorium State Historical Bldg. Des Moines, Iowa	April 27, 1989 7 p.m.
Membership program fee structure, 13.6(2) IAB 3/22/89 ARC 9748	Auditorium State Historical Bldg. Des Moines, Iowa	April 27, 1989 7 p.m.
LABOR SERVICES DIVISION[347] Occupational safety and health rules for general industry, 10.20 IAB 4/5/89 ARC 9788	Division of Labor Services 1000 East Grand Ave. Des Moines, Iowa	April 27, 1989 9 a.m.

NATURAL RESOURCE COMMISSION[571]

Private open space lands, ch 32 IAB 4/5/89 ARC 9778	Conference Room Fourth Floor West Wallace State Office Bldg. Des Moines, Iowa	April 26, 1989 10 a.m.
Waterfowl and coot hunting seasons, amendments to ch 91 IAB 3/8/89 ARC 9716	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 15, 1989 10 a.m.
Pheasant, quail and gray (Hungarian) partridge hunting, 96.1, 96.2, 96.3 IAB 3/8/89 ARC 9720	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 15, 1989 10 a.m.
Common snipe, Virginia rail and sora, woodcock and ruffed grouse, amendments to ch 97 IAB 3/8/89 ARC 9718	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 15, 1989 10 a.m.
Wild turkey fall hunting, ch 99 IAB 3/8/89 ARC 9717	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 15, 1989 10 a.m.
Falconry regulations for hunting game, 102.3 IAB 3/8/89 ARC 9724	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 15, 1989 10 a.m.
Deer hunting regulations, amendments to ch 106 IAB 3/8/89 ARC 9723	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 15, 1989 10 a.m.
Rabbit and squirrel hunting, 107.1, 107.2, 107.3 IAB 3/8/89 ARC 9722	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 15, 1989 10 a.m.
Mink, muskrat, raccoon, badger, opossum, weasel, striped skunk, fox (red and gray), beaver, coyote, otter and spotted skunk seasons, amendments to ch 108 IAB 3/8/89 ARC 9721	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 15, 1989 10 a.m.

NURSING BOARD[655]

Advanced registered nurse practitioners, ch 7 IAB 4/5/89 ARC 9769	Auditorium Wallace State Office Bldg. Des Moines, Iowa	May 17, 1989 7 p.m.
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PUBLIC HEALTH DEPARTMENT[641]

Notification and surveillance of reportable diseases, 1.2(1)"a," 1.9 IAB 4/5/89 ARC 9754	Conference Room Third Floor Lucas State Office Bldg. Des Moines, Iowa	April 25, 1989 1 p.m.
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Appropriate hearing defined; administrative law judge substituted for hearing officer, amendments to chs 9, 11, 12, 13, 15, 16 IAB 3/22/89 ARC 9750	Conference Room Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	April 11, 1989 9 a.m.
Policy on telecommunications and procedures for telecommunications as an instructional tool, 9.5 IAB 3/22/89 ARC 9751	Conference Room Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	April 11, 1989 9:30 a.m.

TRANSPORTATION DEPARTMENT[761]

Train speed ordinances, 800.15 IAB 3/8/89 ARC 9698	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	April 18, 1989
Tourist-oriented directional signing, ch 119 IAB 3/22/89 ARC 9737	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	May 2, 1989
Recreational trails program, ch 165 IAB 2/8/89 ARC 9637	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	May 2, 1989
Improvements and maintenance on primary road extensions, 150.3(1)"e," 150.3(3)"a" IAB 4/5/89 ARC 9791	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	May 16, 1989

UTILITIES DIVISION[199]

Energy conservation strategies and programs, 19.9, 20.10 IAB 4/5/89 ARC 9771	First Floor Hearing Room Lucas State Office Bldg. Des Moines, Iowa	May 2, 1989 10 a.m.
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AGENCY IDENTIFICATION NUMBERS

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

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

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

Other autonomous agencies which were not included in the original reorganization legislation as "umbrella" 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:

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TREASURER OF STATE[781]
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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:

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%
May 1, 1988 — May 31, 1988	9.75%
June 1, 1988 — June 30, 1988	9.75%
July 1, 1988 — July 31, 1988	9.75%
August 1, 1988 — August 31, 1988	9.75%
September 1, 1988 — September 30, 1988	9.75%
October 1, 1988 — October 31, 1988	10.00%
November 1, 1988 — November 30, 1988	10.00%
December 1, 1988 — December 31, 1988	10.00%
January 1, 1989 — January 31, 1989	10.25%
February 1, 1989 — February 28, 1989	10.50%
March 1, 1989 — March 31, 1989	10.50%

ARC 9779

COMMUNITY ACTION AGENCIES DIVISION[427]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 601K.92, the Division of Community Action Agencies hereby gives Notice of Intended Action to amend 427—Chapter 23, "Emergency Community Services Homeless Grant Program," Iowa Administrative Code.

Chapter 23 relates to the program established by Public Law 100-77, Stewart B. McKinney Homeless Assistance Act of 1987. It is the purpose of this legislation "... to meet the critically urgent needs of the homeless of the Nation." Public Law 100-77 has been amended by Public Law 100-628 dated November 7, 1988. The amendments to Chapter 23 being proposed are a result of the amendments to Public Law 100-77 which have been enacted by Congress.

In preparing these amendments, the Division of Community Action Agencies has conferred with several

of the local providers as well as the responsible federal agency in order to fashion the most appropriate program adjustments. The federal agency has not provided a final answer with respect to certain program issues and the final rules may be altered as a result of their action. It was necessary, however, for this Notice of Intended Action to be submitted as of this date to meet program implementation deadlines.

Rule 23.2 is amended to add a definition for the near-homeless, a new target population contained in the amendments to the federal statute.

A change is made in the parenthetic implementation of each rule and in rule 23.5 to refer to the new federal statute.

A new subrule 23.5(5) is added to allow a local option of using a portion of a community's grant to provide direct financial assistance to meet emergency housing or shelter needs for qualifying individuals. This provision is a reaction to the federal amendments and the needs expressed by a number of community action agencies.

Subrule 23.6(1) which had prohibited direct financial assistance is rescinded.

Subrule 23.7(3) is amended to clarify that the requirements of serving the homeless with the greatest need first is exclusive of the new near-homeless target population for prevention services.

A new subrule 23.7(4) is added to adopt the allowance made in the federal amendments that up to 25 percent of program funds may be used for prevention services to the near-homeless. This provision is being adopted at the urging of local providers interested in being more efficient in dealing with homeless problems through early intervention.

Consideration will be given to all written data, views or arguments thereto, received by the Bureau of Community Services, Division of Community Action Agencies, Lucas State Office Building, Des Moines, Iowa 50319, on or before 4:30 p.m. April 25, 1989.

The following amendments are proposed:

ITEM 1. Amend rule 23.2(PL100-77) by adding the following definition in alphabetical order:

"Near-homeless" means an individual who has received a notice of foreclosure or eviction.

ITEM 2. Amend 427—Chapter 23 by adding to the parenthetic implementations following each rule number as follows: (PL100-77, PL 100-628).

ITEM 3. Amend rule 23.5(PL100-77, PL100-628), introductory paragraph, as follows:

427—23.5(PL100-77, PL100-628) Eligible use of funds. As defined by PL 100-77, as amended by PL 100-628, EHP funds may only be used for the following purposes:

Further amend rule 23.5 by adding a new subrule as follows:

23.5(5) Direct financial assistance. Funds may be used for the provision of direct financial assistance such as cash or vouchers to meet the emergency housing or shelter needs of qualifying individuals.

a. For the near-homeless, this assistance would be limited to mortgage or rental payments for individuals who have received a notice of foreclosure or eviction. Financial assistance for a near-homeless individual is allowable if:

(1) The inability of the individual to make a mortgage or rental payment is due to a sudden reduction in income;

COMMUNITY ACTION AGENCIES DIVISION[427] (cont'd)

(2) The assistance is necessary to avoid foreclosure or eviction; and

(3) There is a reasonable prospect that the individual will be able to resume the payments within a reasonable period of time.

b. For the homeless, this assistance would be limited to the payment of housing or shelter costs for an individual who is living on the street, in an abandoned building, house, tent, car, etc., living in an emergency shelter, or living in substantially similar conditions.

ITEM 4. Rescind subrule 23.6(1) and reserve the number.

ITEM 5. Amend rule 23.7(PL100-77,PL100-628) as follows:

Amend subrule 23.7(3) as follows:

23.7(3) Degree of need. Each eligible entity shall maintain and utilize a plan for serving those homeless individuals with the greatest degree of need first. *This provision does not pertain to funds set aside to serve the near-homeless per subrule 23.7(4)*

Further amend rule 23.7(PL100-77,PL100-628) by adding a new subrule as follows:

23.7(4) Near-homeless set-aside. Each eligible entity may provide services to income eligible near-homeless individuals. The amount of funds which may be expended for this target group may not exceed 25 percent of the total EHP funds expended by the eligible entity.

These rules are intended to implement Public Law 100-77, Emergency Community Services Homeless Grant Program, Subtitle D, as amended by Public Law 100-628, Stewart B. McKinney Homeless Assistance Amendments Act of 1988.

Oral presentations may be made by appearing at a public meeting to be held on April 27, 1989, at 7 p.m. in the auditorium of the new State Historical Building, Capitol Complex, Des Moines, Iowa. Written comments will also be accepted at that time.

These rules are intended to implement Iowa Code section 303.1 and chapter 305B.

The following new chapter is proposed:

CHAPTER 7

MUSEUM PROPERTY

221-7.1(305B) Purpose. This chapter implements Iowa Code chapter 305B which governs the disposition of property held by museums within the state. The only provision necessary to implement Iowa Code chapter 305B is the specification of forms for implementation.

221-7.2(305B) Forms. The following forms are provided pursuant to Iowa Code chapter 305B:

1. Notice of injury to or loss of property on loan;
2. Notice of intent to terminate a loan; and
3. Notice of intent to preserve an interest in property.

Copies of the forms may be obtained from the Director, Department of Cultural Affairs, Capitol Complex, Des Moines, Iowa 50319, (515) 281-6078. Inquiries should be addressed to the same location.

These rules are intended to implement Iowa Code section 303.1 and Iowa Code chapter 305B.

FORM 1

NOTICE OF INJURY TO OR LOSS OF PROPERTY ON LOAN

Museum/Institution _____
 Contact Person _____
 Address _____
 Phone _____ Date of Notice _____

Lender/Claimant _____
 Address _____
 Phone _____

In accordance with Iowa Code Chapter 305B the above named institution hereby officially informs you of injury to or loss of the property on loan that is identified and described below. On behalf of the institution, I certify that this injury or loss resulted from actions taken by this institution in the reasonable belief that such action was necessary to protect the property on loan or other property in the custody of this institution or that the property on loan was a hazard to the health and safety of the public or staff. I further certify that reasonable care was exercised in the choice and application of any conservation measures that may have been applied to the property on loan.

Original Date of Loan _____ Term of Loan _____
 Institution Identification of Loan _____
 Description of Property on Loan _____

Condition of Property at Time Loan was Initiated _____

Action By Institution _____

Date of Action _____
 Signed for the Institution _____
 Type Name and Title _____
 Date _____

TO BE COMPLETED BY THE LENDER OR CLAIMANT: I acknowledge receipt of the "Notice of Injury or Loss of Property on Loan" for the property identified above.

Signature _____
 Type/Print Name _____
 Current Address _____
 Current Home Phone Number _____

RETURN TO INSTITUTIONAL CONTACT PERSON ABOVE.
 Date completed form received by Museum _____
 Signature of person receiving returned form _____

ARC 9789

CULTURAL AFFAIRS
 DEPARTMENT[221]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in 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 17A.3 and 303.1A, the Department of Cultural Affairs proposes to adopt Chapter 7, "Museum Property," Iowa Administrative Code.

This chapter provides forms to implement the Museum Property Act. Since the Act specifies the purposes and procedures for implementation in detail, no additional rules are necessary at this time.

Consideration will be given to all written data, views, and arguments thereto, received by the Department of Cultural Affairs, Capitol Complex, Des Moines, Iowa 50319, on or before April 27, 1989.

CULTURAL AFFAIRS DEPARTMENT[221] (cont'd)

FORM 2

NOTICE OF INTENT TO TERMINATE LOAN

Museum/Institution
Contact Person
Address
Phone Date of Notice

Lender/Claimant
Address
Phone

Museum Registration/Identification No(s) of Loan(s)

Original Date(s) of Loan(s)

Terms of Loan(s)

Description of Property

The records of this institution indicate that you currently have the above property on loan to it. The institution wishes to terminate the loan. You must complete and return the enclosed "Notice of Intent to Preserve an Interest in Property on Loan" within one year from the date of this notice...

For the institution
Signature
Date
Address

ATTACHED: Notice of Intent to Preserve an Interest in Property on Loan

FORM 3

NOTICE OF INTENT TO PRESERVE AN INTEREST IN PROPERTY ON LOAN

Museum/Institution
Contact Person
Address
Phone Date of Notice

Lender/Claimant
Address
Phone

Museum Registration/Identification No. (s) of Loan(s)

Original Date(s) of Loan

Terms of Loan(s)

To the Lender or Claimant

Iowa Code Chapter 305B requires that you notify this institution promptly in writing of any change of address or ownership of the property on loan to the museum identified above. If the museum is unable to contact you regarding your loan, you may lose rights in the loaned property.

To the Institution

I hereby notify the above institution that I claim an interest in the property described in this notice.

Current information (if different from above)
Name of lender or claimant
Address
Phone

Interest in Property. If not the original lender, describe the origin and nature of your interest in the property, and attach copies of any and all documentation establishing your interest.

Description of Property. Attach an accurate, legible copy of the loan receipt or provide a detailed description of the claimed property, including its nature, general characteristics, museum registration/identification number (if any), and any other distinguishing or identifying characteristics. Attach copies of any and all evidence documenting the loan.

Acknowledgment: I understand that I must promptly notify the museum in writing of any change in address or ownership of the loaned property identified above.

Claim: I hereby officially notify the institution above of my interest in the property identified.

I declare under penalty of perjury that to the best of my knowledge the information contained in this notice is true.

I understand that I must make arrangements with the institution to retrieve said property within one year of the date of this notice or title to the property shall revert to the institution.

Signed Claimant Date
OR

I declare under penalty of perjury that I am authorized to act on behalf of the claimant. I am informed and believe that the information contained in this notice is true.

Signed Claimant's representative Date

(For Museum Use Only)

Receipt of Notice of Intent to Preserve An Interest in Property

Notice received by

Date received
Copy of receipt returned to claimant
By
Date

ARC 9768

EDUCATION DEPARTMENT[281]

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 280.13, the Iowa Department of Education hereby gives Notice of Intended Action to amend Chapter 36, "Extracurricular Interscholastic Competition," Iowa Administrative Code.

The amendments in Items 1, 2, 4, and 5 are for the purpose of creating a new category ("associate member school") to allow students enrolled in qualifying nonaccredited private schools to participate in extracurricular interscholastic competition. Previously, those students could not compete against students in member schools because membership was not open to nonaccredited schools.

Item 3 of these amendments reflects the recent merger of the two named organizations (IASSP and IASA) into one organization, School Administrators of Iowa.

EDUCATION DEPARTMENT[281] (cont'd)

Any interested person may make written comments or suggestions on these proposed amendments prior to April 25, 1989. Written comments should be directed to Kathy L. Collins, Legal Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. Persons who wish to convey their views orally should contact Kathy L. Collins at (515) 281-5295 or in the office of the Director on the second floor of the Grimes State Office Building at East 14th and Grand.

A public hearing on the proposed amendments is scheduled for Tuesday, April 25, 1989, at 10 a.m. in the State Board Room on the second floor of the Grimes State Office Building at the above address.

These rules are intended to implement Iowa Code chapter 280.

The following amendments are proposed:

ITEM 1. Amend rule 281—36.1(280) by deleting the subrule numbers, arranging the definitions in alphabetical order and inserting the following new definitions:

"Associate member school" means a nonaccredited nonpublic school that has been granted associate member status by the department based upon proof of compliance with:

1. Iowa Code section 279.19B, and rules adopted by the department of education related to the qualifications of the affected teaching staff, and

2. The student eligibility rules of this chapter.

"Member school" means a school that has been granted accreditation from the department.

ITEM 2. Amend subrule 36.3(2) as follows:

36.3(2) Current membership *and* associate membership lists.

ITEM 3. Amend rule 281—36.5(280) as follows:

281—36.5(280) Federation membership. The federation, in addition to conforming to other requirements in this section, shall have in its membership the executive board of the association, union, music association, speech association, Iowa association of secondary school principals and the Iowa association of school administrators of Iowa.

ITEM 4. Amend subrule 36.14(1) as follows:

36.14(1) All contestants must be enrolled and in good standing in a school that is a member *or* associate member in good standing of the organization sponsoring the event.

ITEM 5. Amend subrule 36.15(6), paragraph "d," as follows:

d. In the event a student participates and represents a member school *or* an associate member school in a tournament series sponsored by a governing organization, the student shall be ineligible to represent another school in the same tournament series.

ARC 9763

ENGINEERING AND LAND
SURVEYING EXAMINING
BOARD[193C]

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 17A.3 and 114.6, the Iowa Engineering and Land Surveying Examining Board of the Professional Licensing and Regulation Division, Department of Commerce, proposes to amend Chapter 1, "Administration," Iowa Administrative Code.

The proposed amendment to rule 1.4(114) removes the residency requirement. The Board has determined that this requirement is no longer applicable as a criteria for admission to the examinations.

Persons may make written comments on the proposed amendment to Patricia Peters, Executive Secretary, 1918 S.E. Hulsizer, Ankeny, Iowa 50021, on or before April 25, 1989.

The proposed amendment is intended to implement Iowa Code section 114.13.

Amend rule 193C—1.4(114), item "3," as follows:

3. Requirements for examination. The specific requirements for initial licensing in Iowa are established in Iowa Code section 114.14, and it is the board's policy to issue initial registrations only when those requirements are satisfied chronologically in the order set forth in the statute. Thus, an applicant first must satisfy the practical experience or educational requirements; secondly, the Fundamentals Examination, the Engineer-in-Training (Engineering Intern) requirements or Land Surveyor-in-Training requirements as appropriate, and the professional experience; and thirdly, the Professional Examination. A Fundamentals Examination may be taken any time after satisfying the practical experience or educational requirements, but it must be taken prior to the Professional Examination: College seniors studying an Accreditation Board of Engineering and Technology (ABET) or Canadian Engineering Accreditation Board (CEAB) approved curriculum may take the appropriate Fundamentals Examination during the final academic year; applicants will be permitted to submit for examination during the testing period which most closely precedes anticipated graduation. However, a certified transcript showing that the applicant was graduated must be sent by the registrar to the board before an applicant's examination results will be considered. Applicants who were graduated from a satisfactory engineering or land surveying program and have twenty-five years or more of work experience satisfactory to the board shall not be required to take the Fundamentals Examination.

An applicant who has earned a Doctor of Philosophy degree from an institution in the United States of America with an accredited Bachelor of Science engineering degree program in the same discipline, or a similar doctoral degree in a discipline approved by

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C] (cont'd)

the board, shall not be required to take the Fundamentals Examination.

An applicant for the professional examination shall have a minimum of one year's practical experience in the United States of America or a territory under its jurisdiction.

An applicant for a written examination shall be a student in the state of Iowa or a resident of the state unless that person is a comity applicant or is barred from the examination in the state of residence by registration law or administrative rule.

ARC 9790**HISTORICAL DIVISION[223]**

STATE HISTORICAL SOCIETY OF IOWA

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 17A.3 and 303.2, the State Historical Society of Iowa gives Notice of Intended Action to adopt new Chapter 4, "Agency Procedure for Rule Making," Chapter 5, "Petition for Rule Making," Chapter 6, "Declaratory Rulings"; and amend Chapter 13, "Description of Organization"; adopt new rules to proposed Chapter 14, "Programs and Services," Iowa Administrative Code.

See also Notices of November 30, 1988, Iowa Administrative Bulletin **ARC 9485**; December 28, 1988, Iowa Administrative Bulletin **ARC 9560**; January 11, 1988, Iowa Administrative Bulletin **ARC 9604**; and March 22, 1988, Iowa Administrative Bulletin **ARC 9748**. The purpose of Chapter 13 is to describe the mission and functions of the State Historical Society of Iowa, its internal organization, and major avenues for public participation through the membership program and Board of Trustees. The purpose of Chapter 14 is to describe the programs and services of the State Historical Society of Iowa. The Society's rules are being completely rewritten because of the internal reorganization of the Society and the reorganization of state government. Editing and renumbering of noticed rules will occur prior to final action.

Consideration will be given to all written data, views, and arguments thereto received by the State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, on or before April 27, 1989.

Oral presentation may be made by appearing at a public meeting to be held on April 27, 1989, 7 p.m. in the auditorium of the new State Historical Building, Capitol Complex, Des Moines, Iowa. Written comments will also be accepted at that time.

These rules are intended to implement Iowa Code section 303.2 and Iowa Code chapter 303, subchapter II.

ITEM 1. Adopt a new Chapter 4 as follows:

CHAPTER 4**AGENCY PROCEDURE FOR RULE MAKING**

The state historical society of Iowa adopts 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:

223-4.4(17A) Notice of proposed rule making.

4.4(3) Notices mailed. In lieu of the words "specify time period" insert "one year".

223-4.5(17A) Public participation.

4.5(1) Written comments. In lieu of the words "identify office and address" insert "Administrator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515) 281-8837".

4.5(4) Additional information. Add the following sentence at the end of the subrule: The society may send notices of proposed rule making and a request for comments to an agency, organization, association, or individual known to have a direct interest or expertise pertaining to the proposed rule.

223-4.6(17A) Regulatory flexibility analysis.

4.6(3) Mailing list. In lieu of the words "designate office" insert "Administrator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515) 281-8837".

223-4.10(17A) Exemptions from public rule-making procedures.

4.10(2) Categories exempt. Insert the following sentence for the parenthetical sentences:

These rules shall be those that are mandated by Federal law or regulations.

223-4.11(17A) Concise statement of reasons.

4.11(1) General. In lieu of the words "specify the office and address" insert "Administrator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515) 281-8837".

223-4.13(17A) Agency rule-making record.

4.13(2) Contents. In lieu of the words "agency head" insert "Administrator".

This rule is intended to implement Iowa Code section 17A.4(1)"b".

ITEM 2. Adopt a new Chapter 5 as follows:

CHAPTER 5**PETITION FOR RULE MAKING**

The state historical society of Iowa adopts the petition 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.

223-5.1(17A) Petition for rule making. In lieu of the words "designate office" insert "Administrator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515) 281-8837".

In lieu of the words "AGENCY NAME", the heading on the petition should read:

BEFORE THE STATE HISTORICAL SOCIETY OF IOWA

223-5.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the

HISTORICAL DIVISION[223] (cont'd)

Administrator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515) 281-8837.

These rules are intended to implement Iowa Code section 17A.7.

ITEM 3. Adopt a new Chapter 6 as follows:

CHAPTER 6

DECLARATORY RULINGS

The state historical society of Iowa adopts the petition for 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.

223-6.1(17A) Petition for declaratory ruling. In lieu of the words "designate office" insert "Administrator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515) 281-8837".

In lieu of the words "AGENCY NAME", the heading on the petition should read:

BEFORE THE STATE HISTORICAL
SOCIETY OF IOWA

223-6.3(17A) Inquiries. Inquiries concerning the status of a petition for a declaratory ruling may be made to the Administrator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515) 281-8837.

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

ITEM 4. Amend rule 13.7(303) by adding the following new subrule.

13.7(6) Conflict of interest.

a. Definitions. The following definitions apply in this rule:

"Affinity" means relationship by marriage.

"Contract" means any claim, account, job of work, provision of materials, or manuscript submitted for remuneration.

"Consanguinity of the second degree" means a blood relationship of the second degree such as brother, grandfather, grandson.

b. Board members shall not have an interest, either direct or indirect, personally or by affinity, in any contract in which the state historical society of Iowa is or might become a party.

c. Notwithstanding 13.7(6)"b," the board member who has the interest, either direct or indirect, within the second degree of consanguinity, in any contract in which the state historical society of Iowa is or might become a party shall disclose the interest to the board. The interest shall be noted in the minutes of a board meeting. When the contract requires board action the affected member shall not participate in any discussion or action by the board with respect to the contract. The affected member shall be disqualified from voting on the contract issue by reason of the conflict. The quorum of the board shall not be changed as the result of a conflict of interest disqualification.

ITEM 5. Amend proposed rule 13.11(303) by adding the following new paragraph to 13.11(3).

d. No member of the board of trustees shall be eligible for nomination in any award category during the member's term as a trustee.

ITEM 6. Amend proposed rule 14.9(4)"b" by adding the following new paragraphs.

(4) Preservation education program.

- Purpose. The preservation education program provides educational services to the public concerning many historic preservation topics. Printed materials, audiovisual materials, and staff presentations are available.
- Regulations. The preservation education programs shall operate in accordance with the National Historic Preservation Act of 1966, as amended in 1980 and the Program Guidelines-NPS 49, Chapters 12-13.
- Procedure. Services are provided to individuals or organizations on a first-come, first-served basis. All expenses for audiovisual loans except insurance and return postage are paid by the historic preservation bureau.

Requests for services should be directed to the Receptionist, Historic Preservation Bureau, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515) 281-8719.

(6) Survey and registration of cultural resources program.

- Purpose. The Iowa cultural resources survey and registration program is responsible for identifying and evaluating prehistoric and historic sites, buildings, structures, objects, and districts of significance to Iowa, its communities and the nation as a whole.
- Regulations. The Iowa cultural resources survey and registration program shall operate in accordance with the National Historic Preservation Act of 1966, as amended in 1980, Section 101 and Section 106; Executive Order 11593; and 36 CFR Part 800.
- Procedure. Surveys may be conducted by the staff of the historic preservation bureau; subgrants to consultants; certified local governments; or inter-agency agreements with federal, state, and local governmental agencies.

Selection of survey areas or topics, and the inclusion of survey results in the survey files, shall be determined by the priorities of the Iowa historic preservation plan, requirements of the Secretary of the Interior, and as appropriate, by requirements of the state of Iowa.

The historic preservation bureau shall make available to the public on request federal and state guidelines for planning and conducting surveys of historic properties, survey data collection forms and continuation sheets, photo field catalog sheets, photographic specifications, and guidelines for the reporting of results to the historic preservation bureau. These specifications and guidelines shall be used in all historic property surveys conducted or funded either partially or totally by the state historical society of Iowa. Adoption of these specifications and guidelines is not binding on federal agencies, other Iowa state agencies, local governments, or individuals, but their adoption is strongly recommended to facilitate comprehensive preservation planning, Section 106 review, information sharing, consistency in survey standards, and listing of historic properties on the National Register of Historic Places.

Federal agencies, state and local government entities, public and private institutions, and private individuals may be requested to conduct surveys if they are utilizing federal funds or engaging in a federally licensed, guaranteed, or regulated activity in order to comply with Section 106 of the National Historic Preservation Act and Executive Order 11593.

