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PREFACE

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

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

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

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

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

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

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PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
21	**Friday, March 30, 1990**	**April 18, 1990**
22	**Friday, April 13, 1990**	**May 2, 1990**
23	**Friday, April 27, 1990**	**May 16, 1990**

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

First quarter	July 1, 1989, to June 30, 1990	$185.85 plus $7.43 sales tax
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Third quarter	January 1, 1990, to June 30, 1990	$ 92.90 plus $3.72 sales tax
Fourth quarter	April 1, 1990, to June 30, 1990	$ 46.50 plus $1.86 sales tax

Single copies may be purchased for $6.20 plus $0.20 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

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

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

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(Price includes 16 volumes of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders can be purchased for $3.90 plus $0.16 tax.)

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

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Schedule for Rule Making
1990

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. 5	Jan. 24	Feb. 13	Feb. 28	Mar. 21	Apr. 25	July 23
Jan. 19	Feb. 7	Feb. 27	Mar. 14	Apr. 4	May 9	Aug. 6
Feb. 2	Feb. 21	Mar. 13	Mar. 28	Apr. 18	May 23	Aug. 20
Feb. 16	Mar. 7	Mar. 27	Apr. 11	May 2	June 6	Sep. 3
Mar. 2	Mar. 21	Apr. 10	Apr. 25	May 16	June 20	Sep. 17
Mar. 16	Apr. 4	Apr. 24	May 9	May 30	July 4	Oct. 1
Mar. 30	Apr. 18	May 8	May 23	June 13	July 18	Oct. 15
Apr. 13	May 2	May 22	June 6	June 27	Aug. 1	Oct. 29
Apr. 27	May 16	June 5	June 20	July 11	Aug. 15	Nov. 12
May 11	May 30	June 19	July 4	July 25	Aug. 29	Nov. 26
May 25	June 13	July 3	July 18	Aug. 8	Sep. 12	Dec. 10
June 8	June 27	July 17	Aug. 1	Aug. 22	Sep. 26	Dec. 24
June 22	July 11	July 31	Aug. 15	Sep. 5	Oct. 10	Jan. 7 '91
July 6	July 25	Aug. 14	Aug. 29	Sep. 19	Oct. 24	Jan. 21 '91
July 20	Aug. 8	Aug. 28	Sep. 12	Oct. 3	Nov. 7	Feb. 4 '91
Aug. 3	Aug. 22	Sep. 11	Sep. 26	Oct. 17	Nov. 21	Feb. 18 '91
Aug. 17	Sep. 5	Sep. 25	Oct. 10	Oct. 31	Dec. 5	Mar. 4 '91
Aug. 31	Sep. 19	Oct. 9	Oct. 24	Nov. 14	Dec. 19	Mar. 18 '91
Sep. 14	Oct. 3	Oct. 23	Nov. 7	Nov. 28	Jan. 2 '91	Apr. 1 '91
Sep. 28	Oct. 17	Nov. 6	Nov. 21	Dec. 12	Jan. 16 '91	Apr. 15 '91
Oct. 12	Oct. 31	Nov. 20	Dec. 5	Dec. 26	Jan. 30 '91	Apr. 29 '91
Oct. 26	Nov. 14	Dec. 4	Dec. 19	Jan. 9 '91	Feb. 13 '91	May 13 '91
Nov. 9	Nov. 28	Dec. 18	Jan. 2 '91	Jan. 23 '91	Feb. 27 '91	May 27 '91
Nov. 23	Dec. 12	Jan. 1 '91	Jan. 16 '91	Feb. 6 '91	Mar. 13 '91	June 10 '91
Dec. 7	Dec. 26	Jan. 15 '91	Jan. 30 '91	Feb. 20 '91	Mar. 27 '91	June 24 '91
Dec. 21	Jan. 9 '91	Jan. 29 '91	Feb. 13 '91	Mar. 6 '91	Apr. 10 '91	July 8 '91

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.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

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
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Emission standards for hazardous air pollutants, 23.1(3) IAB 3/21/90 **ARC 756A**	Conference Room Atlantic Municipal Utilities Bldg. 15 West Third St. Atlantic, Iowa	April 10, 1990 10:30 a.m.
	Gold Room University of Iowa Oakdale Campus Oakdale Hall Oakdale, Iowa	April 11, 1990 11 a.m.
	Conference Room Fourth Floor — East Half Wallace State Office Bldg. 900 East Grand Ave. Des Moines, Iowa	April 12, 1990 10 a.m.
Technical standards for underground storage tanks, amendments to ch 135 IAB 3/21/90 **ARC 760A**	Community Room City Hall Denison, Iowa	April 10, 1990 1 p.m.
	Iowa Room Iowa Hall Kirkwood Community College Cedar Rapids, Iowa	April 12, 1990 1 p.m.
	Conference Room — 5th Floor Wallace State Office Bldg. Des Moines, Iowa	April 13, 1990 1 p.m.
INSPECTIONS AND APPEALS DEPARTMENT[481]		
Field survey administration, 30.2, 30.6 IAB 4/4/90 **ARC 795A**	Conference Room Third Floor — Side 1 Lucas State Office Bldg. Des Moines, Iowa	April 24, 1990 10 a.m.
INSURANCE DIVISION[191]		
Petroleum underground storage tank guaranteed loan program, new ch 47 IAB 3/21/90 **ARC 759A**	Conference Room — 6th Floor Lucas State Office Bldg. Des Moines, Iowa	April 10, 1990 10 a.m.
LABOR SERVICES DIVISION[347]		
Occupational safety and health rules for general industry, 10.20 IAB 4/4/90 **ARC 794A**	Division of Labor Services 1000 East Grand Ave. Des Moines, Iowa	April 27, 1990 9 a.m. (if requested)
Occupational safety and health rules for construction, 26.1 IAB 4/4/90 **ARC 793A**	Division of Labor Services 1000 East Grand Ave. Des Moines, Iowa	April 27, 1990 9 a.m. (if requested)
LAW ENFORCEMENT ACADEMY[501]		
Psychological and cognitive testing, 2.2(6), 2.2(7) IAB 4/4/90 **ARC 773A**	Conference Room Law Enforcement Academy Camp Dodge Johnston, Iowa	April 24, 1990 9:30 a.m.

LOTTERY DIVISION[705]		
Iowa Lotto, 10.2, 10.3, 10.6, 10.10 IAB 4/4/90 **ARC 771A** (See also **ARC 772A** herein)	Lottery Office 2015 Grand Ave. Des Moines, Iowa	May 10, 1990 9 a.m.
NATURAL RESOURCE COMMISSION[571]		
Private open space lands, new ch 32 IAB 3/21/90 **ARC 762A**	Conference Room Fifth Floor East Wallace State Office Bldg. Des Moines, Iowa	April 11, 1990 10 a.m.
Waterfowl and coot hunting seasons, amendments to ch 91 IAB 3/7/90 **ARC 726A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 14, 1990 10 a.m.
Nonresident deer hunting regulations, amendments to ch 94 IAB 3/7/90 **ARC 723A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 14, 1990 10 a.m.
Pheasant, quail and gray (Hungarian) partridge hunting seasons, 96.1 to 96.3 IAB 3/7/90 **ARC 725A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 14, 1990 10 a.m.
Common snipe, Virginia rail, sora, woodcock and ruffed grouse hunting seasons, 97.1 to 97.4 IAB 3/7/90 **ARC 724A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 14, 1990 10 a.m.
Wild turkey fall hunting regulations, ch 99; rescind chs 95 and 99 IAB 3/7/90 **ARC 722A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 14, 1990 10 a.m.
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Rabbit and squirrel hunting, 107.1 to 107.3 IAB 3/7/90 **ARC 720A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 14, 1990 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 3/7/90 **ARC 721A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 14, 1990 10 a.m.
PROFESSIONAL LICENSURE DIVISION[645]		
Board of mortuary science examiners, amendments to ch 101 IAB 3/21/90 **ARC 753A**	Conference Room Fourth Floor — Side 1 Lucas State Office Bldg. Des Moines, Iowa	April 11, 1990 1:30 p.m.
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Regulations applicable to carriers, amendments to ch 520 IAB 3/21/90 **ARC 741A**	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	May 1, 1990
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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:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
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- Soil Conservation Division[27]

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Beef Industry Council, Iowa[101]

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  - Architectural Examining Board[193B]
  - Engineering and Land Surveying Examining Board[193C]
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TREASURER OF STATE[781]
Uniform State Laws Commission[791]
Veterinary Medicine Board[811]
Voter Registration Commission[821]

REORGANIZATION—NOT IMPLEMENTED

Agencies listed below are identified in the Iowa Administrative Code with white tabs. These agencies have not yet implemented government reorganization.

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Corrections Department[291]
Dairy Industry Commission[310]
Executive Council[420]
Iowa Advance Funding Authority[515]
Iowa Finance Authority[524]
Library Department[560]
Prison Industries Advisory Board[635]
Product Development Corporation[636]
Records Commission[710]
Veterans Affairs[841]

ARC 778A

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 249A.4, the Department of Human Services proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," appearing in the Iowa Administrative Code.

This amendment limits the aggregate number of inpatient hospice days to 20 percent of the aggregate total number of days of hospice care provided to all Medicaid recipients during the 12-month period beginning November 1 of each year and ending October 31. This limitation is required by Medicaid. Medicare has a similar requirement. States do have the option of excluding Medicaid recipients with acquired immunodeficiency syndrome (AIDS) from this limitation and Iowa has chosen to exercise this option.

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 25, 1990.

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

The following amendment is proposed:

Amend subrule **79.1(14)** by adding the following new paragraph:

e. Limitation of payments for inpatient care. Payments to a hospice for inpatient care shall be limited according to the number of days of inpatient care furnished to Medicaid patients. During the 12-month period beginning November 1 of each year and ending October 31, the aggregate number of inpatient days (both for general inpatient care and inpatient respite care) shall not exceed 20 percent of the aggregate total number of days of hospice care provided to all Medicaid recipients during that same period. Medicaid recipients afflicted with acquired immunodeficiency syndrome (AIDS) are excluded in calculating this inpatient care limitation. This limitation is applied once each year, at the end of the hospices' "cap period" (November 1 to October 31). For purposes of this computation, if it is determined that the inpatient rate should not be paid, any days for which the hospice receives payment at a home care rate will not be counted as inpatient days. The limitation is calculated as follows:

(1) The maximum allowable number of inpatient days will be calculated by multiplying the total number of days of Medicaid hospice care by 0.2.

(2) If the total number of days of inpatient care furnished to Medicaid hospice patients is less than or equal to the maximum, no adjustment will be necessary.

(3) If the total number of days of inpatient care exceeded the maximum allowable number, the limitation will be determined by:

1. Calculating a ratio of the maximum allowable days to the number of actual days of inpatient care, and multiplying this ratio by the total reimbursement for inpatient care (general inpatient and inpatient respite reimbursement) that was made.

2. Multiplying excess inpatient care days by the routine home care rate.

3. Adding together the amounts calculated in "1" and "2."

4. Comparing the amount in "3" with interim payments made to the hospice for inpatient care during the "cap period."

Any excess reimbursement shall be refunded by the hospice.

ARC 795A

INSPECTIONS AND APPEALS DEPARTMENT[481]

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 10A.104(5), the Department of Inspections and Appeals gives Notice of Intended Action to amend Chapter 30, "Field Survey Administration," Iowa Administrative Code.

These amendments clarify the language relating to jurisdiction of hospital inspections and dairy plant inspections, double licensing under Iowa Code chapters 170 and 170A and mobile food units. The amendments also set a limit on grocery sales for food service establishments.

Consideration will be given to all written comments received by the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, if received by April 24, 1990.

Oral comments may be made at a public hearing scheduled for April 24, 1990, at 10 a.m., side 1 of the third floor conference room, Lucas State Office Building, Des Moines, Iowa.

These rules are intended to implement Iowa Code sections 170.2 and 170A.2(5).

The following amendments are proposed:

ITEM 1. Amend rule **481—30.2(10A)** as follows:

Amend the definition of "Farmers market," second unnumbered paragraph,as follows:

~~In addition to the sale of fresh fruits and vegetables, the~~ *The* following products may be sold at a farmers market without being licensed under Iowa Code section 170.2 ~~and Iowa Code chapter 170C.~~ *at the market location:*

Further amend the definition of "Farmers market" by adding the following new numbered paragraphs:

4. Prepackaged, nonhazardous food products prepared in an establishment licensed under Iowa Code section 170.2 as a food establishment.

5. Fresh fruits and vegetables.

Amend the definition of "Food establishment" by adding the following new numbered paragraph:

8. Premises covered or regulated by Iowa Code section 192.5 with a milk or milk products permit issued by the department of agriculture and land stewardship. This exemption includes milk producers, milk haulers, milk distributors, dairy farms, milk plants, receiving stations and transfer stations as defined in Iowa Code section 192.8.

Amend the definitions of "Food service establishment" and "Mobile food unit" as follows:

"Food service establishment" means any place where food is prepared and intended for individual portion service, whether or not there is a charge for the food. The term includes schools and summer camps, but does not include private homes where food is prepared or stored for an individual family to eat. The term does not include child day care facilities or service facilities subject to inspection by other agencies of the state *or other divisions of this department* and located in health care facilities, or hospitals.

"Mobile food unit" means a food service establishment *or food establishment* on a vehicle which is easy to move. *This vehicle must report to its home base each night for cleaning and servicing.*

Further amend rule **481—30.2(10A)** by adding the following new definition in alphabetical order:

"Department" means the Iowa department of inspections and appeals.

ITEM 2. Rescind rule 481—30.6(170,170A), introductory paragraph, and insert the following in lieu thereof:

481—30.6(170,170A) Double licenses. Any establishment which holds a food service establishment license and grosses over $20,000 annually in grocery items shall also be required to obtain a food establishment license. The license holder shall keep a record of these food sales and make it available to the department upon request.

ITEM 3. Amend rule **481—30.6(170,170A)**, first unnumbered paragraph, to read as follows:

A food establishment and a food service establishment which occupy the same premises must be licensed separately and the applicable fee paid. Licensed food establishments serving only coffee, soft drinks, *popcorn,* prepackaged sandwiches or other food items manufactured and packaged by a licensed establishment need only a food establishment license.

ARC 794A

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 occupational exposure to lead; occupational exposure to hazardous chemicals in laboratories; air contaminants; and occupational exposure to lead.

If requested by April 24, 1990, a public hearing will be held on April 27, 1990, 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 26, 1990, 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 25, 1990, 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:

55 Fed. Reg. 3146 (January 30, 1990)
55 Fed. Reg. 3300 (January 31, 1990)
55 Fed. Reg. 3723 (February 5, 1990)
55 Fed. Reg. 4998 (February 13, 1990)

This rule is intended to implement Iowa Code section 88.5.

ARC 793A

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—26.1(88) relating to occupational safety and health rules for construction. The amendment relates to excavations.

If requested by April 24, 1990, a public hearing will be held on April 27, 1990, 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 argu-

ments to be considered in adoption may be submitted by interested persons no later than April 26, 1990, 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 25, 1990, 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—26.1(88)** by inserting at the end thereof:

54 Fed. Reg. 53055 (December 27, 1989)

This rule is intended to implement Iowa Code section 88.5.

ARC 773A

LAW ENFORCEMENT ACADEMY[501]

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 80B.11, the Academy gives Notice of Intended Action to amend Chapter 2, "Minimum Standards for Iowa Law Enforcement Officers," Iowa Administrative Code.

These changes will allow the Academy to charge all law enforcement agencies one-half the cost for psychological and cognitive testing.

Any interested person may make written comments or suggestions on these proposed amendments prior to April 24, 1990. Such written materials should be sent to the Director of the Iowa Law Enforcement Academy, P.O. Box 130, Camp Dodge, Johnston, Iowa 50131. Persons who wish to convey their views orally should contact the Iowa Law Enforcement Academy at (515) 242-5357.

There will be a public hearing on these proposed amendments April 24, 1990, at 9:30 a.m. in the Conference Room at the Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa 50131, at which time persons may present their views orally or in writing. At the hearing persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

The following amendments are proposed:

ITEM 1. Rescind subrule 2.2(6) and insert in lieu thereof the following:

2.2(6) Cost of tests.

a. Science Research Associates (SRA) cognitive test. The academy will pay at least one-half of all testing costs of SRA tests purchased and scored by the academy. The academy will not pay for test administration costs which are incurred as a result of some other person or group administering the test.

b. Minnesota Multiphasic Personality Inventory (MMPI) test.

(1) Law enforcement agencies with vacancies. An employing agency will be charged for not more than one-half of the MMPI testing costs for up to two MMPI tests that are scored and evaluated by the academy for each law enforcement vacancy to be filled.

(2) Law enforcement agencies with no vacancies. A law enforcement agency which purchases MMPI tests scored and evaluated by the academy will be reimbursed for one-half of the cost of the MMPI test for every vacancy that is filled. An employing agency will be reimbursed for one-half of the MMPI test costs upon notification in writing to the academy that a law enforcement position has been filled and that reimbursement is requested.

(3) Testing for larger groups. The Minnesota Multiphasic Personality Inventory tests may be purchased from the academy and administered to a group of applicants larger than the group who will ultimately reach the final selection process. The full cost per applicant may be borne by the applicant in the larger group and will be limited to the cost per test from the supplier plus handling costs. The larger group test scores will not be evaluated by the academy unless requested by a hiring agency.

ITEM 2. Amend subrule **2.2(7)** by rescinding paragraph "c" and relettering paragraphs "d" and "e" as "c" and "d" respectively.

ARC 771A

LOTTERY DIVISION[705]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 99E.9 and 17A.3, the Iowa Lottery Board for the Iowa Lottery Division of the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 10, "Iowa Lotto," Iowa Administrative Code.

These amendments are also filed emergency and are published herein as **ARC 772A**. The purpose of this Notice is to solicit public comment on the amendments which are incorporated here by reference.

Any interested person may make written suggestions or comments on the amendments prior to May 10, 1990.

Written comments or suggestions should be directed to Nichola Schissel, Iowa Lottery, 2015 Grand Avenue, Des Moines, Iowa 50312. Persons who want to convey their views orally should contact Nichola Schissel at (515) 281-7870 or at the address indicated above.

A public hearing will be held on May 10, 1990, at 9 a.m. at 2015 Grand Avenue, Des Moines, Iowa. Persons may present their ideas at this public hearing either orally or in writing.

These rules are intended to implement Iowa Code chapter 99E.

ARC 780A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF DIETETIC 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 258A.3, the Board of Dietetic Examiners hereby gives Notice of Intended Action to amend Chapter 80, "Board of Dietetic Examiners," Iowa Administrative Code.

These amendments clarify requirements for reinstatement of inactive licensees and lapsed licensees, discontinue postapproval of continuing education and directly state the date renewal applications are to be in the office.

Written comments may be sent to Barbara Charls, Board Administrator, Professional Licensure, Lucas State Office Building, Des Moines, Iowa 50319. Deadline for receiving written comments is April 30, 1990.

These rules are intended to implement Iowa Code chapter 152A and Iowa Code section 258A.2.

The following amendments are proposed:

ITEM 1. Amend subrule 80.7(3) as follows:

80.7(3) Renewal fees shall be received by the board *office by the 31st* ~~on or before the end~~ of the last month of the renewal period. ~~Whenever renewal fees are not received as specified, the license lapses and the practice of holding oneself out as licensed to practice dietetics must cease until their license is reinstated by the board. In addition thereto a penalty fee shall be paid.~~

ITEM 2. Rescind subrule 80.7(4) and insert in lieu thereof the following:

80.7(4) If renewing within 30 days after the 31st of the last month of the renewal period, a penalty fee of $25 is required in addition to the renewal fee.