Staff of the bureau of historic preservation may assist federal and state agencies, local governments, and

HISTORICAL DIVISION[223] (cont'd)

individuals in survey planning, the preparation of requests for proposals, and proposal evaluation. Requests for assistance should be directed to Bureau Chief, Historic Preservation Bureau, State Historical Society, Capitol Complex, Des Moines, Iowa 50319, (515) 281-8719.

- Surveys funded entirely or partially by the state historical society of Iowa.

These surveys shall be conducted by principal investigators who meet the minimum professional qualifications specified for the appropriate discipline by the National Park Service in 36 CFR, Part 61. The same standards are recommended for investigators in projects not funded by the state historical society of Iowa.

The historic preservation bureau maintains a list of consultants meeting the requirements of 36 CFR, Part 61 and expressing an interest in conducting survey activities. Persons or firms interested in being listed may apply by submitting a resumé and other materials describing their qualifications to the historic preservation bureau. The staff of the historic preservation bureau shall review the qualifications and inform the applicant of the outcome of the review within 30 working days of submittal of complete documentation. Printed lists of qualified consultants shall be issued annually on January 15. Inclusion on the consultant list does not constitute endorsements of an individual or a firm. At public request the staff of the historic preservation bureau shall review credentials of consultants not on the list and under consideration for a specific project funded by the state historical society of Iowa.

All survey projects to be conducted by a consultant shall be awarded in a competitive bidding process. A request for proposal (RFP) shall be prepared by the staff of the historic preservation bureau. The request for proposal shall describe the project, specifications for the final product, and evaluation factors for the awarding of the contract.

The request for proposal shall be sent by the historic preservation bureau to all individuals and firms on the appropriate consultant list. A minimum of 30 days shall be permitted for the submittal of bids. Staff of the historic preservation bureau and other qualified individuals selected by the bureau shall review the proposals and inform the consultants of the status of their bid within 30 working days. The bureau may reject all proposals, request some bidders to submit best and final offers in 15 working days, or award the contract.

Awards shall be made to the offeror whose proposal is deemed to be the most advantageous to the state of Iowa, price and other factors considered.

Conduct of the survey. All surveys are subject to all state and federal laws regarding trespass and egress and the protection of archeological resources. Responsibility for compliance rests solely with the firm or individual conducting the survey.

Information collected from private and public repositories, individuals and groups, and within the public right-of-way including photography shall be subject to inclusion in the project file. All information collected from private and public repositories, individuals and groups, and within the public rights-of-way including photography shall be considered suitable for inclusion in project files and be made available to the public upon request.

Availability of the survey. The historic preservation bureau is the repository for all architectural and

historical survey data collected through projects funded by the state historical society and the review and compliance (Section 106) process. Other agencies and individuals are encouraged to deposit their survey materials or a copy of those materials with the bureau of historic preservation.

Archeological site records. In accordance with Iowa Code section 22.7(21) and Iowa Administrative Code 685—Chapter 14, specific locational information on archeological resources is confidential unless approved for disclosure. The state historic preservation officer, or designee, shall make archeological site records available to the following entities for inspection and copying: federal and state agencies, local governments, and applicants for federal assistance, permits, and licenses in compliance with Section 106; federal and state agencies, local governments, and other planning bodies for management and oversight of archeological sites under their jurisdiction; members of the Association of Iowa Archeologists; members of the Society of Professional Archeologists; qualified archeologists as defined in Iowa Administrative Code subrule 14.9(4); and other persons deemed to present no unreasonable risk of damage or loss of the resource.

Notwithstanding any of the preceding provisions, the state historic preservation officer, or designee, shall retain the authority to deny access to the Iowa site records, site local maps, and all supporting documents if release results in an unreasonable risk of damage or loss of the resource. An appeal committee consisting of three qualified archeologists as defined in Iowa Administrative Code subrule 14.9(4) shall review contested cases and make recommendations to the director of the department of cultural affairs for final decision.

The state historical society may enter into agreements with the state archeologist or other agencies to obtain or make available Iowa site records for planning purposes.

Unless subject to restriction, copies of survey material may be obtained from the historic preservation bureau. Fees will be posted in accordance with 13.5(3). Requests should be directed to Receptionist, Historic Preservation Bureau, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515) 281-8719.

(7) Review and compliance program.

- Purpose. The review and compliance program implements Section 106 of the National Historic Preservation Act of 1966, as amended in 1980, for the purpose of taking into account the effects of an agency's undertaking on properties included in or eligible for the National Register of Historic Places.
- Regulations. The Iowa review and compliance program shall operate in accordance with the National Historic Preservation Act of 1966, as amended in 1980, Section 106; and 36 CFR Part 800.
- Procedures. The state historic preservation officer, or designee, shall consult with agency officials expending federal funds to identify historic properties, assess effects of the undertaking on historic properties, and consider alternatives to avoid or reduce the effects.

Agency officials desiring a Section 106 review shall contact the historic preservation bureau to obtain the appropriate forms required to evaluate the effects. Completion of the forms does not constitute clearance of the proposed projects, but is intended to assist the

HISTORICAL DIVISION[223] (cont'd)

review and compliance staff in rendering an informed recommendation. Inquiries should be directed to Review and Compliance Coordinator, Historic Preservation Bureau, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515) 281-8743.

Responses to agency requests shall be made by the review and compliance staff of the historic preservation bureau within 30 days. Responses may indicate that no historic properties are located within the impact area, request the presentation of additional information and research, or that there is an effect. If an impact is indicated, the review and compliance staff shall indicate the steps desired to mitigate the impact.

After initiating consultation, the bureau, the funding agency official, or the National Council for Historic Preservation, at its discretion, may state that further consultation will not be productive and thereby terminate the consultation process. The agency official may then request the Council's comments in accordance with Section 800.6(b) of the National Historic Preservation Act of 1966, as amended in 1980, and notify all other consulting parties of the request.

(8) Technical assistance program.

- Purpose. The technical assistance program provides professional consultation in the areas of planning, project monitoring, local ordinance review, local historic district organizations, and general preservation consulting.
- Regulations. Technical assistance is provided as resources of the historic preservation bureau permit. First priority is generally given to projects relating to the National Register of Historic Places, the Certified Local Government program or a local preservation commission, and the preservation partnership program.
- Procedure. The technical assistance program provides service in the following four areas:

Planning assistance. The historic preservation bureau provides on-site or other forms of consultation in the preparation and review of a community or county historic preservation plan. Requests should be directed to the Bureau Chief, Historic Preservation Bureau, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515) 281-8719.

Project monitoring. The historic preservation bureau provides on-site or other forms of project monitoring and facilitation for both bureau-sponsored and other projects. Requests should be directed to the Bureau Chief, Historic Preservation Bureau, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515) 281-8719.

Local ordinance review and local historic district organization. In accordance with Iowa Code section 303.34(4) the local commission shall submit the draft or final ordinance of review and approval by the historic preservation bureau. An existing commission shall similarly submit proposed local historic district designations for review and approval to the historic preservation bureau. Comments by the appropriate bureau staff shall be supplied within 45 days from the receipt of complete documentation. Inquiries and requests should be directed to the Bureau Chief, Historic Preservation Bureau, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515) 281-8719.

General technical assistance. Technical assistance in the physical preservation of properties is provided by

staff of the historic preservation bureau. This service is provided on an individual request and time available basis. The services provided by the bureau shall not substitute for private professional services. Inquiries and requests should be directed to the Bureau Chief, Historic Preservation Bureau, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515) 281-8719.

(9) State register of historic places program.

- Purpose. The state register of historic places recognizes properties of historical significance to Iowa.
- Regulations and procedure. All regulations and procedures of subrule 14.9(4) pertaining to the National Register of Historic Places pertain to the state register of historic places.

(10) Comprehensive preservation planning program. Reserved.

These rules are intended to implement Iowa Code section 303.2 and Iowa Code chapter 303, subchapter II.

ARC 9756

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 225C.6, the Department of Human Services proposes to amend Chapter 32, "State Community Mental Health and Mental Retardation Services Fund," appearing in the Iowa Administrative Code.

The state community mental health and mental retardation services fund is divided into two parts, the general allocation and the special allocation. The general allocation receives 80 percent and the special allocation 20 percent of the funds appropriated each year. The general allocation fund is distributed to counties meeting requirements established in the Iowa Code and administrative rules based on a formula set forth in Iowa Code section 225C.10.

The special allocation funds are awarded by the Mental Health and Mental Retardation Commission based on rules promulgated by the Commission.

These amendments do the following:

1. Clarify what the Commission requires in an application for special allocation funds.

2. Formalize the Commission's policy regarding potential conflict of interest in the review and approval of grant applications.

3. Remove the applicant's requirement to identify objectives in the letter of intent and the requirement that the Department respond to every letter of intent with specific comments.

4. Update Department titles based on Iowa Code changes.

HUMAN SERVICES DEPARTMENT[441] (cont'd)

Consideration will be given to all written data, views and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114 on or before April 26, 1989.

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

The following amendments are proposed:

ITEM 1. Amend rule 441—32.1(225C) by amending the definition of "director" as follows and inserting the following new definition in alphabetical order:

"Administrator" means the administrator of the division of mental health, mental retardation, and developmental disabilities.

"Director" means the director of the ~~division of mental health, mental retardation and development disabilities~~ *department of human services*.

ITEM 2. Amend rule 441—32.2(225C) as follows:

Amend the introductory paragraph as follows:

441—32.2(225C) General allocation distribution. For any year in which the legislature appropriates funds, the ~~director~~ *administrator* shall receive and approve or disapprove applications for a share of the general allocation portion of the services funds.

Amend subrule 32.2(2), paragraph "a," introductory paragraph, and paragraphs "b" and "c" as follows:

a. The ~~director~~ *administrator* shall determine an application is acceptable when it contains all of the required information and meets the following criteria.

b. The ~~director~~ *administrator* may determine an application is unacceptable when it does not meet one or more of the above criteria.

c. When an application has deficiencies, the ~~director~~ *administrator* may grant provisional approval to an applicant when a plan of corrections has been agreed to by the applicant and the ~~director~~ *administrator*.

ITEM 3. Amend rule 441—32.3(225C) as follows:

Amend subrule 32.3(1), paragraph "a," as follows:

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

Further amend subrule 32.3(1), paragraph "b," by rescinding and reserving subparagraph (4) and amending the last paragraph, as follows:

Only letters of intent received by the deadline specified in the public notice will be considered. Applicants will be given a written acknowledgment of the letter of intent. ~~which includes comments~~ *Comments* on the project outlined in the letter *will be included if the letter of intent shows lack of understanding of application requirements*. The commission shall have the discretion to amend the letter of intent content requirements for any given grant application period.

Further amend subrule 32.3(1) by rescinding paragraph "c" and inserting the following in lieu thereof:

c. Grant proposal. Applicants shall submit the proposal to the administrator on Form 470-1461, Mental Health, Mental Retardation and Developmental Disabilities Application Package. If a proposal does not contain all the information specified in the application package including the original application and nine copies of the application or if it is late it shall be disapproved. The application content length shall not exceed 40 pages, not

including appendices. Proposals shall contain the following information:

(1) A complete application with original signatures on the "Face Sheet."

(2) Nine copies of the completed application.

(3) A project information sheet.

(4) The general assurances signed.

(5) A summary section.

(6) An introduction section.

(7) A letter of endorsement from the county mental health, mental retardation, and developmental disabilities coordinating board in the county or counties in which the service is to be provided, which nominates the project for special allocation funding. For a statewide project, a letter is required only from the county of the applicant agency.

(8) Three letters of support from an agency or individual stating familiarity with the proposed project and substantiating the experience of the applicant to conduct the proposed project.

(9) A letter of agreement (if applicable).

(10) A problem statement section.

(11) A project goals and objectives section.

(12) A project methodology section.

(13) An evaluation section.

(14) A future funding section (service projects only).

(15) A budget detail section.

The commission shall have the discretion to amend the grant proposal content requirements for any given grant application period.

Further amend rule 441—32.3(225C) by adding the following new subrule:

32.3(7) Conflict of interest. Pursuant to Iowa Code section 225C.5, the members of the commission are appointed on the basis of interest and experience in the fields of mental health and mental retardation, and include members of county boards of supervisors, mental health, mental retardation, and developmental disabilities coordinating boards, community mental health centers or the Iowa mental health association, community mental retardation agency or the Iowa association for retarded citizens. These requirements create potential for conflict of interest, but are critical to ensuring the desired experience, expertise and interest on the commission.

To protect against conflict of interest in application reviews the following guidelines shall be observed by the commission and by members of other groups assisting the commission with application review:

a. Any member with an affiliation through employment, board membership, consumer status or any other direct relationship with an applicant agency shall not participate in the review, discussion, recommendation or approval of that application.

b. If the affiliation is through employment, that member will be permitted to participate in establishment of criteria for applications from that funding source during that fiscal year, but shall not participate in the review of any other applications from agencies serving the same population group. However, that member would be permitted to review applications serving other population groups.

c. If the agency affiliation is through board membership, consumer status, or other direct connection, that member shall be permitted to participate in establishment of criteria for applications from that funding source

HUMAN SERVICES DEPARTMENT[441] (cont'd)

during that fiscal year, and shall be permitted to participate in the review of all other applications.

ITEM 4. Amend rule 441—32.4(225C) as follows:

441—32.4(225C) Appeals. Applicants dissatisfied with the ~~director's administrator's~~ decision on an application for general allocation funds, the commission's decision on an application for special allocation funds, or the commission's decision on a request for a waiver may file an appeal with the ~~commissioner~~ director. The letter of appeal must be submitted within ten working days of the date of the notice of decision and must include a request for the ~~commissioner~~ director to review the decision and the reasons for dissatisfaction. Within ten working days of the receipt of the appeal the ~~commissioner~~ director will review both the appeal request and evidence provided by the ~~director~~ administrator and will issue a final decision.

ARC 9770

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 217.6 and 249A.4, the Department of Human Services proposes to amend Chapter 60, "Refugee Cash Assistance," and Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

Final federal regulations were issued February 3, 1989, which require the following changes in administration of the Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA) programs.

1. Applicants for RCA shall be required to provide the name of their resettlement agency.

2. Refugees employed 129 hours or more per month are exempt from work registration. A parent or caretaker in a home where another adult relative is registered is no longer exempt from work registration for that reason.

3. Work or training is considered appropriate when, if child care is required, the child care facility meets state licensing or registration requirements. Also, training must be in a field where local manpower statistics indicate employment opportunities will exist.

4. Short-term employability plans may include recertification services for professionals who need a United States license to practice. Participants in most short-term employability plans will no longer be sanctioned for refusing to accept a job offer.

5. Recipients will receive a period of up to 30 days to resolve issues that would normally result in sanction for failure or refusal to comply with work and training requirements. This is referred to as the conciliation period.

6. The requirement is removed that recipients of RCA must have received RCA in at least three of the previous six months in order to receive four months of extended Medicaid coverage when they become ineligible because of increased income from employment.

The states were given no options in adopting these changes except in shortening the conciliation period. Regulations allow the state, as well as the recipient, to shorten the conciliation period. The Department is opting for that ability to be in the hands of the recipient only since the state, because of initiating the conciliation period, obviously has made its determination that the recipient should be sanctioned. Actions by the recipient, such as compliance or blatant refusal, shall be actions that may shorten the period.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before April 26, 1989.

These rules are intended to implement Iowa Code sections 217.6 and 249A.4.

The following amendments are proposed:

ITEM 1. Amend subrule 60.1(3) as follows:

60.1(3) Immigration and Naturalization Service documents. Each refugee shall provide Immigration and Naturalization Service documents in the form of either an I-94 card, an I-151 or I-551 card, or an ~~I-551~~ I-181 card to support the immigration status defined in subrule 60.1(1). *If the name of the resettlement agency which resettled the refugee is not on the document, the refugee shall provide the name of the resettlement agency.*

ITEM 2. Rescind subrule 60.8(1), paragraph "f," and insert the following in lieu thereof:

f. A refugee who is employed in nonsubsidized employment for 129 hours or more per month.

ITEM 3. Amend rule 441—60.9(217) as follows:

Amend subrule 60.9(1) by adding the following new paragraphs:

e. When child care is required, the child care must meet state licensing or registration requirements.

f. Available manpower statistics for a local area must indicate adequate employment potential for persons obtaining the given training. The employment must also meet the other appropriate work requirements.

Amend subrule 60.9(3) as follows:

60.9(3) Short-term employability plan. A short-term employability plan is an employability plan of less than one (1) year approved by the local office after consulting with the individual education and training plan unit and the bureau of refugee programs.

a. One (1) year means the ~~twelve~~ (12)-month period beginning with the date that the applicant's or recipient's employability or training plan is established by the local office. In the case of applicants, this shall occur shortly after the date of application. In recipient cases, it shall occur within ~~thirty~~ (30) days after the recipient's eighteenth (~~18~~) birthday.

b. A short-term employability plan for full-time attendance in a college or professional training program by a refugee in need of professional refresher training or other recertification services in order to qualify to practice that profession in the United States may be approved when:

(1) The training does not exceed one year's duration (including any time enrolled in such a program in the

HUMAN SERVICES DEPARTMENT[441] (cont'd)

United States prior to the refugee's application for assistance).

(2) The training is specifically intended to assist the professional in becoming relicensed in that profession.

(3) The training, when completed, can realistically be expected to result in relicensing.

Amend subrule 60.9(4) as follows:

60.9(4) Training requirements for employed refugees.

An employable refugee recipient, employed less than ~~one hundred (100) hours per month~~ 30 hours a week, shall be required to participate in part-time training when it is available and appropriate as determined by the local office after consulting the individual education and training plan unit and the bureau of refugee programs.

Amend subrule 60.9(5) as follows:

60.9(5) Refusal to apply for, accept or continue or failure to comply with employment or training requirements.

a. An employable refugee applicant who, during the 30 consecutive calendar days immediately prior to the receipt of assistance, refuses to apply for or accept an offer of employment meeting the standards above, *refuses or fails to register under subrule 60.8(3), or who* voluntarily quits employment meeting the standards above for the purpose of receiving assistance, shall be denied assistance.

b. Assistance for an employable refugee recipient shall be terminated if the refugee refuses or fails to apply for, accept, or continue employment or employment-related training as defined above or *refuses or fails to register under subrule 60.8(3)*. For the first refusal or failure the refugee shall be sanctioned for three payment months. Subsequent refusals or failures shall result in a six-payment month sanction for each refusal or failure. If the assistance grant includes other persons and the sanctioned refugee is a caretaker relative, assistance provided to the other persons shall be made in the form of protective payments as defined in rule 441—43.2(239).

c. An employable refugee may refuse a job offer, without penalty, if the refugee is currently participating in an approved short-term employability plan, in progress, of on-the-job training, vocational training or professional relicensing.

d. Prior to initiating the sanctions imposed in paragraph "b" above, the local office shall begin a conciliation effort beginning as soon as possible, but not later than ten days following the date that failure or refusal to participate becomes known. The conciliation period shall not exceed 30 days and may be terminated sooner by the recipient if the recipient resolves the dispute or, by action or statement, indicated the dispute cannot be resolved.

ITEM 4. Amend subrule 75.1(11), paragraph "b," as follows:

b. These recipients In order to receive extended Medicaid coverage under these provisions, an ADC recipient must have received or been deemed to have received ADC or RCA benefits or a combination of the two programs during at least three of the six months immediately preceding the month in which ineligibility occurred. An RCA recipient shall not be required to meet any minimum program participation time frames in order to receive extended Medicaid coverage under these provisions.

ARC 9788

LABOR SERVICES DIVISION[347]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"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 88.5 and 17A.3(1), the Labor Commissioner hereby gives Notice of Intended Action to adopt an amendment to rule 347—10.20(88) relating to occupational safety and health rules for general industry.

The amendment relates to access to employee exposure and medical records; hazard communication correction; occupational exposure to formaldehyde; approval of information collection requirements; start-up date; clarification; technical amendment; request for comment; occupational exposure to formaldehyde, start-up date; access to employee exposure and medical records; effective date and approval of information collection requirements; air contaminants; hazard communication; and hazardous waste operations and emergency response.

In compliance with Iowa Code section 88.5(1)"b," a public hearing will be held on April 27, 1989, at 9 a.m. in the office of the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa. Any interested person will be given the opportunity to make oral or written submissions concerning the proposed rules. Written data or arguments to be considered in adoption may be submitted by interested persons no later than April 25, 1989, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

The agency has determined that this Notice of Intended Action may have an impact on small business. The agency has considered the factors listed in Iowa Code section 17A.31. The agency will issue a regulatory flexibility analysis as provided in Iowa Code section 17A.31 if a written request is filed by delivery or by mailing postmarked no later than April 26, 1989, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under the Act, or an organization of small businesses representing at least 25 persons which is registered with the Division of Labor Services under the Act.

Amend rule 347—10.20(88) by inserting at the end thereof:

53 Fed. Reg. 38162 (September 29, 1988)

53 Fed. Reg. 39581 (October 7, 1988)

53 Fed. Reg. 45080 (November 8, 1988)

53 Fed. Reg. 47188 (November 22, 1988)

53 Fed. Reg. 49981 (December 13, 1988)

54 Fed. Reg. 2920 (January 19, 1989)

54 Fed. Reg. 6888 (February 15, 1989)

54 Fed. Reg. 9317 (March 6, 1989)

These rules are intended to implement Iowa Code section 88.5.

ARC 9778
NATURAL RESOURCE
COMMISSION[571]
Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 172C.5, the Natural Resource Commission gives Notice of Intended Action to adopt a new Chapter 32, "Private Open Space Lands," Iowa Administrative Code.

Iowa Code section 172C.5 places restrictions on the amount of agricultural land which may be owned by certain corporations or partnerships, exempts lands held to protect significant elements of the state's natural open space heritage from these restrictions, and directs the Department to define by rules this exemption. The proposed rules generally relate this exemption to existing statutory or rule definitions in related natural resource programs, and provide a simple procedure for making case-by-case determinations where lands don't fit directly into these other definitions. The intent of this proposal is to establish a broad definition of this exemption to encourage dedication of privately owned lands to natural resource purposes. Public input is solicited to provide a comprehensive, workable definition.

Persons wishing to make written suggestions or comments to this proposal should submit them to Victor Kennedy, Government Liaison Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034, through May 16, 1989. Persons wishing to make oral comments may do so at a public hearing to be held on April 26, 1989, at 10 a.m. in the Fourth Floor West Conference Room at the above address.

These rules are intended to implement Iowa Code section 172C.5.

The following new chapter is proposed:

CHAPTER 32
PRIVATE OPEN SPACE LANDS

571—32.1(172C) Applicability. This chapter defines the private natural open space heritage exemption for agricultural land acquired or obtained by authorized farm corporations or trusts. Iowa Code section 172C.5 exempts lands held or acquired and maintained to protect significant elements of the state's natural open space heritage, from the 1500-acre restriction placed on such entities otherwise provided by that section.

571—32.2(172C) Definition. "Natural open space land" referred to in Iowa Code section 172C.5 means:

32.2(1) Areas which have been designated as tax-exempt under Iowa Code sections 427.1(33) (impoundment structures), 427.1(36) (natural conservation or wildlife areas), 427.1(37) (native prairie), 427.1(38) (land certified as a wildlife habitat), or Iowa Code chapter 161 (fruit-tree and forest reservations), as long as the area is maintained for the exempt purpose;

32.2(2) Areas which have been designated as containing historical or cultural value, pursuant to Iowa Code

chapter 303, or as significant archaeological land, pursuant to Iowa Code chapter 305A, as long as the area is maintained for the designated purpose;

32.2(3) Areas which have been certified or otherwise approved under 571—Chapter 21 (agricultural lease for wildlife habitat), Chapter 22 (wildlife habitat on private lands), Chapter 23 (wildlife habitat promotion), Chapter 24 (recreation/tourism grants), Chapter 25 (native prairie or wildlife habitat), or Chapter 29 (unique or unusual natural areas), as long as the area is maintained for the approved purpose.

32.2(4) Areas which meet the criteria specified in statute or rule for the specified exemption or purpose described above, but for which exemption or approval has not been obtained or sought under those provisions, and other areas which are deemed by the director to protect significant elements of the state's natural open space heritage. Application for exemption under this subrule shall be made in writing and shall state all facts and reasons supporting a finding that the area meets the above criteria. Denial of the application may be appealed to the natural resource commission. It is the intent of these rules that if exemption or approval has been granted under the programs specified in subrules 32.2(2) and 32.2(3), additional approval pursuant to this chapter is not necessary and will not be given.

ARC 9769
NURSING BOARD[655]
Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Nursing hereby gives Notice of Intended Action to rescind Chapter 7, "Advanced Registered Nurse Practitioners," appearing in the Iowa Administrative Code and adopt a new Chapter 7.

The amendments in the rules provide refinement of the definitions for the practice of the advanced registered nurse practitioner.

A public hearing will be held at 7 p.m. on Wednesday, May 17, 1989, in the auditorium of the Wallace State Office Building, East 9th and Grand Avenue, Des Moines, IA.

Any interested person may make written suggestions or comments prior to May 18, 1989. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, State Capitol Complex, 1223 East Court Avenue, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Executive Director at (515) 281-3256 or in the office at 1223 East Court Avenue, by appointment.

These rules are intended to implement Iowa Code section 152.1(2)"d."

NURSING BOARD[655] (cont'd)

The following rules are proposed.

Rescind Chapter 7, "Advanced Registered Nurse Practitioners," and insert in lieu thereof the following:

CHAPTER 7
ADVANCED REGISTERED NURSE
PRACTITIONERS

655—7.1(152) Definitions.

"Advanced registered nurse practitioner" (A.R.N.P.) is a nurse with current active licensure as a registered nurse in Iowa who is prepared for advanced nursing practice by virtue of additional knowledge and skills gained through an organized postbasic program of nursing in a specialty area approved by the board. The advanced registered nurse practitioner is authorized by rule to practice advanced nursing. The advanced registered nurse practitioner may perform physician delegated functions under protocol, as defined in this chapter, on an interdisciplinary health care team.

"Appropriate concurrence" means agreement between the collaborating physician, dentist acting within the scope of their license, or podiatrist acting within the scope of their license and the certified registered nurse anesthetist either through prior personal contact and communication or by protocol.

"Basic nursing education" as used in this chapter is a nursing program that prepares a person for initial licensure to practice nursing as a registered nurse.

"Board" as used in this chapter means Iowa board of nursing.

"Certified family nurse practitioner" is an advanced registered nurse practitioner educated in the disciplines of nursing and family health who possesses evidence of certification by the American Nurses' Association or a successor agency as approved by the board. The certified family nurse practitioner is authorized by rule to practice advanced nursing assessment, intervention and management of physical and psychosocial health along the wellness-illness continuum of the individual/family from birth to death. The certified family nurse practitioner may practice in a variety of settings and, when appropriate, provide for medical consultation, collaborative management, or referral.