ITEM 3. Amend subrule 80.100(3) as follows:

80.100(3) Hours of continuing education may be obtained by attending and participating in a continuing education activity ~~either~~ previously approved by the board ~~or which is post-aproved by the board~~.

ITEM 4. Amend subrule 80.107(1) as follows:

80.107(1) Inactive practitioners who have been granted a waiver of compliance, prior to engaging in the practice of dietetics in the state of Iowa, shall submit written application for reinstatement on a form provided by the board and pay the ~~fees~~ *current renewal fee.*

ITEM 5. Rescind rule 645—80.108(152A) in its entirety and insert in lieu thereof the following:

645—80.108(152A) Reinstatement of lapsed licenses.

80.108(1) A license shall be considered lapsed if not renewed within 30 days of renewal date. If the license lapses, the practice of holding oneself out as licensed to practice dietetics must cease until the license is reinstated by the board.

80.108(2) A licensee who wishes to reinstate a lapsed license shall pay past due renewal fees to a maximum of four years, a reinstatement fee and penalty fees.

80.108(3) Continuing education requirements for the period of time the license was lapsed are not waived.

80.108(4) Application for reinstatement shall be made on a form provided by the board.

ARC 799A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS

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 135E.9, the Board of Examiners for Nursing Home Administrators hereby gives Notice of Intended Action to amend Chapter 140, "Public Information," and Chapter 141, "Licensure of Nursing Home Administrators," Iowa Administrative Code.

The amendment reflects the renumbering of relevant sections of the Iowa Code from chapter 147 to chapter 135E.

Any interested person may make written comments on the proposed amendment prior to 4:30 p.m., April 24, 1990. Such comment shall be directed to Kathy Williams, Board Administrator, Board of Examiners for Nursing Home Administrators, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The proposed amendment is intended to implement Iowa Code chapter 135E.

Amend **645—Chapters 140** and **141** by deleting (147) where it appears after each rule number and replacing it with (135E).

ARC 800A

PROFESSIONAL LICENSURE DIVISION [645]

BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS

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 135E.4, the Board of Examiners for Nursing Home Administrators hereby gives Notice of Intended Action to amend Chapter 141, "Licensure of Nursing Home Administrators," and Chapter 142, "Continuing Education," Iowa Administrative Code.

The proposed amendments change the requirements and procedure for continuing education.

Any interested person may make written comments on the proposed amendments on or before April 24, 1990. Comments should be addressed to Kathy Williams, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rules are intended to implement Iowa Code section 135E.10.

ITEM 1. Amend subrule **141.4(2)** by adding the following new paragraph:

i. Falsifying continuing education reports may result in formal disciplinary action.

ITEM 2. Amend rule 645—142.2(258A) by adding the following new subrules:

142.2(7) Nursing home administrators are responsible for keeping on file required documents that can support the continuing education attendance and participation reports submitted to the board for relicensure. These documents shall include original copies of the certificates of attendance. An administrator, at the request of the board, must submit these original documents, or notarized copies, for review. Programs or other educational activities that do not meet board standards will be disallowed. Support documents shall be retained for four years by the licensee.

142.2(8) Review of continuing education reports.

a. After each educational biennium the board will audit a percentage of the continuing education reports.

b. All renewal license applications that are submitted late, after December 31 of the odd-numbered year, may be required to submit to an audit of continuing education reports.

c. Failure to meet continuing education requirements may result in the license's not being renewed.

ARC 797A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF OPTOMETRY 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 258A.3, the Board of Optometry Examiners hereby gives Notice of Intended Action to amend Chapter 180, "Board of Optometry Examiners," Iowa Administrative Code.

The proposed change will increase the fee for a branch office certificate from $10 to $20.

Any interested person may make written comments on the proposed amendment no later than April 24, 1990, addressed to Kathy Williams, Professional Licensure, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The proposed amendment is intended to implement Iowa Code section 147.80.

Amend subrule 180.10(7) to read as follows:

180.10(7) Fee for a certificate for each branch office is ~~$10~~ *$20*. Biennial renewal fee for each branch office certificate is $20.

ARC 798A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF PODIATRY 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 Podiatry Examiners hereby gives Notice of Intended Action to amend Chapter 220, "Podiatry Examiners," Iowa Administrative Code.

These amendments clarify what agency is recognized by the Board of Podiatry as approving colleges of podiatric medicine and residency programs.

Any interested person may make written comments on the proposed amendments no later than April 24, 1990, addressed to Kathy Williams, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The amendments are intended to implement Iowa Code sections 149.4 and 149.7.

ITEM 1. Amend subrule 220.4(2), paragraph "b," as follows:

b. Present with the application an official copy (8" x 11") of diploma and official transcript proving graduation from a college of podiatric medicine approved by the ~~American Association of Colleges of Podiatric Medicine~~ *Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association.*

ITEM 2. Amend subrule 220.4(2), paragraph "d," subparagraph (5), as follows:

(5) Acceptance in a residency program approved by the ~~American Association of Colleges of Podiatric Medicine~~ *Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association* or a preceptorship program approved by a sponsoring accredited podiatry college.

ARC 785A

RACING AND GAMING COMMISSION[491]

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 99D.7, the State Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 8, "Mutuel Departments," Iowa Administrative Code.

Any person may make written suggestions or comments on these proposed rules prior to April 24, 1990. Written material should be directed to the Racing and Gaming Commission, Lucas State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Commission office at (515) 281-7352.

Also, there will be a public hearing on April 24, 1990, at 9 a.m., Racing and Gaming Office, Second Floor, Lucas State Office Building, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

These rules are intended to implement Iowa Code chapter 99D.

Amend subrule 8.2(4) by adding a new paragraph "n" as follows:

n. Pic-nine. A betting transaction in which you select the (x) place finisher of nine races designated by the association during one racing card. For purposes of these rules, "(x) place" shall be defined as the designated place of finish approved by the commission upon request by the association. Such designated place of finish must remain unchanged until the program immediately following the distribution of the entire net pic-nine pool added to the cumulative pic-nine pool carried over from previous programs and commission approval has been received.

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

(2) The pic-nine pool consists of amounts contributed for a selection for (x) place finish only in each of nine consecutive races designated by the association. Each person purchasing a pic-nine ticket shall designate the (x) place finisher in each of the nine races comprising the pic-nine.

(3) Those runners constituting an entry of coupled runners or those runners coupled to constitute the mutuel field in a race comprising the pic-nine shall race as a single wagering interest for the purpose of the pic-nine pool calculations and payoffs to the public. However, if any part of either an entry or the field racing as a single wagering interest is a starter in a race, the entry or the field selection shall remain as the designated selection to finish in (x) place in that race for the pic-nine calculation and payoff and the selection shall not be deemed a scratch.

(4) Except as provided in 8.2(4)"n"(7) and 8.2(4)"n"(8), the pic-nine pool shall be calculated as follows: One hundred percent of the net amount in the pic-nine pool subject to distribution shall be distributed among the holders of properly issued pic-nine tickets which correctly designate the official (x) place finisher in each of the nine races comprising the pic-nine.

In the event there is no pic-nine ticket properly issued which correctly designated the official (x) place finisher in each of the nine races comprising the pic-nine, 50 percent of the net amount wagered on the pic-nine pool for that program shall be distributed among the holders of pic-nine tickets which correctly designate the most official (x) place finishers of the nine races comprising the pic-nine. The remaining 50 percent of the net amount wagered on the pic-nine pool for that program shall not be distributed but shall be retained by the association as distributable amounts and shall be carried over and included in the pic-nine pool for the next succeeding racing program as an additional net amount to be distributed.

Should no pic-nine ticket which correctly designates the official (x) place finisher in each of the nine races comprising the pic-nine be properly issued on the last program of the association's race meeting, then the entire distributable pic-nine pool and all moneys accumulated therein shall be distributed to the holders of pic-nine tickets correctly designating the most (x) place selections of the pic-nine for that program.

In the event there is no pic-nine ticket properly issued correctly designating any official (x) place finisher, the pic-nine for that program shall be canceled in its entirety and the total amount wagered on the pic-nine pool for that program shall be refunded to purchasers of all pic-nine tickets upon presentation and surrender of those pic-nine tickets. Any retained distributable amounts carried over from any prior cumulative pic-nine pool pursuant to this subrule shall be carried over to the next succeeding racing program at that meeting or, if applicable, to the first day's pic-nine program of the next race meeting should this instance occur on the final program of the association's race meeting.

For purposes of the pic-nine pool, the distributable amount to be distributed to the holders of properly issued pic-nine tickets which correctly designate the official (x)

place finisher in each of the nine races comprising the pic-nine shall be the greater of the amount calculated pursuant to this subrule or an amount to be guaranteed at the association's option. The association must disclose the amount of any guaranteed pic-nine payoff to the Iowa racing and gaming commission in all advertising mentioning the pic-nine and at the designated location for official notices at the association's facility.

(5) In the event a pic-nine pari-mutuel ticket designates a selection in any one or more of the nine races comprising the pic-nine and that selection is scratched, excused or determined by the stewards to be a nonstarter in that race, the (x) place favorite, as evidenced by the amounts wagered in the win pool at the time of the start of that race, will be substituted for the nonstarting selection for all purposes, including pic-nine pool calculation and payoffs. In cases where there is more than one (x) place favorite in that race, the lower number runner/betting interest shall be selected and substituted.

(6) In the event of a dead heat for (x) place finish between two or more runners representing different betting interests in any pic-nine race, all runners in the dead heat for (x) place shall be considered as (x) place finishers in the race for the purpose of calculating the pic-nine pool.

(7) Should three or more of the nine races comprising the pic-nine races on the program have seven or less betting interests, or should any of the nine races comprising the pic-nine races on the program have six or less betting interests, the distribution of the entire net amount wagered on the pic-nine pool that program shall be distributed among the holders of pic-nine tickets which correctly designate the most official (x) place selections in all of the pic-nine races comprising the pic-nine on that program. Any retained distributable amounts carried over from any prior pic-nine cumulative pool pursuant to 8.2(4)"n"(4) shall be carried over to the next succeeding racing program of that meeting. However, if this instance should occur on the final program of that association's race meeting, holders of pic-nine tickets which correctly designate the most official (x) place finishers in all of the pic-nine races shall share equally the entire net pic-nine pool from that program plus any cumulative pic-nine pool carried over from previous programs.

Should two or less of the nine races comprising the pic-nine races on the program be canceled for any reason or are declared as "no race" by the stewards, the distribution of the entire net amount wagered on the pic-nine pool that program shall be distributed among the holders of pic-nine tickets which correctly designate the most official (x) place selections in all of the remaining pic-nine races comprising the pic-nine on that program. Any retained distributable amounts carried over from any prior pic-nine cumulative pool pursuant to 8.2(4)"n"(4) shall be carried over to the next succeeding racing program of that meeting. However, if this instance should occur on the final program of that association's race meeting, holders of pic-nine tickets which correctly designate the most official (x) place finishers in all of the remaining pic-nine races shall share equally the entire net pic-nine pool from that program plus any cumulative pic-nine pool carried over from previous programs.

In the event the stewards cancel or declare as "no race" three or more of the nine races comprising the pic-nine, the pic-nine shall be canceled in its entirety and the pic-nine pool on that program shall be refunded to purchasers of all pic-nine tickets upon presentation and surrender of those pic-nine tickets, and any retained distributable amounts carried over from any prior cumulative pic-nine pool pursuant to 8.2(4)"n"(4) shall be carried over to the next succeeding racing program at that meeting or, if applicable, to the first day's pic-nine program of the next race meeting should this instance occur on the final program of the association's race meeting.

In the event that any race comprising the pic-nine races on any program is marred by jams, spills or other circumstances while the race is being run and less than four runners finish the race, the stewards shall declare the race a "no race" for purposes of the pic-nine pool.

(8) In the event that on the final program of the association's race meeting any retained distributable amount carried over from prior cumulative pic-nine pools is carried over to the first program of the next race meeting, the entire net pic-nine pool from that program plus any cumulative pic-nine pool carried over from previous programs shall be distributed to the holders of pic-nine tickets correctly designating the most official (x) place selections of the nine races comprising the pic-nine for that program. Provided, however, if on the first program of the next race meeting, the stewards cancel or declare as "no race" three or more of the nine races comprising the pic-nine or in the event there is no pic-nine ticket properly issued correctly designating any official (x) place finisher and the pic-nine pool carried over from previous program shall continue to be carried over to the next program of that race meeting at which the pic-nine is not canceled and the entire net pic-nine pool from that program plus the cumulative pic-nine pool carried over from previous programs shall be distributed to the holders of the pic-nine tickets correctly designating the most official (x) place selections of the nine races comprising the pic-nine for that program.

(9) No pic-nine ticket for the pic-nine pool shall be sold, exchanged, or canceled after the time of the closing of wagering in the first of the nine races comprising the pic-nine, except for refunds on pic-nine tickets as required by this rule, and no person shall disclose the number of pic-nine tickets sold in the pic-nine pool or the number or amount of tickets selecting (x) place finishers of pic-nine races until the stewards have determined the last pic-nine race comprising the pic-nine on each program to be official.

ARC 770A

REVENUE AND FINANCE DEPARTMENT[701]

Notice Terminated and Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and

Finance hereby gives Notice of Intended Action to amend Chapter 33, "Receipts Subject to Use Tax Depending on Method of Transaction," Iowa Administrative Code.

Notice of Intended Action, **ARC 717A**, published March 7, 1990, is hereby terminated.

The termination occurs because the subject of **ARC 717A** was a preliminary draft of the Department's new rule concerning sales and use taxation of property in interstate commerce. That draft contains incorrect statements of law; therefore, the Notice must be withdrawn and the Notice of Intended Action set out herein must be substituted in its place.

Recently, the Department was forced to rescind its rule which explains when the use of property in interstate commerce can and cannot be subjected to Iowa tax. This decision was in response to the decision of the Iowa Supreme Court in the case of Grudle v. Iowa Department of Revenue and Finance (S. Ct. No. 88-1785, 1-24-90). In the Grudle case, the Supreme Court stated that the proper standard for determining when property used in interstate commerce can and cannot be taxed by the state of Iowa is the "four-prong" test set out in the case of Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 97 S.Ct. 1076, 51 L. Ed.2d 326 (1977). In response to the Supreme Court mandate, the four-prong test is incorporated into the Department's rules.

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

The Department has determined that this proposed rule may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than April 24, 1990, to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on this proposed amendment on or before May 4, 1990. Such written comments should be directed to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

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

Requests for a public hearing must be received by April 27, 1990.

The following new rule is proposed:

Amend 701—Chapter 33, "Receipts Subject to Use Tax Depending on Method of Transaction," by adding the following new rule:

701—33.6(422,423) Exemption for property used in Iowa only in interstate commerce. In determining whether property used in interstate commerce is exempt from Iowa use tax, the following four circumstances will be considered. Any person claiming that use of property in Iowa is exempt from tax by virtue of its use in interstate commerce must prove that:

1. The use does not have a substantial nexus with Iowa; or
2. Iowa use tax is not fairly apportioned; or
3. Imposition of Iowa use tax results in discrimination against interstate commerce; or
4. The use tax imposed is not fairly related to services provided by Iowa and which aid the retailer or user.

See Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 97 S.Ct. 1076, 51 L. Ed.2d 326 (1977) and D. H. Holmes Company, Ltd. v. McNamara, 100 L.Ed.2d 21, 108 S.Ct. 1619 (1988). The second prong, fair apportionment, will be satisfied where the tax credit, authorized by Iowa Code section 423.25, is granted. D. H. Holmes, 100 L.Ed.2d at 28.

ARC 775A

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 10, "Administrative Rules and Declaratory Rulings," Iowa Administrative Code.

This chapter is being revised to provide for adoption of rules by the Director of Transportation unless statutes specifically provide for Commission adoption.

The provisions for receipt of written and oral comments on proposed rules are also being revised. The revised rules provide that the deadline for receipt of written comments and requests for oral presentation will be no sooner than the twenty-sixth day after publication of the Notice of Intended Action. The current rules tie the deadline to a Commission meeting date. As is currently done, the Department's Notices of Intended Action will also afford any interested person or agency the opportunity to make oral presentation. However, the requirement that oral presentations be scheduled for Commission meetings is being deleted.

The petition for rule making provisions are being revised to allow the petitioner to request an informal meeting with the Department to discuss the petition. The current rules provide for an appearance before the Commission.

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

On June 5, 1990, 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.

TRANSPORTATION DEPARTMENT[761] *(cont'd)*

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 21, 1990.

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 **10.2(1)** by striking paragraphs "b" and "c," relettering paragraph "d" as paragraph "c," and adding new paragraph "b" as follows:

b. The methods that persons and agencies may use to present their views on the proposed rules. In addition to providing for the submission of written comments, the Notice shall afford any interested person or agency the opportunity to make an oral presentation.

ITEM 2. Amend paragraph **10.2(2)**"a," introductory paragraph, as follows:

a. With regard to proposed rules published under Notice of Intended Action, the department shall accept and consider, from any person or agency, written comments and written requests to make an oral presentation ~~to the commission~~ when prepared and submitted in conformance with the following:

ITEM 3. Amend subparagraph **10.2(2)**"a"(3) as follows:

(3) Comments and requests shall be submitted to the office of financial/operational analysis. To be considered, they must be ~~delivered to~~ *received by* this office ~~or postmarked~~ no later than the ~~tenth working day prior to the commission meeting at which the proposed rules will be considered.~~ *date specified in the Notice of Intended Action. The date shall be no less than 26 days after publication of the Notice.*

ITEM 4. Amend paragraph **10.2(2)**"b" by striking subparagraph (1) and renumbering subparagraphs (2) and (3) as (1) and (2).

ITEM 5. Rescind subrule 10.2(3) and insert in lieu thereof the following:

10.2(3) Adoption and filing of rules.

a. The director shall adopt proposed rules unless statutes specifically provide for commission adoption.

b. Upon adoption of proposed rules by the director or the commission, the director shall file them in accordance with Iowa Code section 17A.5.

ITEM 6. Amend subrule **10.2(5)**, introductory paragraph, by striking the words "to 10.2(3)" and inserting in lieu thereof the words "and 10.2(2)".

ITEM 7. Amend subrule 10.2(6), introductory paragraph, as follows:

10.2(6) Position affirmation statement. If requested in accordance with this subrule, the department shall issue a concise statement of the principal reasons for and against a rule *that has been* adopted ~~by the commission~~, incorporating therein the reasons for overruling considerations urged against the rule.

ITEM 8. Amend subparagraph **10.2(6)**"a"(3) as follows:

(3) Be delivered to this office or postmarked no later than the thirtieth calendar day following adoption of the subject rule ~~by the commission~~.

ITEM 9. Amend paragraph **10.2(6)**"c" as follows:

c. ~~In the event~~ *If* the rule which is the subject of a request is not adopted ~~by the commission~~, the requester shall be so informed.

ITEM 10. Amend paragraph **10.3(1)**"a" by adding the following:

5. If desired, a request to meet informally with the department to discuss the petition.

ITEM 11. Rescind subrule 10.3(5) and insert in lieu thereof the following:

10.3(5) Disposition of petitions acceptable for consideration:

a. Upon request in the petition, the department shall schedule an informal meeting with the petitioner to discuss the petition.

b. The department shall notify the petitioner of the director's or commission's determination to grant or deny the petition. If the petition is denied, the notification shall include a summary of the reasons for denial.

c. The 60-day time limit specified in Iowa Code section 17A.7 for disposition of petitions begins the day a petition acceptable for consideration is received.

ARC 786A

UTILITIES DIVISION[199]

Amended Notice of Intended Action

The Iowa State Utilities Board hereby gives notice that on March 8, 1990, the Board issued an order in Docket No. RMU-89-14, In Re: Fire Protection Costs, "Order Renoticing Rules," pursuant to the authority of Iowa Code sections 476.1, 476.2, 476.8, and 17A.4, to consider the adoption of a new rule, Iowa Administrative Code 199—21.8(476). The Board has received comments on the proposed rule, which was published in the Iowa Administrative Bulletin on November 29, 1989, as **ARC 462A**, and the Board has revised the proposed rule and will renotice the rule for additional comments.

This rule would implement Iowa Code Supplement section 476.6(18), which allows cities furnished water by a public utility subject to rate regulation to apply to the Utilities Board for the inclusion of all or a part of the costs of fire hydrants and other improvements, maintenance, and operations for the purpose of providing adequate water production, storage, and distribution for public fire protection, in the utility's rates or charges assessed to consumers covered by the applicant's fire protection service. The proposed rule outlines the procedure to be followed by the applying city.

Under Iowa Code section 17A.4(1)"a" and "b," all interested persons may file written comments on the proposed rule no later than April 24, 1990, by filing an original and ten copies of the comments substantially complying with the form prescribed in subrule 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa State Utilities Board, Lucas State Office Building, Des Moines, Iowa 50309.

The following new rule is proposed:

199—21.8(476) Applications for water costs for fire protection services.

21.8(1) Definition. For purposes of this rule, "water costs for fire protection service" shall be defined as all

or a part of the utility's costs of fire hydrants and other improvements, maintenance, and operations for the purpose of providing adequate water production, storage, and distribution for public fire protection, as reflected in the utility's current tariff for public fire protection water service.

21.8(2) Utility requirements. A rate-regulated utility which provides public fire protection water service to a city filing an application pursuant to subrule 21.8(3) shall provide the city all necessary information and affidavits to enable the city to meet its application filing requirements.

21.8(3) Application contents. Any city filing an application with the board requesting inclusion of all or a part of the water costs for fire protection service in a rate-regulated utility's rates or charges to customers covered by the city's fire protection service shall submit, at the time the application is filed, the following information with supporting testimony:

a. A statement showing (1) the proposed method of allocating costs to affected customers, and (2) both the proposed per-customer rate increase and the average percentage increase by customer class, based on the utility's current tariff, if the costs for fire protection water service are included in rates charged to affected customers;

b. Copies of all bills rendered to the city by the utility for public fire protection water service during the preceding 24-month period;

c. The current number of utility customers served within the city's corporate limits, by customer class, with an affidavit from the utility verifying the information;

d. A map illustrating both (1) the city's corporate limits, and (2) the portion of the utility's customer service area within the city's corporate limits, with an affidavit from the utility verifying the customer service area;

e. An affidavit from the utility showing that the notice required by Iowa Code section 476.6(17)"c" and subrule 21.8(4) has been provided and paid for by the applicant and mailed by the utility to all affected customers.

21.8(4) Customer notification.

a. Prior approval. The city shall submit to the board for its approval, not less than 30 days before providing notification to affected customers, ten copies of the proposed notice.

b. Required content of notification. The notice shall advise affected customers of the proposed increase in rates and charges, the proposed effective date of the increase, and the percentage increase by customer class. It shall advise customers that the city is requesting the increase and that they have a right to file with the board a written objection to the proposed increase and to request a public hearing. It shall also include a written explanation of the reason for the increase.

c. Notice of deficiencies. Within 30 days of the filing of the proposed notice, the city shall be notified of either the approval of the notice or of any deficiencies in the notice and the corrective measures required for approval.

d. Distribution. The city shall provide to the utility, for mailing, a sufficient number of copies of the approved notice. The city shall direct the utility either to: (1) include the notice with the utility's next regularly scheduled mailing to the affected customers; or (2) make a separate mailing of the notice to affected customers within 30 days of receiving from the city the requisite number of copies of the notice. The city shall pay all expenses incurred by the utility in providing notice to affected customers. The utility may require payment prior to the mailing.

e. Delivery. The written notice to affected customers shall be mailed or delivered by the utility not more than 90 days before the application is filed.

21.8(5) Procedure.

a. Service of application. The applicant shall file an original plus ten copies of the application with the executive secretary's office, serve two copies of the application on the public utility and serve two copies on the consumer advocate division of the Iowa department of justice.

b. Docketing. Within 30 days of the filing of the application, the board shall either approve the application or docket the case as a formal proceeding and establish a procedural schedule.

c. Rules. If the case is docketed as a formal proceeding, the rules in 199—Chapter 7, if not inconsistent, shall apply.

d. Decision. The board shall render its decision within six months of the date of the application. If the application is approved, the board shall order the rate-regulated utility providing the water service to the city to file tariffs implementing the board's decision. The approved water-related fire protection costs shall be identified and billed as a surcharge on the bills to affected customers. The city shall pay all costs incurred by the utility to file and implement the required tariff.

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:

Period	Rate
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%
May 1, 1989 — May 31, 1989	11.25%
June 1, 1989 — June 30, 1989	11.25%
July 1, 1989 — July 31, 1989	10.75%
August 1, 1989 — August 31, 1989	10.25%
September 1, 1989 — September 30, 1989	10.00%
October 1, 1989 — October 31, 1989	10.00%
November 1, 1989 — November 30, 1989	10.25%
December 1, 1989 — December 31, 1989	10.00%
January 1, 1990 — January 31, 1990	9.75%
February 1, 1990 — February 28, 1990	9.75%
March 1, 1990 — March 31, 1990	10.25%
April 1, 1990 — April 30, 1990	10.50%

ARC 783A

COLLEGE AID COMMISSION[283]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 261.3 and 261.37, the College Aid Commission emergency adopts an amendment to Chapter 10, "Iowa Stafford Loan Program," Iowa Administrative Code.

In compliance with Iowa Code section 17A.4(2), the Commission finds that public notice and participation are impracticable because delay in the implementation of this rule will needlessly increase the cost of a service which the Commission provides. The Commission has solicited comments from participating lenders and has found the lenders receptive to the change.

Further, in accordance with 17A.5(2)"b"(2), this rule became effective immediately upon filing with the Administrative Rules Coordinator. This immediate implementation confers a benefit on the public as it will result in a savings of public funds.

The Commission provides assistance to lenders when a student loan becomes delinquent. The purpose of this assistance is to resolve the delinquency and prevent possible default. This assistance is currently offered to lenders on the 71st day of loan repayment delinquency. Federal regulations allow lenders to file within 10 days of this date; therefore, lenders can request this assistance anytime between the 61st and 81st day of delinquency. The Commission proposes to change the date the assistance is offered to the 90th day of delinquency, allowing lenders to request assistance between the 80th and the 100th day of delinquency.

Because the cost of providing this assistance has rapidly escalated, staff studied the use of these funds and determined that the high number of requests seems to be directly related to the early date on which the assistance is currently offered by the Commission. Most guarantee agencies offer the assistance at 90 days, and the experience of lenders confirms that many delinquencies are automatically resolved between the 50th and 80th days, even without assistance from the guarantee agency. Therefore, staff concluded that some of the resources currently directed to this service could be better directed to other forms of default prevention by adopting the generally accepted filing date.

The Commission proposes to immediately change this date; however, requests for assistance submitted as early as the 61st day of delinquency will be accepted for the next 3 months, allowing time for all lenders to adjust their procedures.

The Iowa College Aid Commission adopted this rule at a regular meeting on March 13, 1990. This rule became effective immediately upon filing with the Administrative Rules Coordinator, March 15, 1990.

This rule implements Iowa Code sections 261.3 and 261.37.

Amend **283—10.33(261)**, table entitled "Days Delinquent" — "Action Required," third paragraph, as follows:

61-150 During each 30-day period, make diligent efforts to contact the borrower and any cosigner by telephone. If unable to reach the borrower, and any cosigner by telephone, during each 30-day period, send at least one collection letter no less forceful than the previous collection letters. Complete a Lender Request for Assistance (ICAC-06 6/84) and send it to the ICAC Processing Center. *Preclaims assistance is offered by the Commission on the 90th day of delinquency.* A Lender Request for Assistance (LRA) may be sent no earlier than the ~~71st~~ *80th* day of delinquency and no later than the ~~81st~~ *100th* day of delinquency unless a borrower cannot be located through normal skip-tracing procedures, in which case an LRA may be sent before the ~~71st~~ *80th* day of delinquency. Allow at least 60 days for the ICAC Processing Center to help resolve the delinquency. Continue attempts to contact the borrower and any cosigner during this period. A lender must submit an LRA each time a borrower reaches this point in delinquency even though a previous LRA may have been resolved satisfactorily.

[Filed emergency 3/15/90, effective 3/15/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 777A

EDUCATION DEPARTMENT[281]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 256.7(5) and Iowa Code Supplement section 279.51(5), the Department of Education hereby adopts Chapter 66, "School-Based Youth Services Programs," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 13, 1989, as **ARC 491A**.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules, 35 days after publication, should be waived and the rules be made effective on March 19, 1990, after filing with the Administrative Rules Coordinator, as they confer a benefit upon the public to ensure speedy and uniform compliance with the Department's legislative mandates.

The State Board of Education adopted these rules on November 15, 1989.

The Iowa Code Supplement section 279.51(1)"c," provides appropriations for $800,000 to the Department of Education to be used for support of School-Based Youth Services Programs which shall be awarded for implementation by July 1, 1990. Based on local school budgeting, this will necessitate approvals no later than April 30, 1990, so contracts for staff can be developed. These rules structure implementation of School-Based Youth Services Programs to promote services for adolescents needing assistance to succeed in school, employment and in the community. These rules also set forth the procedures and conditions under which state funds shall be made available to assist local school districts to implement programs.

A public hearing was held on January 3, 1990. In response to the public hearing, the following rule changes were made:

EDUCATION DEPARTMENT[281] *(cont'd)*

1. Rule 66.2(256), definition of "In-school support services" is amended by adding the word "school" before "social work" and "psychology" to more accurately identify the practice specialties of school social work and school psychology. Also, speech-language "pathology" is the term currently used by this profession and thus should be used in this definition.

2. Rule 66.2(256), definition of "Mental health and family counseling" is amended by adding the terms "family therapy" and "psychotherapy" which will more accurately identify the mental health services to be provided in this program since identifying family therapy is consistent with the intent to address the needs of parents and families as a means to support adolescents.

3. Rule 66.2(256), definition of "Preventive and primary health care services" is amended by modifying the language to clarify that services would only be provided by degreed, licensed or certified health care providers.

4. Subrule 66.4(2), paragraph "c," is amended by accommodating the provision of other community-based services through flexible scheduling, physical space to provide service, etc., as well as meaningfully integrating the efforts of education and other community-based service providers, and comprehensively coordinating these services is a major focus of school-based youth services programs. By including the concepts of integration and coordination, the rule is less passive and more inclusive.

5. Subrule 66.4(16) is amended by including representatives from in-school support service providers to ensure that more comprehensive planning and coordination of the program occur.

6. Subrule 66.6(7) is amended by more explicitly stating the extent of the AEA's responsibility for providing in-school support services.

These rules will become effective March 19, 1990, at which time the Filed Emergency rules published December 13, 1989, as **ARC 491A** will be rescinded.

The following new chapter is adopted:

CHAPTER 66

SCHOOL-BASED YOUTH SERVICES PROGRAMS

281—66.1(256) Scope, purpose and general principles.

66.1(1) Scope. These rules apply to the provision of school-based youth services authorized in Iowa Code Supplement section 279.51, "Programs for At-Risk Children."

66.1(2) Purpose. The purpose of the school-based youth services education program is to enable adolescents, especially those with problems, to complete their education and to obtain skills that lead to employment, additional education, and to a mentally and physically healthy life.

66.1(3) General principles. School-based youth services programs (SBYSP), at a minimum, may be made available at the middle or high school level, or both, to offer job training and employment services, mental health and family counseling services and preventive and primary health care services in the context of the educational needs of the students. Only school districts in cooperation with other service providers can apply for funds to support such programs. The management of the programs may be by the school district or by a nonprofit service organization. All programs must be provided in or near schools to make services accessible to teenagers. Moreover, all programs must be designed for implementation over no less than a four-year period. The inclusion of abortion counseling or the dispensing of contraceptives with these programs is prohibited by Iowa Code Supplement section 279.51. Budgets for proposed programs will be funded by the state to a maximum of $200,000 per year. Local contributions of at least 20 percent of the total costs of the program are required.

281—66.2(256) Definitions. For the purpose of this chapter the following definitions apply:

"Contributions" means in-kind services plus gifts and cash donations from private and public sources that are directed at establishing and maintaining the youth service program.

"In-kind services" means existing person power, equipment, facilities, materials, tools, and other local resources owned or maintained by a school district, other service providers, nonprofit service organizations or local private organizations that contribute to carrying out the goals of the youth service program.

"In-school support services" means services provided by the school district, area education agency or other education agencies in a contractual arrangement with the school district. At minimum, these services should include school social work, school psychology, school nurse, and school guidance services. Other services may include, but are not limited to, audiology, speech and language pathology, occupational therapy, physical therapy and food services.

"Job training and employment services" means preparing and assisting students to enter employment on a competitive or noncompetitive basis including, but not limited to, assessment and exploration of skills, abilities and aptitudes for work; support services to access available vocational classes; work experiences; on-the-job training; assistance in locating and securing employment and follow-up services to ensure continuation in employment.

"Mental health and family counseling" means evaluation and diagnostic services, the development of individual treatment plans, individual and group therapy in and outside the home, parent education on parenting skills and referral to other legitimate services identified through evaluation, guidance services and training.

"Middle and high school age children" means those enrolled in school in any of grades 6 to 12 or those aged 11 to 21.

"Nonprofit service organization" means public service organization conducted not for profit or supported by public tax dollars including, but not limited to, recreational services, job services, human services, civic services, juvenile treatment services and rehabilitation services.

"Other education agencies" means all in-state as well as out-of-state public or private education agencies not covered in the definition of "school district."

"Other service providers" means all public human and health service providers apart from education including, but not limited to, recreational services; employment services; civic services; juvenile treatment services; mental health services; maternal and child health services; woman, infant and child nutrition services; child health specialty clinic services and substance abuse prevention and treatment services.

"Preventive and primary health care services" means services which include, but are not limited to, preventive

EDUCATION DEPARTMENT[281] *(cont'd)*

care, maintenance services, diagnosis, care plan, treatment, referral, case management, health supervision, and health teaching. These services are delivered by degreed, licensed or certified providers such as physicians, dentists, registered nurses, nutritionists, social workers, psychologists, dental hygienists, physical or occupational therapists, and respiratory therapists. Youth with complex health needs may require referral to specially trained and skilled health care providers.

"School-based youth services" means job training and employment services; human services, including mental health and family counseling; primary health care services, day care, transportation; recreation services; teen parenting education; rehabilitation services and other services designed to assist school-age children to be able to succeed in school and be productive citizens upon leaving school.

"School district" means a public school district directly supported in whole or in part by tax dollars as defined in Iowa Code section 280.2 and with the power and jurisdiction provided by Iowa Code section 274.1.

281—66.3(256) Development of a program plan. For the purpose of seeking approval for funding youth service programs, school districts must submit plans approved by their board of directors to the department of education on a request for proposal (RFP) basis. RFPs will be issued within the limits of available funds during the school year preceding the year for which implementation is planned.

281—66.4(256) Program plan. The following areas shall be included in a program plan developed by a school district in response to an RFP issued by the department of education.

66.4(1) Identifying the need for the program. An explanation shall be provided which identifies the significant youth concerns that exist in the district. This explanation may include, but not be limited to:

a. High rates of adolescent problems compared to average state rates including school dropouts; teen pregnancy; teen parents; juvenile offenders; unemployment; teen suicide; mental health problems; substance use and abuse; homelessness; and language, gender and disability barriers.

b. Indications of poverty including such areas as the percentage of parents in the district qualifying for the economic eligibility requirements established under the federal National School Lunch and Child Nutrition Act, 42 U.S.C. Section 1751-1785, for free or reduced price lunches and census economic data that can be seen as a proxy for other youth concerns.

c. Percentages of school-age children needing additional assistance to succeed in the middle and high school education program and for whom appropriate services are not being provided.

d. Comparisons of existing resources and demands for services in mental health, employment, child care, health care, and in-school support services.

e. Identification of existing staff needs for training to improve services.

f. Description of problems in existing arrangements to coordinate school and other service providers.

66.4(2) Identifying objectives. The following objectives shall be included in the program plan.

a. The establishment of a youth services education program located in or near a middle or high school that integrates multiple service providers with middle or high school age adolescents in need of services to assist them to succeed in education programs, complete high school and be productive workers and contributors to the community.

b. Provisions for no less than the minimum education program as defined in Iowa Code section 256.11 and Iowa Administrative Code rule 281—12.5.

c. Flexibility of the education program to accommodate and integrate other community-based services such as mental health therapy, substance abuse treatment, health care, etc.

d. Job training and employment services.

e. Mental health and family counseling.

f. Preventive and primary health care services.

g. Other noneducational services considered necessary to achieve the program plan.

66.4(3) Identification of the components and development of a schedule for the youth services program. At minimum, the following shall be included:

a. Description of the job training and employment services, mental health and family counseling services and preventive and primary health care services in the context of how these services and others will be provided in conjunction with the education program.

b. A schedule or timeline for the operation of the program taking into consideration day and evening accessibility, the number of days per week and the number of months per year the program will operate.

c. If applicable, descriptions of partnerships between public and private sectors to provide employment and training opportunities.

66.4(4) In-school support services. A description of in-school support services as defined in these rules and offered to students in the youth services program must be provided.

66.4(5) Parent and family involvement. A complete plan of parent-family involvement must be included and shall, at a minimum, contain:

a. The parent communication system to be used which may include letters, checklists, personal contacts by phone and home visits.

b. In-service provisions for individual and group participation which may include parent/family counseling, assistance at home, attendance in school affairs, parent training and volunteer assistance.

c. Involvement in the development of program goals, decision-making processes and the evaluation of program services.

66.4(6) Evaluation procedures to be used in monitoring program objectives and student outcomes. A system to monitor and report program implementation and outcomes must be established to identify:

a. Numbers and characteristics of students served and type and magnitude of services provided.

b. Improved school attendance and performance.

c. Increased potential for placement in employment.

d. Improved health.

e. Improved social interaction and behavior.

f. Increased high school completion rates.

g. Improved coordination between schools and other service providers.

h. Increased ability of "other service providers" to deliver services.

i. Utilization of economic resources to improve employment and productivity of students leaving school.

Evaluation shall coincide with the objectives of the youth services program. The methods that are used to

monitor progress shall be identified. Monitoring and testing instruments shall be kept on file within the school district or managing agency.

66.4(7) Record keeping. Each school-based youth services program shall keep records of all requests for assistance from children making use of the program and, where appropriate, maintain a confidential case file for children. Records shall be maintained to enable complete reporting as prescribed by the department of education. Records must yield numbers and characteristics of students served, services provided, and indicators of impact/behavior change.

66.4(8) Identify the roles and responsibilities of staff. A list of school and other service provider staff involved in the youth service program and their responsibilities related to program objectives, monitoring and reporting, identification of and referral of students to the program, staff development, and family involvement must be provided.

66.4(9) Qualifications of program personnel. All staff involved in the youth service program shall have preservice or in-service training that is commensurate with their involvement in providing services.

66.4(10) Staff utilization plan. Staff shall be assigned and managed to ensure a quality program by employing the following procedures:

a. A designated school or other service agency person shall be responsible for the overall coordination of the youth services program including coordination between the schools and other service providers.

b. Time shall be made available for youth services program staff and regular school staff to coordinate and carry out professional responsibilities.

c. Time shall be made available to youth services program staff and regular school staff for in-service training.

d. School administration staff and nonprofit agency personnel must assume some responsibility for coordination even if another service agency assumes the major responsibility of management of the youth services program.