"Certified nurse-midwife" is an advanced registered nurse practitioner educated in the disciplines of nursing and midwifery who possesses evidence of certification by the American College of Nurse-Midwives or a successor agency as approved by the board. The certified nurse-midwife is authorized by rule to manage the care of normal newborns and women, antepartally, intrapartally, postpartally or gynecologically, occurring within a health care system which provides for medical consultation, collaborative management, or referral.

"Certified obstetric-gynecologic nurse practitioner" is an advanced registered nurse practitioner educated in the disciplines of nursing and reproductive health care of women who possesses evidence of certification by the Nurses' Association of the American College of Obstetricians and Gynecologists Certification Corporation or a successor agency as approved by the board.

The certified obstetric-gynecologic nurse practitioner is authorized by rule to practice advanced nursing in the promotion of wellness and prevention of illness in the reproductive health care of women. In concert with the physician, care includes: management of the prenatal patient with delivery by the physician; family planning services; and routine gynecologic care throughout the life span.

The certified obstetric-gynecologic nurse practitioner may practice in a variety of settings that provide for medical consultation, collaborative management, or referral.

"Certified pediatric nurse practitioner" is an advanced registered nurse practitioner educated in the disciplines of nursing and pediatrics who possesses evidence of certification by the American Nurses' Association (A.N.A.) or the National Board of Pediatric Nurse Practitioners and Associates or a successor agency as approved by the board. The certified pediatric nurse practitioner is authorized by rule to practice advanced nursing assessment, intervention and management of the physical and psychosocial health status of children and their families along the wellness-illness continuum in a variety of settings which provide for medical consultation, collaborative management, or referral.

"Certified psychiatric-mental health nurse practitioner" is an advanced registered nurse practitioner prepared at the master's level who possesses evidence of certification by the Division of Psychiatric Mental Health Nursing of the American Nurses' Association or a successor agency as approved by the board.

"Certified registered nurse anesthetist" is an advanced registered nurse practitioner educated in the disciplines of nursing and anesthesia who possesses evidence of certification by the Council on Certification of Nurse Anesthetists or Recertification of Nurse Anesthetists or a successor agency as approved by the board. The certified registered nurse anesthetist is authorized by rule to practice anesthesia with appropriate concurrence as defined in this chapter.

"Certified school nurse practitioner" is an advanced registered nurse practitioner educated in the disciplines of nursing and school health who possesses evidence of certification by the American Nurses' Association, or a successor agency as approved by the board.

The certified school nurse practitioner is authorized by rule to practice advanced nursing assessment, intervention and management of the physical and psychosocial health status of students. In providing care, the certified school nurse practitioner may collaborate with the student's family, educators, or health professionals.

"Fees" means those fees collected which are based upon the cost of sustaining the board. The fees set by the board are as follows:

1. For a license or renewal to practice as an advanced registered nurse practitioner, \$12 per year or any period thereof.
2. For a duplicate license/original certificate to practice as an advanced registered nurse practitioner, \$15.
3. For advanced registered nurse practitioner late renewal, \$10 plus the renewal fee.
4. For advanced registered nurse practitioner delinquent license fee, \$50 plus all renewal fees to date due.
5. For a check returned for any reason, \$10.

"Physician" means a medical doctor licensed under Iowa Code chapter 148 or osteopathic physician and surgeon licensed under Iowa Code chapter 150A.

"Protocol" means a jointly developed written document reviewed and signed at least annually by the collaborating physician(s) and advanced registered nurse practitioner(s) which clearly delineates situations in which the advanced registered nurse practitioner may perform physician delegated medical services. A protocol shall be made available for inspection and review at all

NURSING BOARD[655] (cont'd)

times by the board. The existence of a protocol shall not in any way constitute or imply acceptance or approval of that protocol by the board.

655—7.2(152) General requirements for the advanced registered nurse practitioner.

7.2(1) Specialty areas of nursing practice for the advanced registered nurse practitioner. The board derives its authority to define the educational and clinical experience that is necessary to practice at an advanced registered nurse practitioner level under the provisions of Iowa Code section 152.1(2)"d." The specialty areas of nursing practice for the advanced registered nurse practitioner which shall be considered as legally authorized by the board are as follows:

- a. Nurse anesthetist.
- b. Nurse-midwife.
- c. Pediatric nurse practitioner.
- d. Family nurse practitioner.
- e. School nurse practitioner.
- f. Obstetric-gynecologic nurse practitioner.
- g. Psychiatric-mental health nurse practitioner.

7.2(2) Titles and abbreviations. A registered nurse who has completed all requirements to practice as an advanced registered nurse practitioner and who is registered with the board to practice shall use the title advanced registered nurse practitioner (A.R.N.P.). Utilization of the title which denotes the specialty area is at the discretion of the advanced registered nurse practitioner.

a. No person shall practice or advertise as or use the title of advanced registered nurse practitioner for any of the defined specialty areas unless the name, title and specialty area appear on the official record of the board and on the current license.

b. No person shall use the abbreviation A.R.N.P. for any of the defined specialty areas or any other words, letters, signs or figures to indicate that the person is an advanced registered nurse practitioner unless the name, title and specialty area appear on the official record of the board and on the current license.

c. Any person found to be practicing under the title of advanced registered nurse practitioner or using the abbreviation A.R.N.P. without being registered as defined in this subrule shall be subject to disciplinary action.

7.2(3) General education and clinical requirements.

a. The general educational and clinical requirements necessary for recognition by the board as a specialty area of nursing practice are as follows:

(1) Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills as approved by the board; or

(2) Satisfactory completion of an organized postbasic program of study and appropriate clinical experience as approved by the board.

b. Additional requirements. Nothing in this rule shall be construed to mean that additional general educational or clinical requirements cannot be defined in a specialty area.

7.2(4) Application process. A registered nurse who wishes to practice as an advanced registered nurse practitioner shall submit the following to the office of the board:

a. An advanced registered nurse practitioner application form which may be obtained from the office of the board.

b. A registration fee as established by the board.

c. A copy of certification by appropriate national organization; copy of diploma or official transcript from formal postbasic training necessary to document that all requirements have been met in one of the specialty areas of nursing practice as listed in subrule 7.2(1). A registered nurse may make application to practice in more than one specialty area of nursing practice.

7.2(5) Initial registration. The executive director or a designee shall have the authority to determine if all requirements have been met for registration as an advanced registered nurse practitioner. If it has been determined that all requirements have been met:

a. Official licensure records of the registered nurse shall denote registration as an advanced registered nurse practitioner as well as the specialty area(s) of nursing practice.

b. The registered nurse shall be issued, whichever applicable, one of the following:

(1) Temporary registration card when the nurse presents evidence of eligibility for the next certification examination. The temporary registration is valid until the results of the first examination are received. The expiration date of the temporary registration card shall be determined by the executive director or designee based upon the examination requirements.

(2) A license and a certificate to practice as an advanced registered nurse practitioner which clearly denotes the name, title, specialty area(s) of nursing practice and expiration date of registration. The expiration date shall be based on the same period of license to practice as a registered nurse.

7.2(6) Denial of registration. If it has been determined that all requirements have not been met, the registered nurse shall be notified in writing of the reason(s) for the decision. The applicant shall have the right of appeal to the Iowa board of nursing within 30 days of denial by the executive director or designee.

7.2(7) Application process for renewal of registration. Renewal of registration for the advanced registered nurse practitioner shall be for the same period of license to practice as a registered nurse. The executive director or a designee shall have the authority to determine if all requirements have been met for renewal as an advanced registered nurse practitioner. A registered nurse who wishes to continue practice as an advanced registered nurse practitioner shall submit the following at least 30 days prior to the license expiration to the office of the Iowa board of nursing:

a. Completed renewal application form.

b. Renewal fees as outlined in rule 7.1(152), definition of "fees."

7.2(8) Continuing education requirements. Continuing education shall be met as required for certification by the relevant national certification board, agency, etc.

7.2(9) Denial of renewal registration. If it has been determined that all requirements have not been met, the applicant shall be notified in writing of the reason(s) for the decision. Failure to obtain the renewal will result in termination of registration and of the right to practice in the advanced registered nurse practitioner specialty area(s). The applicant shall have the right of appeal to the Iowa board of nursing within 30 days of denial of the executive director or designee.

7.2(10) License to practice as an advanced registered nurse practitioner revoked, suspended, etc. The board may restrict, suspend or revoke a license to practice as

NURSING BOARD[655] (cont'd)

an advanced registered nurse practitioner on any of the grounds stated in Iowa Code sections 147.55, 152.10 or chapter 258A. In addition:

a. The board may refer a complaint against an advanced registered nurse practitioner to a peer review committee for investigation and review in accordance with Iowa Code section 258A.6(2).

b. The peer review committee shall be comprised of three advanced registered nurse practitioners in the same specialty area of nursing practice.

c. The board may appoint a physician from a related area of medical specialty to serve as a consultant to the peer review committee.

ARC 9780**PROFESSIONAL LICENSURE
DIVISION[645]****BOARD OF COSMETOLOGY 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 157.14, the Board of Cosmetology Examiners gives Notice of Intended Action to amend Chapter 62, "Cosmetology Continuing Education," Iowa Administrative Code.

The rule decreases the continuing education requirements for a two-year period from 16 hours to 8 hours for licensees, and from 32 hours to 16 hours for instructors.

The rule also establishes a new license renewal period beginning in 1991. The new license renewal period will be a biennium from April 1 of one year to March 31 of second year following. The rule provides for a staggered schedule of license renewals, so that half of the licensees will renew their licenses one year and half will renew the next year.

Any interested person may make written comments on the proposed rule on or before April 25, 1989. Comments should be addressed to Grace M. West, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

This rule is intended to implement Iowa Code sections 258A.2, 258A.2A, 258A.3 and 157.14.

Amend rule 645—62.2(258A) as follows:

Amend subrule 62.2(1) by rescinding the introductory paragraph and amending the unnumbered paragraph as follows:

Beginning January 1, ~~1989~~ 1989, each person licensed to practice cosmetology in this state shall complete during each ~~compliance period~~ *license renewal period* (January 1 of each ~~odd numbered year to November 1 of the next even numbered year~~) a minimum of 16 8 hours of continuing education approved by the board. Each person holding an instructor's license shall complete a minimum of ~~32~~ 16 hours of continuing education at the advanced instructor's institutes

prescribed by the board during each ~~compliance period~~ *license renewal period*, which will also fulfill the continuing education required for their cosmetology license. Compliance with the requirement of continuing education is a prerequisite for license renewal in the next license renewal period.

Rescind the existing subrule 62.2(2) and insert the following in lieu thereof:

62.2(2) The current license renewal period shall consist of a two-year period from January 1, 1989, through December 31, 1990.

Beginning January 1, 1991, the license renewal period shall consist of a period of two years, from April 1 of one year to March 31 of the second year following.

To establish this license renewal period and implement a staggered schedule for license renewals the board will:

a. Renew licenses for half of the licensees for a period of January 1, 1991, to March 31, 1992. Continuing education requirements and license fees will be prorated accordingly. The continuing education requirements for licensees will be 4 hours instead of the 8 hours stated in subrule 62.2(1). The continuing education requirements for instructors will be 8 hours instead of the 16 hours stated in subrule 62.2(1). The license renewal fee for each will be \$12 instead of the \$20 stated in rule 60.9(147).

b. Renew licenses for half of the licensees for a period of January 1, 1991, to March 31, 1993. Continuing education requirements and fees will be prorated accordingly. The continuing education requirement for licensees will be 8 hours. The continuing education requirements for instructors will be 16 hours. The license renewal fee for each will be \$22 instead of the \$20 stated in rule 60.9(147).

c. Notify all licensees at time of renewal whether they will be licensed according to 62.2(2), paragraph "a" or "b."

d. Renew licenses thereafter on a biennial basis, from April 1 of one year to March 31 of the second year following.

ARC 9781**PROFESSIONAL LICENSURE
DIVISION[645]****BOARD OF PSYCHOLOGY 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 Psychology Examiners gives Notice of Intended Action to amend Chapter 240, "Board of Psychology Examiners," Iowa Administrative Code.

The amendments clarify requirements for academic training, clarify "supervision" in clinical experience requirements for licensure, increase from 1500 to 1800 hours the minimum training experience required, define a "psychology associate" and "associate in psychology,"

PROFESSIONAL LICENSURE DIVISION[645] (cont'd)

and provide for a designation of "license transfer in process" for out-of-state licensees seeking licensure in Iowa. The amendments establish time frames for taking the written examination, establish a passing score of 70 percent for the exam, and prohibit reexamination if an applicant has failed the exam four times. The amendments establish a delinquent penalty of \$25 for late return of continuing education reports.

Any interested person may make written comments concerning the proposed rules no later than April 25, 1989, addressed to Keith Rankin, Psychology Board Administrator, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The proposed rules are intended to implement Iowa Code chapters 154B and 258A.

~ITEM 1. Amend subrule 240.5(10) as follows:

Amend subrule 240.5(10), paragraph "f," as follows:

f. There must be an identifiable psychology faculty and a on-site sufficient in size to ensure that the ratio of faculty to students is adequate for instruction. The faculty must also have sufficient breadth in order to ensure that the scope of knowledge in psychology provides for adequate instruction. There must be a psychologist responsible for the program.

Amend subrule 240.5(10), paragraph "i," first paragraph, as follows:

i. The curriculum shall encompass a minimum of three academic years of graduate study. *Because a significant residency experience is necessary to ensure adequate socialization experiences and acquisition of professional-technical skills, at least a minimum of one year's residency at the educational institution granting the doctoral degree is required.* In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (five or more graduate quarter hours) in each of these four substantive content areas:

ITEM 2. Amend subrule 240.6(9), paragraph "b," as follows:

b. The supervisor and the supervisee met on a face-to-face basis and discussed matters pertinent to the psychological practice for a minimum of one hour on at least a biweekly basis. From and after January 1, 1980, the supervisor and the applicant shall meet for a minimum of one hour at each meeting and averaging at least one meeting per week. *Group supervision is not acceptable to fulfill this requirement for supervised professional experience.*

ITEM 3. Amend subrule 240.6(11) as follows:

Amend paragraph "a" as follows:

a. Applicants for licensure who have met educational requirements, but have not yet passed the written examination for the practice of psychology, may be designated "psychology clerk," "psychology associate" or "associate in psychology". The title "psychology clerk" "psychology associate" or "associate in psychology" shall not be used except as the person's employment and supervision meet the requirements of subrules 240.6(9) and 240.6(10).

Further amend 240.6(11) by adding a new paragraph "d" as follows:

d. Persons licensed in another state who are in the process of seeking licensure in Iowa and who are being supervised until obtaining an Iowa license may use the designation "License Transfer in Process, Licensed Psychologist (name of state)", for a period up to one year from the date of application.

ITEM 4. Amend rule 240.8(154B) as follows:

Amend subrule 240.8(4) as follows:

240.8(4) An applicant who fails to appear for the scheduled examination will forfeit the examination fee unless an explanation acceptable to the board is provided in writing not later than 15 days after the examination. *From and after July 1, 1989, an applicant approved by the board to sit for the written examination must take one of the next three written examinations administered by the board from the date of the board's initial approval. If the applicant has not taken the written examination, the initial board review to sit for the examination shall then become invalid. In order to be considered for examination later, the applicant shall file with the board a complete, new application including the nonrefundable application fee and must meet the requirements for licensure at the time such application is filed. Upon approval to sit for the written examination, the examination fee will be required.*

Amend subrule 240.8(7) as follows:

240.8(7) The board will notify the applicant in writing of examination results. *An applicant will be deemed to have passed the written examination if the score obtained on the examination is equal to or greater than 70 percent of the total items.*

Amend subrule 240.8(8) as follows:

240.8(8) Beginning January 1, 1984, persons determined by the board not to have performed satisfactorily may apply for reexamination no more three times. *Any applicant who has taken and failed the examination a combined total of four times in this state or in any other state or jurisdiction shall not be permitted to sit for the examination in this state.*

ITEM 5. Amend rule 240.10(154B) as follows:

Amend rule 240.10(154B), introductory paragraph, as follows:

645—240.10(154B) Licensure fees. All fees are nonrefundable. *Checks should be made payable to the Iowa State Board of Psychology Examiners.*

Amend subrule 240.10(2) by changing "\$100" to "\$150".

Amend rule 240.10(154B) by adding a new subrule 240.10(12) as follows:

240.10(12) *Delinquent penalty fee for failure to file continuing education report as provided in rule 240.105(258A) is \$25.*

ITEM 6. Amend rule 240.11(154B) as follows:

Amend subrule 240.11(2), paragraph "g," as follows:

g. There must be an identifiable psychology faculty and on-site sufficient in size to ensure that the ratio of faculty to students is adequate for instruction. The faculty must also have sufficient breadth in order to ensure that the scope of knowledge in psychology is sufficiently broad for adequate instruction. ~~breadth to carry out its responsibilities, and~~ There must be a psychologist responsible for the program.

Amend subrule 240.11(2), paragraph "j," first paragraph, as follows:

j. The curriculum shall encompass a minimum of three academic years of graduate study. *Because a significant*

PROFESSIONAL LICENSURE DIVISION[645] (cont'd)

residency experience is necessary to ensure adequate professional-technical skills, at least a minimum of one year's residency at the educational institution granting the doctoral degree is required. In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (five or more graduate quarter hours) in each of these four substantive content areas:

Amend subrule 240.11(4), paragraph "l," as follows:

1. The training experience (minimum ~~1500~~ 1800 hours) shall be completed within 24 consecutive months and no less than 12 months.

ITEM 7. Amend subrule 240.103(2) as follows:

240.103(2) Prior approval of activities. An organization or person other than an accredited sponsor, which desires prior approval of a course, program or other continuing education activity or who desires to establish accreditation of the activity prior to attendance thereat, shall apply for approval to the board at least 60 days in advance of the commencement of the activity on a form provided by the board. The board shall approve or deny such application in writing. The application shall state the dates, subjects offered, total hours of instruction, names and qualifications of speakers and other pertinent information.

ITEM 8. Rescind rule 240.104(258A).

ITEM 9. Amend rule 240.105(258A) as follows:

645—240.105(258A) Report of licensee. Each licensee shall file a report of continuing education on a form provided by the board once each licensure biennium by January 31 of the calendar year following the most recent continuing education compliance period. This continuing education report will be used as evidence for fulfillment of continuing education requirements for the subsequent biennial licensure renewal period beginning July 1. The licensee will be required to maintain appropriate records including evidence of attendance and completion of the continuing education activities reported and may be asked by the board to produce continuing education activity attendance and completion records. Failure to report education by the specified date *will result in a penalty fee as provided in rule 645—240.10(154B).* Failure to report continuing education activity and attendance records or failure to produce upon request continuing education attendance and completion records satisfactory to the board will result in nonrenewal of licensure for the subsequent licensure biennium unless such a failure is the result of a disability or illness documented by a statement from an appropriately licensed health care professional and is acceptable to the board.

ITEM 10. Rescind rule 240.205(258A).

ARC 9754

PUBLIC HEALTH
DEPARTMENT[641]

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 139.1(3) and chapter 135I, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 1, "Notification and Surveillance of Reportable Diseases," Iowa Administrative Code.

These proposed amendments:

1. Delete "Trachoma" and add "Parvovirus B19 infection (fifth disease and other complications)" to the list of reportable infectious diseases, and change "Legionnaire's" disease to "Legionellosis."

2. Add a new rule regarding notification requirements for persons handling a dead body when certain known or suspected contagious or infectious diseases are involved.

The Iowa Department of Public Health will hold a public hearing on Tuesday, April 25, 1989, at 1 p.m., in the Third Floor Conference Room, Lucas State Office Building, Des Moines, Iowa. Any oral or written comments must be received on or before April 25, 1989. Comments should be addressed to Cheryl Christie, Iowa Department of Public Health, Division of Disease Prevention, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code section 139.1(3) and Iowa Code chapter 135I.

The following amendments are proposed:

ITEM 1. Amend subrule 1.2(1), paragraph "a," by deleting "Trachoma" from the list of specific infectious diseases, changing "Legionnaire's disease" to "Legionellosis," and adding, in alphabetical order, the following disease:

Parvovirus B19 infection (fifth disease and other complications)

ITEM 2. Amend 641—Chapter 1 by adding the following new rule:

641—1.9(135I) Contagious or infectious disease notification—purpose. The purpose is to establish contagious or infectious disease notification requirements for the information of any person handling a dead body.

1.9(1) Definitions. For the purpose of rule 641—1.9(135I), the following definitions shall apply:

"Contagious or infectious disease" means any contagious or infectious disease which is transmitted by a bloodborne route or by skin-to-skin contact.

"Health care provider" means a person providing health care services of any kind.

"Health facility" means a hospital, health care facility, clinic, blood bank, blood center, sperm bank, laboratory organ transplant centers and procurement agencies, or other health care institution.

PUBLIC HEALTH DEPARTMENT[641] (cont'd)

1.9(2) Notification procedures and responsibilities.

a. A health care provider attending a person prior to the person's death shall, at the time of death, place with the body a written notice which specifies or signifies either "known contagious or infectious disease" or "suspected contagious or infectious disease."

b. The health facility in which the health care provider is working shall be responsible for establishing written procedures and implementing the specific internal practices necessary to satisfy this notification requirement.

These rules are intended to implement Iowa Code section 139.1(3) and Iowa Code chapter 135I.

ARC 9791**TRANSPORTATION
DEPARTMENT[761]****Notice of Intended Action**

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 307.12 and 307A.2, the Department of Transportation hereby gives Notice of Intended Action to amend 761—Chapter 150, "Improvements and Maintenance on Primary Road Extensions," Iowa Administrative Code.

The amendments allow the Department some flexibility in participating in the costs of local service roads or streets and in the costs of lighting on extensions of expressway, arterial, and arterial connector highways.

These amendments are intended to implement Iowa Code chapters 306, 313 and 314.

On May 16, 1989, at their regular meeting at the Department of Transportation Complex, 800 Lincoln Way, Ames, Iowa, the Transportation Commission shall consider these proposed administrative rules.

Any person or agency may submit written comments concerning these proposed rules or may submit a written request to make an oral presentation at the Commission meeting. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to the Department of Transportation, Office of Financial/Operational Analysis, 800 Lincoln Way, Ames, Iowa 50010.

5. Be delivered to this office or postmarked no later than May 2, 1989.

The Department shall notify a person or agency properly requesting an oral presentation of the time of day scheduled for the presentation.

Proposed rule-making actions:

ITEM 1. Amend subrule 150.3(1), paragraph "e," as follows:

e. *Unless otherwise mutually agreed to and specified in the agreement:*

(1) The department shall be responsible for one-half of the right-of-way and construction costs of local service roads or streets only when these local service roads or streets are developed as a part of the initial construction of the through traffic lanes. The city shall be expected to be responsible for the remainder of the right-of-way and construction costs.

(2) The storm sewer construction costs for local service roads or streets shall be shared equally between the department and the city.

ITEM 2. Amend subrule 150.3(3), paragraph "a," as follows:

a. The department shall not be responsible for the installation, energy, and maintenance costs of lighting on extensions of expressway, arterial and arterial connector highways. The city may elect to provide this lighting at its own expense. *However:*

(1) ~~However,~~ For a smaller city, the department may elect for smaller cities to install interchange lighting and to be responsible for or to participate in the energy and maintenance costs of this lighting.

(2) On a new construction project that results in a predominately fully controlled access highway, but incorporates some expressway or arterial segments, the department may elect to participate in the installation of lighting at conflict points if the city agrees to be responsible for the energy and maintenance costs of this lighting.

ARC 9760**TRANSPORTATION
DEPARTMENT[761]****Notice Terminated**

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Department of Transportation hereby terminates ARC 9646 published February 8, 1989. ARC 9646 proposed an amendment to Chapter 800, "Items of General Application," Iowa Administrative Code.

The proposed amendment required a railroad to notify all interested persons when the railroad divests a right-of-way or easement. The Department received several comments concerning the complexities and burdens of applying the rule and has decided to terminate the rule.

The proposed amendment was intended to implement Iowa Code chapters 327C and 327G.

ARC 9771**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.14, the Iowa Utilities Board (Board) gives Notice that on March 8, 1989, the Board issued an order in Docket No. RMU-89-1, In Re: Energy Conservation Strategies and

UTILITIES DIVISION[199] (cont'd)

Programs. "Order Granting Petition And Commencing Rule Making." The Board is initiating this rule making to allow interested parties to comment on the rule making proposed by the Office of Consumer Advocate (Consumer Advocate) concerning energy conservation. The Board is proposing to rescind 19.9(1), add new subrules 19.9(1) to 19.9(5), renumber 19.9(2) to 19.9(5) as 19.9(6) to 19.9(9), and to amend renumbered 19.9(8). In addition, the Board is proposing to amend and renumber 20.10(7) and 20.10(9), renumber 20.10(8), and add new subrules 20.10(7) through 20.10(11).

Any interested person may file a written statement of position pertaining to the proposed rules. The statement must be filed on or before April 25, 1989, 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. The Board has scheduled an oral presentation to commence at 10 a.m. on Tuesday, May 2, 1989, in the First Floor Hearing Room, Lucas State Office Building.

The following amendments are proposed:

ITEM 1. Amend rule 199—19.9(476) as follows:

199—19.9(476) Energy conservation strategies.

19.9(1) Coverage. Standards for energy conservation strategies shall apply to all rate and service regulated gas utilities in Iowa. Nothing in this rule subjects the rates of municipal utilities to the regulatory authority of the board.

19.9(1) Applicability. Each gas public utility subject to the jurisdiction of the board pursuant to Iowa Code chapter 476 over energy conservation strategies and programs, including pilot projects, shall comply with this chapter. All information presented by utilities, the board staff, the board, the office of consumer advocate or any other person in any annual proceeding conducted pursuant to this chapter, and all board rulings thereon, shall not, in any manner or to any degree, be construed as justifying or excusing an action taken by a gas public utility when, in another proceeding, the reasonableness of that action, or the rate-making treatment to be accorded thereto, is at issue. The adoption and implementation of this rule shall not be construed as relieving the management of any public utility of its duty to act prudently and reasonably, nor shall adoption and implementation of this rule be construed to shift responsibility for prudent and reasonable planning from the utility to the board or any other public representative.

19.9(2) Annual filings. Each gas public utility described in 19.9(1) shall file on or before July 1 of each year, commencing on July 1, 1989, an energy conservation strategy and program plan. The plan shall include each utility's comprehensive energy management program similar where applicable to that contemplated for electric public utilities pursuant to Iowa Code section 476A.6(4). If no such program is currently in effect, the gas public utility shall implement such a program forthwith and thereafter.

19.9(3) Written comments on plans. Any party may conduct discovery and any person or party may file written comments with the board on or before October 31 of the filing year addressing any gas public utility's plan. Such comments may propose that the board in whole or

in part accept, modify or reject the plan of any gas public utility.

19.9(4) Each gas utility may file reply comments on or before November 30 of the filing year.