66.4(11) Specifying staff development plans. A training component must be established to update youth services program staff, school staff, other service provider staff, and the community. At minimum the following provisions shall be included:

a. Designated number of days (not less than one) for training for youth services program staff.

b. At least one program to orient all school staff or other service provider staff on the youth services program.

c. At least one public relations program to orient community members to the youth services program.

d. A specific budget to support training.

66.4(12) Specifying provisions for ongoing identification of students. Students shall be referred and served in accordance with the following:

a. Services shall include in-school as well as out-of-school middle and high school age children.

b. All children will be encouraged to utilize youth services.

c. School personnel and other service providers may refer children to the program via a counseling approach encouraging free choice.

66.4(13) Facilities. The following information concerning facilities shall be included in the program plan:

a. Identify facilities and equipment to be used. An accessible and attractive center in or near a middle or high school that is most likely to be used by middle or high school age children must be identified and provided without the utilization of grant funds to build a new facility and utilizing no more than 10 percent of the grant funds to renovate an existing structure.

b. Equipment and resources used to provide services and used as an in-kind contribution must be listed and prorated using the most recent available figures for fair market value.

c. Assurances that the facilities are accessible and equipment is appropriate for the population to be served must be provided.

66.4(14) Measures that will be taken to ensure nondiscrimination in the provision of services. Specific procedures must be identified to ensure that children and family members and employees are not discriminated against on the basis of race, religion, national origin, gender, age or disability. At minimum, the following measures must be followed:

a. Student data (participation and progress) will be collected, processed and analyzed with regard to age, disability, gender, and race.

b. Specific steps will be taken to encourage student involvement when discriminatory patterns become apparent such as a lack of minority or female/male student involvement.

c. The hiring of staff will be completed giving consideration to the minority makeup of the community, and the need for certain role models and cultural understanding.

d. The staff hiring process will be free of discrimination on the basis of race, religion, national origin, gender, age or disability.

e. Efforts will be made to implement public relations activities in all parts of the community including homeless populations and minority neighborhoods.

f. Materials utilized for training and public relations will be screened for bias.

g. Staff development and training will include elements to assist staff to implement nondiscriminatory practices.

66.4(15) Budget. School districts must identify a separate budget for the youth services program and be able to account for all expenditures directly related to the program. The following limits shall apply to the budget:

a. All expenditure items identified in the Uniform Financial Accounting System for Public School Districts and Area Education Agencies are allowable.

b. The maximum grant dollars allowable for a youth services program is $200,000. The total local budget may exceed $200,000.

c. At least 20 percent of the total costs of the program must be provided locally using in-kind services and cash contributions.

d. Up to 10 percent of the grant funds may be used to renovate an existing structure for a youth services program.

e. Up to 10 percent of the grant funds in addition to the 10 percent for renovation may be used for each of the following service categories: day care, transportation, and recreation.

f. No grant funds may be used to construct a new facility.

g. All grant funds must be used to develop new services and to supplement existing services.

h. All grant funds and local contributions must be used to implement the youth services program.

66.4(16) Advisory council. An advisory council shall be identified and utilized for the youth services program. At minimum, membership of the council must include:

a. A representative from the private industry council.

b. Parents of children in the school district.

c. A teacher recommended by the local teachers association.

d. Representatives from health and mental health.

e. Students enrolled in the youth services program or school recommended by the school student government.

f. A representative of a nonprofit service provider.

g. A representative from the juvenile court system.

h. A representative from a community-based substance abuse provider.

i. Representative(s) from in-school support services providers.

A plan of action for the council shall be included in the written application for grant funds. The plan of action shall include the utilization of advisory members on an individual as well as group basis and indicate group meetings no less than two times annually.

66.4(17) Letters of support. Letters of support for the youth services program must be provided from:

a. The local teachers association.

b. Parent-teacher organization.

c. Nonprofit agencies providing human services (mental health and substance abuse), health services and job services.

d. Community organizations.

e. The area private industry council.

66.4(18) Commitment of schools. A written commitment must be provided from the school principal and the board of directors of the school board that the school will work to cooperate and integrate existing school services and activities with the program.

281—66.5(256) Evaluation of financial support. A specific evaluation of necessary financial support and how it can be generated must be developed at the conclusion of each four-year period.

281—66.6(256) Responsibilities of area education agencies. Area education agencies are responsible for assisting school districts in developing program plans and budgets for school-based youth services programs. Assistance may include, but is not limited to:

66.6(1) Providing person power to coordinate planning between districts and other service providers and in writing grants.

66.6(2) Gathering and providing information for completion of program plans.

66.6(3) Identifying staff development resources and organizing staff training.

66.6(4) Identifying resources for establishing a 20 percent local contribution.

66.6(5) Participating in the advisory council.

66.6(6) Helping develop and implement recording procedures for evaluation of data and analysis of results.

66.6(7) Providing in-school support services to the extent possible with existing resources and to the extent services are supplemented or expanded by contractual arrangements with local school districts and other sources.

66.6(8) Assisting with implementation of nondiscrimination measures.

281—66.7(256) Responsibilities of the department of education. The department of education shall:

66.7(1) Provide guidelines and forms to school districts for submitting program plans.

66.7(2) Provide technical assistance to school districts, other education agencies and service providers in the development of plans.

66.7(3) Perform reviews and approval of written plans.

66.7(4) Develop and administer a format for evaluation. An annual evaluation report shall be filed with the department of education by school districts following the close of each school year.

66.7(5) Provide technical assistance to school districts and other service providers in designing preservice and in-service training.

66.7(6) Consult with the departments of human services, public health, and economic development (division of job training and entrepreneurship assistance) and the division of job service to develop rules and administer programs.

66.7(7) Establish assistance through the F.I.N.E. Foundation and other foundations and public and private agencies in evaluating programs under these rules and to provide support to school districts in implementing the funded programs.

66.7(8) Receive assistance from the youth 2000 coordinating council in providing oversight and assistance to the SBYSP.

[Filed emergency after Notice 3/12/90, effective 3/19/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 784A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

The Medicare Catastrophic Coverage Act of 1988 required adjustment for inflation of the minimum and maximum community spouse resource and income allowances. The Health Care Financing Administration issued a letter on February 12, 1990, informing states that the Consumer Price Index increased by 4.3 percent and requiring states to implement this change in the minimum and maximum allowances effective January 1, 1990.

Therefore, these amendments increase the minimum state resource standard from $12,000 to $12,516 and the maximum state resource standard from $60,000 to $62,580. The posteligibility maximum income standard for the maintenance needs of the community spouse is increased from $1,500 to $1,565. These standards will be applied retroactively to January 1, 1990.

The Department of Human Services finds that notice and public participation are unnecessary because the Department has no choice but to implement these changes which are mandated by federal law. Therefore,

these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these rules confer a benefit by increasing the amount of resources and income which a community spouse is allowed to have. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted these rules March 14, 1990.

These rules are intended to implement Iowa Code section 249A.4.

These rules became effective March 14, 1990.

The following amendments are adopted:

ITEM 1. Amend subrule **75.5(3)**, paragraph "d," as follows:

d. Method of attribution. The resources attributed to the institutionalized spouse shall be one-half of the documented resources of both the institutionalized and community spouse at the time of the spouse's last entry to a medical institution. However, if one-half of the resources is less than ~~$12,000~~ *$12,516*, then ~~$12,000~~ *$12,516* shall be protected for the community spouse. Also, when one-half the resources attributed to the community spouse exceeds ~~$60,000~~ *$62,580* the amount over ~~$60,000~~ *$62,580* shall be attributed to the institutionalized spouse. (The ~~$12,000~~ *minimum* and ~~$60,000~~ *maximum* limits shall be indexed after 1989 by the consumer price index.)

If the institutionalized spouse has transferred resources to the community spouse under a court order for the support of the community spouse, the amount transferred shall be the amount attributed to the community spouse if it exceeds the specified limits above.

ITEM 2. Amend subrule **75.16(2)**, paragraph "d," subparagraph (3), as follows:

(3) Needs of spouse. The maintenance needs of the spouse shall be determined by subtracting the spouse's gross income from ~~$1500~~ *$1565*. (This amount shall be indexed for inflation annually according to the consumer price index.)

However, if either spouse establishes through the appeal process that the community spouse needs income above ~~$1500~~ *$1565*, due to exceptional circumstances resulting in significant financial duress, an amount adequate to provide additional income as is necessary shall be substituted.

Also, if a court has entered an order against an institutionalized spouse for monthly income to support the community spouse, then the community spouse income allowance shall not be less than this amount.

[Filed emergency 3/14/90, effective 3/14/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 796A

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 135C.14, the Department of Inspections and Appeals hereby emergency adopts and implements an amendment to Chapter 64, "Intermediate Care Facilities for the Mentally Retarded," Iowa Administrative Code.

This amendment reinstates a rule relating to the involuntary discharge or transfer of residents. This rule was inadvertently omitted from this chapter when changes were made to incorporate legislative mandates and published in the Iowa Administrative Bulletin on July 26, 1989, as **ARC 65A**.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation are unnecessary since the amendment adds a rule that providers were already complying with and which was previously in place in Chapter 64.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this rule should be waived and the rule should become effective on March 16, 1990, because it confers a benefit to the public by establishing residents' rights in regard to involuntary discharge and transfer.

This rule is intended to implement Iowa Code sections 135C.2(3) and 135C.14(8).

Amend 481—Chapter 64 by adding the following new rule:

481—64.36(135C) Involuntary discharge or transfer.

64.36(1) A facility shall not involuntarily discharge or transfer a resident from a facility except: for medical reasons; for the resident's welfare or that of other residents; for nonpayment for the resident's stay (as contained in the contract for the resident's stay), except as prohibited by Title XIX of the Social Security Act, 42 U.S.C. 1396 to 1396k by reason of action pursuant to Iowa Code chapter 229; by reason of negative action by the Iowa department of human services; and by reason of negative action by the professional review organization. A resident shall not be transferred or discharged solely because the cost of the resident's care is being paid under Iowa Code chapter 249A, or because the resident's source of payment is changing from private support to payment under chapter 249A. (I, II)

a. "Medical reasons" for transfer or discharge are based on the resident's needs and are determined and documented in the resident's record by the attending physician. Transfer or discharge may be required to provide a different level of care. In the case of transfer or discharge for the reason that the resident's condition has improved so that he or she no longer needs the level of care being provided by the facility, the determination that medical reason exists is the exclusive province of the professional review organization or utilization review process in effect for residents whose care is paid in full or in part by Title XIX. (II)

b. "Welfare" of a resident or that of other residents refers to their social, emotional, or physical well-being. A resident might be transferred or discharged because his/her behavior poses a continuing threat to himself/herself (e.g., suicidal) or to the well-being of other residents or staff (e.g., his/her behavior is incompatible with their needs and rights). Evidence that the resident's continued presence in the facility would adversely affect the welfare of the resident or that of other residents shall be made by the administrator or designee and shall be in writing and shall include specific information to support this determination. (II)

c. Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or responsible party at least 30 days in advance

of the proposed transfer or discharge. The 30-day requirement shall not apply in any of the following instances:

(1) If an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician. Emergency transfers or discharges may also be mandated to protect the health, safety, or well-being of other residents and staff from the resident being transferred. (II)

(2) If the transfer or discharge is subsequently agreed to by the resident or the resident's responsible party, and notification is given to the responsible party, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. (II)

(3) If the discharge or transfer is the result of a final, nonappealable decision by the department of human services or the professional review organization.

d. The notice required by 64.36(1)"c" shall contain all of the following information:

(1) The stated reason for the proposed transfer or discharge. (II)

(2) The effective date of the proposed transfer or discharge. (II)

(3) A statement in not less than 12-point type (elite), which reads: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa state department of inspections and appeals (hereinafter referred to as "department") within seven days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after receipt of your request by the department and you will not be transferred prior to a final decision. Provision may be made for extension of the 14-day requirement upon request to the department of inspections and appeals designee in emergency circumstances. If you lose the hearing, you will not be transferred before the expiration of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than five days following final decision of such hearing. To request a hearing or receive further information, call the department at (515) 281-4115 or you may write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319." (II)

e. A request for a hearing made under 64.36(1)"d"(3) shall stay a transfer or discharge pending a hearing or appeal decision. (II)

f. The hearing shall be held in the facility and the hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, responsible party, and Iowa department of elder affairs long-term care ombudsman of record not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident or responsible party that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. The Iowa department of elder affairs long-term care ombudsman shall have the right to appear at the hearing.

g. The hearing shall be heard by a department of inspections and appeals designee pursuant to Iowa Code chapter 17A. (The hearing shall be public unless the resident or the resident's representative requests in writing that it be closed.) The licensee or a designee shall have the opportunity to present to the representative of the department any oral testimony or written materials to show by a preponderance of the evidence just cause why a transfer or discharge may be made. The resident and responsible party shall also have an opportunity to present to the representative of the department any oral testimony or written material to show just cause why a transfer or discharge should not be made. In a determination as to whether a transfer or discharge is authorized, the burden of proof rests on the party requesting the transfer or discharge.

h. Based upon all testimony and materials submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, contested hearings, a written findings of fact, conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, responsible party, and department of elder affairs long-term care ombudsman within ten working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

Appeals from any decision or order of the representative must be made in writing and mailed to the director of the department of inspections and appeals by certified mail, return receipt requested, or by personal service within ten days after the mailing of the decision or order to the aggrieved party. A party who has exhausted all adequate administrative remedies and is aggrieved by the final action of the department may petition for judicial review in the manner provided by chapter 17A.

i. A copy of the notice required by 64.36(1)"c" shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department, the resident's responsible party, physician, the person or agency responsible for the resident's placement, maintenance, and care in the facility, and the department of elder affairs long-term care ombudsman.

j. If the basis for an involuntary transfer or discharge is the result of a negative action by the Iowa department of human services or the professional review organization (Iowa foundation for medical care), appeals shall be filed with those agencies as appropriate. Continued payment shall be consistent with rules of those agencies.

k. If nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to make full payment up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility. (II)

l. The involuntary transfer or discharge shall be discussed with the resident, the resident's responsible party, and the person or agency responsible for the resident's placement, maintenance, and care in the facility within 48 hours after notice of discharge has been received. The explanation and discussion of the reasons for involuntary transfer or discharge shall be given by the facility administrator or other appropriate facility representa-

tive as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and made a part of the resident's record. (II)

m. The resident shall receive counseling services before (by the sending facility) and after (by the receiving facility) the involuntary transfer to minimize the possible adverse effects of the involuntary transfer. Counseling shall be documented in the resident's record. (II)

(1) Counseling shall be provided by a qualified individual who meets one of the following criteria:

1. Has a bachelor's or master's degree in social work from an accredited college. (II)

2. Is a graduate of an accredited four-year college and has had at least one year of full-time paid employment in a social work capacity with a public or private agency. (II)

3. Has been employed in a social work capacity for a minimum of four years in a public or private agency. (II)

4. Is a licensed psychologist or psychiatrist. (II)

5. Is any other person of the resident's choice. (II)

(2) The facility shall develop a plan to provide for the orderly and safe transfer or discharge of each resident to be discharged or transferred. (II)

(3) The receiving health care facility of a resident involuntarily discharged or transferred shall immediately formulate and implement a plan of care which takes into account possible adverse effects the transfer may cause. (II)

n. In the case of an emergency transfer or discharge as outlined in 64.36(1)"c"(1), the resident must still be given a written notice prior to or within 48 hours following transfer or discharge. A copy of this notice must be placed in the resident's file and it must contain all the information required by 64.36(1)"d"(1) and (2). In addition, the notice must contain a statement in not less than 12-point type (elite), which reads: "You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa state department of inspections and appeals within seven days after receiving this notice. If you request a hearing, it will be held no later than 14 days after receipt of your request by the department. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, call the department at (515)281-4115 or you may write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319." A hearing requested pursuant to this subrule shall be held in accordance with 64.36(1)"f," "g," and "h." (II)

o. Residents shall not have the right to a hearing to contest an involuntary discharge or transfer resulting from the revocation of the facility's license by the department of inspections and appeals. In the case of a facility voluntarily closing, a period of 30 days must be allowed for an orderly transfer of residents to other facilities.

64.36(2) Intrafacility transfer.

a. Residents shall not be relocated from room to room within a licensed health care facility arbitrarily. (I, II) Involuntary relocation may occur only in the following situations and such situation shall be documented in the resident's record.

(1) Incompatibility with or disturbing to other roommates, as documented in the resident's record.

(2) For the welfare of the resident or other residents of the facility.

(3) For medical, nursing or psychosocial reasons, as documented in the resident's record, as judged by the attending physician, nurse or social worker in the case of a facility which groups residents by medical, nursing or psychosocial needs.

(4) To allow a new admission to the facility which would otherwise not be possible due to separation of roommates by sex.

(5) In the case of a resident whose source of payment was previously private, but who now is eligible for Title XIX assistance, the resident may be transferred from a private room to a semiprivate room or from one semiprivate room to another.

(6) Reasonable and necessary administrative decisions regarding the use and functioning of the building.

b. Unreasonable and unjustified reasons for changing a resident's room without the concurrence of the resident, or responsible party include:

(1) Change from private pay status to Title XIX, except as outlined in 64.36(2)"a"(5). (II)

(2) As punishment or behavior modification (except as specified in 64.36(2)"a"(1). (II)

(3) Discrimination on the basis of race or religion. (II)

c. If intrafacility relocation is necessary for reasons outlined in 64.36(2)"a," the resident shall be notified at least 48 hours prior to the transfer and the reason therefor shall be explained. The responsible party shall be notified as soon as possible. The notification shall be documented in the resident's record and signed by the resident or responsible party. (II)

d. If emergency relocation is required to protect the safety or health of the resident or other residents, the notification requirements may be waived. The conditions of the emergency shall be documented. The family or responsible party shall be notified immediately or as soon as possible of the condition requiring emergency relocation and notification shall be documented. (II)

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 772A

LOTTERY DIVISION[705]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 99E.9 and Iowa Code chapter 17A, the Iowa Lottery Board for the Lottery Division of the Iowa Department of Revenue and Finance adopts amendments to Chapter 10, "Iowa Lotto," Iowa Administrative Code.

These amendments provide game rules for the Wild Card option of the Iowa Lotto game.

LOTTERY DIVISION[705] *(cont'd)*

In accordance with Iowa Code section 17A.4(2), the Lottery Board finds that public notice and participation are impractical, unnecessary, and contrary to the public interest in that this game change is made by the Lottery to maximize revenues received by the state and will provide an additional game feature to players of the Iowa Lotto game.

In accordance with Iowa Code section 17A.5(2) "b"(2), the Iowa Lottery Board also finds that the usual effective date of these rules, 35 days after publication, should be waived and the rules be made effective on March 14, 1990. This effective date confers a benefit on the public by allowing the Iowa Lottery to announce the new game feature in a manner intended to maximize revenues from the Iowa Lotto game. Lottery players will be informed of the game changes through the use of game literature.

These rules are also published herein as a Notice of Intended Action, **ARC 771A**, to solicit public comment.

These rules are intended to implement Iowa Code chapter 99E.

ITEM 1. Rescind rule 10.2(99E) and adopt the following in lieu thereof:

705—10.2(99E) Iowa Lotto definitions. For the purposes of interpreting this chapter, the following definitions are applicable unless the context requires a different meaning.

"Board" or "game board" means the area of a play slip which contains squares representing the numbers which may be played and the Wild Card option.

"Central computer" or "central computer system" is a computer system designed to control, monitor, and communicate with the terminals and to record the plays processed by the terminals.

"Drawing" means that process which is used to randomly select six "winning numbers" between one (01) and 39 and a "winning card" from a field of 52 "playing cards."

"Easy pick" means the random selection by the computer terminal of six different two-digit numbers from one (01) through 39.

"Game ticket" or "ticket" means a ticket produced by a terminal, which contains the caption "Iowa Lotto," the drawing day and date, one or more lettered game plays each of which has six 2-digit numbers from one (01) through 39, a playing card and an indication of whether the Wild Card option was exercised as part of the play, the price of each play, the total price of the ticket, a bar code representation of the ticket serial number, a 23-digit serial number, five alphabetic dual security characters, and the time the ticket was issued on the front of the ticket. An eight-digit ticket stock sequential number followed by two letters and a reference to the game rules appear on the back of the ticket.

"Pick seven" means a system where a player selects seven numbers which represent seven game plays reflecting all possible six-number combinations of the seven numbers.

"Pick eight" means a system where a player selects eight numbers which represent 28 game plays reflecting all possible six-number combinations of the eight numbers.

"Play" or "game play" means the six different two-digit numbers from one (01) through 39 and one "playing card" if the "Wild Card option" is exercised.

"Play slip" means a card used by the player in marking a player's game plays.

"Playing card" is a representation of a card containing one suit out of a possible four suits and one value out of a possible thirteen values. The suits and their legends are as follows: S=spades, H=hearts, D=diamonds and C=clubs. The values and their legends are as follows: A=ace, K=king, Q=queen, J=jack, 10=ten, 9=nine, 8=eight, 7=seven, 6=six, 5=five, 4=four, 3=three, and 2=two. The four suits and thirteen values result in 52 distinct "playing cards."

"Retailer" means the person or entity licensed by the Iowa lottery to sell game plays.

"Terminal" means a device which is authorized by the lottery to function in an on-line, interactive mode with the central computer system for the purpose of issuing lottery tickets and entering, receiving, and processing lottery transactions.

"Wild Card option" means a feature of the Iowa Lotto game which allows the player to include a "playing card" as part of a single "game play."

"Winning card" means the representation of a "playing card" randomly selected at each "drawing" which shall be used to determine winning plays from "game plays" exercising the "Wild Card option."

"Winning numbers" means the six 2-digit numbers between one (01) and 39, randomly selected at each drawing, which shall be used to determine winning plays contained on a game ticket.

This rule is intended to implement Iowa Code sections 99E.9(3) and 99E.9(3)"b."

ITEM 2. Rescind rule 10.3(99E) and adopt the following in lieu thereof:

705—10.3(99E) Method of play. To play Iowa Lotto, a player must select one or more sets of six, seven, or eight different two-digit numbers, between one (01) and 39, for input into a terminal. A player may select each set by verbally communicating the six, seven, or eight numbers to a retailer or by verbally requesting "easy pick" from a retailer or by marking six numbered squares or the "easy pick" square in any one game board on a play slip and submitting the play slip to a retailer.

At the time of selecting one or more sets of six different two-digit numbers the player may exercise the Wild Card option of Iowa Lotto by verbally requesting the Wild Card option from the retailer or by marking the Wild Card square in any game board in which the player has marked six numbers or the "easy pick" square. The Wild Card option cannot be exercised on a "pick seven" or "pick eight" play.

The retailer will issue a ticket, via a terminal, containing the selected set or sets of numbers, a playing card or cards and the designation "yes" for each game play which included the Wild Card option.

Players may also purchase tickets from player-activated terminals by use of a touch screen or by inserting a play slip into the terminal if player-activated terminals are available.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"b," and 99E.9(3)"j."

ITEM 3. Rescind subrules 10.6(1) and 10.6(2) and adopt the following in lieu thereof:

10.6(1) When a "jackpot share" for a particular Iowa Lotto drawing is equal to or greater than $20,000 and the prize pool is sufficient to fund the prizes under the provisions of this subrule, the formula for determining the jackpot prize and shares of the jackpot shall be the

following formula. For purposes of applying this rule, a "jackpot share" is determined by dividing the jackpot prize pool by the number of uncanceled plays matching all six numbers.

Jackpot Prize Pool = P-(M1+M2+M3+M4+M5+M6+M7+M8+M9)+R+I

Where P (Prize Pool) = (48.08% of Uncanceled Sales for Drawing Involved)

M1 = (Winners Matching 3 Numbers) = $.48x(number of uncanceled plays matching 3 numbers; the number can be 0).

M2 = (Winners Matching 0 Numbers and Wild Card) = $10x(number of uncanceled plays matching 0 numbers and Wild Card; the number can be 0).

M3 = (Winners Matching 1 Number and Wild Card) = $10x(number of uncanceled plays matching 1 number and Wild Card; the number can be 0).

M4 = (Winners Matching 2 Numbers and Wild Card) = $20x(number of uncanceled plays matching 2 numbers and Wild Card; the number can be 0).

M5 = (Winners Matching 4 Numbers) = $30x(number of uncanceled plays matching 4 numbers; the number can be 0).

M6 = (Winners Matching 3 Numbers and Wild Card) = $200x(number of uncanceled plays matching 3 numbers and Wild Card; the number can be 0).

M7 = (Winners Matching 5 Numbers) = $600x(number of uncanceled plays matching 5 numbers; the number can be 0).

M8 = (Winners Matching 4 Numbers and Wild Card) = $2000x(number of uncanceled plays matching 4 numbers and Wild Card; the number can be 0).

M9 = (Winners Matching 5 Numbers and Wild Card) = $20,000x(number of uncanceled plays matching 5 numbers and Wild Card; the number can be 0).

The prizes awarded when a "jackpot share" is determined by the formula set forth above shall be as follows:

Uncanceled Plays Containing the Following Number of Matches in One Game Play Irrespective of Drawing Order	Prize amount
All Six Winning Numbers	Jackpot Share
Five Winning Numbers and Wild Card	$20,000
Five Winning Numbers	$600
Four Winning Numbers and Wild Card	$2,000
Four Winning Numbers	$30
Three Winning Numbers and Wild Card	$200
Three Winning Numbers	Free Iowa Lotto or Lotto America play(s)
Two Winning Numbers and Wild Card	$20
One Winning Number and Wild Card	$10
Wild Card (No Winning Numbers)	$10

10.6(2) If a "jackpot share" for a particular Iowa Lotto drawing is less than $20,000 when calculated under the provisions of subrule 10.6(1) or the prize pool is insufficient to fund the prizes under the provisions of subrule 10.6(1) then "prize pool" is defined as 88 percent of the value of gross uncanceled sales for the drawing involved and "share value" is defined as the result of the following formula rounded down to the nearest dollar:

$$\frac{\text{Prize Pool} - N1 + R + I}{N2+N3+N4+N5+N6+N7+N8+N9+N10}$$

Where N1 = 48.08% x number of uncanceled plays matching exactly 3 numbers; the number can be 0.

N2 = number of uncanceled plays matching exactly the Wild Card and 0 numbers; the number can be 0.

N3 = number of uncanceled plays matching exactly the Wild Card and 1 number; the number can be 0.

N4 = number of uncanceled plays matching exactly the Wild Card and 2 numbers multiplied by 2; the number can be 0.

N5 = number of uncanceled plays matching exactly 4 numbers multiplied by 3; the number can be 0.

N6 = number of uncanceled plays matching exactly the Wild Card and 3 numbers multiplied by 20; the number can be 0.

N7 = number of uncanceled plays matching 5 numbers multiplied by 60; the number can be 0.

N8 = number of uncanceled plays matching exactly the Wild Card and 4 numbers multiplied by 200; the number can be 0.

N9 = number of uncanceled plays matching exactly the Wild Card and 5 numbers multiplied by 2,000; the number can be 0.

N10 = number of uncanceled plays matching exactly 6 numbers multiplied by 2,000; the number can be 0.

R = Rollover Jackpot Prize Pool which is all the jackpot prize pool from the previous drawing, if no valid play matching all 6 numbers drawn was recorded in the previous drawing.

I = Prize insurance fund authorized in 10.6(3).

If this formula is used, the following prizes will be awarded.

Uncanceled Plays Containing the Following Number of Matches in One Game Play Irrespective of Drawing Order	Prize amount
All Six Winning Numbers	2000 x Share Value as defined above
Five Winning Numbers and Wild Card	2000 x Share Value as defined above

LOTTERY DIVISION[705] *(cont'd)*

Five Winning Numbers	60 x Share Value as defined above
Four Winning Numbers and Wild Card	200 x Share Value as defined above
Four Winning Numbers	3 x Share Value as defined above
Three Winning Numbers and Wild Card	20 x Share Value as defined above
Three Winning Numbers	Free Iowa Lotto or Lotto America play(s)
Two Winning Numbers and Wild Card	2 x Share Value as defined above
One Winning Number and Wild Card	Share Value as defined above
Wild Card (No Winning Numbers)	Share Value as defined above

ITEM 4. Rescind rule 10.10(99E) and adopt the following in lieu thereof:

705—10.10(99E) Price. A game play in Iowa Lotto without the Wild Card option shall sell for $1 including sales tax. The exercise of the Wild Card option as part of an Iowa Lotto game play shall cost an additional $1 per play.

This rule is intended to implement Iowa Code sections 99E.9(3), 99E.9(3)"b," and 99E.9(3)"c."

[Filed emergency 3/13/90, effective 3/14/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 779A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 136C.3(4), the Iowa Department of Public Health hereby emergency adopts amendments to Chapter 39, "Registration of Radiation Machines and Licensure of Radioactive Materials," Iowa Administrative Code.

The Notice of Intended Action on these amendments was published January 10, 1990, in the Iowa Administrative Bulletin as **ARC 565A**.

The 1984 General Assembly amended Iowa Code chapter 136C, authorizing the Governor to enter into an agreement with the United States Nuclear Regulatory Commission (NRC) which gives the state the authority to license and regulate all radioactive materials used in Iowa. The proposed new subrules are being added in order to maintain compatibility with NRC under the agreement. They establish requirements for the exemption of aerosols used in nuclear medicine and for bankruptcy notification to the department by licensees.

The Department gave Notice allowing for a public comment period for both written comments and a public hearing but received no comments. The Department also has a 21-member advisory committee. The new amendments were submitted to this group and all comments received were positive.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments, 35 days after publication, should be waived and the rules be made effective upon filing with the Administrative Rules Coordinator on March 15, 1990, to maintain compatibility with federal regulations.

These amendments are identical to the Notice.

ITEM 1. Amend subrule **39.31(3)**, paragraph "b," by adding the following new subparagraphs:

(6) The following radiopharmaceuticals when used for the listed clinical procedures are not subject to the restrictions in 641—39.31(3)"b"(5):

1. Technetium-99m pentetate as an aerosol for lung function studies;
2. Technetium-99m pertechnetate for cystography;
3. Technetium-99m pertechnetate for dacryocystography;
4. Technetium-99m sulfur colloid as a solid or liquid for gastroesophageal imaging; and
5. Technetium-99m sulfur colloid, pertechnetate or macroaggregated human serum albumin for LeVeen shunt imaging.

(7) Radioactive aerosols shall be administered with a closed, shielded system that either is vented to the outside atmosphere through an air exhaust or provides for collection and disposal of the aerosol.

ITEM 2. Amend rule 641—39.48(136C) by adding the following new subrules:

39.48(5) Each licensee shall notify the agency in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code by or against:

a. The licensee;

b. An entity (as that term is defined in 11 U.S.C. 101(14) controlling the licensee or listing the license or licensee as property of the estate; or

c. An affiliate (as that term is defined in 11 U.S.C. 101(2) of the licensee.

39.48(6) The notification specified in 39.48(5) shall indicate the bankruptcy court in which the petition for bankruptcy was filed and the date of the filing of the petition.

[Filed emergency after Notice 3/15/90, effective 3/15/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 790A

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 25, "Continuing Education," Iowa Administrative Code.

The purpose of these amendments is to incorporate the Board's continuing education guidelines into rule form and to address the statutory requirements relating to the training requirements in the area of dependent adult and child abuse.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 27, 1989, as **ARC 531A**.

Several nonsubstantive changes were made at the request of the Administrative Rules Review Committee.

These rules were adopted on March 15, 1990, and will become effective on May 9, 1990.

The adopted amendments are intended to implement Iowa Code section 258A.2.

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 Ch 25] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 531A**, IAB 12/27/89.

[Filed 3/16/90, effective 5/9/90]
[Published 4/4/90]

[For replacement pages for IAC, see IAC Supplement, 4/4/90.]

ARC 776A

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, to reflect the new fiscal year dates and revised manual title.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 7, 1990, as **ARC 627A**.

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

This rule will become effective July 1, 1990.

This rule is intended to implement Iowa Code section 286A.16.

Amend subrule 21.45(2) as follows:

21.45(2) Area schools shall report contact hours for fiscal year ~~1990~~ *1991* (July 1, ~~1989~~ *1990* to June 30, ~~1990~~ *1991*) 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 ~~1990~~ *1991*."

[Filed 3/13/90, effective 7/1/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 807A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 239.18, the Department of Human Services hereby amends Chapter 49, "Transitional Child Care Assistance Program," appearing in the Iowa Administrative Code.

The state of Iowa implemented a Transitional Child Care Assistance program October 1, 1988, with all state dollars. The Family Support Act of 1988, Public Law 100-485, section 302, requires states to implement a transitional child care assistance program effective April 1, 1990. Federal regulations were issued October 13, 1989, establishing requirements to obtain federal funding for the program.

These amendments revise the rules on the Transitional Child Care (TCC) program to implement changes required by the Family Support Act of 1988 and federal regulations. Generally, the federal program required by the Family Support Act is more restrictive than the state's current program. In some cases, however, the revised federal program is more liberal than the state program. Accordingly, a number of changes are being made. Note that the Department has made provision to continue benefits to those persons who were eligible for the state-funded program. The changes being made are as follows:

1. The Department is required to ensure that client copayment to the provider is made. Failure of the client to make the required copayment results in ineligibility for TCC. The Department was not required to ensure copayment under the state-funded program.

2. Persons receiving Aid to Dependent Children-Unemployed Parent (ADC-UP) benefits are now eligible for TCC when the family becomes ineligible because the qualifying parent has gone to work for 100 or more hours per month.

3. The state-funded program provided TCC assistance to persons who had received ADC, regardless of the length of time on ADC. The federally funded program restricts eligibility to those families who received ADC in at least three of the six months preceding the month that the family becomes ineligible for ADC.

4. The federal program is restricted to those families becoming ineligible for ADC on or after April 1, 1990. There is no provision to extend the federal program to families who became ineligible for ADC prior to April 1, 1990. Therefore, Iowa has chosen to continue benefits to those persons covered by the state program for the remainder of their 12-month period of eligibility.

5. Under the state program, TCC pays for the care of any child in the home, provided the care is required to permit the caretaker relative to work. The federal program restricts payment to those children who would be in the ADC eligible group if the family were still receiving ADC and to those children who are receiving Supplemental Security Income (SSI) or IV-E foster care. Payment is further restricted to the care of children under the age of 13, or to those children 13 and older when the child is mentally or physically disabled or under court supervision.

6. The rules are revised to clarify that TCC payments can be made to child care programs administered by public or nonprofit school systems that have been approved or accredited by the Department of Education.

7. The state program prohibits eligibility for months preceding the month of application for TCC. The federal program allows for retroactive eligibility, regardless of when in the 12-month period benefits are requested.
8. The federal program is not available to persons who either quit a job without good cause or fail to cooperate with child support recovery.
9. Client copayment is a requirement for federal TCC, regardless of family income. Accordingly, the Department has established minimal copayment amounts for families who would not have been required to make copayment under the state program.
10. Caretaker relatives who fail to make the required copayment are ineligible until the back payment is made or satisfactory arrangements for payment are made with the child care provider.
11. The rate of payment will be limited to the same rate of payment in use for the PROMISE JOBS program. Federal regulations limit child care for both PROMISE JOBS and TCC to the seventy-fifth percentile of care costs. The Department is in the process of promulgating rules to implement this requirement in the PROMISE JOBS program effective July 1, 1990. Prior to July 1, the rate of payment is limited to the going rate in the community.
12. There was no provision under the state program to recover overpayments either from clients or from providers. The federal program requires the state to track and seek recovery from the overpaid party. Because the Family Support Act and federal regulations establish the same funding source for PROMISE JOBS child care and TCC, the Department has elected to implement identical recovery policies for both programs.
13. The federal program does not allow the client the option of receiving TCC instead of ADC. The state program allowed continued receipt of TCC in instances where the family became temporarily eligible for ADC due to monthly fluctuations of income but chose not to apply for ADC.

The Department has chosen to continue using state-only moneys to provide transitional child care assistance for those families eligible under the state program so as not to interrupt the family's efforts to attain self-sufficiency. However, some families who would have been eligible for transitional child care assistance under the state program will not be eligible under the federal program. In addition, those families transitioned from the state program will be subject to new requirements, such as the copayment requirement, recovery of overpayments, restrictions on eligible children, etc.

These rules were previously Adopted and Filed Without Notice in the February 7, 1990, Iowa Administrative Bulletin as **ARC 631A**. Notice of Intended Action to solicit comment on that submission was published in the Iowa Administrative Bulletin on February 7, 1990, as **ARC 630A**.

Based on federal clarification, subrule 49.1(1) was revised to provide that only ineligibility for ADC due to increased hours, earnings, or the loss of income disregards by a member of the eligible group will create eligibility for transitional child care assistance.

Rule 441—49.5(73GA,ch318) was also revised based on federal clarification to provide that, regardless of whether a family loses eligibility for transitional child care due to terminating a job with or without good cause or for failure to cooperate with child support, a family may qualify for a new 12-month period of transitional child care if eligibility for ADC is reestablished and again lost due to earned income and the family otherwise meets the eligibility requirements for transitional child care.

The Council on Human Services adopted these rules March 14, 1990.

These rules are intended to implement 1989 Iowa Acts, chapter 318, sections 6 and 8, and Iowa Code section 239.21.

These rules shall become effective June 1, 1990.

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 [Ch 49] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 630A**, IAB 2/7/90.

[Filed 3/16/90, effective 6/1/90]
[Published 4/4/90]

[For replacement pages for IAC, see IAC Supplement, 4/4/90.]

ARC 806A

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 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these rules March 14, 1990. Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on February 7, 1990, as **ARC 638A**.

These amendments correct a typographical error and clarify what forms are to be completed by providers when making presumptive Medicaid eligibility determinations for pregnant women.

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

These rules are intended to implement Iowa Code section 249A.4.

These rules shall become effective June 1, 1990.

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 Ch 75] is being omitted. These rules are identical to those published under Notice as **ARC 638A**, IAB 2/7/90.

[Filed 3/16/90, effective 6/1/90]
[Published 4/4/90]

[For replacement pages for IAC, see IAC Supplement, 4/4/90.]

ARC 805A

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 March 14, 1990. Notices of Intended Action were published in the Iowa Administrative Bulletin on November 15, 1989, as **ARC 389A**, on January 24, 1990, as **ARC 593A**, and on February 7, 1990, as **ARC 637A**.

Iowa's Medicaid program adopts many Medicare rules as a policy base. These rules clarify that Iowa will not require prior hospitalization as a condition of skilled nursing care coverage.

The Medicare Catastrophic Coverage Act of 1988 eliminated the prior hospitalization requirement to receive skilled nursing facility coverage under Medicare effective January 1, 1989. Medicaid has never required prior hospitalization, but rules were amended to remove the prior hospitalization requirement as an exception to Medicare policy. With the repeal of Medicare catastrophic coverage, Medicare once again requires a person be hospitalized before skilled nursing care will be covered. Therefore, these amendments add Medicaid's current policy of not requiring a person to have prior hospitalization to the list of exceptions to Medicare policy for coverage of skilled nursing care.

Currently, with two exceptions, payment of medical transportation claims is made directly to the recipient. It is then the recipient's responsibility to reimburse the provider of the transportation if a provider was involved.

This rule adds a third exception relating to situations in which the provider is one of the Department's volunteers. Some districts make heavy use of volunteers to provide medical transportation. A frequently reported problem is one where the recipient fails to pay the volunteer. Some volunteers have even quit the program because of this problem.