19.9(5) Disposition of annual filings. On or before December 31 of the filing year, unless extended by the board, the board shall notify each gas public utility and other parties by order of its preliminary decision of whether to in whole or in part accept, modify or reject that gas public utility's plan. Each gas public utility or any interested party, including the office of consumer advocate, may request a hearing within 14 days of the issuance of such order specifying which portions of said order are objected to and the grounds of said objection. Upon the filing of such a request, the board shall set the matter for contested case hearing and provide appropriate notice thereof. After hearing and any briefing, the board shall issue its final order which in whole or in part shall accept, modify or reject the plan of the gas public utility.

19.9(26) Load management techniques. Each rate or service regulated gas utility shall offer to its customers load management techniques that are determined by the board to:

- a. Be reliable,
- b. Provide useful energy or capacity management advantages to the gas utility, and
- c. Be practicable and cost-effective. The technique is cost-effective if it is likely to reduce maximum demand on the utility, and the long-run cost-savings to the utility due to the reduction are likely to exceed the long-run costs to the utility associated with implementation of the technique.

19.9(37) Other energy conservation strategies. Each rate regulated gas utility shall offer to its consumers other energy conservation strategies that are determined by the board to:

- a. Be reliable,
- b. Provide useful energy conservation advantages to utilities, and
- c. Be practicable and cost-effective. The strategy is cost-effective if long-run cost savings to the utility of the energy conservation strategy are likely to exceed the long-run costs to the utility associated with the implementation of the strategy.

19.9(48) Pilot projects. The commission board may initiate programs related to these standards as pilot projects to accumulate sufficient data to determine if the programs meet the requirements of this rule.

Pilot projects approved by the board may include as participants all or part of any existing customer class or classes. Customers may volunteer to participate in pilot projects.

Only if necessary to ensure the validity or success of a pilot project, and if approved by the board, the pilot project may be made mandatory for all or part of any existing customer class or classes. In these cases, the participants shall be selected on a reasonable and nondiscriminatory basis, from all or part of those customers. Where participation in a pilot project is mandatory, participants shall be given notice as required in Iowa Code section 476.6, shall be provided with an opportunity to contest the reasonableness of the proposed energy conservation strategy or load management technique, or the propriety of the selection process, and shall be allowed to request an exemption from participation based on individual hardship.

UTILITIES DIVISION[199] (cont'd)

Any person or any gas public utility may at any time request in writing for the board to initiate a pilot project pursuant to Iowa Code section 476.1. Pilot projects found by the board to be cost-effective for a gas public utility, and for an electric public utility where the board finds that such pilot projects can be implemented by a gas public utility, shall be implemented by all other gas public utilities within 120 days of such finding by the board unless a gas public utility affirmatively shows that the pilot project is not cost-effective for that gas public utility. The burden of proof shall be on the gas public utility attempting to avoid implementation of a pilot project previously determined by the board to be cost-effective. Any interested party, including the office of consumer advocate, may request and shall be granted a hearing to determine if the gas public utility has carried its burden of proof in this regard.

The board may at any time on its own motion initiate a pilot project pursuant to Iowa Code section 476.1 or implement a cost-effective energy conservation strategy or program pursuant to Iowa Code section 476.1 applicable to one or more gas public utilities.

Further amend rule 199—19.9(476) by renumbering subrule 19.9(5) as 19.9(9).

ITEM 2. Amend rule 199—20.10(476) by adding the following new subrules 20.10(7) to 20.10(11) and renumbering and amending existing subrules 20.10(7) to 20.10(9) as follows:

20.10(7) Applicability. Each electric public utility subject to the jurisdiction of the board pursuant to Iowa Code chapter 476 over energy conservation strategies and programs, including pilot projects, shall comply with this chapter. All information presented by utilities, the board staff, the board, the office of consumer advocate or any other person in any annual proceeding conducted pursuant to this chapter, and all board rulings thereon, shall not, in any manner or to any degree, be construed as justifying or excusing an action taken by an electric utility when, in another proceeding, the reasonableness of that action, or the rate-making treatment to be accorded thereto, is at issue. The adoption and implementation of this rule shall not be construed as relieving the management of any public utility of its duty to act prudently and reasonably, nor shall adoption and implementation of this rule be construed to shift responsibility for prudent and reasonable planning from the utility to the board or any other public representative.

20.10(8) Annual filings. Each electric public utility described in 20.10(7) shall file on or before January 1 of each year, commencing on January 1, 1990, an energy conservation strategy and program plan. The plan shall include, but not be limited to, each electric public utility's comprehensive energy management program as defined in Iowa Code section 476A.6(4). If no such program is currently in effect, the electric public utility shall implement such a program forthwith and thereafter.

20.10(9) Written comments on plan. Any party may conduct discovery and any person or party may file written comments with the board on or before April 30 of the filing year addressing any electric public utility's plan. Such comments may propose that the board in whole or in part accept, modify or reject the plan of any electric public utility.

20.10(10) Each electric utility may file reply comments on or before May 31 of the filing year.

20.10(11) Disposition of annual filings. On or before June 30 of the filing year, unless extended by the board,

the board shall notify each electric public utility and other parties by order of its preliminary decision of whether to in whole or in part accept, modify or reject that electric public utility's plan. Each electric public utility or any interested party, including consumer advocate, may request a hearing within 14 days of the issuance of such order specifying which portions of said order are objected to and the grounds of said objection. Upon the filing of such a request, the board shall set the matter for contested case hearing and provide appropriate notice thereof. After hearing and any briefing, the board shall issue its final order which in whole or in part shall accept, modify or reject the plan of the electric public utility.

20.10(712) Load management techniques. Each rate or service regulated electric utility (subrule 20.10(1) notwithstanding) shall offer to its electric consumers load management techniques that are determined by the board to:

- a. Be reliable,
- b. Provide useful energy or capacity management advantage to the electric utility, and
- c. Be practical and cost-effective. The technique is cost-effective if it is likely to reduce maximum kilowatt demand on the electric utility, and the long-run cost-savings to the utility of that reduction are likely to exceed the long-run costs to the utility associated with implementation of the technique.

Nothing in this subrule subjects the rates of municipal utilities to the regulatory authority of the ~~commission~~ board.

20.10(813) Other energy conservation strategies. Each rate or service regulated electric utility (subrule 20.10(1) notwithstanding) shall offer to its electric consumers other energy conservation strategies that are determined by the board to:

- a. Be reliable,
- b. Provide useful energy conservation advantages to utilities, and
- c. Be practicable and cost-effective. The strategy is cost-effective if long-run cost savings to the utility of the energy conservation strategy are likely to exceed the long-run costs to the utility associated with implementation of the strategy.

Nothing in this subrule subjects the rates of municipal utilities to the regulatory authority of the board.

20.10(914) Pilot projects. The board may initiate programs related to these rate-making standards as pilot projects to accumulate sufficient data to determine if the programs meet the requirements of this rule.

Pilot projects approved by the board may include as participants all or part of any existing customer class or classes. Customers may volunteer to participate in pilot projects.

Only if necessary to ensure the validity or success of a pilot project, and if approved by the board, the pilot project may be made mandatory for all or part of any existing customer class or classes. In these cases, the participants shall be selected on a reasonable and nondiscriminatory basis, from all or part of those customers. Where participation in a pilot project is mandatory, participants shall be given notice as required in Iowa Code section 476.6, shall be provided with an opportunity to contest the reasonableness of the proposed energy conservation strategy or load management technique, or the propriety of the selection process, and

UTILITIES DIVISION[199] (cont'd)

shall be allowed to request an exemption from participation based on individual hardship.

Any person or any electric public utility may at any time request in writing for the board to initiate a pilot project pursuant to Iowa Code section 476.1. Pilot projects found by the board to be cost-effective for an electric public utility, and for a gas public utility where the board finds that such pilot projects can be implemented by an electric public utility, shall be implemented by all other electric public utilities within 120 days of such finding by the board unless an electric public utility affirmatively shows that the pilot project is not cost-effective for that electric public utility. The burden of proof shall be on the electric public utility attempting to avoid implementation of a pilot project previously determined by the board to be cost-effective. Any interested party, including the office of consumer advocate, may request and shall be granted a hearing to determine if the electric public utility has carried its burden of proof in this regard.

The board may at any time on its own motion initiate a pilot project pursuant to Iowa Code section 476.1 or implement a cost-effective energy conservation strategy or program pursuant to Iowa Code section 476.1 applicable to one or more electric public utilities.

ARC 9785

VOTER REGISTRATION
COMMISSION[845]

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 47.8, the Voter Registration Commission proposes to amend Chapter 1, “Organization, Purpose and Procedure,” Chapter 2, “Voter Registration Forms and Instructions,” Chapter 6, “Criteria for County Data Processing Systems for Voter Registration,” and Chapter 7, “State Voter Registration File Update and Maintenance Requirements,” appearing in the Iowa Administrative Code.

These amendments reflect the changes in organizational structure, alter the format and specifications for alternate registration forms, make grammatical corrections to rules related to the procurement of voter lists from the registrar, clarify that the requester is responsible for payment, and allow county input on computer floppy disks.

The amendments were adopted by the Voter Registration Commission at the regularly scheduled meeting on February 14, 1989.

Any interested person may make written suggestions or comments on these proposed amendments prior to April 25, 1989. Such written materials should be directed to the Director of Voter Registration, Level B, Hoover State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Director at (515) 281-5781.

These rules are intended to implement Iowa Code chapters 47 and 48.

The following amendments are proposed:

ITEM 1. Amend rule 845—1.2(47) to read as follows:

845—1.2(47) State registrar of voters. The senior administrator of the data processing division of the ~~state comptroller's office~~ Iowa department of general services is the state registrar of voters. The state registrar is responsible for the regulation of the preparation, preservation and maintenance of voter registration records and the preparation of precinct election registers for all elections administered by the commissioner of any county. This regulation activity is in accordance with the policies of the voter registration commission.

ITEM 2. Amend subrules 1.4(1) and 1.4(2) to read as follows:

1.4(1) Voter registration system. Under the general direction of the state registrar of voters, the director of voter registration ~~and his or her assistant~~ conducts and directs those activities necessary to implement and maintain the statewide voter registration system. The voter registration staff includes clerical and technical personnel assigned to the voter registration function by the registrar.

1.4(2) Intergovernmental relations. The voter registration staff is responsible for working with and assisting county commissioners in performing their voter registration duties under the law, including acquisition of voter registration data processing services, preparation of election registers, updating, correcting and maintaining voter registration files, processing ~~postcard registration~~, *alternate registrations*, developing standard edit tables and related activities.

ITEM 3. Amend rule 845—2.1(48) as follows:

845—2.1(48) Voter registration forms.

2.1(1) No change.

2.1(2) No change.

2.1(3) Registration forms distributed by the commissioner to deputy registrars shall, in addition to the requirements of subrule 2.1(1):

- a. Provide for a receipt to be given the registrant; ~~and~~
- b. Be numbered in a manner which allows a deputy registrar to make an accurate accounting of that deputy's forms to the commissioner; ; ~~See also subrule 2.2(1) and~~
- c. *Contain a space for the signature of the deputy registrar. See also subrule 2.2(1).*

2.1(4) No change.

2.1(5) The postcard registration form shall, in addition to the requirements of subrule 2.1(1):

- a. Be precisely the same, in wording, order, type size and other particulars, as the sample form titled “Sample Postcard Registration Form—2.1(5)” reproduced at the end of this subrule;
- b. Be white or buff in color and of a type approved by the U.S. Postal Service for postcards;
- c. Be exactly 3 1/2 inches by 6 inches; *after the removal of the stub containing the instructions;*
- d. Be legibly printed;
- e. Have the following instructions printed on a *detachable stub* on the left side of the *reverse face* of the form:

“1. To register to vote in Iowa you must be: a citizen of the United States; be 17 1/2 years of age or older and declare Iowa as your voting residence. You must be 18 to vote.

VOTER REGISTRATION COMMISSION[845] (cont'd)

"1. Use this form to register to vote, or to report a change of name, address, telephone number or party affiliation. Please check the appropriate box(es) at the top right. If you are not certain you are presently registered in the county in which you live, check the 'new registration' box.

2. You may register by this form at any time; however, this form or the envelope bearing the form must be postmarked or delivered to the County Auditor's office no later than 15 days prior to an election to be valid for that election:

- 2. The following information is required:
a. Your full name.
b. Your birth date.
c. Your complete address including apartment and box numbers.
d. Your gender.
e. The name of the county in which you live.
f. Where you were last registered to vote.

3. This form may also be used to record a change of name, address, or political party.

3. The following information is requested:
a. Your social security number. Solicited pursuant to Iowa Code Section 48.5, this number is used to avoid multiple registrations for a single individual.

b. The name of the city and school district in which you live. If you do not live inside a city, list the name of the township and section number in which you live. If you do not know your township and section number, complete the "RURAL ROUTES" section on the reverse side of the form.

c. Your telephone number, including area code.

4. You must sign this form.

4. Detach this stub before mailing the form."

5. Within a week you should receive a receipt of this registration: If you do not, contact your county auditor.

6. There are other ways to register. Contact your county auditor if assistance is required," and

f. Have additional information printed on the reverse of the stub in the following form:

"MORE INFORMATION

1. To register to vote, you must be a citizen of the United States, at least 17 1/2 years old, and declare Iowa as your voting residence. (You must be at least 18 years old to vote.)

2. When used as a registration form, this form must be postmarked or delivered to your County Auditor not later than the 15th day preceding an election to be valid for that election.

3. When used as a notice of change, this form must be received by your County Auditor not later than the 10th day before a general or primary election, or the 11th day before any other election, to be valid for that election.

4. You should receive a receipt of this registration within 10 days. If you do not, please contact your County Auditor. Be prepared to state when and where you filled out the form, and to whom it was given or sent if you did not personally mail or take it to the Auditor.

5. There are other ways to register. Contact your County Auditor if you need assistance."

g. Have the following instructions directed to RURAL VOTERS printed on the left side of the reverse of the form:

"PLEASE COMPLETE THIS SECTION ONLY IF YOU LIVE OUTSIDE THE CITY LIMITS OF ANY CITY, AND YOU DO NOT KNOW THE TOWNSHIP AND SECTION NUMBER IN WHICH YOU LIVE.

Please do not attempt to provide directions to get to the location, but instead describe where it is.

I live _____ miles _____ (number) (N,S,E, or W) and _____ miles _____ (number) (N,S,E, or W) _____"; _____ and (landmark or highway junction)

f h. Contain space on the reverse for the county commissioner's address. Alternatively, the commissioner's address may be preprinted.

Sample Postcard Registration Form—2.1(5)

INSTRUCTIONS

- 1. Use this form to register to vote, or to report a change of name, address, telephone number or party affiliation. Please check the appropriate box(es) at the top right. If you are not certain you are presently registered in the county in which you live, check the "new registration" box.
2. The following information is required:
a. Your full name.
b. Your birth date.
c. Your complete address, including apartment and box numbers
d. Your gender.
e. The name of the county in which you live.
f. Where you were last registered to vote.
3. The following information is requested:
a. Your social security number. Solicited pursuant to Iowa Code Section 48.5, this number is used to avoid multiple registrations for a single individual.
b. The name of the city and school district in which you live. If you do not live inside a city, list the name of the township and section number in which you live. If you do not know your township and section number, complete the "RURAL ROUTES" section on the reverse side of the form.
c. Your telephone number, including area code.
4. Detach this stub before mailing the form.

ALTERNATE REGISTRATION FORM Please see instructions at left.

PLEASE PRINT

CHECK ALL THAT APPLY:

This is a new registration in this county. This is a change of Name Address Telephone Party

Form with fields for Name, Address, Birth Date, Gender, Telephone, and Registration Information. Includes a signature line and a date field.

VOTER REGISTRATION COMMISSION[845] (cont'd)

RURAL VOTERS

PLEASE COMPLETE THIS SECTION ONLY IF YOU LIVE OUTSIDE THE CITY LIMITS OF ANY CITY, AND YOU DO NOT KNOW THE TOWNSHIP AND SECTION NUMBER IN WHICH YOU LIVE.

Please do not attempt to provide directions to get to the location, but instead describe where it is.

I live _____ miles _____
 number N,S,E or W
 and _____ miles _____ of
 number N,S,E or W

 landmark or highway junction

PLACE
STAMP
HERE

County Auditor — Commissioner of Elections

Courthouse

City (County Seat)

IOWA

Zip Code

MORE INFORMATION

1. To register to vote, you must be a citizen of the United States, at least 17½ years old, and declare Iowa as your voting residence. (You must be at least 18 years old to vote.)
2. When used as a registration form, this form must be postmarked or delivered to your County Auditor not later than the 15th day preceding an election to be valid for that election.
3. When used as a notice of change, this form must be received by your County Auditor not later than the 10th day before a general or primary election, or the 11th day before any other election, to be valid for that election.
4. You should receive a receipt of this registration within 10 days. If you do not, please contact your County Auditor. Be prepared to state when and where you filled out the form, and to whom it was given or sent if you did not personally mail or take it to the Auditor.
5. There are other ways to register. Contact your County Auditor if you need assistance.

2.1(6) The substitute registration form shall be identical to the postcard registration form except:

a. The detachable stub described in subrule 2.1(5), paragraph "e," is not required to be printed;

b. It is not required to be cut to 3 1/2 inches by 6 inches; however, if it is not, borders of that size must be printed. If multiple forms are printed on a single sheet, a single border separating two forms shall be sufficient. Borders shall be printed to separate multiple forms on a single sheet. Each form shall be 3 1/2 inches in height. The width shall be 6 inches if the detachable stub is not printed; 9 inches if the stub is printed;

c. The minimum weight and grade of paper stock upon which the form is printed shall be 20-pound bond or equivalent;

d. Printing on the reverse of the form is not required. The space for preprinting the county commissioner's address may be used for that or any other purpose;

e. The instructions listed in subrule 2.1(5), paragraph "e," shall be prominently printed on each page where one or more substitute registration forms appear. If the detachable stub is not printed as part of each substitute registration form, the instructions listed in subrule 2.1(5), paragraphs "e" and "f," shall be prominently printed on each page where one or more substitute registration forms appear;

f. If a space for the commissioner's address is not printed on the reverse, or the weight of the stock upon which the form is printed does not meet minimum U.S. Postal Service requirements for postcards, the following instruction shall be added to those required by subrule 2.1(6), paragraph "d": 2.1(5), paragraph "e":

"7. "5. If mailed, this form must be enclosed in an envelope."; and

g. The sentence "See instructions on reverse side." "Please see instructions to the left." at the top of the face of the postcard registration form shall be appropriately modified to refer to the location of the printed instructions; "

h. The form shall bear a facsimile signature of the state registrar of voters as an attest to the form's authenticity; and

i. The form shall bear a line stating "This form valid through (here insert date)."

2.1(7) No change.

Further amend rule 845—2.1(48) by rescinding subrule 2.1(8) and amending the implementation language as follows:

This rule is intended to implement Iowa Code sections 48.3, 48.4, 48.6, and 48.7 as amended by 1986 Iowa Acts, House File 2457 and Iowa Code section 48.4 and 48.27.

ITEM 4. Amend rule 845—2.2(48) as follows:

845—2.2(48) Handling of voter registration forms.

2.2(1) No change.

2.2(2) Each commissioner shall establish a system of recordkeeping so that, upon termination or expiration of a deputy registrar's appointment, the deputy registrar is required to account for all forms supplied that deputy registrar.

2.2(3) No change.

2.2(4) No change.

2.2(5) The registration form shall be marked to clearly show the registration date, which shall be determined as follows:

a. If the registration is taken by a registrar, the registration date shall be the date the form is completed;

b. If the registration is on an alternate registration form and is delivered by the U.S. Postal Service, the postmark postage cancellation date shall be the date of registration. If the postmark postage cancellation date is illegible, or missing, the registration date shall be the date of the day prior to the form's receipt in the commissioner's office; . A postage meter date is not a postage cancellation date;

c. If the registration is on an alternate registration form and is not delivered by the U.S. Postal Service, the date of registration shall be the date the form is received in the commissioner's office.

2.2(6) No change.

2.2(7) No change.

2.2(8) No change.

ITEM 5. Amend subrule 2.4(3) to read as follows:

2.4(3) Camera-ready proofs of the substitute registration form shall be available from the state registrar of voters. Substitute registration forms shall be produced only by using these proofs as master images. The registrar may require a deposit, sufficient to replace the proof, to guarantee its safe return.

ITEM 6. Amend rule 845—3.1(48) as follows:

845—3.1(48) Lists of registered voters to requesters.

3.1(1) No change.

3.1(2) No change.

3.1(3) Each request shall contain information as follows:

VOTER REGISTRATION COMMISSION[845] (cont'd)

- a. Date request made.
- b. Date list desired.
- c. Name of requester (and agency or company name if applicable).
- d. Address.
- e. Telephone.
- f. Social security number (if available).
- g. Selection criteria (e.g., entire file, specific age groups, specific locations).
- h. Sequence of data (alphabetical, by name, by precinct, etc.).
- i. Media to which data is to be transferred (e.g., printed list, mailing labels, magnetic tape, etc.).
- j. Cost specified by unit, to be charged if the county is providing the list.
- k. Intended use of list.

l. The following signed statement: "I shall not willfully allow this list to be used for any purpose other than for an official purpose by an elected official, to request a registrant's vote or any other bona fide political purpose." *I agree to pay the cost of the above ordered list upon delivery.*"

3.1(4) Payment must be received for all lists requested. No list shall be provided any requester or organization represented by such requester until ~~all previously requested lists have been paid for.~~ *payment has been made for all previously requested lists.* Payment may be made, at the option of the requester, at the registrar's office or the county commissioner's office in person or by mail. Lists may be shipped C.O.D. upon request. Checks shall be made payable to the ~~Comptrollers Data Processing or County Commissioner of Elections or Iowa Department of General Services - ISD~~ as appropriate.

a. An elected official who has requested a list to be used in the performance of official duties and to be paid for with tax dollars may receive the list without prepayment; however, payment must be made by the governmental unit within ~~thirty~~ 60 days.

b. All other requesters must pay for the list before ~~delivery or at the time of delivery.~~

3.1(5) to 3.1(9) No change.

This rule is intended to implement ~~section 48.5, The Code, as amended by the Acts of the Sixty-ninth General Assembly, 1981 Session, Chapter 34.~~ *Iowa Code section 48.5.*

ITEM 7. Amend rule 845—4.3(47,48), introductory paragraph, to read as follows:

845—4.3(47,48) Data processing contract specifications. All contracts or agreements for voter registration data processing services between a county and a data processing service agency, company or bureau except the ~~state comptroller's Iowa department of general services'~~ data processing division shall conform substantially to the following model contract language.

ITEM 8. Amend subrule 6.1(2) to read as follows:

6.1(2) Types of input acceptable to the state. The state registrar will accept voter registration data in the following forms:

a. 6250 BPI or 1600 BPI or 800 BPI *one-half inch* magnetic tape.

b. ~~96 column cards.~~ *Five and one-quarter inch floppy disks in MSDOS format.*

e. ~~80 column cards.~~

~~d.~~ c. Direct electronic communications link.

For each type of data submission the county must submit complete data in the format prescribed by the registrar. The format prescribed for each type of submission is available by request and on file in the office of the registrar. A vendor or county may provide updates on only one type of media and may not change without approval of the registrar which shall not be unreasonably withheld.

ITEM 9. Amend rule 845—7.1(47), introductory paragraph, as follows:

845—7.1(47) Update policy. It is the policy of the Iowa voter registration commission and the state registrar to accept voter registration update data in a specified variety of media to accommodate most of the existing county data processing capabilities of the counties. Not all possible election input media can be handled by the state system; therefore, input media is limited to the following types: Magnetic tape, ~~96 column cards, 80 column cards,~~ *floppy disk* and direct electronic communications link ~~(when available).~~

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:

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%
June 1, 1988 — June 30, 1988	10.75%
July 1, 1988 — July 31, 1988	11.00%
August 1, 1988 — August 31, 1988	11.00%
September 1, 1988 — September 30, 1988	11.00%
October 1, 1988 — October 31, 1988	11.25%
November 1, 1988 — November 30, 1988	11.00%
December 1, 1988 — December 31, 1988	10.75%
January 1, 1989 — January 31, 1989	11.00%
February 1, 1989 — February 28, 1989	10.75%
March 1, 1989 — March 31, 1989	11.00%
April 1, 1989 — April 30, 1989	11.25%

ARC 9755

NATURAL RESOURCE
COMMISSION[571]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 455A.5 and 107.24, the Natural Resource Commission emergency amends Chapter 67, "Development and Management of Recreation Trails on State Lands," Iowa Administrative Code.

Subrule 67.7(4) is amended to provide that upon the request of six or more persons the Director shall direct that a public informational meeting be held in the vicinity to inform the public of the planned trail closure and to receive public comments. A summary of the public comments shall then be presented to the Natural Resource Commission for review, and the Commission may uphold or reverse the Director's decision regarding the permanent trail closings. This rule is intended as a clarification by the Department in response to suggestions by the public.

In compliance with Iowa Code section 17A.4(2), the Commission finds that further public notice and participation would be unnecessary and impracticable because the Commission must ensure speedy and uniform compliance with the matter of review of the Director's action. There have already been public hearings and substantial public comment on the rule, and this change is made pursuant to public comments received after the rule became final. This is a clarification of the procedure the Department had originally intended.

The Commission also finds that, pursuant to Iowa Code section 17A.5(2)"b"(2), the normal effective date of this

rule, 35 days after publication, should be waived and the rule made effective after filing with the Administrative Rules Coordinator because the rule confers a benefit upon the public by providing for Commission review of the Director's actions. Delaying the effective date will unnecessarily postpone the review process of this rule.

This amended rule became effective on March 10, 1989.

This rule is intended to implement Iowa Code sections 107.24 and 111.35.

Amend subrule 67.7(4) as follows:

67.7(4) No trail shall be permanently closed to public use without approval of the director. Recommendations for permanent closure shall be made to the division administrator by the area manager. The division administrator shall prepare a report documenting reasons for closure and provide the report and recommendation to the director. *At the request of six or more persons, The the director may shall direct that a public informational meeting be held in the vicinity of the area to inform the public of the planned closure: and to receive public comments. A summary of the public comments made at the meeting shall be presented to the natural resource commission for review. The commission may uphold or reverse the director's decision and shall consider both public comments and staff recommendations before taking action.*

[Filed emergency 3/9/89, effective 3/10/89]
[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9787**DENTAL EXAMINERS BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Dental Examiners adopts an amendment to Chapter 29, "General Anesthesia, Parenteral Sedation and Nitrous Oxide Inhalation Analgesia," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, January 25, 1989, as **ARC 9608**.

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

The Iowa Board of Dental Examiners adopted the amendment on March 17, 1989.

This amendment will become effective May 10, 1989.

This amendment is intended to implement Iowa Code sections 153.33 and 153.34.

Amend rule 650—29.5(153) by adding the following new subrule.