There is a mechanism wherein reimbursement may be made directly to a provider of transportation if the recipient persistently fails to pay the provider. However, this generally means that the provider must lose some payments before this action is taken.

Current policy regarding covered services for rehabilitation agencies indicates only that Medicaid covers the same services as Medicare. These amendments make the Department's requirements, conditions, and restrictions concerning payment of claims more explicit. These amendments are largely based on the requirements of the Medicare program. However, the following provisions differ from Medicare based on the Department's own experience:

1. Coverage of services has been revised to provide that payment will not be made to a rehabilitation agency for therapy provided a recipient residing in an intermediate care facility for the mentally retarded since these facilities are responsible for providing or paying for needed services to residents.

2. A unit of service has been defined in terms of 15-minute increments.

3. The definition of restorative potential has been revised to indicate that there must be an expectation that the patient's condition will show functional improvement in a reasonable period of time.

4. Maintenance therapy has been revised to indicate that the initial evaluation and instruction of the patient's family members, home health aides, and of facility personnel to carry out the program is covered. In these cases payment is limited to a maximum of three visits. Payments for supervisory visits to monitor the program are limited to two per month for a maximum period of 12 months.

5. The conditions under which isokinetic or isotonic equipment is covered are defined.

6. Policy is clarified that the teaching of activities of daily living and energy conservation which require the skill of a licensed occupational therapist and which are restorative is covered.

7. Swallowing disorders other than those resulting from mental impairment are payable if certain restorative criteria are met.

8. In order for teaching a patient to use sign language to be reimbursable, the patient must show significant progress outside the therapy sessions.

These rules have been discussed with a committee composed of representatives of participating agencies. It is anticipated that these rules will help alleviate misunderstanding of the Department's policies by rehabilitation agencies.

The following revisions were made to rules published as **ARC 389A**. There were no changes to the rules published as **ARC 593A** and **ARC 637A**.

1. Subrule 78.19(1), paragraph "a," subparagraph (1), was revised in response to comments to provide that the statement that the facility does not have the services available must be signed by the facility and only needs to be completed at the start of care unless the situation changes.

2. Subrule 78.19(1), paragraph "a," subparagraph (6), number 2, was revised in response to comments to allow group therapy if individual therapy is the primary service and to provide that the units of group therapy may not exceed the units of individual therapy. Number 3 was revised in response to comments to clarify that a unit of treatment shall be considered to be 15 minutes in length and to permit treatment sessions to exceed 60 minutes per day if documentation of the specific condition and the need for the longer treatment is provided. Number 4 was revised in response to comments to provide that progress shall be documented in the progress notes rather than the case plan.

3. Subrule 78.19(1), paragraph "b," subparagraph (2), was revised in response to comments to reference the department of public health, professional licensure division, subrule 200.20(7) in regard to services that may be relegated to a qualified physical therapist assistant. Subparagraph (8) was revised to provide that payment for supervisory visits to monitor a maintenance program will be limited to a maximum period of 12 months.

4. Subrule 78.19(1), paragraph "c," subparagraph (1), was revised in response to comments to provide that the qualified occupational therapist and assistant must be licensed.

5. Subrule 78.19(2), paragraph "a," subparagraphs (2), (3), (4), (6) and (18), were revised in response to comments to provide that dates of prior hospitalization, date of prior

surgery, the date the patient was last seen by the physician, dates of onset of any diagnoses for which treatment is being rendered, and any prior treatment information need be provided on medical information forms and treatment plans only if available or known. Subparagraph (14) was rewritten for clarity in response to comments.

These rules are intended to implement Iowa Code section 249A.4.

These rules shall become effective June 1, 1990.

The following amendments are adopted:

ITEM 1. Amend subrule **78.12(1)** by reinstating paragraph "b" as follows:

b. Medicaid does not require that the person be previously hospitalized.

ITEM 2. Amend subrule **78.13(10)** by adding the following new paragraph:

c. In all situations where one of the department's volunteers is the provider of transportation.

ITEM 3. Rescind rule 441—78.19(249A) and insert the following in lieu thereof:

441—78.19(249A) Rehabilitation agencies.

78.19(1) Coverage of services.

a. General provisions regarding coverage of services.

(1) Services are provided in the recipient's home or in a care facility (other than a hospital) by a speech therapist, physical therapist, or occupational therapist employed by or contracted by the agency. Services provided a recipient residing in a skilled nursing facility, intermediate care facility, or residential care facility are payable when a statement is submitted signed by the facility that the facility does not have these services available. The statement need only be submitted at the start of care unless the situation changes. Payment will not be made to a rehabilitation agency for therapy provided to a recipient residing in an intermediate care facility for the mentally retarded since these facilities are responsible for providing or paying for services required by recipients.

(2) All services must be determined to be medically necessary, reasonable, and meet a significant need of the recipient that cannot be met by a significant other, friend, or medical staff personnel; must meet accepted standards of medical practice; and must be a specific and effective treatment for a patient's condition.

(3) In order for a service to be payable, a licensed skilled therapist must complete a plan of treatment every 30 days and indicate the type of service required. The plan must also contain the following information: patient's medical condition and functional abilities, a brief summary of the initial evaluation, patient's rehabilitation potential, discipline of the person providing the service, frequency and duration of the service, measurable short-term and long-term goals, the physician's signature and date (within the certification period), certification period, patient's progress in measurable statistics, and the estimated date of discharge, if applicable.

(4) There is no specific limitation on the number of visits for which payment through the program will be made so long as that amount of service is medically necessary in the individual case, is related to a diagnosed medical impairment, and meets the current standards of practice in each related field. Documentation must be submitted with each claim to support the need for the number of services being provided.

(5) Payments will be made both for restorative service and also for maintenance types of service. Essentially, maintenance services means services to a patient whose condition is stabilized and who requires observation by a therapist of conditions defined by the physician as indicating a possible deterioration of health status. This would include persons with long-term illnesses whose condition is stable rather than posthospital.

(6) Therapy sessions must meet the following criteria:

1. There must be face-to-face patient contact interaction.

2. Services must be provided primarily on an individual basis. Group therapy is covered, but total units of service in a month shall not exceed total units of individual therapy.

3. Treatment sessions may be no less than 15 minutes of service and no more than 60 minutes of service per date unless more than 60 minutes of service is required for a treatment session due to the patient's specific condition. If more than 60 minutes of service is required for a treatment session, additional documentation of the specific condition and the need for the longer treatment session shall be submitted with the claim. A unit of treatment shall be considered to be 15 minutes in length.

4. Progress must be documented in measurable statistics in the progress notes in order for services to be reimbursed.

b. Physical therapy services.

(1) To be covered under rehabilitation agency services, physical therapy services must relate directly and specifically to an active written treatment plan, follow a treatment plan established by the licensed skilled therapist after consultation with the physician, be reasonable and necessary to the treatment of the person's illness or injury, be specific and effective treatment for the patient's condition, and be of such a level of complexity and sophistication, or the condition of the patient must be such that the services required can be safely and effectively performed only by a qualified physical therapist or under the supervision of the therapist.

(2) A qualified physical therapy assistant may provide any restorative services performed by a licensed physical therapist under supervision of the therapist as set forth in the department of public health, professional licensure division, subrule 200.20(7).

(3) The initial physical therapy evaluation must be provided by a licensed physical therapist.

(4) There must be an expectation that there will be a significant, practical improvement in the patient's condition in a reasonable amount of time based on the patient's restorative potential assessed by the physician.

(5) It must be demonstrated there is a need to establish a safe and effective maintenance program related to a specific disease state.

(6) The amount, frequency, and duration of the services must be reasonable.

(7) Restorative therapy must be reasonable and necessary to the treatment of the person's illness and condition. The expected restorative potential must be practical and in relation to the extent and duration of the treatment. There must be an expectation that the patient's condition will show functional improvement in a reasonable period of time. Functional improvement means that demonstrable measurable increases have occurred in the patient's level of independence outside the therapeutic environment.

(8) Maintenance therapy is, generally, repetitive exercises to maintain function which do not require the services of a qualified physical therapist and are not reimbursable.

Certain conditions or situations may require a maintenance program established by a qualified therapist; for example, a patient with Parkinson's disease who has not been under a restorative physical therapy program. In these cases, the initial evaluation and the instruction of the patient, family members, home health aides, or facility personnel to carry out the program are considered a covered physical therapy service. In these cases payment shall be made for a maximum of three visits to establish the evaluation and instruction of the caregivers. Payment for supervisory visits to monitor the program would be limited to two per month for a maximum period of 12 months. The plan of treatment must specify the anticipated monitoring activity of the supervisor.

(Restorative and maintenance therapy definitions also apply to speech and occupational therapy.)

When a patient is under a restorative physical therapy program, the patient's condition is regularly reevaluated and the program adjusted by the physical therapist. It is expected then, that prior to discharge, a maintenance program has been designed by the physical therapist. Consequently, where a maintenance program is not established until after the restorative program has been completed, it would not be considered reasonable and necessary to the treatment of the patient's condition and would be excluded from coverage.

(9) Hot packs, hydrocollator, infrared treatments, paraffin baths, and whirlpool baths do not ordinarily require the skills of a qualified physical therapist. These are covered when the patient's condition is complicated by other conditions such as a circulatory deficiency or open wounds or if the service is an integral part of a skilled physical therapy procedure.

(10) Gait training and gait evaluation and training constitute a covered service if the patient's ability to walk has been impaired by a neurological, muscular or skeletal condition or illness. The gait training must be expected to significantly improve the patient's ability to walk.

Repetitious exercise to increase endurance of feeble or unstable patients can be safely provided by supportive personnel, e.g., aides, nursing personnel. Therefore, it is not a covered physical therapy service.

(11) Ultrasound, shortwave, and microwave diathermy treatments are considered covered services.

(12) Range of motion tests must be performed by a qualified physical therapist. Range of motion exercises require the skills of a qualified physical therapist only when they are part of the active treatment of a specific disease which has resulted in a loss or restriction of mobility.

Documentation must reflect the degree of motion lost, the correct degree of motion, and the degree to be restored.

Range of motion to unaffected joints only does not constitute a covered physical therapy service.

(13) Reconditioning programs after surgery or prolonged hospitalization are not covered as physical therapy.

(14) Therapeutic exercises would constitute a physical therapy service due either to the type of exercise employed or to the condition of the patient.

(15) Use of isokinetic or isotonic type equipment in physical therapy is covered when normal ambulation or range of motion of a joint is affected due to bone, joint, ligament or tendon injury or postsurgical trauma. Billing can only be made for the time actually spent by the therapist in instructing the patient and assessing the patient's progress.

c. Occupational therapy services.

(1) To be covered under rehabilitation agency services, occupational therapy services must be included in a plan of treatment, improve or restore practical functions which have been impaired by illness or injury or enhance the person's ability to perform those tasks required for independent functioning, be prescribed by a physician under a plan of treatment, be performed by a qualified licensed occupational therapist or a qualified licensed occupational therapist assistant under the general supervision of a qualified licensed occupational therapist as set forth in the department of public health, professional licensure division, rule 201.9(148B), and be reasonable and necessary for the treatment of the person's illness or injury.

(2) Restorative therapy is covered when an expectation exists that the therapy will result in a significant practical improvement in the person's condition.

However, in these cases where there is a valid expectation of improvement met at the time the occupational therapy program is instituted, but the expectation goal is not realized, services would only be covered up to the time one would reasonably conclude the patient would not improve.

The guidelines under restorative and maintenance therapy for physical therapy in 78.19(1)"b"(7) and (8) apply to occupational therapy.

(3) Maintenance therapy, or any activity or exercise program required to maintain a function at the restored level, is not a covered service. However, designing a maintenance program in accordance with the requirements of 78.19(1)"b"(8) and monitoring the progress would be covered.

(4) The selection and teaching of tasks designed to restore physical function are covered.

(5) Planning and implementing therapeutic tasks, such as activities to restore sensory-integrative functions are covered. Other examples include providing motor and tactile activities to increase input and improve responses for a stroke patient.

(6) The teaching of activities of daily living and energy conservation to improve the level of independence of a patient which require the skill of a licensed therapist and meet the definition of restorative therapy is covered.

(7) The designing, fabricating, and fitting of orthotic and self-help devices are considered covered services if they relate to the patient's condition and require occupational therapy. A maximum of 13 visits is reimbursable.

(8) Vocational and prevocational assessment and training are not payable by Medicaid. These include services which are related solely to specific employment opportunities, work skills, or work settings.

d. Speech therapy services.

(1) To be covered by Medicaid as rehabilitation agency services, speech therapy services must be included in a plan of treatment established by the licensed, skilled therapist after consultation with the physician, relate to a specific medical diagnosis which will significantly

improve a patient's practical, functional level in a reasonable and predictable time period, and require the skilled services of a speech therapist. Services provided by a speech aide are not reimbursable.

(2) Speech therapy activities which are considered covered services include: restorative therapy services to restore functions affected by illness or injury resulting in a communication impairment or to develop functions where deficiencies currently exist. Communication impairments fall into the general categories of disorders of voice, fluency, articulation, language, and swallowing disorders resulting from any condition other than mental impairment. Treatment of these conditions is payable if restorative criteria are met.

(3) Aural rehabilitation, the instruction given by a qualified speech pathologist in speech reading or lip reading to patients who have suffered a hearing loss (input impairment), constitutes a covered service if reasonable and necessary to the patient's illness or injury. Group treatment is not covered. Audiological services related to the use of a hearing aid are not reimbursable.

(4) Teaching a patient to use sign language and to use an augmentative communication device is reimbursable. The patient must show significant progress outside the therapy sessions in order for these services to be reimbursable.

(5) Maintenance therapy, the carrying out of any activity or exercise program required to maintain speech communication at the level to which it has been restored, is not a covered service. However, a maintenance program established by a qualified speech pathologist for a patient who has not been under a restorative speech therapy program could be considered a covered service.

The guidelines under restorative and maintenance therapy for physical therapy in 78.19"b"(7) and (8) apply to speech therapy.

78.19(2) General guidelines for plans of treatment.

a. The minimum information to be included on medical information forms and treatment plans includes:

(1) The place services are rendered.

(2) Dates of prior hospitalization (if applicable or known).

(3) Dates of prior surgery (if applicable or known).

(4) The date the patient was last seen by the physician (if available).

(5) A diagnosis relevant to the medical necessity for treatment.

(6) Dates of onset of any diagnoses for which treatment is being rendered (if applicable).

(7) A brief summary of the initial evaluation or baseline.

(8) The patient's prognosis.

(9) The services to be rendered.

(10) The frequency of the services and discipline of the person providing the service.

(11) The anticipated duration of the services.

(12) Assistance devices to be used.

(13) Functional limitations.

(14) The patient's rehabilitative potential and the extent to which the patient has been able to apply the skills learned in the rehabilitation setting to everyday living outside the therapy sessions.

(15) The date of the last episode of instability or the date of the last episode of acute recurrence of illness or symptoms (if applicable).

(16) Quantitative, measurable, short-term and long-term functional goals.

(17) The period of time of a session.

(18) Prior treatment (history related to current diagnosis) if available or known.

b. The information to be included when developing plans for teaching, training, and counseling include:

(1) To whom the services were provided (patient, family member, etc.).

(2) Prior teaching, training, or counseling provided.

(3) The medical necessity of the rendered services.

(4) The identification of specific services and goals.

(5) The date of the start of the services.

(6) The frequency of the services.

(7) Progress in response to the services.

(8) The estimated length of time the services are needed.

[Filed 3/16/90, effective 6/1/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 804A

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 81, "Intermediate Care Facilities," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments on March 14, 1990. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on November 15, 1989, as **ARC 388A**.

These amendments require all intermediate care facilities to execute separate written contracts for pharmaceutical vendor services and consultant pharmacist services.

The Seventy-third General Assembly in 1989 Iowa Acts, chapter 304, section 903, required the Department to adopt rules requiring all intermediate care facilities to execute separate written contracts for pharmaceutical vendor services and consultant pharmacist services. The consultant pharmacist contract shall require monthly drug regimen review reports and shall provide for reimbursement on the basis of fair market value.

The Notice of Intended Action also contained amendments clarifying the meaning of "supplementation" as applied to intermediate care facilities. That portion of the Notice of Intended Action is not being adopted at this time, but has been placed on hold pending possible legislative direction.

Subrule 81.13(7), paragraph "j," was rewritten for clarification in response to comments.

This rule is intended to implement Iowa Code section 249A.4 and 1989 Iowa Acts, chapter 304, section 903.

This rule shall become effective June 1, 1990.

The following amendment is adopted:

Amend subrule **81.13(7)**, paragraph "j," as follows:

j. When the facility does not employ a licensed pharmacist, it shall have formal arrangements with a licensed pharmacist to provide consultation on methods

and procedures for ordering, storage, administration and disposal and record keeping of drugs and biologicals. The formal arrangements with the licensed pharmacist shall ~~be in writing, and delineate the services to be provided~~ *include separate written contracts for pharmaceutical vendor services and consultant pharmacist services.* The consultant's visits are scheduled to be of sufficient duration and at a time convenient to work with nursing staff on *the* resident care plan, consult with the administrator and others on developing and implementing policies and procedures, and planning in-service training and staff development for employees. *The consultant shall provide monthly drug regimen review reports. The facility shall provide reimbursement for consultant pharmacists based on fair market value.* Documentation of consultation shall be available for review in the facility.

[Filed 3/16/90, effective 6/1/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 803A

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 83, "Medicaid Waiver Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments on March 14, 1990. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on February 7, 1990, as **ARC 636A**.

These amendments provide for the following changes and clarifications to the Model Waiver program. The Application for Model Waiver has been combined with the Application for Medical Assistance or State Supplementary Assistance. The title of Form 470-0660 has been revised. A married recipient who has a spouse or a spouse and a dependent living with the recipient shall be allowed to retain the current supplemental security income standard for a recipient in the recipient's own home, rather than the personal needs allowance of $30 allowed a recipient in an intermediate care facility or skilled nursing facility.

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

These rules are intended to implement Iowa Code section 249A.4.

These rules shall become effective June 1, 1990.

The following amendments are adopted:

ITEM 1. Amend subrule **83.2(1)**, paragraph "e," introductory paragraph, as follows:

e. The person must be within the first 200 names on a log to be maintained by the ~~bureau~~ *division* of medical services. The model waiver is limited to 200 persons at any one time. The local office shall contact the ~~bureau~~ *division* of medical services by the end of the second workday after the receipt of ~~an Application for Model Waiver, Form MA-3033~~ *a completed Form PA-1107, Application for Medical Assistance or State Supplementary Assistance.* On the third workday after the receipt of ~~the Application for Model Waiver~~ *Form PA-1107,* persons will be entered on the log by the ~~bureau~~ *division* of medical services according to the following:

ITEM 2. Amend subrule **83.3(3)**, paragraph "c," as follows:

c. A client must be given the choice between model waiver services and institutional care. The service worker shall have the client or guardian complete and sign Part C of Form 470-0660, ~~Model Waiver Service Report~~ *Home and Community Based Service Report,* indicating the client's choice of caregiver.

ITEM 3. Amend subrule **83.4(1)**, paragraphs "a" and "b," as follows:

a. A single *or married* recipient shall be allowed the current supplemental security income standard for a recipient in the recipient's own home, or if the recipient only has dependent children under the age of 21 living at home, an allowance of the aid to dependent children (ADC) benefit for the number of children at home shall be allowed to bring the children's income up to that ADC benefit.

b. A married recipient who has a spouse or a spouse and a dependent living with the recipient shall have resources and the client participation determined by rules 441—75.5(249A) and 441—75.16(249A) *except for subrule 75.16(2), paragraph "a."*

[Filed 3/16/90, effective 6/1/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 802A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 237A.12, the Department of Human Services hereby amends Chapter 109, "Child Care Centers," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments March 14, 1990. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on January 24, 1990, as **ARC 584A**.