29.5(6) Based on the evaluation of credentials, facilities, equipment, personnel and procedures of a dentist, the board may determine that restrictions may be placed on a permit.

[Filed 3/17/89, effective 5/10/89]
[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9786**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 Chapter 30, "Grounds for Discipline," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, January 25, 1989, as **ARC 9607**.

Changes from such Notice are as follows as recommended by the Administrative Rules Review Committee.

32. Line 4, delete "such" and insert "the".

Line 6, delete "such" and insert "the".

Line 7, delete "such" and insert "the".

The Iowa Board of Dental Examiners adopted these amendments on March 17, 1989.

These amendments will become effective May 10, 1989.

These amendments are intended to implement Iowa Code sections 153.34(9), 258A.3(2), 258A.4, and 258A.5.

Rescind rule **650—30.4(153)**, numbered paragraph "15," and insert in lieu thereof the following:

15. Engaging in the practice of dentistry or dental hygiene in Iowa after failing to renew a license to practice in Iowa within 90 days of expiration of the license.

Further amend rule **650—30.4(153)** by adding the following new paragraphs.

30. Knowingly submitting a false continuing education reporting form or failure to meet the continuing education requirements for renewal of an active license.

31. Failure to notify the board of change of address within 60 days.

32. Failure to report a license revocation, suspension or other disciplinary action taken by a licensing authority of another state, territory or country within 30 days of the final action by the licensing authority. A stay by an appellate court shall not negate this requirement; however, if the disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board when the board is so notified.

33. Failure to comply with a subpoena issued by the board.

34. Engaging in the practice of dentistry or dental hygiene with an expired or inactive renewal.

[Filed 3/17/89, effective 5/10/89]
[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9793**ECONOMIC DEVELOPMENT, IOWA
DEPARTMENT OF [261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts amendments to Chapter 8, "Self-Employment Loan Program," Iowa Administrative Code.

The Iowa Department of Economic Development Board adopted the amendments at its March 16, 1989, meeting.

Notice of Intended Action was published on January 11, 1989, in the Iowa Administrative Bulletin as **ARC 9601**.

The adopted amendments delete the definition of "underemployed" from rule 261—8.2(15) and subrule 8.3(3) because it is a term that does not affect income determination and program eligibility. The definition of "family income" in rule 261—8.2(15) is amended to emphasize that annualized income is determined based on the income of household members. Amendments to subrule 8.4(2) clarify the evaluation and scoring system used by the review committee. Under the revised procedure, applications must receive a minimum of five out of ten points to be considered for recommendation for funding.

A public hearing was held on January 31, 1989, at 10 a.m. in the Division of Job Training Conference Room at the Iowa Department of Economic Development. No public comments were received concerning the proposed amendments.

The adopted amendments are identical to the proposed rules.

The amendments will become effective on May 10, 1989.

The adopted amendments are intended to implement Iowa Code section 15.241.

The following amendments are adopted:

ITEM 1. Amend rule **261—8.2(15)** by rescinding the definition of "underemployed" and amending the following definition:

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

"Family income (annualized)" means all income actually received from all sources by all household members of the family during the six months immediately prior to application multiplied by two. When computing family income, income of a spouse and other family members shall be counted for the portion of the income determination period that the person was actually a part of the family unit of the applicant.

ITEM 2. Rescind subrule 8.3(3) and renumber the remaining subrules.

ITEM 3. Amend subrule 8.3(4), introductory paragraph, as follows:

8.3(4) (3) Income. To qualify to apply for a loan an applicant must have annualized household family income that is no more than 70 percent of the lower living standard income. For purposes of calculating family income, exclusions are:

ITEM 4. Amend subrule 8.4(2) as follows:

8.4(2) Review. Applications will initially be reviewed by the IDED staff. IDED staff may request additional information from the applicant prior to committee review. A review committee will score each application; determine the amount of the loan (not to exceed \$5000); and the amount of the interest to be charged (not to exceed 5 percent). The scores will be averaged and the applications receiving the highest scores will be recommended for funding a minimum of five points out of a total of ten will be considered by the committee for recommendation for funding. The committee's recommendation for funding will include the amount of the loan (not to exceed \$5000), the amount of the interest to be charged (not to exceed 5 percent), and other terms and conditions. The IDED director will review the recommendations and make a final decision based on various factors including geographical distribution, economic impact, etc.

ITEM 5. Amend subrule 8.4(3) as follows:

8.4(3) Evaluation factors. In scoring and reviewing applications, the following factors to be considered include, but are not limited to: budget factors, business design, demonstrated need of applicant, feasibility of plan, creditworthiness, and previous business experience. In addition, the review committee will take into consideration an applicant's inability to secure a loan from conventional sources (e.g., bank, savings and loan) for the business venture; personal debt level; and lack of personal financial resources to adequately finance the business venture.

[Filed 3/17/89, effective 5/10/89]
[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9761

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 286A.16, the Iowa Department of Education adopts an amendment to Chapter 21, "Area Vocational Schools and Community Colleges," Iowa Administrative Code.

This amendment implements Iowa Code section 286A.16, Division V, "State Area School Funding Plan," to reflect the new fiscal year dates and revised manual title.

Notice of Intended Action was published in the Iowa Administrative Bulletin, February 8, 1989, as ARC 9644.

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

This rule will become effective July 1, 1989.

The following amendment is adopted:

Amend subrule 21.45(2) as follows:

21.45(2) Area schools shall report contact hours for fiscal year 1989 1990 (July 1, 1988 1989 to June 30, 1989 1990) in conformity with instructions prepared by the department of education and distributed to area schools in the manual entitled "Instructions for Reporting Contact Hours of Enrollment for Fiscal Year 1989 1990."

This amendment will be effective July 1, 1989, and is intended to implement Iowa Code section 286A.16.

[Filed 3/15/89, effective 7/1/89]
[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9764

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 114.6, the Iowa Engineering and Land Surveying Examining Board of the Professional Licensing and Regulation Division, Department of Commerce, adopts amendments to Chapter 1, "Administration," Iowa Administrative Code.

Amendments to subrules 1.9(1), 1.9(2), and 1.9(3) increase registration fees and certain examination fees. The fee increases are necessary for the Board to meet its allocated share of the budget for the Professional Licensing and Regulation Division.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 28, 1988, as ARC 9543. The amendments are identical to those published under Notice.

These amendments were adopted on March 2, 1989, and will become effective on May 10, 1989.

These amendments are intended to implement Iowa Code sections 114.13 and 114.30.

Amend subrules 1.9(1), 1.9(2), and 1.9(3) as follows:

1.9(1) Biennial registration renewal fees.

- 1. Active registration renewal \$52.00
\$60.00
2. Inactive registration renewal \$22.00
\$30.00

3. New registrant registration fee—same as above; registration will be prorated at six-month intervals.

1.9(2) Examination fees:

- 1. Fundamentals of engineering (EIT), including certificate \$40.00
2. Fundamentals of land surveying (LSIT), including certificate \$47.50

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C] (cont'd)

3. Principles and practice of engineering (PE) or Special Structural I Examination.....\$80.00
\$90.00
4. Principles and practices of land surveying (LS).....\$80.00
\$90.00
5. Repeat of any portion of principles and practice of land surveying.....\$40.00
6. Fee for applicants who were scheduled and did not appear for examination for the next offering of examination provided application is still current.....\$25.00
- 1.9(3) Comity application fees:
1. Registration as a professional engineer.....\$60.00
\$100.00
2. Registration as a land surveyor (including the one-hour Iowa examination).....\$60.00
\$100.00

[Filed 3/15/89, effective 5/10/89]
[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9765**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services hereby amends Chapter 1, "Departmental Organization and Procedures," and Chapter 38, "Developmental Disabilities Basic Grant Program," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules on March 15, 1989. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on February 8, 1989, as **ARC 9667**.

These amendments reflect the changes in responsibilities and membership of the Governor's Planning Council for Developmental Disabilities (GPCDD) due to the reauthorization of the Developmental Disabilities Act. The restructuring of the GPCDD as a separate entity in the Department is also reflected.

In addition, these amendments clarify the GPCDD's processes for awarding dollars for projects. Rules are added to reflect the current practices of awarding contracts to sole source projects and field-initiated proposals and to outline the GPCDD's conflict of interest policy for funding awards.

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

These rules are intended to implement Iowa Code sections 217.6 and 225C.3.

These rules shall become effective June 1, 1989.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to chs 1 and 38] is being omitted. These rules are identical to those published under Notice as **ARC 9667**, IAB 2/8/89.

[Filed 3/15/89, effective 6/1/89]
[Published 4/5/89]

[For replacement pages for IAC, see IAC Supplement, 4/5/89.]

ARC 9762**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 225C.6(1)"b," the Department of Human Services hereby amends Chapter 22, "Standards for Services to Persons with Mental Retardation, Developmental Disabilities, or Chronic Mental Illness," appearing in the Iowa Administrative Code.

The Mental Health and Mental Retardation Commission adopted these rules March 7, 1989. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on September 21, 1988, as **ARC 9276**.

According to the provisions of Iowa Code section 225C.29, any person with mental retardation, a developmental disability, or chronic mental illness who is receiving services and believes that those services are not being delivered in accordance with the guidelines in Chapter 22 may initiate compliance review proceedings with the Division of Mental Health, Mental Retardation, and Developmental Disabilities. If the findings of those proceedings are that services have not been delivered in accordance with the guidelines established in this chapter, either the Division or the aggrieved party may apply to the district court for an order to enforce the decision of the Department.

Only the court has the authority to enforce a decision issued by the Department pursuant to these rules. Since the rules in Chapter 22 are only guidelines, the court cannot enforce a decision of the Department unless there is existing statutory authority. An example would be as follows. A state agency such as the Department of Human Services has the choice of whether or not to incorporate the guidelines in Chapter 22 into the requirements for approval of community supervised apartment living arrangements (CSALAs). If the Department does not incorporate the guidelines into those requirements, the court would have no authority to require a CSALA to deliver services in accordance with the guidelines. If the Department does incorporate the guidelines into the CSALA approval requirements, the court would have the authority to require a CSALA program to deliver services in accordance with those guidelines.

This amendment adds the procedures governing the compliance review proceedings.

Rule 441—22.1(225C), subrule 22.5(4), introductory paragraph and paragraph "a," were revised by changing the words "hearing officer" to "administrative law judge".

Subrule 22.5(4), paragraph "a," was revised in response to public comments to extend the time period for the aggrieved party to appeal the proposed decision to the director from 10 to 20 calendar days from the date on which the proposed decision was signed and mailed.

These rules are intended to implement Iowa Code section 225C.29.

These rules shall become effective June 1, 1989.

The following amendments are adopted:

ITEM 1. Amend 441—Chapter 22, Preamble, by adding the following to the description of the sections contained in the standards:

5. Procedures governing compliance review proceedings.

HUMAN SERVICES DEPARTMENT[441] (cont'd)

ITEM 2. Amend rule 441—22.1(225C) by adding the following definitions in alphabetical order:

"Administrative law judge" means an employee of the Iowa department of inspections and appeals who conducts compliance hearings.

"Administrative remedy" or "administrative review process" means the procedures of any agency or organization which are designed to provide a person affected by actions of that agency or organization with a mechanism for resolving conflict between the person and the agency or organization.

"Aggrieved party" means a person with mental retardation, a developmental disability, or chronic mental illness who has been receiving services and who believes that those services have not been delivered in accordance with the standards adopted by the commission pursuant to Iowa Code section 225C.27.

"Authorized representative" means the aggrieved party's legal representative or designee.

"Commission" means the mental health and mental retardation commission.

"Compliance hearing" means the process for determining if services have been delivered in accordance with the guidelines established in the standards in this chapter.

"Department" means the Iowa department of human services.

"Director" refers to the director of the Iowa department of human services.

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

"Issues of fact" means disputed issues of facts or of the application of state or federal law or policy to the facts of the person's individual situation.

"Issues of law or policy" means issues of the legality, fairness, equity, or constitutionality of state or federal law or agency policy where the facts and applicability of the law or policy are undisputed.

"Subject of the hearing" means the individual, agency or organization whose actions are the basis of the request for the compliance hearing.

ITEM 3. Further amend 441—Chapter 22 by adding the following new rule:

441—22.5(225C) Compliance hearing.

22.5(1) The right to a compliance hearing.

a. When a hearing is granted. A hearing shall be granted to any person who meets the definition of an "aggrieved party." A hearing will be granted only after it is determined that the aggrieved party has exhausted all other administrative remedies for correction of the situation prompting the request for a hearing.

b. Time limit for request. A request for a compliance hearing shall be made within 30 calendar days of the finalization of the last action of any previous administrative review process. If there is no other administrative remedy, the request for compliance hearing shall be made within 90 calendar days of the occurrence of the situation or condition prompting the request.

c. Where no hearing is granted. When upon review, it is determined that the party on whose behalf the hearing is requested does not meet the criteria of an aggrieved party or the request is untimely under these rules, no hearing will be granted.

22.5(2) Opportunity for compliance hearing.

a. Initiating a request. The aggrieved party or authorized representative shall notify the division in writing that the person wishes to request a compliance hearing. The request shall be sent to:

Division of Mental Health, Mental Retardation,
and Developmental Disabilities
Iowa Department of Human Services
Hoover State Office Building, 5th Floor
Des Moines, Iowa 50319-0114

b. Filing the request. The person shall be encouraged to complete the request for a compliance hearing on Form 470-2422, Compliance Hearing Request and Information Sheet, available from the division or from the local offices of the department. When the person is unwilling to complete or sign this form, nothing in this rule shall be construed to preclude the right to a compliance hearing, as long as the desire for a hearing is communicated in writing to the division by the person or the person's authorized representative. A written request for a hearing is filed on the date postmarked on the envelope sent to the division, or on the date the aggrieved party brings the request form to the division.

c. Withdrawal. When the aggrieved party desires to voluntarily withdraw the request, a representative of the division shall request the person to sign Form 470-2423, Request for Withdrawal of Request for Compliance Hearing.

22.5(3) Procedural considerations. The division shall submit the request for a hearing to the department of inspections and appeals pursuant to department of inspections and appeals' rule 481—10.3(10A). The hearing will be conducted by the department of inspections and appeals pursuant to 481—Chapter 10.

22.5(4) Limitations on persons attending. The hearing shall be limited in attendance to the following persons: Aggrieved party, aggrieved party's representative, subject of the hearing, the subject's representative, other persons present for the purpose of offering testimony pertinent to the issues in controversy, and others upon mutual agreement of the parties. The administrative law judge may sequester witnesses during the hearing. Nothing in this rule shall be construed to allow members of the press, news media, or any other citizens' group to attend the hearing without the written consent of the aggrieved party and the subject of the review.

a. Appeal of proposed decision. After issuing a proposed decision to the parties, the administrative law judge shall submit it to the director and the division. The proposed decision may be appealed by the aggrieved party. The aggrieved party may appeal the proposed decision to the director within 20 calendar days of the date on which the proposed decision was signed and mailed. When the time limit for filing falls on a holiday or weekend, the time will be extended to the next workday. The day upon which the proposed decision is signed and mailed is the first day of the 20-day period. When the aggrieved party has not appealed the proposed decision, the proposed decision shall become the final decision.

An appeal from or review of the proposed decision shall be on the basis of the record as defined in Iowa Code section 17A.12, subsection 6. The review shall be limited to issues raised prior to that time and specified by the party requesting the review. In cases where there is an appeal from a proposed decision, an opportunity shall be afforded to each party to file exceptions, present briefs, and, with the consent of the director, present oral

HUMAN SERVICES DEPARTMENT[441] (cont'd)

arguments. A party wishing oral argument shall specifically request it. When granted, all parties shall be notified in advance of the time and place.

b. Time limit. A final decision shall be issued within 90 days from the date of request pursuant to subrule 22.5(2)"b." Should the aggrieved party or the subject of the hearing request a delay in the hearing in order to prepare the case or for other essential reasons, reasonable time not to exceed 30 days except with the approval of the department of inspections and appeals, will be granted and the extra time may be added to the maximum time for the final decision.

c. Limit of findings. The findings of fact and conclusions of law in the proposed or final decision may be limited to contested issues of fact or policy.

22.5(5) Accessibility of hearing decisions. Summary reports of all hearing decisions shall be made available to local offices of the department and the public. The information shall be presented in a manner consistent with applicable laws and regulations on confidentiality.

22.5(6) Right of judicial review. The hearing decision shall advise the aggrieved party or the subject of the hearing of the right to judicial review by the district court. Either the division, the aggrieved party or the aggrieved party's authorized representative may apply to the Iowa district court for an order to enforce the decision. The division will apply to the district court only upon the request of the aggrieved party or the aggrieved party's authorized representative.

[Filed 3/14/89, effective 6/1/89]
[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9757**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 225C.6, the Department of Human Services hereby amends Chapter 24, "Standards for Individual Case Management Services," appearing in the Iowa Administrative Code.

The Mental Health and Mental Retardation Commission adopted these rules March 7, 1989. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on January 25, 1989, as **ARC 9625**.

These amendments provide further clarification that nothing in the rules on the standards for case management services is to be construed to create an entitlement to services or to implement the legislation known as the Bill of Rights (Iowa Code sections 225C.25 to 225C.28).

These amendments are being promulgated to address a concern expressed by the Iowa State Association of Counties that language used in these rules could be construed to create entitlement to case management or other services.

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

These rules are intended to implement 1988 Iowa Acts, chapter 1245.

These rules shall become effective May 10, 1989.

The following amendments are adopted:

ITEM 1. Amend rule 441—24.1(72GA, ch1245) by adding the following introductory sentence prior to the list of definitions:

441—24.1(72GA, ch1245) Definitions. Nothing in this rule shall be construed to create an entitlement to services or to be an implementation of Iowa Code sections 225C.25 to 225C.28.

ITEM 2. Amend rule 441—24.3(72GA, ch1245) by adding the following introductory sentence prior to the subrules:

441—24.3(72GA, ch1245) Administration. Nothing in these subrules shall be construed to create an entitlement to services or to be an implementation of Iowa Code sections 225C.25 to 225C.28.

[Filed 3/9/89, effective 5/10/89]
[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9766**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services hereby amends Chapter 57, "Interim Assistance Reimbursement," appearing in the Iowa Administrative Code.

Currently the interim assistance reimbursement program enables the Social Security Administration (SSA) to reimburse county relief agencies for assistance provided by the county to an applicant for Supplemental Security Income (SSI) during the period between the first day of the month in which an application for SSI is filed and the month payments begin. Reimbursement is from the recipient's initial retroactive check.

Public Law 100-203 expanded the interim assistance reimbursement provision effective January 1, 1989, to provide, at the state agency's option, for reimbursement of county agencies for interim assistance made to persons whose SSI benefits were terminated or suspended and who subsequently were found eligible.

The Department received an advance copy of the federal instructions for implementation of the new provisions on December 12, 1988. These amendments implement the expanded provisions based on those instructions. The forms which are signed by the client to authorize the SSA to make the initial retroactive payment or the initial posteligibility retroactive payment payable to the county will also be used to protect the person's filing date for SSI benefits.

These rules were previously filed emergency as **ARC 9632**, published in the Iowa Administrative Bulletin on February 8, 1989. Notice of Intended Action to solicit comment on that submission was published in the Iowa Administrative Bulletin on February 8, 1989, as **ARC 9631**.

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

HUMAN SERVICES DEPARTMENT[441] (cont'd)

The Council on Human Services adopted these rules March 15, 1989.

These rules are intended to implement 1984 Iowa Acts, chapter 1310, section 9.

These rules shall become effective June 1, 1989, and the emergency adopted rules shall be rescinded on that same date.

The following amendments are adopted:

ITEM 1. Amend rule 441—57.1(249) as follows:

Amend the definition of "interim period" as follows:

"Interim period" is the time span beginning with the effective filing date of a supplemental security income (SSI) application through and including the month when SSI or federally administered state supplementation began (1) the day on which the individual filed an application for benefits, and was found eligible, and ending with (and including) the month the individual's benefits began, and (2) during the period, beginning with the day the individual's benefits were reinstated after a period of suspension or termination, and ending with (and including) the month the individual's benefits were reinstated. The interim period does not include any periods subsequent to the month in which the individual is determined to be eligible for SSI, e.g., it does not include any periods in which the SSI beneficiary is in nonpayment or suspended status nor does it include any periods during which the individual is underpaid by the Social Security Administration due to that agency's failure to make a timely modification of the individual's SSI benefit or for any other reason.

Rescind the definitions of "payments" and "written authorization," and insert the following new definitions in alphabetical order:

"Act" means the Social Security Act.

"Benefits" are SSI benefits under Title XVI of the Act and any federally administered state supplementary assistance payments that are determined by the Social Security Administration to be due the individual at the time the SSI payment is made.

"Initial payment" is the amount of benefits determined by the Secretary to be payable to an eligible individual (including any retroactive amounts) at the time the individual is first determined to be eligible under Title XVI of the Act. It does not include any emergency advance payment, any presumptive disability or blindness payments, or any immediate payments authorized under Section 1631 of the Act.

"Initial posteligibility payment" means the amount of benefits determined by the Secretary to be payable to an eligible individual (including any retroactive amounts) at the time the individual is first determined eligible under Title XVI of the Act following a period of suspension or termination. This term does not include any emergency advance payments, any presumptive disability or blindness payments, or any immediate payments authorized under Section 1631 of the Act.

"Secretary" means the Secretary of Health and Human Services or the Secretary's delegate, the Social Security Administration.

ITEM 2. Amend subrule 57.2(1) as follows:

57.2(1) The county agency will secure written authorization from the individual for the Secretary to withhold SSI payments due the individual the individual's initial payment or initial posteligibility payment and make these payments payable to the county agency using Form 470-1950, Initial Interim Assistance Reim-

bursement Authorization, or Form 470-2551, Posteligibility Interim Assistance Reimbursement Authorization. These forms shall also be used by the individual to indicate an intent to apply for SSI benefits. The county agencies are designated by the Secretary to accept these forms which protect the individual's filing date for SSI benefits.

[Filed 3/15/89, effective 6/1/89]

[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9767

**HUMAN SERVICES
DEPARTMENT[441]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules on March 15, 1989. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on February 8, 1989, as **ARC 9666**.

Under current policy in order for Medicaid to pay for treatment for eating disorders as an outpatient hospital service, the recipient must meet five of eight criteria. Participating providers have indicated that this requirement is too stringent for outpatient care. They point out that in most cases if the recipient did in fact meet five of the criteria (symptoms) the recipient's condition would be so severe as to justify inpatient care. Therefore, these amendments provide that the recipient must only meet three of the eight criteria.

Current policy also provides that Medicaid will pay for a maximum of 25 treatment days in a five-week period for pulmonary rehabilitation. It has been pointed out to the Department by participating programs that some patients who may need the maximum number of treatments may, because of their physical condition, be unable to tolerate that number in a five-week period. Therefore, these amendments leave the maximum number of treatments at 25, but remove the time restriction.

This rule is identical to that filed under Notice of Intended Action.

This rule is intended to implement Iowa Code section 249A.4.

This rule shall become effective on June 1, 1989.

The following amendments are adopted:

ITEM 1. Amend subrule 78.31(4), paragraph "b," subparagraph (4), as follows:

(4) Admission criteria. In order to be accepted for treatment, the patient shall meet the diagnostic criteria for anorexia nervosa or bulimia as established by the DSM III R (Diagnostic and Statistical Manual, Third Edition, Revised).

In addition to the diagnostic criteria, the need for treatment will be determined by a demonstrable loss of control of eating behaviors and the failure of the patient in recent attempts at voluntary self-control of the problem. Demonstrable impairment, dysfunction,

HUMAN SERVICES DEPARTMENT[441] (cont'd)

disruption or harm of physical health, emotional health (e.g., significant depression, withdrawal, isolation, suicidal ideas), vocational or educational functioning, or interpersonal functioning (e.g., loss of relationships, legal difficulties) shall have occurred.

The need for treatment may be further substantiated by substance abuse, out-of-control spending, incidence of stealing to support habit, or compulsive gambling.

The symptoms shall have been present for at least six months and five *three* of the following criteria must be present:

Medical criteria including endocrine and metabolic factors (e.g., amenorrhea, menstrual irregularities, decreased reflexes, cold intolerance, hypercarotenemia, parotid gland enlargement, lower respiration rate, hair loss, abnormal cholesterol or triglyceride levels).

Other cardiovascular factors including hypotension, hypertension, arrhythmia, ipecac poisoning, fainting, or bradycardia.

Renal considerations including diuretic abuse, dehydration, elevated BUN, renal calculi, edema, or hypokalemia.

Gastrointestinal factors including sore throats, mallery-weiss tears, decreased gastric emptying, constipation, abnormal liver enzymes, rectal bleeding, laxative abuse, or esophagitis.

Hematologic considerations including anemia, leukopenia, or thrombocytopenia.

Ear, nose, and throat factors including headaches or dizziness.

Skin considerations including lanugo or dry skin.

Aspiration pneumonia, a pulmonary factor.

The presence of severe symptoms and complications as evaluated and documented by the medical director may require a period of hospitalization to establish physical or emotional stability.

ITEM 2. Amend subrule 78.31(4), paragraph "g," subparagraph (7), as follows:

(7) Restrictions and limitations on payment. Medicaid will pay for a maximum of 25 treatment days in a ~~five-week period~~. Form 470-0829, Request for Prior Authorization, must be submitted prior to initiation of treatment. Requests for coverage beyond 25 *treatment* days will be submitted on Form 470-0829 for review by the fiscal agent's medical consultant. When requests are accompanied by documentation that the patient has not reached an exit level, coverage may be extended ~~not more than one additional week~~.

[Filed 3/15/89, effective 6/1/89].

[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9758

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 225C.36, the Department of Human Services hereby adopts Chapter 184, "Family Support Subsidy Program," Iowa Administrative Code.

The Seventy-second General Assembly in 1988 Iowa Acts, chapter 1122, directed the Department to implement a Family Support Subsidy Program to keep families together and to reduce the capacity in state facilities by defraying some of the costs of caring for a child with special needs, thus facilitating the return of children from out-of-home placements to their family homes and preventing or delaying the out-of-home placement of children who reside in their family homes. These rules implement that program.

If a child requires special education and is assigned a weighting of 2.2 or 3.6 for the school year by the applicable Area Education Agency, the child's family may be eligible for a monthly supplement to help meet the family's special needs for maintaining the child at home if the family's net taxable income is \$40,000 or less and the family resides in Iowa.

The child must be a resident of or being considered for placement in a state-hospital school, a community-based intermediate care facility for the mentally retarded, a foster care group home, foster family home or a state mental health institute.

The monthly family support subsidy is to be in an amount equivalent to the monthly maximum Supplemental Security Income (SSI) payment available in Iowa for an adult recipient living in the household of another. This will be \$245.34 effective January 1, 1989. In addition the family whose child is in an out-of-home placement at the time of application may receive a one-time lump-sum advance payment of twice the monthly family support subsidy amount for the purpose of meeting the special needs of the family in preparing for in-home care.

It is estimated as many as 1,175 families may be eligible for this program. The Department was appropriated \$75,000 to be used for grants under this program. Given the appropriation level, a maximum of 40 families will receive subsidy at this time, with the remaining applicants to be placed on a waiting list. Initially the money will be distributed to the eight districts evenly, five slots each, with first priority for three of the slots to be given to families of children in out-of-home placements, or to families where application for out-of-home placement has been made. After 30 days, if the money is not all allocated, the district may fund any eligible families. After 60 days, if the money is not all allocated, the slots will be awarded to families on the statewide waiting list in order of the date the local office received their application and necessary verification.

These rules were previously filed emergency and published in the December 28, 1988, Iowa Administrative Bulletin as ARC 9529. Notice of Intended Action to solicit comment on that submission was published in the Iowa Administrative Bulletin on December 28, 1988, as ARC 9530.

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

The Mental Health and Mental Retardation Commission approved these rules March 7, 1989.

These rules are intended to implement Iowa Code sections 225C.35 to 225C.42.

These rules shall become effective June 1, 1989 and at this time the filed emergency rules will be rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [441—Ch 184] is being omitted.

HUMAN SERVICES DEPARTMENT[441] (cont'd)

These rules are identical to those published under Notice as **ARC 9530**, and Filed Emergency as **ARC 9529**, IAB 12/28/88.

[Filed 3/9/89, effective 6/1/89]
[Published 4/5/89]

[For replacement pages for IAC, see IAC Supplement, 4/5/89.]

ARC 9772**LABOR SERVICES DIVISION[347]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 17A.3, the Labor Commissioner hereby adopts an amendment to the Division of Labor's Fair Information Practices Rules, specifically rule 347—1.59(22,91), Iowa Administrative Code.

A new paragraph 1.59(2)"h" is added to allow the Citizens' Aide to examine any and all records and documents of the Division of Labor Services without the consent of the subject of the record or document.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on September 21, 1988, as **ARC 9223**.

A public hearing was scheduled for October 17, 1988. No comments were received.

This rule is identical to the Notice of Intended Action. This rule shall become effective on May 10, 1989.

This rule is intended to implement 1988 Iowa Acts, chapter 1247.

Amend subrule **1.59(2)** by adding the following new paragraph:

h. To the citizens' aide under Iowa Code section 601G.9(3) as amended by 1988 Iowa Acts, chapter 1247.

[Filed 3/17/89, effective 5/10/89]
[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9773**LABOR SERVICES DIVISION[347]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 17A.3(1), the Labor Commissioner hereby adopts an amendment to rule 347—9.12(88).

The amendment to subrule 9.12(3) relates to conditions under which an employee may refuse to be exposed to dangerous conditions without fear of subsequent discrimination by an employer. The change is due to an amendment to Iowa Code section 88.9 as a result of statutory changes made by 1988 Iowa Acts, chapter 1107.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on September 21, 1988, as **ARC 9226**.

A public hearing was scheduled for October 17, 1988. No comments were received.

This rule is identical to the Notice of Intended Action. This rule shall become effective on May 10, 1989.

This amendment is intended to implement Iowa Code section 88.9(3).

Amend subrule 9.12(3) to read as follows:

9.12(3) However, occasions might arise when an employee is confronted with a choice between not performing assigned tasks or being subjected to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to be exposed to the dangerous condition, the employee would be protected against subsequent discrimination: *if the following conditions are met:*

a. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury. ~~and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from the employer, and been unable to obtain, a correction of the dangerous condition:~~

b. *The employee, where possible, first sought to:*

(1) *Eliminate the danger through resort to regular statutory enforcement channels, unless there has been insufficient time due to the urgency of the situation, or*

(2) *Obtain from the employer a correction of the dangerous condition but was unable to do so.*

[Filed 3/17/89, effective 5/10/89]
[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9774**LABOR SERVICES DIVISION[347]****Adopted and Filed**

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

An amendment published as a Notice of Intended Action in the Iowa Administrative Bulletin on September 21, 1988, as **ARC 9222** related to occupational exposure to benzene, occupational exposure to asbestos, and occupational exposure to ethylene oxide.

An amendment published as a Notice of Intended Action in the Iowa Administrative Bulletin on October 5, 1988, as **ARC 9305** related to a chart for servicing of multipiece and single-piece rim wheels.

An amendment published as a Notice of Intended Action in the Iowa Administrative Bulletin on October 19, 1988, as **ARC 9370** related to changes to occupational exposure to asbestos and corrections.

In compliance with Iowa Code section 88.5(1)"b," public hearings were scheduled for October 17, 1988, for **ARC 9222**; October 31, 1988, for **ARC 9305**; and November 14, 1988, for **ARC 9370**. No comments were received.

These rules are identical to the Notices of Intended Action.

These rules shall become effective on May 10, 1989.

These rules are intended to implement Iowa Code section 88.5.

LABOR SERVICES DIVISION[347] (cont'd)

ITEM 1. Amend rule 347—10.19(88) by adding a new subrule as follows:

10.19(8) Benzene. Rule 1910.1028 of the federal rules as adopted by reference in 347—10.20(88) shall apply to the exposure of every employee to benzene in every place of employment covered by 347—10.12(88), in lieu of any different standard on exposure to benzene which would otherwise be applicable by virtue of any rule adopted in 347—Chapter 26.

ITEM 2. Rule 347—10.20(88) is amended by adding at the end thereof the words:

53 Fed. Reg. 27346 (July 20, 1988)

53 Fed. Reg. 27960 (July 26, 1988)

53 Fed. Reg. 34736 (September 8, 1988)

53 Fed. Reg. 35625 (September 14, 1988)

53 Fed. Reg. 37080 (September 23, 1988)

[Filed 3/17/89, effective 5/10/89]

[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9775**LABOR SERVICES DIVISION[347]****Adopted and Filed**

The Labor Commissioner, pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), adopts amendments to rule 347—26.1(88) relating to occupational safety and health rules for construction.

An amendment published as a Notice of Intended Action in the Iowa Administrative Bulletin on September 21, 1988, as **ARC 9224** related to concrete and masonry construction, occupational exposure to asbestos, and crane or derrick suspended personnel platforms.

An amendment published as a Notice of Intended Action in the Iowa Administrative Bulletin on October 19, 1988, as **ARC 9369** related to changes to occupational exposure to asbestos, minor corrections to previous federal standard on cranes and derricks, power actuated tools, and exposure to asbestos.

In compliance with Iowa Code section 88.5(1)"b," public hearings were scheduled for October 17, 1988, for **ARC 9224**, and November 14, 1988, for **ARC 9369**. No comments were received.

These rules shall become effective on May 10, 1989.

These rules are intended to implement Iowa Code section 88.5.

Amend rule 347—26.1(88) by inserting at the end thereof:

53 Fed. Reg. 22643 (June 16, 1988)

53 Fed. Reg. 27346 (July 20, 1988)

53 Fed. Reg. 29139 (August 2, 1988)

53 Fed. Reg. 35627 (September 14, 1988)

53 Fed. Reg. 35953 (September 15, 1988)

53 Fed. Reg. 36009 (September 16, 1988)

53 Fed. Reg. 37080 (September 23, 1988)

These rules are intended to implement Iowa Code section 88.5.

[Filed 3/17/89, effective 5/10/89]

[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9776**LABOR SERVICES DIVISION[347]****Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 17A, the Labor Commissioner hereby adopts an amendment to rule 347—38.10(95) relating to applications for a license to operate a private employment agency.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on September 21, 1988, as **ARC 9225**.

A public hearing was scheduled for October 17, 1988. No comments were received.

This rule is intended to implement Iowa Code chapter 95.

This rule shall become effective on May 10, 1989.

Amend subrule 38.10(1) to read as follows:

38.10(1) PEA-1. This form shall contain the name of the applicant, and if the applicant be a firm, the names of the members, and if it be a corporation, the names of the corporation officers. The form shall contain the name, number and address of the building and place where the business of the agency is to be conducted. The form shall specify the period for which the license is requested. When ~~an~~ *the* applicant is applying for a license for the first time, the applicant shall fill out that portion of ~~this~~ *the* form which contains the affidavits of two reputable citizens of the state in no way connected with the applicant, or, if a firm or corporation, of each of the members or officers thereof, and that the applicant is a citizen of the United States, if a natural person. That portion of Form PEA-1 dealing with the affidavits of two reputable citizens need not be completed when an applicant is ~~renewing~~ *applying for a new license prior to the expiration of a current license*.

[Filed 3/17/89, effective 5/10/89]

[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9783**LABOR SERVICES DIVISION[347]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 89.5, the Labor Commissioner hereby adopts amendments to rules in 347—Chapters 41, 43 to 46, 48 and 49, Iowa Administrative Code, relating to boilers and pressure vessels.

The amendments change the dates of documents incorporated by reference and make other minor corrective changes.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on September 21, 1988, as **ARC 9221**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was scheduled for October 17, 1988. No comments were received. Minor corrections on dates have been made to the rules as published under Notice.

These rules shall become effective on May 10, 1989.

These amendments are intended to implement Iowa Code chapter 89.

LABOR SERVICES DIVISION[347] (cont'd)

ITEM 1. Amend rule 347—41.2(89) by striking "sixty (60)" and inserting in lieu thereof "30".

ITEM 2. Amend rule 347—41.5(89) by striking "twenty dollars (\$20)" and inserting in lieu thereof "\$50".

ITEM 3. Amend rule 347—41.6(89) to read as follows:

347—41.6(89) Quality control review. At the request of a manufacturer of boilers, pressure vessels or component parts, the division of labor services shall may conduct an inspection to assure the manufacturer is qualified for ASME certification code symbol stamp or National Board "R" stamp certification. A charge of one hundred thirty-five dollars (\$135) per day plus travel expenses not to exceed the mileage and per diem expenses authorized by the comptroller's office for state employees shall be charged to the The entity requesting a quality control review shall pay expenses as specified in subrule 42.3(8).

ITEM 4. Amend rule 347—41.12(89), the definition for "National Board Inspection Code," by striking "(1982)" and inserting in lieu thereof "(1987)".

ITEM 5. Amend rule 347—43.2(89) to read as follows:

347—43.2(89) New installations.

43.2(1) Installations — July 1, 1983, to December 31, 1988. All new installations of boilers, including reinstalled and secondhand boilers, shall be installed in accordance with the requirements of the ASME Code for Boilers and Pressure Vessels (1986) with 1988 addenda (1983) and the requirements of this chapter. Boiler installations shall also comply with ANSI/ASME CSD-1 (1982), excluding the provisions for listing or labeling by a nationally recognized testing agency.

43.2(2) Installations — after January 1, 1989. All new installations of boilers, including reinstalled and secondhand boilers, shall be installed in accordance with the requirements of the ASME Code for Boilers and Pressure Vessels (1986) with 1988 addenda. Boiler installations shall also comply with ANSI/ASME CSD-1 (1988), excluding the provisions for listing or labeling by a nationally recognized testing agency.

ITEM 6. Amend subrules 44.1(1), 44.4(1), and 44.4(10)"c," rule 347—44.10(89), subrule 45.3(8), rule 347—46.2(89), subrules 48.2(2)"b," and 48.2(4), rule 347—49.4(89), subrule 49.7(2), and rules 347—49.14(89) and 49.15(89) by striking "(1983)" and inserting in lieu thereof "(1986) with 1988 addenda".

ITEM 7. Amend rule 347—45.10(89) by adding at the end thereof the following: "The rules contained in 347—Chapter 49 do not apply to miniature model boilers."

ITEM 8. Amend rule 347—45.11(89) by striking "(1984)" and inserting in lieu thereof "(1986)".

ITEM 9. Amend 347—46.2(89) to read as follows:

347—46.2(89) New installations.

46.2(1) Installations — July 1, 1960, to June 30, 1983. All boiler installations and reinstalled boilers covered by this chapter installed in this state from July 1, 1960, to June 30, 1983, shall be constructed and installed in accordance with the ASME Boiler Code for Boilers and Pressure Vessels, Section IV (1960).

46.2(2) Installations — July 1, 1983, to December 31, 1988. All boiler installations and reinstalled boilers covered by this chapter installed in this state after July 1, 1983, shall be constructed and installed in accordance

with ASME Boiler Code for Boilers and Pressure Vessels, Section IV (1983) (1986) with 1988 addenda and ASME Safety Code, CSD-1, Boiler Installations (1982), excluding the provisions for listing or labeling by a nationally recognized testing agency.

46.2(3) Installations — after January 1, 1989. All boiler installations and reinstalled boilers covered by this chapter shall be constructed and installed in accordance with ASME Code for Boilers and Pressure Vessels, Section IV (1986) with 1988 addenda and ASME Safety Code, CSD-1, Boiler Installations (1988), excluding the provisions for listing or labeling by a nationally recognized testing agency.

ITEM 10. Amend rule 347—48.1(89) to read as follows:

347—48.1(89) New installations. This rule applies to pressure Pressure vessels, except those exempted by Iowa Code section 89.4(2);.

48.1(1) Installations — July 1, 1983, to December 31, 1988. Pressure vessels shall not be installed after July 1, 1983, unless shall be constructed, inspected, and stamped in conformity with the applicable section sections of the ASME Boiler and Pressure Vessel Code (1983) and national board requirements the National Board Inspection Code (1983).

48.1(2) Installations — after January 1, 1989. Pressure vessels installed shall be constructed, inspected and stamped in conformity with the applicable sections of the ASME Boiler and Pressure Vessel Code (1986) with 1988 addenda and the National Board Inspection Code (1987).

ITEM 11. Amend subrule 49.7(1) by striking in two places "(1983)" and inserting in lieu thereof "(1987)".

ITEM 12. Amend the title of 347—Chapter 49 to read as follows: GENERAL REQUIREMENTS FOR ALL BOILERS AND PRESSURE VESSELS EXCEPT MINIATURE MODEL BOILERS.

ITEM 13. Amend the implementation clause at the end of 347—Chapters 44, 45, 46, 48 and 49 to read as follows:

These rules are intended to implement Iowa Code chapter 89 and 1986 Iowa Acts, Senate File 2175, section 902.

[Filed 3/17/89, effective 5/10/89]

[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9784

LABOR SERVICES DIVISION[347]

Adopted and Filed

Pursuant to the authority of Iowa Code section 17A.3(1), the Labor Commissioner hereby adopts an amendment to rule 347—82.3(88B).

The amendment modifies the current licensing fee and provides a requirement that past penalties be paid to the Division prior to licensing.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on September 21, 1988, as **ARC 9250**.

LABOR SERVICES DIVISION[347] (cont'd)

A public hearing was scheduled for October 17, 1988. No comments were received. An error was made in the Notice of Intended Action relating to Item 1. This item is not being adopted.

This rule shall become effective on May 10, 1989.

This rule is intended to implement Iowa Code chapter 88B.

Amend rule 347—82.3(88B) by adding a new subrule as follows:

82.3(5) Denial. The division may deny an application if the applicant has outstanding penalties due to the division for more than 30 days.

[Filed 3/17/89, effective 5/10/89]

[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9782**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 106.3, the Natural Resource Commission, at their regular meeting on March 8, 1989, adopted the following amendment to Chapter 45, "Boat Motor Regulations," Iowa Administrative Code.

This rule changes the motor restrictions on Crawford Creek Lake in Ida County from 10 horsepower to unrestricted horsepower operated at a no-wake speed. This change was requested by the Ida County Conservation Board.

Notice of Intended Action was published in the December 28, 1988, Iowa Administrative Bulletin as **ARC 9533**.

No comments were received. There is no change from the Notice of Intended Action.

This rule is to become effective on May 10, 1989.

This rule is intended to implement the provisions of Iowa Code section 106.31.

Amend subrule **45.4(1)**, paragraph "b," Crawford Creek Recreation Area Lake, as follows:

~~Crawford Creek Recreation Area Lake, Ida County - not more than 10 horsepower outboard motors unrestricted horsepower operated at a no-wake speed.~~

[Filed 3/17/89, effective 5/10/89]

[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9777**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 107.24, the Natural Resource Commission hereby adopts a new Chapter 80, "Salvage of Fish and Game," Iowa Administrative Code.

This chapter gives the regulations for salvage of game animals accidentally killed by motor vehicles or fish and game confiscated by the Natural Resource Commission or its designee.

Notice of Intended Action was published on November 30, 1988, Iowa Administrative Bulletin as **ARC 9480**.

A public hearing was held on December 20, 1988. The only comments received were opposition by the Iowa Taxidermist Association, who expressed opposition to 80.1(2) which prohibits the salvaging of spotted fawn deer and hen pheasants. The Department also received three letters from Iowa taxidermists expressing the same opposition. No changes have been made and these rules are identical to those published as Notice of Intended Action.

These rules will become effective on May 10, 1989.

These rules are intended to implement the provisions of Iowa Code section 109.11.

The following new chapter is adopted:

CHAPTER 80

SALVAGE OF FISH AND GAME

571—80.1(109) Salvage. Salvage is authorizing the possession of accidentally killed game for the purpose of human consumption or the feeding of domestic animals. Any benefits derived from the possession of legally salvaged game (such as sale of hides, plumage, or antlers) is a secondary benefit only.

80.1(1) Peace officers are not to salvage game solely for the purpose of financial gain or commercial taxidermy.

80.1(2) The following game when accidentally killed by a motor vehicle shall not be considered salvageable: spotted fawn deer and hen pheasants.

571—80.2(109) Game killed by motor vehicle. The following conditions shall apply to a person being allowed to take possession of a game animal that has been accidentally killed by a motor vehicle.

80.2(1) Any person wanting to possess game accidentally killed by a motor vehicle shall immediately notify the nearest conservation officer, Iowa state trooper, or sheriff's department and request a salvage tag prior to taking possession of said game.

80.2(2) When a request is made for game accidentally killed by a motor vehicle, the game shall, when salvageable, be disposed of in accordance with the following priorities:

- a. Individuals involved in the accident;
- b. Public institutions;
- c. Nonprofit organizations;
- d. Others.

80.2(3) All game accidentally killed by a motor vehicle shall be tagged with forms provided by the department of natural resources.

80.2(4) All game accidentally killed by a motor vehicle shall be subject to the following possession regulations:

a. A salvage tag is not valid unless signed by the holder and a designee of the director of the department of natural resources.

b. A salvage tag shall not be valid for more than 90 days.

c. A salvage tag shall remain with the game until consumed.

d. It is unlawful to sell or trade any part of the carcass except as provided by law.

NATURAL RESOURCE COMMISSION[571] (cont'd)

e. It is unlawful to process or cut up for preservation any game prior to obtaining a salvage tag or verbal authorization from a conservation officer with the department of natural resources.

80.2(5) The conservation officer is the issuing authority for the salvage tags and is responsible for the county program records.

571—80.3(109) Confiscated fish or game. The following conditions shall apply to a person being allowed to take possession of fish or game confiscated by the department of natural resources or a court.

80.3(1) Confiscated fish or game, when salvageable, shall be disposed of in accordance with the following priorities:

- a. Public institutions;
- b. Nonprofit organizations;
- c. Others.

80.3(2) Confiscated fish or game shall be tagged with forms provided by the department of natural resources.

80.3(3) All confiscated fish or game shall be subject to the following possession regulations:

- a. A salvage tag is not valid unless signed by the holder and a designee of the director of the department of natural resources.
- b. A salvage tag shall not be valid for more than 90 days.
- c. A salvage tag shall remain with the fish or game until consumed.
- d. It is unlawful to sell or trade any part of the carcass except as provided by law.

These rules are intended to implement the provisions of Iowa Code section 109.11.

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ARC 9792**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 135.11(13) and 714.16(2), the Iowa Department of Public Health hereby adopts a new Chapter 14, "Residential Water Treatment," Iowa Administrative Code.

These rules establish minimum standards for testing and labeling of residential water treatment devices for sale in Iowa.

The rules were published as a Notice of Intended Action, **ARC 9458**, in the November 16, 1988, Iowa Administrative Bulletin.

The Iowa Department of Public Health held a public hearing on Tuesday, December 6, 1988. Comments were received primarily from water treatment manufacturers and sales organizations which objected to the provision in the statute and the rules which only allows (1) third-party laboratory testing of water treatment units and (2) the delivery of third-party test results and other required information to the buyer prior to the delivery of the product.

Changes in addition to the editorial corrections are new provisions to allow for a detailed third-party labor-

atory audit and evaluation of manufacturers' testing as an alternative to third-party laboratory testing.

These rules were reviewed and adopted by the Iowa State Board of Health on March 8, 1989, and shall become effective on May 10, 1989.

These rules are intended to implement Iowa Code section 714.16.

The following new chapter is adopted:

CHAPTER 14**RESIDENTIAL WATER TREATMENT**

641—14.1(714) Purpose. The purpose of these rules is to establish procedures for the testing and sale of residential water treatment systems. These rules are established pursuant to Iowa Code section 714.16, which prohibits false or deceptive representations of reducing the concentration of health-related contaminants in drinking water by a person selling a residential water treatment system in Iowa.

641—14.2(714) Applicability. The provisions contained within apply to the seller or manufacturer of any residential water treatment system offered for sale, lease, or rent for which representations of reducing health-related contaminants are made.

641—14.3(714) Definitions.

"Annual registration" means the renewal of registration of a water treatment system for years subsequent to the initial registration.

"Buyer" means the person to whom the water treatment system is being sold, leased or rented.

"Consumer information pamphlet" means a publication which explains water quality, health effects, quality expectations for drinking water, and the effectiveness and functions of water treatment systems.

"Consummation of sale" means the completion of the act of selling, leasing, or renting. Where the water treatment system is ordered by telephone or mail, "consummation of sale" means delivery.

"Department" means the Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319.

"Health-related contaminant" means any particulate, chemical, microbiological, or radiological substance in water which has a potentially adverse health effect and for which a maximum contaminant level (MCL) has been specified in the national primary drinking water regulations.

"Initial registration" means the first registration of a water treatment system after certification by an approved third-party testing agency.

"Label" means the written, printed, or graphic matter attached to or printed on the water treatment system so it is not likely to be separated during normal shipping and handling and can only be removed with a purposeful effort by the owner.

"Manufacturer's performance data sheet" means a manufacturer's booklet, document, or other printed material containing, at a minimum, the information required pursuant to Iowa Code section 714.16.

"National Sanitation Foundation (NSF)" means the National Sanitation Foundation, 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, Michigan 48106.

"Performance testing" means (1) the third-party laboratory testing of a water treatment system in accordance with the performance testing protocol or (2) an audit of manufacturers' facilities and data by third-party testing agencies.

PUBLIC HEALTH DEPARTMENT[641] (cont'd)

"Seller" means the person offering the water treatment system for sale, lease, or rent.

"State hygienic laboratory" means the University Hygienic Laboratory, University of Iowa, Oakdale Campus, Iowa City, Iowa 52242.

"Temporary registration" means the registration of a water treatment system between the enactment of these rules and July 1, 1990, during which a testing protocol has not been approved for the water treatment system or the water treatment system has not been tested and certified by an approved third-party testing agency.

"Third-party testing agency" means an independent laboratory which is authorized by the department to conduct performance testing and is not wholly or partially owned or managed by the manufacturer of the water treatment system to either conduct performance laboratory testing of water treatment systems or conduct laboratory audits of manufacturers' facilities and data.

"Water treatment system" means a water treatment device or assembly for which a claim is made that it will improve the quality of public or private drinking water by reducing one or more health-related contaminants through mechanical, physical, chemical or biological processes or combinations of the processes. Each model of a water treatment system shall be deemed a distinct water treatment system.

641—14.4(714) Performance testing. All water treatment systems must be performance tested in accordance with approved protocols by a third-party testing agency.

14.4(1) Approval of performance testing protocols. State hygienic laboratory must approve testing protocols for the performance testing of water treatment systems. A manufacturer or seller must submit a performance testing protocol to the laboratory for review and approval. Where applicable, the information must include, but not necessarily be limited to, the following:

a. Name, address and telephone number of the submitter or official representative.

b. The brand name and model number of each water treatment system requiring performance testing for verification of health-related claims.

c. A detailed drawing, with part numbers identifying each component of the water treatment system.

d. Identification of the water treatment system materials which are in direct contact with the water.

e. Identification of the contaminants claimed to be reduced by the submitter's design.

f. A detailed description of the performance testing protocol or the National Sanitation Foundation (NSF) Testing Protocol contained within the NSF Standard reference number applicable to the submitter's water treatment system. The performance testing protocol shall include the following conditions and procedures:

(1) A statement clarifying if the water treatment system would be advertised or sold for treatment of water from private wells, public water supplies, or both.

(2) Each water treatment system shall be tested to at least 120 percent of its capacity.

(3) The water used for the performance testing shall be characterized as to its key parameters, i.e., pH, hardness, total dissolved solids (TDS), turbidity, and others as necessary for the evaluation of the water treatment system's performance in the treatment of water from either private wells or public water supply systems, or both.

(4) Procedures shall be included to demonstrate that the test rig without the water treatment system in place

has no effect on the water characteristics or on the concentration of any challenge material.

(5) The temperature of the challenge water must be maintained at 20 degrees Celsius plus or minus 2 degrees Celsius throughout the test.

(6) For plumbed-in water treatment systems, the test pressure must be 55 pounds per square inch (PSI) plus or minus 5 PSI during the challenge period.

(7) Samples taken from the influent challenge water immediately prior to the water treatment system being tested are analyzed for the specific challenge material or surrogate deemed suitable by the University Hygienic Laboratory (UHL). Environmental Protection Agency (EPA) approved methods of analysis, where appropriate, are required.

(8) For water treatment systems challenged to 120 percent of capacity, samples shall be collected after the passage of 10 unit volumes of test water without the specific challenge material present and at least 10, 50, 100, and 120 percent of capacity with the specific challenge material present. Additional samples may be collected and included in the test report.

(9) Influent and effluent samples collected for volatile organic compound (VOC) analyses must comply with acceptable methods pertaining to storage and analysis. Samples must be collected in glass vials with Teflon-lined cap septa in accordance with standard EPA protocol.

g. Proposals for modifications or additions to the above requirements must be submitted with the performance testing protocol. The state hygienic laboratory shall determine if the modifications are appropriate and reasonable for the water treatment system to be tested. The state hygienic laboratory may approve using a single testing protocol for a number of water treatment models which are based on the same treatment technology.

14.4(2) Reserved.

641—14.5(714) Approval of third-party testing agencies. The department must approve third-party testing agencies.

14.5(1) Testing laboratory. A third-party testing agency will be approved for independent laboratory testing based upon:

a. The submission of a U.S. Environmental Protection Agency laboratory certification under the Safe Drinking Water Act for the claimed contaminant(s) and a review by the department of the testing agency documentation of the instrumentation, equipment and experience of personnel to conduct the required physical testing of the water treatment system according to the approved performance testing protocol, or

b. A written verification to the department that the testing agency has the capability to perform the U.S. Environmental Protection Agency approved methods of analysis for the claimed contaminants and demonstration that the agency has:

(1) The essential instrumentation, equipment and experience of personnel to conduct the required testing of the water treatment system according to the approved testing protocol, and

(2) A satisfactory quality assurance program and demonstrated performance in an approved proficiency testing program for the claimed contaminants.