These amendments provide for the following changes in requirements for child care centers:

1. Require that children's hands must be washed before eating and after using the restroom or being diapered.
2. Allow the on-site director in charge of school-age programs during the school year to be in charge of school-age programs during holidays and during the summertime by eliminating the three-hour limit.
3. Require that the on-site director or administrator of a program for school-age children must have three semester hours of coursework in administration or one

year on-the-job business-related experience in finance, personnel, supervision, record keeping, or budgeting.

4. Allow school-age children to bring sack lunches.

5. Require eating surfaces to be sanitized before eating.

6. Add a new set of requirements for those centers taking mildly ill children on a drop-in basis. Centers which take mildly ill children who are already enrolled in the center will not be affected.

Subrule 109.11(3) was revised in response to comments from the Iowa Board of Nursing to provide that if the nurse on duty at the drop-in-get-well center is an LPN, the medical advisor or an RN on the medical advisor's staff shall provide on-site consultation one hour per week, or the facility shall employ an RN for at least one hour per week for on-site consultation.

These rules are intended to implement Iowa Code section 237A.12.

These rules shall become effective June 1, 1990.

The following amendments are adopted:

ITEM 1. Amend rule 441—109.3(237A) by adding the following new subrule:

109.3(10) Children at the facility shall have their hands washed with soap and running water and dried with disposable towels or a forced air dryer at the following times:

a. Immediately before eating.

b. After using the restroom or being diapered.

ITEM 2. Amend subrule 109.4(8) as follows:

Amend the introductory paragraph as follows:

109.4(8) ~~Before or after school programs defined as those meeting no more than three hours per session~~ *School-age programs* for kindergarten and older children, and licensed for more than 20 *school-age* children *only*, may operate under the supervision of an on-site director who meets the following requirements:

Further amend subrule **109.4(8)** by adding the following new paragraph:

c. Completion of three semester hours of coursework in administration, or one year on-the-job business-related experience in finance, personnel, supervision, record keeping, or budgeting.

ITEM 3. Amend rule **441—109.6(237A)** as follows:

Amend subrule **109.6(3)** by adding the following new paragraph:

f. Programs for school-age children need not comply with subrules 109.6(1) and 109.6(3), paragraphs "a" and "b," and may allow school-age children only to bring sack lunches.

Amend subrule **109.6(5)** by adding the following new paragraph:

h. Eating surfaces shall be sanitized immediately prior to serving or eating food.

ITEM 4. Amend 441—Chapter 109 by adding the following new rule:

441—109.11(237A) Drop-in-get-well center. A drop-in-get-well center is a facility that cares for mildly ill children for short enrollment periods. A mildly ill child is a child with a temporary illness of short duration. A drop-in-get-well center shall meet the following requirements in addition to all the licensing requirements for centers contained in Iowa Code chapter 237A and 441—Chapter 109 except for the exceptions listed in subrule 109.11(9).

109.11(1) Medical advisor. The center shall have a medical advisor for the center's health policy. The medical advisor shall be a medical doctor or a doctor of osteopathy currently in pediatrics or family practice.

109.11(2) Health policy. The center shall have a written health policy signed by the owner or the chairman of the board and by the medical advisor and approved by the department before the center can begin operations. Any subsequent changes in the health policy shall be handled in a like manner. A written summary of the health policy shall be given to the parent when a child is enrolled in the center. The center's health policy as a minimum shall address procedures in the following areas:

a. Medical emergencies.

b. Triage policy.

c. Storage and administration of medications.

d. Dietary considerations.

e. Sanitation and infection control.

f. Employee health policy.

g. Categorization of illness.

h. Length of enrollment periods.

i. Exclusionary policy.

109.11(3) Licensed LPN or RN. A center shall have a licensed LPN or RN on duty at all times. If the nurse on duty is an LPN, the medical advisor or an RN on the medical advisor's staff shall provide on-site consultation one hour per week, or the facility shall employ an RN for at least one hour per week for on-site consultation.

109.11(4) Staff ratios. A center shall maintain a minimum staff ratio of one-to-four for infants and one-to-five for children over the age of two.

109.11(5) Staff training. All staff that have contact with children shall have a minimum of 17 clock hours of special training for caring for mildly ill children. Current certification of the training shall be contained in the personnel files. Special training shall be department approved and include the following:

a. Four hours' training in infant and child cardiopulmonary resuscitation (CPR), four hours' training in pediatric first aid, and one hour of training in infection control within the first month of employment.

b. Six hours' training in care of ill children, and two hours' training in child abuse identification and reporting within the first six months of employment.

109.11(6) Evaluation of child. The child shall be given a brief evaluation by an LPN or RN upon each arrival at the center.

109.11(7) Summary of day. The parent shall receive a brief written summary when the child is picked up at the end of the day. The summary must include:

a. Admitting symptoms.

b. Medications administered and time they were administered.

c. Nutritional intake.

d. Rest periods.

e. Output.

f. Temperature.

109.11(8) Physical requirements.

a. There shall be 40 square feet of program space per child.

b. There shall be a sink with hot and cold running water in every child-occupied room.

109.11(9) Exceptions.

a. Outdoor space may be waived with the approval of the department.

b. Grouping of children shall be allowed by categorization of illness or by transmission route without regard

to age, and shall be in separate rooms with full walls and doors.

[Filed 3/16/90, effective 6/1/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 789A

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 505.8 and 515.20, the Iowa Division of Insurance hereby adopts an amendment to Chapter 5, "Regulation of Insurers — General Provisions," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 7, 1990, as **ARC 660A**.

Changes from the rules as published as Notice of Intended Action are as follows:

Subrule 5.6(4), relating to nonadmitted assets, is deleted. Rule 5.4 is narrowed in response to comments.

This rule will become effective May 9, 1990.

This rule is intended to implement Iowa Code section 505.8 and chapters 508, 515 and 520.

The following amendment is adopted.

Amend 191—Chapter 5 by adding the following new rule:

191—5.4(505,508,515,520) Surplus notes. Surplus notes are recognized by the commissioner for both stock and mutual insurers.

[Filed 3/16/90, effective 5/9/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 792A

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. The amendment relates to occupational exposure to control of hazardous energy sources (lockout/tagout); air contaminants, corrections; grain handling facilities; air contaminants; and occupational exposure to asbestos, tremolite, anthophyllite, and actinolite.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on February 7, 1990, as **ARC 664A**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was held on March 6, 1990. No comments were received.

This rule shall become effective May 9, 1990.

Rule **347—10.20(88)** is amended by inserting at the end thereof:

54 Fed. Reg. 46610 (November 6, 1989)
54 Fed. Reg. 47513 (November 15, 1989)
54 Fed. Reg. 49971 (December 4, 1989)
54 Fed. Reg. 50372 (December 6, 1989)
54 Fed. Reg. 52024 (December 20, 1989)

This rule is intended to implement Iowa Code section 88.5.

[Filed 3/16/90, effective 5/9/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 791A

LABOR SERVICES DIVISION[347]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner adopts an amendment to rule 347—26.1(88) relating to occupational safety and health rules for construction. The amendment relates to excavations; hazard communication, correction; occupational exposure to asbestos, tremolite, anthophyllite, and actinolite; and excavations, effective date.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on February 7, 1990, as **ARC 665A**.

In compliance with Iowa Code section 88.5(1)"b," a public hearing was scheduled for March 6, 1990. No comments were received.

This rule shall become effective May 9, 1990.

Rule **347—26.1(88)** is amended by adding at the end thereof:

54 Fed. Reg. 45894 (October 31, 1989)
54 Fed. Reg. 49279 (November 30, 1989)
54 Fed. Reg. 52024 (December 20, 1989)
54 Fed. Reg. 53055 (December 26, 1989)

This rule is intended to implement Iowa Code section 88.5.

[Filed 3/16/90, effective 5/9/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 769A

NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement subsection 80E.3(2), the Iowa Narcotics Enforcement Advisory Council adopts Chapter 1, "Organization and

Operation"; Chapter 2, "Petitions for Rule Making"; Chapter 3, "Declaratory Rulings"; Chapter 4, "Agency Procedure for Rule Making"; and Chapter 5, "Public Records and Fair Information Practices," Iowa Administrative Code.

Notice of Intended Action was published in the November 1, 1989, Iowa Administrative Bulletin, as **ARC 351A**. These rules are identical to those published in the Notice. The rules adopt the uniform rules.

These rules will become effective on May 9, 1990.

The following rules are adopted:

CHAPTER 1

ORGANIZATION AND OPERATION

551—1.1(80E) Council created. Pursuant to Iowa Code Supplement section 80E.3, the Iowa narcotics enforcement advisory council is created to recommend policy for the operation and conduct of the narcotics enforcement division of the department of public safety and to recommend policy changes and alternatives to the drug abuse prevention and education advisory council created therein. Procedures for membership, frequency of meetings and size of quorum are detailed in the above statute.

This rule is intended to implement Iowa Code Supplement section 80E.3.

CHAPTER 2

PETITIONS FOR RULE MAKING

The Iowa narcotics enforcement advisory council hereby adopts the petitions for rule making segment of the Uniform Administrative Rules which is printed in the front of Volume I of the Iowa Administrative Code with the following amendments.

551—2.1(17A) Petition for rule making. In lieu of the words "agency at (designate office)", insert "Iowa Narcotics Enforcement Advisory Council, Office of Drug Policy, Lucas State Office Building, Des Moines, Iowa 50319". In lieu of the words "(AGENCY NAME)", the heading on the petition should read:

"BEFORE THE IOWA NARCOTICS
ENFORCEMENT ADVISORY COUNCIL"

551—2.3(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert the "Chairperson, Iowa Narcotics Enforcement Advisory Council, Office of Drug Policy, Lucas State Office Building, Des Moines, Iowa 50319".

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

CHAPTER 3

DECLARATORY RULINGS

The Iowa narcotics enforcement advisory council hereby adopts the declaratory rulings segment of the Uniform Administrative Rules which is printed in the front of Volume I of the Iowa Administrative Code with the following amendments.

551—3.1(17A) Petition for declaratory rulings. In lieu of the words "agency at (designate office)", insert "Iowa Narcotics Enforcement Advisory Council, Office of Drug Policy, Lucas State Office Building, Des Moines, Iowa 50319". In lieu of the words "(AGENCY NAME)", the heading on the petition should read:

"BEFORE THE IOWA NARCOTICS
ENFORCEMENT ADVISORY COUNCIL"

551—3.3(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert "the Chairperson, Iowa Narcotics Enforcement Advisory Council, Office of Drug Policy, Lucas State Office Building, Des Moines, Iowa 50319".

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

CHAPTER 4

AGENCY PROCEDURE FOR RULE MAKING

The Iowa narcotics enforcement advisory council hereby adopts the agency procedure for rule making segment of the Uniform Administrative Rules which is printed in the front of Volume I of the Iowa Administrative Code with the following amendments.

551—4.1(17A) Applicability. The following sentence is added: "The agency contact for 4.5(1), 4.6(3), 4.11(1) or other unspecified rule-making matters is the Chairperson, Iowa Narcotics Enforcement Advisory Council, Office of Drug Policy, Lucas State Office Building, Des Moines, Iowa 50319, telephone (515)281-4518."

551—4.4(17A) Notice of proposed rule making.

4.4(3) Notices mailed. In lieu of "(specify time period)", insert "one state fiscal year (July 1 to June 30)".

These rules are intended to implement Iowa Code section 17A.4.

CHAPTER 5

PUBLIC RECORDS AND FAIR
INFORMATION PRACTICES

The Iowa narcotics enforcement advisory council hereby adopts the fair information practices segment of the Uniform Administrative Rules which is printed in the front of Volume I of the Iowa Administrative Code with the following amendments.

551—5.1(17A,22) Definitions. As used in this chapter:

"Agency" means the Iowa narcotics enforcement advisory council.

551—5.3(17A,22) Requests for access to records.

5.3(1) Location of records. A request for access to a record should be directed to the office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Iowa Narcotics Enforcement Advisory Council, Office of Drug Policy, Lucas State Office Building, Des Moines, Iowa 50319. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

5.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays.

5.3(7) Fees.

c. Supervisory fee. In lieu of "(specify time period)", insert "one hour". Delete the parenthetical sentence at the end of the paragraph.

551—5.9(17A,22) Public records, confidential records. All records in the possession of the council other than confidential records are public records. The council shall deem to be confidential those categories of records enumerated in Iowa Code section 22.7 which are in its possession.

551—5.10(17A,22) Personally identifiable information. No agency records shall include personally identifiable information.

551—5.11(17A,22) Data processing. No data processing system collates or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

These rules are intended to implement Iowa Code section 22.11.

[Filed 3/12/90, effective 5/9/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 782A

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Iowa Board of Nursing hereby amends Chapter 3, "Licensure to Practice—Registered Nurse/Licensed Practical Nurse," Iowa Administrative Code.

This amendment permits nurses licensed in another state, who are are not eligible for endorsement, to practice in Iowa for a fixed period of time and only under certain conditions.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 10, 1990, as **ARC 555A**. This amendment is identical to that published under Notice of Intended Action.

This amendment will become effective May 9, 1990.

This amendment is intended to implement Iowa Code section 152.1.

The following amendment is adopted:

Amend subrule 3.6(2) to read as follows:

3.6(2) Special licensure for those licensed in another country. A special license may be granted by the board on an individual basis. The intent of the special license is to allow nurses licensed in another country who are not eligible for endorsement to practice in Iowa for a fixed period of time and only under certain conditions. The purpose of the license is to allow those nurses not previously licensed in Iowa to provide care in a specialty area, to provide consultation or teaching where care is directed, *to serve as a research assistant, to serve as a teaching assistant or* to obtain clinically based continuing education~~,~~ ~~or to be a student in a graduate nursing education program~~.

[Filed 3/15/90, effective 5/9/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 781A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135B.7, the Iowa Department of Public Health hereby rescinds Chapter 180, "Hospital Protocol for Donor Requests," and amends Chapter 51, "Hospitals," Iowa Administrative Code.

Notice of Intended Action was published in the December 27, 1989, Iowa Administrative Bulletin as **ARC 545A**. The adopted rules are identical to those published under Notice.

The Board of Health adopted the rules on March 14, 1990, and they will become effective May 9, 1990.

These rules establish the requirement for written policies and protocols to obtain organ and tissue donation.

These rules are intended to implement Iowa Code section 135B.7.

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 [51.4(5) to 51.4(11), rescind Ch 180] is being omitted. These rules are identical to those published under Notice as **ARC 545A**, IAB 12/27/89.

[Filed 3/15/90, effective 5/9/90]
[Published 4/4/90]

[For replacement pages for IAC, see IAC Supplement, 4/4/90.]

ARC 801A

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code chapters 100 and 101, the Iowa Department of Public Safety, State Fire Marshal Division, adopts amendments to Chapter 5, "Fire Marshal," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, December 13, 1989, as **ARC 510A**.

These adopted rules amend the flammable liquid rule requiring observation wells; strike 1950 from five-person RCF-MR rules according to 1989 Iowa Acts, chapter 269; add new definitions for level of exit discharge, story, first story and basement in schools; and provide additional exceptions to 661—5.655(2)"a" and "b" requiring windows in scheduled student occupied space except in school buildings with complete or approved automatic detection.

Changes from the Notice are as follows:

5.655(2)"a"—The word "scheduled" was added for clarification.

5.655(2)"b"—Exception No. 3: The term one-hour was stricken.

Both of these changes were the result of comments from the Muscatine School District and the Iowa Chapter of the American Institute of Architects received after the public hearing.

These rules are intended to implement Iowa Code chapters 100 and 101.

These rules will become effective May 9, 1990.

The following amendments are adopted:

ITEM 1. Rescind rule 661—5.313(101) and insert in lieu thereof the following:

661—5.313(101) Observation wells. Observation wells may be required on new and existing tanks when a high environmental risk exists or in the event of suspected

tank failure or leakage. When installed pursuant to this rule, observation wells shall meet the following requirements and shall be:

1. A minimum of 4 inches in diameter and adequately identified to avoid confusion with product fill openings.
2. Installed to a depth of 24 inches below the tank bottom or to the top of the concrete slab, if used for anchoring.
3. Installed with pipe section having 0.020-inch maximum slots with the slots extending to within approximately 12 inches of grade.
4. Capped and protected from traffic.

ITEM 2. Amend subrule **5.552(1)**"a" as follows:

a. Frame or ordinary construction not over two stories in height: Class 1A shall include 15 or fewer residents and shall be equipped with an approved automatic fire detection and alarm system. Class 2A shall include 16 or more residents and shall be equipped with an approved automatic sprinkler system. Class 3A shall include facilities licensed as residential care facilities for the mentally retarded (RCF-MR), housing not more than 5 persons in buildings ~~constructed after 1950 and shall be~~ equipped with automatic smoke detection on each floor including basements.

ITEM 3. Amend rule **661—5.651(100)** by removing the numbering from the definitions, placing them in alphabetical order, and adding the following new definitions:

First story. The lowest story in a building which qualifies as a story, as defined herein, except that a floor level in a building having only one floor level shall be classified as a first story, provided such floor level is not more than four feet below grade, as defined herein, for more than 50 percent of the total perimeter, or not more than eight feet below grade, as defined herein, at any point.

Level of exit discharge. The level or levels with direct access to grade which do not involve the use of stairs or ramps. The level with the fewest steps shall be the level of exit discharge when no level exists directly to grade. In the event of a dispute, the state fire marshal shall determine which level is the level of exit discharge.

Rescind the definition of "basement" and insert in lieu thereof the following:

Basement. A usable or unused floor space not meeting the definition of a story or first story.

Rescind the definition of "story" and insert in lieu thereof the following:

Story. That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused underfloor space is more than 6 feet above grade as defined herein for more than 50 percent of the total perimeter or is more than 12 feet above grade as defined herein at any point, such usable or unused underfloor space shall be considered as a story.

ITEM 4. Amend subrule 5.655(2) as follows:

5.655(2) Emergency rescue or ventilation.

a. In new construction, every *room or* space used for classroom or other educational purposes or ~~normally~~ subject to *normally scheduled* student occupancy shall have at least one outside window for emergency rescue or ventilation. Such window shall be openable from the inside without the use of tools and provide a clear opening of not less than 20 inches in width, 24 inches in height and 5.7 square feet in area. The bottom of the opening shall be not more than 44 inches above the floor.

Exception No. 1: Buildings protected throughout by an approved automatic sprinkler system.

Exception No. 2: Rooms or spaces that have a door leading directly to the outside of the building.

Exception No. 3: Fire resistive or noncombustible buildings protected throughout by a complete automatic fire detection system.

b. The requirements of 5.655(2)"a" shall be effective for all existing school buildings by July 1, 1993.

Exception No. 1: Existing awning or hopper type windows with a clear opening of 600 square inches may be continued in use.

Exception No. 2: Doors that allow travel between adjacent classrooms and, when used to travel from classroom to classroom, provide direct access to exits in both directions or direct access to an exit in one direction and to a separate smoke compartment that provides access to another exit in the other direction.

Exception No. 3: Buildings protected by an approved automatic fire detection system.

[Filed 3/16/90, effective 5/9/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 774A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Department of Transportation, on March 6, 1990, adopted 761—Chapter 121, "Adopt-a-Highway Program," Iowa Administrative Code.

A Notice of Intended Action for these rules was published in the January 24, 1990, Iowa Administrative Bulletin as **ARC 585A**.

These rules which describe the Adopt-a-Highway program, the activities included and the application procedure were prepared at the request of the Administrative Rules Review Committee.

These rules are identical to the ones published under Notice except that subrule 121.4(2) was amended in response to a concern of the Administrative Rules Review Committee.