14.5(2) Testing auditor. A third-party testing agency may be approved for the auditing of manufacturers' data and facilities based upon:

PUBLIC HEALTH DEPARTMENT[641] (cont'd)

a. Written description of the agency's qualifications and experience in performing laboratory audits and laboratory analysis.

b. Written verification that U.S. Environmental Protection Agency (EPA) or equivalent procedures for auditing quality control of laboratories are followed in performing an audit of a manufacturer's testing of a water treatment system.

c. The submission of a U.S. Environmental Protection Agency laboratory certification under the Safe Drinking Water Act, or

d. A written verification to the department that the testing agency has the capability to perform the U.S. Environmental Protection Agency approved methods of analysis for the claimed contaminants and demonstration that the agency has:

(1) The essential instrumentation, equipment and experience of personnel to conduct the required testing of the water treatment system according to the approved testing protocol, and

(2) A satisfactory quality assurance program and demonstrated performance in an approved proficiency testing program for the claimed contaminants.

14.5(3) Certification by third-party testing agency. Upon completion of the laboratory performance testing or auditing the third-party testing agency shall submit to the department in writing the following:

a. Testing laboratory.

(1) A copy of all test results applicable to the water treatment system tested. A copy of all test results must be maintained by the third-party testing agency for a period of at least two years.

(2) A statement that the testing was conducted in accordance with each provision of the approved testing protocol.

b. Testing auditor. Upon completion of an audit of a manufacturer's testing facility, the third-party auditing agency shall submit to the department a record of the audit and a statement that the manufacturer's testing facility did or did not have the capability to perform.

14.5(4) Manufacturer's testing approval. A manufacturer's test data from tests performed may be approved in lieu of third-party laboratory testing provided that the manufacturer's testing facility and test data are found to be adequate when audited by a qualified third-party testing agency.

14.5(5) Certification by manufacturers of testing performed prior to audit evaluations.

a. Prior to third-party audit evaluations, the manufacturer must submit to the department in writing a copy of all test results applicable to the water treatment system tested and a statement that manufacturer's testing was conducted in accordance with each provision of an approved performance testing protocol as outlined in 641—14.4(714).

b. A written verification to the department that the manufacturer's laboratory has the capability to perform the U. S. Environmental Protection Agency approved methods of analysis for the claimed contaminants and demonstration that the manufacturer has:

(1) The essential instrumentation, equipment and experience of personnel to conduct the required testing of the water treatment system according to the approved testing protocol, and

(2) A satisfactory quality assurance program and demonstrated performance in an approved proficiency testing program for the claimed contaminants.

641—14.6(714) Labeling and manufacturer's performance data sheet. All water treatment systems must be provided with a label and accompanying manufacturer's performance data sheet to provide the consumer with clear information on the effectiveness of reducing health-related contaminants from typical water found in Iowa public and private water supplies.

14.6(1) Label. Each water treatment system must bear a conspicuous and legible label stating, "IMPORTANT NOTICE - Read the manufacturer's performance data sheet."

14.6(2) Manufacturer's performance data sheet. The manufacturer's performance data sheet shall be given to the buyer by the seller and shall be signed and dated by the buyer and the seller prior to the consummation of the sale of the water treatment system and retained on file by the seller for a minimum of two years. The manufacturer's performance data sheet shall contain information including, but not limited to:

a. The name, address, and telephone number of the seller.

b. The name, brand, or trademark under which the water treatment system is sold, and its model number.

c. Performance and test data including, but not limited to:

(1) The list of contaminants found to be reduced by the water treatment system.

(2) The test influent concentration level of each contaminant.

(3) The percentage reduction or effluent concentration of each contaminant.

(4) The maximum contaminant level (MCL) specified in the U.S. Environmental Protection Agency's national primary drinking water regulations.

(5) The approximate capacity in gallons or the period of time during which the water treatment system is effective in reducing the concentration of contaminants based upon the contaminant influent concentrations used for the performance tests. The claimed volume capacity of a water treatment system needs only to be based upon the claimed contaminant most likely to break through into the effluent during the test period.

(6) Where applicable, the flow rate, pressure, and temperature of the water during the performance tests.

d. The following information must be contained on the performance data sheet or may be referenced to the owner's manual.

(1) Installation instructions.

(2) Procedures and requirements necessary for the proper operation of the water treatment system including, but not limited to, electrical requirements; maximum and minimum pressure; flow rate; temperature limitations; maintenance requirements; and expected replacement frequencies.

(3) The seller's warranty limitations.

(4) Nonhealth-related substances may be listed on the performance data sheet but may not be referred to as contaminants.

641—14.7(714) Consumer information pamphlet. A consumer information pamphlet prepared by the department must be given to the buyer by the seller along with the manufacturer's performance data sheet prior to the consummation of the sale of a water treatment system. The consumer information pamphlet may be printed in detail by the manufacturer.

PUBLIC HEALTH DEPARTMENT[641] (cont'd)

641—14.8(714) Registration. All water treatment systems meeting the criteria of these rules shall be registered with the department according to the following schedule.

14.8(1) Temporary registration. Each manufacturer of a water treatment system subject to these rules shall within 120 days of the adoption of these rules register all models of applicable water treatment system. Temporary registration shall expire one year after the establishment of an approved testing protocol but no later than July 1, 1990.

To obtain a temporary registration the manufacturer shall submit for each model of a water treatment system the following:

- a. Manufacturer's name, address, telephone number, and contact person.
- b. Name and description of the water treatment system.
- c. Model number.
- d. A list of trade names the system is sold under.
- e. A temporary registration fee of \$30 for each model of a water treatment system subject to these rules.

14.8(2) Initial registration. Upon completion of the performance testing required in 641—14.4(714) and upon completion of the labeling and manufacturer's performance data sheet requirements of 641—14.6(714), the manufacturer shall submit the following to the department for each model of water treatment system subject to these rules:

- a. Test results and laboratory certification documents for the water treatment system.
- b. Manufacturer's performance data sheet.
- c. An initial registration fee of \$400 for each model of water treatment system subject to these rules.

14.8(3) Annual registration. Beginning July 1, 1990, and after meeting the requirements of initial registration contained in subrule 14.8(2), the manufacturer of a water treatment system subject to these rules shall submit the following to the department between April 1 and June 30 of each calendar year.

- a. Certification that there has been no change in the water treatment system's design since the system was tested during the initial registration process.
- b. Any change in the performance data sheet. Changes must be explained and supported by third-party testing results.
- c. A list of trade names the system is sold under.
- d. An annual registration fee of \$200 for each model of water treatment system subject to these rules.

14.8(4) A fee not to exceed \$200 will be paid by the manufacturer directly to the university hygienic laboratory for review of each performance testing protocol submitted under these rules.

14.8(5) Third-party testing agency or third-party audit costs and fees necessary for compliance with these rules shall be paid directly by the manufacturer.

14.8(6) A fee not to exceed \$200 will be paid directly to the department by third-party agencies for the review process as described in rule 14.5(714).

641—14.9(714) Penalties. A seller of a water treatment system or unit violating any provision of these rules shall be subject to civil penalties pursuant to the authority of Iowa Code chapter 714.

[Filed 3/17/89, effective 5/10/89]
[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9759

RACING AND GAMING
DIVISION[491]

Adopted and Filed

Pursuant to the authority of Iowa Code section 99D.7, the State Racing Commission hereby adopts amendments to Chapter 9, "Harness Racing," and Chapter 10, "Thoroughbred Racing," Iowa Administrative Code.

There have been no changes to those rules that were published under Notice of Intended Action as **ARC 9653** and as Emergency Adopted and Implemented as **ARC 9652** in the Iowa Administrative Bulletin, February 8, 1989.

These rules are intended to implement Iowa Code chapter 99D.

These amendments will become effective May 10, 1989, and the emergency rules published as **ARC 9652**, February 8, 1989, will be rescinded.

ITEM 1. Amend subrule 9.4(14), paragraph "a," as follows:

9.4(14) Alcohol and drug testing rule.

a. Alcohol prohibition/breathalyzer test. Licensees or employees of any entity associated with the conduct of racing while *on duty or in a restricted area* on the grounds of a licensed or franchised racetrack shall not have present within their system any amount of alcohol which would constitute legal impairment or intoxication (.10%). Acting with reasonable cause, the stewards or a designated racing commission representative may direct any licensee or employee to submit to a breathalyzer test. The licensee or employee shall, when so directed, submit to examination. If the results show a reading of ~~.05~~ .10 percent alcohol content or more, the licensee or employee shall not be permitted to continue duties for that day and then be subject to fine or suspension by the stewards or racing commission. For a subsequent violation the licensee or employee may be subject to procedures following positive chemical analysis (below).

Further amend subrule 9.4(14), paragraph "a," by adding the following unnumbered paragraph:

Licensees or employees of any entity associated with the conduct of racing while *on duty or in a restricted area* on the grounds of a licensed or franchised racetrack shall not have present within their system any amount of alcohol which would constitute legal impairment (.05%). Acting with reasonable cause, the stewards or a designated racing commission representative may direct any licensee or employee to submit to a breathalyzer test. The licensee or employee shall, when so directed, submit to examination. If the results show a reading of .05 percent alcohol content or more, the licensee or employee shall not be permitted to continue duties for that day. For a second violation, the licensee or employee shall not be permitted to continue duties for that day and then be subject to fine or suspension by the stewards or racing commission. For a subsequent violation the licensee or employee may be subject to procedures following positive chemical analysis (below).

ITEM 2. Amend subrule 10.4(14), paragraph "a," as follows:

10.4(14) Alcohol and drug testing rule.

a. Alcohol prohibition/breathalyzer test. Licensees or employees of any entity associated with the conduct of racing while *on duty or in a restricted area* on the grounds

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

of a licensed or franchised racetrack shall not have present within their system any amount of alcohol which would constitute legal impairment or intoxication (.10%). Acting with reasonable cause, the stewards or a designated racing commission representative may direct any licensee or employee to submit to a breathalyzer test. The licensee or employee shall, when so directed, submit to examination. If the results show a reading of .05 .10 percent alcohol content or more, the licensee or employee shall not be permitted to continue duties for that day and then be subject to fine or suspension by the stewards or racing commission. For a subsequent violation the licensee or employee may be subject to procedures following positive chemical analysis (below).

Further amend subrule 10.4(14), paragraph "a," by adding the following unnumbered paragraph:

Licensees or employees of any entity associated with the conduct of racing while on duty or in a restricted area on the grounds of a licensed or franchised racetrack shall not have present within their system any amount of alcohol which would constitute legal impairment (.05%). Acting with reasonable cause, the stewards or a designated racing commission representative may direct any licensee or employee to submit to a breathalyzer test. The licensee or employee shall, when so directed, submit to examination. If the results show a reading of .05 percent alcohol content or more, the licensee or employee shall not be permitted to continue duties for that day. For a second violation, the licensee or employee shall not be permitted to continue duties for that day and then be subject to fine or suspension by the stewards or racing commission. For a subsequent violation the licensee or employee may be subject to procedures following positive chemical analysis (below).

[Filed 3/15/89, effective 5/10/89]

[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

ARC 9794**UTILITIES DIVISION[199]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 476.1, 476.2, 476.4, 476.6(7), 476.11, and 17A.4, the Utilities Board (Board) gives notice that on March 20, 1989, the Board issued an order in Docket No. RMU-87-22, In Re: Intrastate Access Service Tariffs and Interutility Service, "Order Adopting Rules."

On December 24, 1987, the Board issued an order in this docket commencing a rule making to consider the adoption of revisions to Iowa Administrative Code 199—22.1(3), 22.1(6), 22.14(1), 22.14(2), 22.14(3), 22.14(4), and 22.14(5). The proposed rule making was published in the Iowa Administrative Bulletin on January 13, 1988, as **ARC 8309**. Written comments were received and an oral presentation was held in this docket. On August 26, 1988,

the Board issued an order adopting rules in which it adopted most of the changes proposed in Docket No. RMU-87-22. The adopted rules were published in the Iowa Administrative Bulletin on September 21, 1988, as **ARC 9294**. On August 26, 1988, the Board issued an order amending its proposed rules to seek additional comment regarding the definition of "intrastate access services" found in subrule 22.1(3). The amendment was published in the Iowa Administrative Bulletin on September 21, 1988, as **ARC 9293**. In order to allow for public comment on the amended rule, a deadline of October 11, 1988, was set for written comments.

The proposed rules define "intrastate access service" as those services which provide a "capability" of originating and terminating telecommunication services. That capability benefits both end-users and interexchange carriers. Written statements of position were filed by the Consumer Advocate Division of the Iowa Department of Justice (Consumer Advocate), the Iowa Telephone Association (ITA), Northwestern Bell Telephone Company (Northwestern Bell), Iowa Network Services (INS), and AT&T Communications of the Midwest, Inc. (AT&T).

Northwestern Bell expressed concern that the Board's use of the term "toll calls" in the proposed definition narrowed the intended breadth of the proposed rule. Northwestern Bell recommended substituting either the word "telecommunication" or the term "telecommunication services" for the words "toll calls." The Board recognizes that numerous types of intrastate telecommunications have a need to be connected or delivered from an end-user to an interexchange utility's service for origination or termination. Therefore, the Board will modify the proposed rule by substituting the term "telecommunication services" for the words "toll calls."

Consumer Advocate recommended the proposed wording be modified to clarify that terminating intrastate access services also provide "the capability" to deliver intrastate telecommunication services from interexchange utilities to end-users. The Board finds merit in this suggestion and will modify the proposed rule accordingly.

The Board does not believe additional public comment on the rules is necessary because the changes made to the proposed rules are not substantial. The rule making will become effective on May 10, 1989, pursuant to Iowa Code section 17A.5(2).

The Board, having given due consideration to each of the comments received, adopts the following amendment:

Delete the definition of "intrastate access service" in subrule 22.1(3) and substitute the following:

"Intrastate access services" are services of telephone utilities which provide the capability to deliver intrastate telecommunications services which originate from end-users to interexchange utilities and the capability to deliver intrastate telecommunications services from interexchange utilities to end-users.

[Filed 3/17/89, effective 5/10/89]

[Published 4/5/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/5/89.

EFFECTIVE DATE DELAY

[Pursuant to §17A.4(5)]

AGENCY	RULE	EFFECTIVE DATE DELAYED
Agriculture and Land Stewardship Department[21]	64.147 to 64.153 [IAB 2/8/89, ARC 9660]	Seventy days from effective date of March 15, 1989

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWAFILED MARCH 22, 1989

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. 88-551. MORITZ v. MAACK.

Appeal from the Iowa District Court for Sioux County, Cameron B. Arnold, Judge. Affirmed. Considered by McGiverin, C.J., and Harris, Schultz, Neuman and Andreasen, JJ. Opinion by McGiverin, C.J. (15 pages \$6.00)

Gerald Eppling purchased a car for the use of his seventeen-year-old son Brad. Gerald Eppling held sole title to the car. Gerald directed Brad repeatedly not to let anyone else use the car. In spite of his father's prohibition, Brad did allow a friend, Lisa Maack, to drive the car. Maack was involved in a one-car accident, injuring a passenger. The injured passenger sued driver Maack and also sued registered owner Gerald Eppling, seeking to impose liability on Gerald pursuant to Iowa Code section 321.493 on a theory that the car had been driven with Gerald's express or implied consent. The district court granted Gerald a summary judgment, and the plaintiffs have appealed. OPINION HOLDS: Viewing the facts in the light most favorable to the plaintiffs, the uncontradicted evidence shows Lisa Maack operated the car owned by Gerald Eppling without his express or implied consent. The summary judgment in favor of Gerald is therefore affirmed.

No. 87-1557. MERMIGIS v. SERVICEMASTER INDUSTRIES, INC.

Appeal from the Iowa District Court for Polk County, Ray Fenton, Judge. Affirmed in part, reversed in part, and remanded. Considered by McGiverin, C.J., and Harris, Schultz, Neuman and Andreasen, JJ. Opinion by McGiverin, C.J. (18 pages \$7.20)

Plaintiff Carol Ann Mermigis was injured when struck by a door closer on the premises of her employer, Des Moines General Hospital. Defendant Servicemaster was employed at the time to manage the maintenance operations of the hospital's physical plant. Plaintiff's action, alleging her injuries were due to defendant's negligence in

No. 87-1557. MERMIGIS v. SERVICEMASTER INDUSTRIES, INC.

(continued).

maintaining the hospital premises, was submitted to a jury which returned a verdict in her favor. Defendant appealed and plaintiff cross-appealed. OPINION HOLDS: I. Servicemaster contends that it was an agent of the hospital and therefore plaintiff's coemployee. As a coemployee, Servicemaster claims that, absent allegations of gross negligence, the plaintiff's action is exclusively within the jurisdiction of the Industrial Commissioner. The district court correctly ruled, as a matter of law, that Servicemaster was employed by the hospital as an independent contractor. Finding defendant Servicemaster was not a coemployee of plaintiff, jurisdiction in plaintiff's action was properly exercised by the district court. II. There is no error in the district court's instruction concerning the possible existence of a principal-agent relationship. Omission of a "consent" instruction does not render the agency instruction defective. Consent may be implied from both the evidence and the instruction relative to control. III. Defendant claims the trial court's negligence instruction improperly assigned Servicemaster the duty and standard of care applicable to the owner of the premises, Des Moines General Hospital. Among the bases for liability enumerated in the trial court's negligence instruction was the breach of certain obligations which imposed a standard of care on Servicemaster by virtue of its contract with the hospital. We find substantial evidence supported this instruction. IV. Defendant argues that the jury in the present action should have been allowed to consider the acts of the hospital in assessing fault and assigning liability for plaintiff's injuries on the special verdict form. As plaintiff's employer, the hospital enjoys statutory immunity from tort liability for plaintiff's injuries arising out of and in the course of her employment. Thus, the trial court correctly restricted the jury from assessing the fault of Des Moines General Hospital on the special verdict form. V. The district court did not abuse its discretion in admitting certain expert testimony. The facts underlying the economist's testimony here were sufficiently, if not completely, established. VI. On cross-appeal, plaintiff contends the district court erred in suspending the accrual of certain prejudgment interest. The district court may not withhold interest as a sanction for delay or as a condition for granting a continuance under Iowa Rule of Civil Procedure 215.1. The district court erroneously suspended the accrual of plaintiff's prejudgment interest between December 31, 1986, and September 29, 1987. VII. Accordingly, we affirm in part, reverse in part, and remand for entry of judgment consistent with this opinion.

No. 86-1802. STATE v. WELLS.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Jack D. Levin, Richard A. Strickler, and Theodore H. Miller, Judges. Decision of court of appeals vacated; judgment of district court affirmed. Considered by Larson, P.J., and Carter, LAVORATO, Snell, and Andreasen, JJ. Opinion by Snell, J. Special concurrence by Larson, J. (16 pages \$6.40)

Wells was found guilty by a jury of three counts of attempted murder, in violation of Iowa Code section 707.11 (1985). Wells raised three issues on appeal: (1) whether the trial court erred by permitting identification testimony by a victim, Garity, when the identification was allegedly based upon his dreams about the incident; (2) whether Wells was denied his constitutional right of confrontation by the State's use of deposition testimony by Gatewood; and (3) whether the trial court abused its discretion by overruling Wells' motion for mistrial based upon jury misconduct. OPINION HOLDS: I. Although Garity stated his dreams accorded with his memory of the incident, it is apparent his original observations did not include more than general impressions regarding the assailant. Garity's dreams were likely influenced by his view of Wells at the deposition. Under these circumstances, we conclude the trial court abused its discretion by admitting Garity's testimony identifying Wells. However, we do not believe this error requires reversal of Wells' conviction. Substantially the same evidence is elsewhere in the record without objection. We conclude the admission of Garity's identification of Wells was harmless. II. The State made a good faith effort to locate and present Gatewood. We do not believe the procedural infirmities in the service of the second subpoena on Gatewood suggest the State did not seriously wish to compel Gatewood's attendance at trial. The trial court was correct in allowing the tape of Gatewood's deposition testimony to be played to the jury. III. Regarding juror Michel's visit to the scene, we agree with the trial court that there did not exist a reasonable probability that Michel's misconduct influenced the verdict. The only juror to whom he related his observations was dismissed from the jury and replaced by the alternate juror. There is no evidence that Michel discussed the visit with any other juror, let alone that the visit was brought to the attention of the jury as a whole. The circumstances in this case do not rise to a prejudicial level of misconduct. We conclude the trial court did not abuse its discretion by overruling Wells' motion for mistrial. SPECIAL CONCURRENCE ASSERTS: Garity's identification testimony should not have been excluded on the ground it was the sole product of his dreams.

No. 88-184. METROPOLITAN LIFE INSURANCE COMPANY
v. DeKLOTZ.

Appeal from the Iowa District Court for Benton County,
L. Vern Robinson, Judge. Affirmed. Considered en banc.
Dissent by Carter, J. (7 pages \$2.80)

In 1979, the DeKlotzes granted a mortgage to Metropolitan which covered certain agricultural land including the DeKlotzes' homestead. Later, the DeKlotzes granted a second mortgage of this property to the Peoples Bank. The DeKlotzes defaulted on their loans and Metropolitan instituted a foreclosure action. A foreclosure decree was entered. Prior to the sheriff's sale, the DeKlotzes filed a voluntary bankruptcy petition which automatically stayed the foreclosure sale. Later, the DeKlotzes and Metropolitan filed a stipulation and agreement for relief from automatic stay and abandonment with the bankruptcy court. The bankruptcy court then lifted the automatic stay and the foreclosure sale was held. Metropolitan and Peoples Bank then filed a motion to determine the DeKlotzes' redemption rights. The district court held that the DeKlotzes waived their redemption rights when they filed for bankruptcy and that the stipulation to abandon the real estate did not revive the right to redeem. The DeKlotzes appeal. OPINION HOLDS: I. In Hawkeye Bank & Trust v. Milburn, ___ N.W.2d ___, ___ (Iowa 1989), we upheld the constitutionality of Iowa Code section 628.4 (1987). Thus, the district court correctly held that the DeKlotzes' statutory right of redemption was barred by their filing a voluntary petition in bankruptcy. II. The stipulation filed in bankruptcy court was not an agreement to revive the DeKlotzes' redemption rights. The DeKlotzes failed to establish that the parties entered into an agreement with the intent that the redemptive rights would remain or be restored. DISSENT. ASSERTS: I dissent for the same reasons which were expressed in my dissent in Hawkeye Bank & Trust v. Milburn, ___ N.W.2d ___ (Iowa 1989).

No. 87-1759. HAWKEYE BANK & TRUST v. MILBURN.

Appeal from the Iowa District Court for Appanoose County, James P. Rielly, Judge. Affirmed in part, reversed in part and remanded. Considered en banc. Opinion by Andreasen, J. Dissent by Carter, J. (13 pages \$5.20)

In 1982, Milburn defaulted on his note with the bank. Milburn filed for bankruptcy. Later, the bank obtained relief from the automatic stay and filed a foreclosure action. Eventually, the Iowa district court ruled that Milburn was entitled to redeem the homestead portion of the real estate under the provisions of Iowa Code section 654.16 but that he was not entitled to redeem the remaining portion of the land pursuant to Iowa Code section 628.4. Both parties appealed. OPINION HOLDS: I. We find that Iowa Code section 628.4 does not violate the due process and equal protection provisions of the United States Constitution. II. Iowa Code section 628.4 does not

No. 87-1759. HAWKEYE BANK & TRUST v. MILBURN.(continued).
violate the supremacy clause of the United States Constitution. We find no conflict between Iowa Code section 628.4 and section 541(c)(1) of the Bankruptcy Act. The Iowa debtor who proceeds into bankruptcy before the foreclosure sale has only an equity of redemption. This equitable property interest is not forfeited, modified, or terminated by the bankruptcy filing. III. We agree with the bank that Milburn does not have a right to redeem the homestead property because of the application of section 628.4. A mortgage debtor who has stayed execution is prohibited from claiming the statutory right of redemption, including the right to redeem a farm homestead by tendering fair market value under Iowa Code section 634.16. DISSENT ASSERTS: The consequences that the majority attaches to the automatic stay arising upon a federal bankruptcy filing violates the supremacy clause of the federal constitution.

No. 87-1484. STATE v. LAUGHRIDGE.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Benton County, Thomas M. Horan, Judge. Decision of court of appeals vacated; district court judgment affirmed. Considered by Larson, P.J., and Carter, Lavorato, Snell and Andreasen, JJ. Opinion by Andreasen, J. (7 pages \$2.80)

The defendant appealed from his conviction for operating while intoxicated. The court of appeals reversed the conviction, and we then granted the State's application for further review. OPINION HOLDS: The district court properly admitted into evidence the result of a blood test withdrawn after a doctor certified that the defendant was incapable of consenting or refusing to consent to a chemical test. There was substantial evidence to support the district court's finding and conclusion that the facts necessary for the doctor's certification were present. We therefore vacate the court of appeals decision and affirm the conviction.

No. 88-893. CALOIA v. CALOIA.

Appeal from the Iowa District Court for Wapello County, James P. Rielly, Judge. Affirmed. Considered by McGiverin, C.J., and Harris, Schultz, Neuman, and Andreasen, JJ. Per Curiam. (6 pages \$2.40)

The petitioner appeals from the dismissal of her child custody action. OPINION HOLDS: Under the principles stated in the Uniform Child Custody Jurisdiction Act, Iowa Code chapter 598A, the state of New York is a more convenient forum than the state of Iowa for this child custody determination. We therefore affirm the district court's dismissal of the present petition.

No. 87-1175. STATE v. HARRINGTON.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Theodore H. Miller and Jerrold W. Jordan, Judges. Court of appeals decision affirmed, district court judgment reversed and remanded. Considered by McGiverin, C.J., and Harris, Schultz, Neuman, and Andreasen, JJ. Per curiam. (3 pages \$1.20)

Defendant Wendell Harrington was convicted in a jury trial of three counts of second-degree burglary. The court of appeals reversed his conviction, and remanded for a new trial, citing our recent decision in State v. Jeffries, 430 N.W.2d 728 (Iowa 1988). In Jeffries, we generally held that it was error for the court to refuse to instruct on lesser-included offenses if they passed the "legal test." OPINION HOLDS: Because we find Jeffries applicable to this case, we affirm the court of appeals decision. On further review, the State only challenges whether Jeffries should be applied retroactively. State v. Royer, ___ N.W.2d ___ (Iowa 1989), holds that Jeffries is to be retroactively applied to cases pending on direct appeal in which error was properly preserved. Defendant falls within this category.

NO. 87-1809. STATE v. GETTIER.

Appeal from the Iowa District Court for Story County, Mark S. Cady, Carl E. Peterson, and Carl D. Baker, Judges. Affirmed. Considered by McGiverin, C.J., and Harris, Schultz, Neuman, and Andreasen, JJ. Opinion by Schultz, J. (14 pages \$5.60)

Defendant Robert Ray Gettier was convicted in a jury trial of sexual abuse in the third degree, in violation of Iowa Code section 709.4. The complainant maintains the defendant invited her to come examine his remodeled van. Once inside, the complainant asserts that the defendant forced her to engage in sexual intercourse. Defendant appealed his conviction. OPINION HOLDS: I. Defendant claims that the court denied his due process rights by suppressing a witness' testimony stating that after the complainant had emerged from defendant's van, "she told me she had sex with two men that day." Defendant sought to introduce this testimony in a motion filed pursuant to our "rape shield law," Iowa Rule of Evidence 412, which allows evidence of a victim's prior sexual conduct only in limited circumstances. Rule 412(b) is inapplicable to the portion of the statement referring to defendant; but the portion of the statement regarding past sexual behavior with a third person is inadmissible under rule 412(b) with no applicable exceptions. However, a determination concerning admissibility under rule 412 does not end our inquiry. The trial court also held the evidence inadmissible on the alternate ground "that the potential unfair prejudice of the purported evidence is so prejudicial as to outweigh the probative value, if any." We cannot say the trial court abused its discretion in weighing the probative value of this statement against its prejudicial effect. The evidence was properly excluded. II. The trial court

NO. 87-1809. STATE v. GETTIER.(continued).
admitted the expert testimony of a psychologist concerning the classic characteristics that are exhibited after people have experienced a trauma. While her testimony centered around a particular aspect of this syndrome, commonly described as "rape trauma syndrome," this term was not specifically referred to in the trial. Our review of the case law indicates that the majority of jurisdictions find no abuse of discretion in the admission of expert testimony limited to an explanation of the effects of Post Traumatic Stress Disorder (PTSD) and the typical reaction of a rape victim. This is an almost unanimous uniform rule when the expert neither uses the term "rape trauma syndrome" nor offers an opinion on whether the victim had been raped. The testimony in the present case showed only the typical symptoms exhibited by a person after being traumatized. We believe that the admissibility of the testimony was a matter within the trial court's discretion.

No. 87-1762. TORNER v. REAGEN.

Appeal from the Iowa District Court for Black Hawk County, James L. Beeghly, Judge. Reversed and remanded. Considered by McGiverin, C.J., and Harris, Schultz, Neuman, and Andreasen, JJ. Opinion by Harris, J. (7 pages \$2.80).

This is a tort action, brought under 42 U.S.C. section 1983 against the commissioner of the Iowa department of human services. The question is whether the commissioner enjoys qualified immunity for the actions which form the basis of this suit. As detailed in Torner by Torner v. State, 399 N.W.2d 381 (Iowa 1987), the department of human services determined that Bernice Torner became ineligible for continued Medicaid benefits because her income was too high. We rejected Bernice's constitutional challenge to the departmental rule under which her benefits were terminated. A separate trial court ruling, in an injunction action involving the parties, resulted in a holding that Bernice was entitled to a hearing before the benefits could be terminated. That holding was not appealed. The absence of such a hearing became the catalyst for this section 1983 suit. The matter was tried to a jury which returned a substantial verdict against the commissioner. The case is before us on the commissioner's appeal. OPINION HOLDS: I. State courts have jurisdiction over appropriate section 1983 claims. In exercising this jurisdiction a state court is to apply federal law. The test for determining claims of qualified immunity is an objective test: Did the alleged conduct violate clearly established law of which a reasonable official would have been aware? II. We share in the trial court's view that qualified immunity is available to the defendant in this case but disagree with the trial court in thinking the matter was to be resolved by the jury. It was error for the trial court to have the jury decide whether Bernice's right to a hearing was a clearly established legal principle. III. The question becomes whether, when the commissioner failed in 1982 to provide Bernice a

No. 87-1762. TORNER v. REAGEN.(continued).

pre-termination hearing, federal law clearly required one. The department's denial of a hearing for Bernice was based on federal regulations then in effect. By no stretch could it be said that Bernice's right to a termination hearing was clearly established. It follows that the commissioner was entitled to qualified immunity as a matter of law. The judgment must be set aside. IV. A part of Bernice's judgment was an award for attorneys fees under 42 U.S.C. section 1988. Because we have said plaintiff is not entitled to recovery, the fee award must also be set aside. The case is reversed and remanded for entry of judgment for defendant.

No. 88-571. HEGG v. HAWKEYE TRI-COUNTY REC.

Appeal from the Iowa District Court for Winneshiek County, Robert E. Mahan, Judge. Reversed. Considered by McGiverin, C.J., and Harris, Schultz, Neuman, and Andreasen, JJ. Per curiam. (4 pages \$1.60)

We granted permission for this interlocutory appeal to review an order of reinstatement after the case had been automatically dismissed under Iowa rule of civil procedure 215.1. OPINION HOLDS: On this record we find the trial court was without authority to reinstate the case. We therefore reverse. In spite of its unfortunate impact on some litigants we have often pointed out that rule 215.1 is rooted in sound public policy. Justice is achieved under a system which demands reasonable promptness in processing litigation. This case became automatically dismissed under the rule, and was not reinstated upon timely application. The case must stand as dismissed.

No. 88-890. STATE v. HOVERSTEN.

Appeal from the Iowa District Court for Hardin County, M.D. Seiser, Judge. Affirmed. Considered by McGiverin, C.J., and Harris, Schultz, Neuman, and Andreasen, JJ. Opinion by Harris, J. (5 pages \$2.00)

Defendant was convicted of second-degree sexual abuse of his four-year-old stepdaughter. The child was a prosecution witness and testified while a one-way mirror was placed between her and the defendant. She could not see the defendant while testifying but he could see her. On appeal the defendant asserts he was denied his Sixth Amendment confrontation rights based on the holding by the United States Supreme Court in Coy v. Iowa, 487 U.S. _____, 108 S. Ct. 2798, 101 L. Ed. 2d 857 (1988). OPINION HOLDS: I. In Coy the United States Supreme Court recognized there are exceptions to an accused's right to a face-to-face meeting with witnesses when necessary to further an important public policy. Protection of child witnesses is such an exception. A de novo review of the record in this case justifies the trial court's finding that the child needed the protection. II. Defendant's second assignment of error challenges trial court evidentiary rulings. The assignment presupposes the child's testimony was improper. Because we have found her testimony was proper, the testimony was admissible.

No. 88-579. MAHERS V. STATE; No. 88-281. LEONARD V. STATE.

Appeal from the Iowa District Court for Lee County, John C. Miller and William S. Cahill, Judges. Reversed and remanded in No. 88-579; affirmed in No. 88-281. Considered by Larson, P.J., and Carter, Lavorato, Snell, and Andreasen, JJ. Opinion by Lavorato, J. (15 pages \$6.00)

Mahers and Leonard, while inmates, were each charged with infractions of prison disciplinary rules. Mahers wanted to call three other inmates as witnesses at his disciplinary hearing to assist with his defense. Leonard, on the other hand, wanted to call prison employees who had prepared the disciplinary complaints against him. Each was denied the opportunity to call these witnesses, and the prison disciplinary committee subjected each to discipline for rule violations. Each exhausted administrative appeals and applied to the district court for postconviction relief, which was denied. Mahers and Leonard have separately appealed these denials to this court. Their cases present a common issue: the extent to which an inmate has the due process right under the fourteenth amendment of the United States Constitution to call witnesses at a disciplinary hearing. OPINION HOLDS: I. Both inmates recognize that they have no due process rights to confront or cross-examine witnesses and that the authorities may refuse to call witnesses for reasons such as safety or irrelevance. A. In the case of Mahers, who wanted to call other inmates as witnesses, the limited nature of the evidence against him made the possible testimony of his witnesses relevant. No security problem was cited by the authorities. In addition, the inmates in question had not been used to present evidence against Mahers, so no potential for cross-examination existed. We think the circumstances in Mahers' case justified his request for the witnesses. Accordingly, we must reverse the district court's denial of postconviction relief. B. As to Leonard's claim, the case for allowing the requested witnesses to be called is considerably weaker. He wanted to call prison employees who had prepared disciplinary reports against him. Unlike the witnesses in Mahers' case, Leonard's requested witnesses do not seem to have much to do with presenting his defense. Cross-examination was more likely his purpose in calling them. In view of these circumstances, we think the district court made the correct decision on this issue. II. Mahers also argues that the committee's decision in his case was not supported by sufficient evidence. Only "some evidence" is needed under the due process clause to justify a prison disciplinary action. The officer's report on Mahers was sufficient evidence. III. Leonard also argues that in his case the authorities violated a prison rule regarding the timing of disciplinary hearings. We think the district court's reading of this rule is reasonable. As such, it is affirmed.

No. 88-96. IOWA CONTRACTORS WORKERS' COMPENSATION GROUP V. IOWA INSURANCE GUARANTY ASSOCIATION.

Appeal from the Iowa District Court for Polk County, John N. Hughes, Senior Judge. Affirmed. Considered by Harris, P.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Lavorato, J. (26 pages \$10.40)

In this declaratory judgment action, the Iowa Contractors Workers' Compensation Group (Group) asked the district court to rule that the Iowa Insurance Guaranty Association (Association) was liable for unpaid claims owed to the Group by an insolvent insurance company (Mission). The district court decided that the Association was indeed liable. In doing so, the court ruled against the Association on four issues. First, the court determined that the Mission policy was "direct insurance" within the meaning of Iowa Code section 515B.1, and not reinsurance. The court's determination triggered the application of chapter 515B to the Group's claims. Second, the court refused to recognize the Group as an insurer or underwriting association within the meaning of Iowa Code section 515B.2(3), which excludes claims of such entities from the provisions of Iowa Code chapter 515B. Third, the court rejected the Association's contention that only workers employed by the Group were covered by the Mission policy. Finally, the court concluded that a subrogation provision in the Mission policy did not inure to the benefit of the Association. The Association appealed, challenging the district court's ruling on all four issues. OPINION HOLDS: I. The district court correctly concluded that the Mission policy was direct insurance rather than reinsurance. II. The district court correctly concluded that the Group is not an insurer or underwriting association for purposes of section 515B.2(3). III. We agree with the district court's analysis and conclusion that the claims by employees of the Group's members were covered by the Mission policy. IV. We agree with the district court that the subrogation provisions of the Mission policy do not inure to the Association's benefit.

NO. 87-1568. DAVIS v. OTTUMWA YMCA.

Appeal from the Iowa District Court for Wapello County, James D. Jenkins, Judge. Reversed and remanded. Considered by Harris, P.J., and Larson, Schultz, Carter, and Snell, JJ. Opinion by Larson, J. (17 pages \$6.80)

Randy Davis was employed by the Ottumwa YMCA in late 1982. One of the fringe benefits of this job was coverage under a group health insurance policy with Blue Cross. Health insurance coverage was critical to Davis because his daughter, Wendy, was a Down's syndrome child. Wendy soon required extensive medical treatment, and Davis looked to Blue Cross for reimbursement. Blue Cross denied coverage on the ground that Davis's employer, the YMCA, had allowed the policy to lapse for nonpayment of the premium. Davis sued for reimbursement of Wendy's medical expenses and joined in the action the YMCA, Blue Cross, and State Farm Insurance Company, which had taken over the YMCA's group plan. The district court dismissed Davis's claims as to all defendants, and he appealed. On appeal, four issues are raised:

NO. 87-1568. DAVIS v. OTTUMWA YMCA.(continued).

(1) whether a federal statute, the Employee Retirement Income Security Act (ERISA), preempted Davis's common-law actions for breach of contract and negligence; (2) whether the district court abused its discretion in refusing to allow Davis to amend his petition to add a claim under the federal act; (3) whether Davis's appeal was timely as to State Farm Insurance Company, which had been dismissed from the action approximately two years earlier; and (4) whether a genuine issue of material fact could be generated against the defendants. OPINION HOLDS: I. We hold that Davis's common-law claims are preempted by ERISA, because they "relate to . . . [an] employee benefit plan" and do not fall within any of the exceptions to preemption contained in the ERISA statute. II. We believe the district court abused its discretion by refusing to let Davis amend his petition to add an ERISA claim. The decision to deny Davis's amendment was based on clearly untenable grounds and was done without a valid justifying reason or due consideration of the justice of the result. Accordingly, we reverse and remand with instructions to enter an order allowing the amendment. III. Dismissal on State Farm's motion for summary judgment was properly appealed within the time permitted to appeal from the order disposing of the rest of the case. IV. We conclude that disputed fact issues exist on questions of agency and fiduciary relationship and that entry of summary judgment would be improper under the circumstances.

No. 88-628. IN RE K.F.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Scott County, Arlen J. Van Zee, District Associate Judge. Decision of court of appeals vacated; district court judgment affirmed. Considered by McGiverin, C.J., Harris, Schultz, Neuman, and Andreasen, JJ. Opinion by Neuman, J. (14 pages \$5.60)

The mother of a child challenges the juvenile court's termination of her parental rights. OPINION HOLDS: I. The written report of a social worker was admissible over the mother's hearsay objection. II. The evidence was sufficient to support the termination of the mother's parental rights. The State has proven by clear and convincing evidence that Kristi cannot be reunited with her mother now, or in the foreseeable future, without subjecting her to the same harm that would justify adjudicating her a child in need of assistance. III. We cannot accept the mother's argument that termination of her parental rights should be avoided under Iowa Code section 232.116((3)(c). That statute provides that an otherwise warranted termination can be avoided if it would be "detrimental to the child . . . due to the closeness of the parent-child relationship." In this case the record reveals a bond between mother and child but also reveals that the child's love for the mother is mixed with fear and confusion. An understandable distance has developed between mother and child, as the child attempts to protect herself physically and emotionally from the mother's often frightening behavior.

No. 88-1343. IN RE A.E.O. III.

Appeal from the Iowa District Court for Dallas County, Robert O. Frederick, Senior Judge. Affirmed. Considered by McGiverin, C.J., and Harris, Schultz, Neuman, and Andreasen, JJ. Opinion by Neuman, J. (6 pages \$2.40)

The child involved here was previously adjudicated to be a child in need of assistance and was placed in a substance abuse treatment facility. In a subsequent review order, the juvenile court directed continued placement in the substance abuse treatment facility. The child challenges this review order on the ground the review hearing was not held within six months of the initial dispositional hearing, as contemplated by Iowa Code section 232.102(7)(a). The child contends this defect required dismissal of the CINA proceeding. OPINION HOLDS: The six month time period for a review hearing, stated in section 232.102(7)(a), is directory rather than mandatory. A delay beyond the statutory period, while not to be condoned, does not require dismissal of the CINA proceeding. Such a harsh remedy for delay would run counter to the statute's main objective, which is to assure the child the most safe and secure placement consistent with his or her best interest.

NO. 88-600. SAGE v. JOHNSON.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge. Reversed and remanded. Considered by Harris, P.J., and Larson, Schultz, Carter, and Snell, JJ. Opinion by Larson, J. (8 pages \$3.20)

Mark Sage was seriously injured in a diving accident which he claims was the result of his own intoxication. Mark and his parents sued several parties including the Lumettas, hosts of a party attended by Mark on the night of the accident. The Lumettas had furnished beer to Mark who was then under the legal age of twenty-one. The district court dismissed the suit against the Lumettas on the ground that social host liability had been abrogated by an amendment to Iowa Code section 123.49 (1987). Mark has appealed. OPINION HOLDS: We have held previously that the amendment to section 123.49, relied on by the district court, was inapplicable to suits based on furnishing of alcohol to an underage consumer. The remaining issue here is whether an underage drinker, a "minor" for our purposes, may sue a social host in a common-law action for injuries arising out of his own intoxication. We hold that a minor injured as the result of consuming alcoholic beverages furnished in violation of Iowa Code section 123.47 is not necessarily precluded from pursuing a claim against the person furnishing the alcohol, but that such a claim is subject to the comparative fault provisions of chapter 668.

No. 88-659. STATE V. STARKEY.

Appeal from the Iowa District Court for Cerro Gordo County, Carlynn D. Grupp, District Associate Judge. Affirmed in part and reversed in part. Considered by Larson, P.J., and Carter, Lavorato, Snell, and Andreasen, JJ. Opinion by Lavorato, J. (7 pages \$2.80)

No. 88-659. STATE V. STARKEY. (continued).

The defendant was convicted of leaving the scene of a personal injury accident. In an amended judgment order, the district court directed the defendant to pay restitution for some \$195,000 in medical expenses suffered by the accident victim. The defendant has appealed from this amended judgment order. OPINION HOLDS: The accident victim's injuries were not caused by the defendant's leaving the accident scene, but by the accident itself. Therefore the victim's injuries were not caused by the crime charged. Iowa Code sections 910.1(1) and 910.1(2) permit victim restitution only when there is a causal connection between the conduct for which the defendant is convicted and the damages the victim suffers. Since this causal connection was absent in the present case, the victim restitution order was improper and must be reversed. However, we affirm that part of the court's decision ordering restitution for court costs.

NO. 87-1473. HEARITY v. BOARD OF SUPERVISORS.

Appeal from the Iowa District Court for Fayette County, John Bauercamper, Judge. Reversed and remanded. Considered by Larson, P.J., and Carter, Lavorato, Snell, and Andreasen, JJ. Opinion by Carter, J. (7 pages \$2.80).

On June 17, 1987, defendant W. Wayne Saur, individually and as Fayette County Attorney, filed a motion asking the court to impose sanctions against the plaintiff and his attorney pursuant to Iowa Rule of Civil Procedure 80(a). On June 25, 1987, defendant attorneys joined in the request for sanctions presented by defendant Saur. On June 26, 1987, plaintiff filed a notice of appeal from the final judgment entered in the case. On July 1, 1987, defendant Board of Supervisors and the individual board members also filed motions for rule 80(a) sanctions against plaintiff and his attorney. This court ordered a limited remand to the district court for purposes of permitting that court to consider and rule on the various motions for sanctions. The district court ruled that all motions for sanctions were untimely. OPINION HOLDS: The many considerations which confront an advocate seeking to protect the best interests of a client militate against requiring that a motion for rule 80(a) sanctions be filed within a time frame shorter than the expiration of the time for appeal from the final judgment. All of the motions for sanctions in the present case were filed within that time. For the reasons stated, we reverse the order of the district court and remand the case to that court for further proceedings not inconsistent with our opinion.

NO. 88-651. STATE v. SUMPTER.

Appeal from the Iowa District Court for Marshall County, Timothy J. Finn, Judge. Affirmed. Considered by Larson, P.J., and Carter, Lavorato, Snell, and Andreasen, JJ. Opinion by Larson, J. (10 pages \$4.00)

The defendant appeals from his conviction and sentence for second-degree murder. OPINION HOLDS: I. Two aunts and an uncle of the murder victim were not "victims" under the

NO. 88-551. STATE v. SUMPTER. (continued).
statutory definition of the term and therefore had no standing under Iowa Code section 910A.5A to file victim impact statements. However, this defendant has failed to show prejudice from the use of victim impact statements by the aunts and uncle. Therefore, the defendant is not entitled to have his sentence vacated on this ground. II. The sentencing court did not abuse its discretion by making the sentence for this crime consecutive to two life sentences the defendant was already serving. The statutory authority for comparative sentencing was not impaired by the fact that the crime involved here occurred before the imposition of the separate life sentence for other crimes.

NO. 88-28. BRINEGAR v. IOWA DEPARTMENT OF REVENUE.

Appeal from the Iowa District Court for Wapello County, Dan F. Morrison, Judge. Reversed and remanded. Considered by Harris, P.J., and Larson, Schultz, Carter, and Snell, JJ. Opinion by Larson, J. (5 pages \$2.00)

Plaintiffs challenge an equalization order of the director of revenue entered under Iowa Code section 441.47 (1985). The plaintiffs' challenge to the equalization order began with an appeal to the Iowa Director of Revenue, who affirmed the equalization order. Plaintiffs appealed to the Iowa State Board of Tax Review, which affirmed the director's order. Brinegar sought judicial review in district court under Iowa Code section 17A.19. The district court reversed the board on the ground that the department's rules concerning equalization procedures violated Iowa Code section 441.21(1)(f) by failing to consider the county's modern soil survey in entering the equalization order. The Iowa Department of Revenue and the Iowa Board of Tax Review appealed to this court. OPINION HOLDS: The director contends plaintiffs do not have standing under Iowa Code section 17A.19(1). We assume Brinegar had standing to challenge the equalization order for purposes of this appeal. Section 441.21(1)(f) requires the department to consider a county's soil survey. The department counters that the purpose of equalization among counties would be frustrated if it were required to give emphasis to the soil survey because not all counties have them. We hold that section 441.21(1)(f) does not require the director to consider the soil surveys in entering equalization orders under section 441.47, at least until all counties have such surveys available. Accordingly, we reverse and remand with directions to reinstate the department's order for equalization.

No. 88-602. MIDWEST OFFICE TECHNOLOGY, INC. v. AMERICAN ALLIANCE INSURANCE CO.

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge. Reversed. Considered by McGiverin, C.J., Harris, Schultz, Neuman, and Andreasen, JJ. Opinion by Schultz, J. (9 pages \$3.60)

Midwest purchased a business protection insurance policy from American covering losses of inventory. The

No. 88-602. MIDWEST OFFICE TECHNOLOGY, INC. v. AMERICAN ALLIANCE INSURANCE CO. (continued).

policy provided variable coverage corresponding to the amount of inventory Midwest reported. The coverage was limited to the amount listed in the last monthly report filed prior to the loss. A fire destroyed Midwest's inventory. Midwest sought the entire policy limits but American paid only the amount of inventory claimed by Midwest in its most recent report prior to the fire. Midwest then filed the present breach of contract action. The trial court concluded that Midwest's breach of the monthly reporting requirement neither increased the risk nor contributed to the loss incurred. Therefore, the court determined the recovery should not be limited by its breach. American appealed. OPINION HOLDS: Iowa Code section 515.101 provides that any condition in a policy making the policy void before the loss occurs shall not prevent recovery if the failure to observe such provision did not contribute to the loss. We believe that section 515.101 is limited to situations in which an insured's breach of a condition voids the policy and forfeits the insured's coverage. Such is not the case here. When the value reporting clause is breached, liability is not avoided, but merely limited. The policy unambiguously provides that the insured's coverage is limited to the amount of inventory reported on the last report filed prior to any loss. The trial court erred when it concluded to the contrary.

No. 88-187. HUSTON v. CITY OF DES MOINES.

Appeal from the Iowa District Court for Polk County, Harry Perkins, Judge. Affirmed in part, reversed in part, and remanded. Considered by McGiverin, C.J., and Harris, Schultz, Neuman, and Andreasen, JJ. Per curiam.

(4 pages \$1.60)

This is an appeal from an adjudication of law points and summary judgment entered in favor of defendant City of Des Moines in a suit brought by plaintiff James Huston in connection with his resignation as a city sewage plant employee. In both motions, the City asserted that any challenge to "removal" from civil service employment lies exclusively in the Civil Service Commission under Iowa Code chapter 400. The district court agreed. OPINION HOLDS: While there is merit in the court's ruling as it bears on Huston's claim of wrongful discharge, the district court's adjudication of law points must be reversed with regard to all the other counts of Huston's petition. Had Huston been discharged, then chapter 400 would have furnished exclusive relief and Huston's failure to timely pursue that remedy would preclude an action in district court. However, the parties concede that Huston voluntarily resigned pursuant to a negotiated agreement with the City. For breach, if any, of that agreement, chapter 400 has no application. Because we have determined the court erred as a matter of law with regard to the jurisdictional issue, the court's

No. 88-502. MIDWEST OFFICE TECHNOLOGY, INC. v. AMERICAN ALLIANCE INSURANCE CO. (continued).

basis for summary ruling in the City's favor is flawed and its judgment must be reversed. Except for Huston's claim of wrongful discharge, which he concedes cannot survive the City's motions, the remainder of Huston's claims must be remanded to the district court for further proceedings.

No. 88-729. SALLIS v. EMPLOYMENT APPEAL BOARD.

Appeal from the Iowa District Court for Black Hawk County, Peter Van Metre, Judge. Reversed and remanded. Considered by McGiverin, C.J., and Harris, Schultz, Neuman, and Andreasen, JJ. Opinion by Andreasen, J.

(7 pages \$2.80)

Petitioner Richard O. Sallis was discharged from employment when he failed to report to work one day. The district court affirmed the Employment Appeal Board's decision denying him unemployment compensation. He appealed. OPINION HOLDS: I. Although absenteeism may be grounds for discharge, it is not necessarily misconduct under Iowa Code section 96.5(2). Courts are not in agreement as to whether a single instance constitutes misconduct. Most courts have made this determination based on the facts and circumstances of the individual cases. Certain contributing factors have been considered in determining whether an employee's single unexcused absence constitutes misconduct. These factors include the nature of an employee's work, the effect of the employee's absence, dishonesty or falsification by the employee in regard to the unexcused absence, and whether the employee made any attempt to notify the employer of the absence. III. We conclude the March 14 conduct of Sallis cannot be considered disqualifying misconduct as defined by administrative rules. There is no substantial evidence in the record, even considering the comment made by Sallis on March 17 that he was more concerned with his car than his work, which would support the holding of the appeal board. We reverse the district court and remand to the agency for the determination of benefits.

NO. 87-930. HEARITY v. BOARD OF SUPERVISORS.

Appeal from the Iowa District Court for Fayette County, John Bauercamper, Judge. Affirmed. Considered by Larson, P.J., and Carter, Lavorato, Snell, and Andreasen, JJ. Opinion by Carter, J.

(11 pages \$4.40)

Plaintiff, Robert J. Hearity, appeals from a judgment entered on a directed verdict for the defendants in his claims brought under the Iowa Competition Law (Iowa Code ch. 553). The litigation challenges the validity of a contractual arrangement between the Fayette County Board of Supervisors and four attorneys for indigent legal services in criminal cases and juvenile court. On June 13, 1985, the board entered into four separate contracts with the four

NO. 87-930. HEARITY v. BOARD OF SUPERVISORS.(continued). attorneys. The contracts provided that, for a fee of \$1000 per month, each attorney would provide 25 percent of all court-appointed legal services required in Fayette County. Hearity is an attorney who has practiced law in Fayette County since 1982 and had received numerous court appointments prior to July 1985. OPINION HOLDS: There has never been a competitive market in the field of indigent defense services by lawyers, either with respect to the securing of business or the fixing of prices. The selection of counsel and the establishing of fees has been monopolized by the appointing power and fee-establishing responsibility of the district court judges. The legislature did not intend the Iowa Competition Law to apply to the selection of lawyers to represent indigent criminal defendants and juveniles. The actions of the county and its board of supervisors are expressly exempted from operation of that anticompetition legislation by Iowa Code section 553.6(5). Conspire as they might, the four attorneys could not have restrained competition through an exclusive contract without the action of the affected public agencies. Under this analysis, the validity of the contract depends only upon the entitlement of the board of supervisors and this court to operate outside the scope of the Iowa Competition Law. For all of the reasons stated, we conclude that the district court acted correctly in directing a verdict for all of the defendants.



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