These rules are intended to implement Iowa Code chapter 307.

These rules will become effective May 9, 1990.

Rule-making actions:

The following new chapter is adopted:

CHAPTER 121

ADOPT-A-HIGHWAY PROGRAM

761—121.1(307) Purpose. These rules describe the adopt-a-highway program and the procedure for applying to participate in the program.

761—121.2(307) Information and location. Information and application forms relating to the adopt-a-highway program may be obtained from the local resident maintenance engineer or: Office of Maintenance, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. Applications shall be submitted to the local resident maintenance engineer.

761—121.3(307) Program guidelines. All primary roads under the jurisdiction of the department shall be eligible for participation in the adopt-a-highway program except fully controlled access highways including interstate highways.

761—121.4(307) Sponsors.

121.4(1) Eligible sponsors. Communities, organizations and individuals are eligible to participate in the adopt-a-highway program.

121.4(2) Ineligible sponsors. The department shall not grant sponsorship of a highway section in the adopt-a-highway program if the sponsorship might be deemed a partisan endorsement by the state or have an adverse effect on the program.

761—121.5(307) Eligible activities.

121.5(1) The adopt-a-highway program allows individuals or groups to assume responsibility for performing one or more of the eligible activities for a specific segment of highway.

121.5(2) Eligible activities for sponsorship in the adopt-a-highway program include, but are not limited to: litter pickup, wildflower and prairie grass plantings, planting and harvesting seed for wildlife and reseeding operations, tree planting, landscaping and landscape maintenance, living snow fence plantings, and hand weeding of sensitive areas.

761—121.6(307) Procedure.

121.6(1) Application. Form 810105, "Application to Adopt-A-Highway," includes the agreements to be signed by the sponsor and the department and lists the responsibilities of both the sponsor and the department.

121.6(2) Selection. If more than one individual or group applies to adopt a specific highway segment, the department shall determine the sponsor.

121.6(3) Termination. If the department determines that a sponsor is not fulfilling the terms and conditions of the agreement, the department may terminate the sponsorship.

These rules are intended to implement Iowa Code section 307.24.

[Filed 3/13/90, effective 5/9/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 768A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Department of Transportation, on March 6, 1990, adopted 761—Chapter 143, "Traffic Signal Synchronization," Iowa Administrative Code.

A Notice of Intended Action for these rules was published in the January 24, 1990, Iowa Administrative Bulletin as **ARC 582A**.

These rules implement Iowa Code Supplement section 364.24, which requires the Department to adopt rules by July 1, 1990, regarding traffic signal synchronization. The rules affect cities with more than three traffic signals within the corporate limits.

These rules are identical to the ones published under Notice except as follows:

The following modifications to the Noticed rules were made as a result of public comment received and were presented to the Administrative Rules Review Committee at its February 12, 1990, meeting:

In rule 143.1(364), the following definitions were modified for clarity: "pedestrian-actuated operation," "traffic signal," and "computerized system." The original intent of these definitions has not changed.

Subrule 143.3(2) was modified to more fully explain what "pedestrian-actuated" means for inventory purposes.

Rules 143.5(364) and 143.6(364) as they appeared under Notice were combined into one rule and rewritten. The revised language reduces paperwork requirements.

In addition, the text of subrule 143.4(2) was deleted as a result of comments received at the March 6, 1990, public hearing. This subrule dealt with required actuated controllers at isolated intersections. It was pointed out that current traffic engineering data regarding this issue is inconclusive and that further study is being undertaken at the national level.

These rules will become effective May 9, 1990.

The following rules are adopted:

CHAPTER 143

TRAFFIC SIGNAL SYNCHRONIZATION

761—143.1(364) Definitions. The following definitions apply to these rules:

"Arterial street" means any U.S. or state numbered route, controlled access highway, or other major street or highway designated by the city within its respective jurisdiction as a part of a major arterial system of streets or highways.

"Controller" means a supervisory device that controls the sequence and duration of indications displayed by traffic signals. Types of controllers:

1. "Actuated controller" means a controller for supervising the operation of traffic signals in accordance with the varying demands of traffic as registered with the controller by detectors or push buttons. Types of actuated controller operations:

- "Full-actuated operation" means traffic demands are registered with the controller by detectors placed on all approaches to the intersection.
- "Pedestrian-actuated operation" means pedestrian timings or phases may be added to or included in the cycle by actuation of pedestrian detectors (push buttons).
- "Semiactuated operation" means traffic demands are registered with the controller by detectors placed on one or more, but not all, approaches to the intersection.
- "Volume-density operation" means full-actuated operation with the ability to reduce the right-of-way time assigned to each vehicle on the basis of the waiting time of opposing vehicles (gap reduction).

2. "Pretimed controller" means a controller for supervising the operation of traffic signals that uses

preset, fixed cycle lengths; all preset phases are displayed during each cycle.

"Coordination" means the establishment of a definite timing relationship between adjacent traffic signals.

"Cycle" means any complete sequence of traffic signal indications (phases).

"Cycle length" means the time required for one complete cycle.

"Detector" means a device that senses vehicular or pedestrian demand and transmits an impulse to a controller.

"Isolated intersection" means a signalized intersection with a controller whose operation is unaffected by any other controller or supervisory device.

"Local controller" means a controller supervising the operation of traffic signals at a single or two closely spaced intersections.

"Master controller" means a controller supervising the operation of several local controllers.

"Phase" means a portion of the cycle during which an assignment of right-of-way is made to a traffic movement or combination of traffic movements.

"Traffic signal" means any permanently installed, electrically powered traffic control device by which traffic is alternately directed to stop and to proceed.

"Traffic signal system" means two or more traffic signals operating in a coordinated manner. Types of coordinated systems:

1. "Computerized system" means a system in which controllers are supervised by a computer.

2. "Interconnected master-controlled system" means a system in which local controllers are supervised by a master controller through a communications link (wire/radio). The master establishes a base line condition; the local then operates its intersection in a predetermined relationship with the base line.

3. "Noninterconnected system" means a system in which timing relationships between individual local controllers are coordinated by manual settings, without physical interconnection between the controllers.

4. "Time-based coordinated system" means a noninterconnected system in which the local controllers use a very accurate programmable digital timing and control device (time-based coordinator) to maintain coordination.

5. "Traffic responsive system" means a system in which a master controller specifies cycle timings based on the real time demands of traffic as sensed by vehicle detectors.

761—143.2(364) Applicability. This chapter applies to all cities with more than three traffic signals within the corporate limits.

761—143.3(364) Traffic signal inventory. By July 1, 1991, the cities to which this chapter applies shall submit the following to the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010:

143.3(1) A map or listing indicating the location of each traffic signal installation within the corporate limits.

143.3(2) Information about the type of controller operation at each location: full-actuated, pedestrian-actuated, semiactuated, volume-density, or pretimed. For inventory purposes, "pedestrian-actuated" includes only those signals installed to accommodate pedestrians at school or pedestrian crossings.

143.3(3) A listing of locations included in each traffic signal system or subsystem and the classification of the system: computerized, interconnected master-controlled, noninterconnected, time-based coordinated, traffic responsive or, if none of the preceding apply, a description of the classification being used.

761—143.4(364) Required synchronization.

143.4(1) Unless a traffic engineering study documents that it is not practical, traffic signals within one-half mile of each other along an arterial street or in a network of intersecting arterial streets shall be operated in coordination; preferably in a computerized, interconnected master-controlled, time-based coordinated, or traffic responsive system.

143.4(2) Reserved.

143.4(3) Timing and operational plans developed for traffic signals shall be developed by application of traffic engineering principles to provide maximum traffic flow efficiencies and safety.

143.4(4) All traffic signal installations and operations shall meet the requirements of the "Manual on Uniform Traffic Control Devices for Streets and Highways," as adopted in 761—Chapter 130, Iowa Administrative Code.

761—143.5(364) Reporting requirements.

143.5(1) Cities. By July 1, 1992, each city to which this chapter applies shall furnish to the office of local systems, at the address listed in rule 143.3(364), an affidavit certifying one of the following:

a. The city is in compliance with the requirements of this chapter and Iowa Code Supplement section 364.24.

b. The city has adopted a program to achieve compliance with the requirements of this chapter and Iowa Code Supplement section 364.24.

143.5(2) Department. By September 1, 1992, the department shall report to the governor and the general assembly those cities that have submitted affidavits and the types of certifications made.

This chapter is intended to implement Iowa Code Supplement section 364.24.

[Filed 3/12/90, effective 5/9/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 788A

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 476.1, 476.2, and 17A.4, the Utilities Board (Board) gives notice that on March 15, 1990, the Board issued an order in Docket No. RMU-89-29, In Re: Lowest Rate Quotes — Telephone, "Order Adopting Rules."

On November 22, 1989, the Board issued an order in this docket commencing the rule making to consider the amendment of Iowa Administrative Code 199—subrule 22.4(1) relating to information which must be furnished by a telephone utility to a customer.

Subparagraph 22.4(1)"a"(2) was recently amended in Docket No. RMU-89-8. The intent of the amendment in that docket was to require telephone companies to provide certain cost information whenever a customer or prospective customer requests transmission service. However, the Administrative Rules Review Committee pointed out that the language used was ambiguous and could be read contrary to the intent of the amendment. The amendment to 22.4(1)"a"(2) adopted in this rule making corrects the ambiguity.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on December 13, 1989, as **ARC 515A.**

No comments were filed with respect to this amendment; therefore, the Board adopts the amendment as proposed.

The amendment will become effective May 9, 1990.

The following amendment is adopted:

Amend subrule **22.4(1)**, paragraph "a," subparagraph (2), as follows:

(2) ~~Upon the request of~~ *Whenever* a residential customer or prospective residential customer *requests* ~~for~~ transmission service, the local exchange utility shall ask the residential customer or prospective residential customer if the customer desires to be informed of the lowest-priced service alternatives available and upon an affirmative response shall inform that customer of the lowest-priced single and multiparty service alternative available at the relevant location.

[Filed 3/16/90, effective 5/9/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

ARC 787A

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4(1) and 476.2, the Iowa State Utilities Board (Board) gives notice that on March 15, 1990, the Board issued an order in Docket No. RMU-89-25, In Re: Filing of Annual Reports, "Order Adopting Rules."

On November 8, 1989, the Board issued an order in this docket commencing a rule making to consider the adoption of amendments to Iowa Administrative Code 199—subrule 23.1(2). The Board initiated this rule making to allow comment regarding a rule proposed by Iowa Public Service Company. Iowa Public Service Company proposed to change the filing date for annual reports to the Board from gas and electric utilities from April 1 to April 30 of each year. Iowa Public Service Company reasoned that the additional time would allow companies to better coordinate the demands placed on their accounting personnel due to the multitude of annual filings that must be compiled and also would allow better coordination of annual report preparation with the preparation of annual reports to the Federal Energy Regulatory Commission. At the same time, the Board proposed the option of allowing all utilities affected by subrule 23.1(2) to file annual reports on April 30, rather than April 1, of each year.

The proposed rule making was published in the Iowa Administrative Bulletin on November 29, 1989, as **ARC 461A.** In order to allow for public comment on the proposed amendments, a deadline of December 19, 1989, was set for written comments.

There were fifteen commenters, including the Consumer Advocate Division of the Department of Justice (Consumer Advocate), the Iowa Association of Municipal Utilities, the Iowa Telephone Association, four telephone utilities, two electric utilities, two gas utilities, and four gas and electric combination utilities. All the commenters, except the Consumer Advocate, favored extending the time for filing annual reports. According to the Board's records, however, during the past five years only telephone utilities have made numerous requests for extension of time to file annual reports. Many of these requests concerned the Board's adoption of the new Federal Communications Commission Uniform System of Accounts or the extensive revisions which have been made to the Board's annual report form. In the last five years, the only other rate-regulated utility requesting an extension of time to file its annual report has been Iowa Public Service Company. The Board will not extend the filing date for annual reports. In Iowa Code section 476.33(4), the Legislature has recognized that when the Board engages in rate regulatory proceedings under chapter 476, the Board should examine the most current data available. Delay in receiving annual reports would require the use of less current data. Utilities requiring more time to file annual reports may continue to apply to the Board individually.

Iowa-Illinois Gas and Electric Company expressed concern about the language in the proposed amendments regarding the filing of annual reports in the case of merger or sale of a company. The amendments do not change the meaning of the rule, but merely reword it. The Board has added language to the amended rule to clarify that each utility involved in a merger or sale of plant must file a report within 90 days after the transaction. The report must cover operations from the beginning of the calendar year to the date of the merger or sale.

Having considered all the comments, the Board will adopt the amendments as revised. The adopted amendments will become effective May 9, 1990, pursuant to Iowa Code section 17A.5.

The following amendments are adopted:

Amend subrule 23.1(2) to read as follows:

23.1(2) ~~In order that the board may keep informed regarding the manner and method in which a utility business is conducted, and in order to obtain information on which to apportion the costs of operation of the bureau of rate and safety evaluation of the board as prescribed by chapter 476, all public utilities coming under the provision of chapter 476, shall file with this board, annual reports as hereinafter described in these rules, on or before April 1 of each year covering their operations during the immediately preceding calendar year.~~ *Each public utility subject to Iowa Code chapter 476 shall file with this board, on or before April 1 of each year, an*

annual report as described in these rules and covering operations during the immediately preceding calendar year. Pursuant to chapter 476, this information will be used to apportion the costs of the utilities division. ~~In the event that a utility has ceased operations~~ *If a utility ceases operations* through merger or sale of its plant during the calendar year, ~~each of the involved utilities shall be responsible for filing an annual report with the board which reflects the operations of the properties which were subject to such sale or merger. The annual report covering the portion of the calendar year operations to the date of sale or merger shall be filed with the board within ninety (90) days after such transaction.~~ *each utility involved in the transaction shall separately file, within 90 days after the merger or sale, an annual report covering the portion of the calendar year operations to the date of sale or merger.*

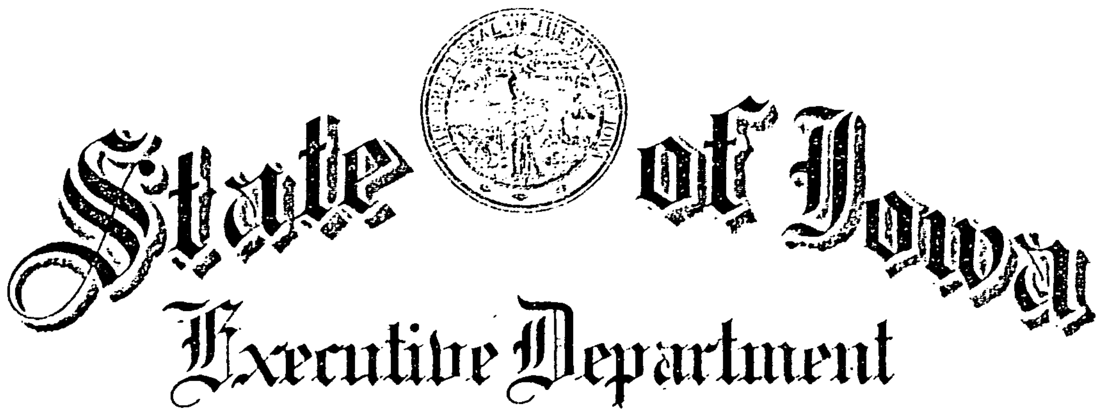
[Filed 3/16/90, effective 5/9/90]
[Published 4/4/90]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/4/90.

EFFECTIVE DATE DELAY

[Pursuant to §17A.4(5)]

AGENCY	RULE	EFFECTIVE DATE DELAY
Human Services Department[441]	76.6(2), 78.3(12)"c," 79.10(5), 79.11(6), ch 88 preamble, 88.1 "8," 88.3(1)"b," 88.4(4)"b," 88.21 "8," 88.24(4)"b," 88.41 to 88.51 (IAB 2/7/90, **ARC 632A**)	Effective date of April 1, 1990, delayed seventy days by the Administrative Rules Review Committee at its March 21, 1990, meeting.



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION OF DISASTER EMERGENCY

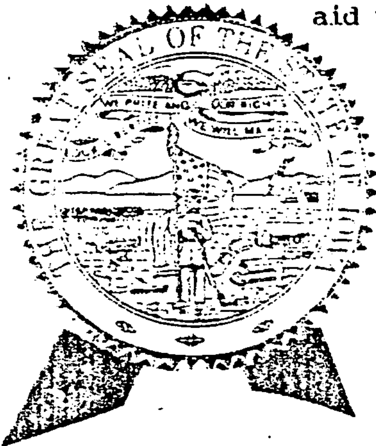
WHEREAS, on Tuesday, March 13th, 1990, a severe storm system moved across east central Iowa generating strong winds, heavy rains and a tornado; and

WHEREAS, this storm system spawned an intense tornado and/or straight winds which caused extensive destruction and damage to residences and private property in and near Worthington, located in Dubuque County; and

WHEREAS, based upon reports and after an on-site damage assessment survey forwarded by state and local officials; and

WHEREAS, the results of this information and survey indicates a need exists by the local government for State aid to assist with response and recovery phases as requested to facilitate public safety; and

NOW THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby proclaim Dubuque County, for the aforementioned reason, a state of disaster emergency. This proclamation of Disaster Emergency authorizes local and state government to render good and sufficient aid to assist this area in its time of need.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 16th day of March in the year of our Lord one thousand nine hundred ninety.

Attest:

SECRETARY OF STATE

GOVERNOR

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA

FILED MARCH 21, 1990

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. 89-63. STATE v. KIRCHOFF.
Appeal from the Iowa District Court for Polk County, Thomas A. Renda, District Associate Judge. **AFFIRMED.** Considered en banc. Opinion by McGiverin, C.J. Dissent by Neuman, J. (18 pages $7.20)

Timothy Kirchoff was charged by trial information with the offense of carrying weapons, and the offense of operating a motor vehicle while intoxicated (OWI), second offense. Kirchoff completed and signed a separate written "petition to plead guilty" to each charge. Kirchoff later appeared before the district court to enter his pleas. The proceeding was a joint one, in which Kirchoff appeared simultaneously with three other defendants. The district court addressed the defendants collectively at times but did address Kirchoff individually concerning the factual basis for his pleas, and at these points the transcript attributes responses to Kirchoff individually. The court accepted Kirchoff's guilty pleas. No motion in arrest of judgment was ever filed by Kirchoff. He appealed. OPINION HOLDS: I. Kirchoff's failure to challenge the plea proceeding by a motion in arrest of judgment does not preclude his challenge of the plea proceeding on appeal. This is because the district court did not adequately explain to Kirchoff the consequences of failing to file a motion in arrest of judgment under Iowa Rule of Criminal Procedure 23(3)(a). II. Kirchoff contends that his pleas of guilty must be set aside because the court failed to inform him of the matters enumerated in Iowa Rule of Criminal Procedure 8(2)(b), in the manner prescribed by that rule. Our opinion in State v. Fluhr, 287 N.W.2d 857 (Iowa 1980), suggests that enumeration of those matters in a written plea form can under no circumstances satisfy the rule. We now reconsider the position taken in Fluhr and find that rule 8(2)(b) should not be so woodenly construed. We conclude that when Kirchoff's petitions to plead guilty were introduced into the plea proceeding by direct reference and affirmed and acknowledged by Kirchoff

No. 89-63. STATE v. KIRCHOFF (continued).
in open court, substantial compliance with rule 8(2)(b) was achieved. III. During the oral plea proceeding, a better record would have been made if each defendant had been required to respond individually to the court's questions. We recommend that procedure be used whenever guilty pleas are taken at a joint proceeding. However, the procedure used in the present case does not invalidate Kirchoff's plea. IV. The sentencing court properly exercised its discretion and stated on the record its reason for selecting the particular sentence imposed. Because Kirchoff's appeal was timely and properly filed, any error in advising him of the necessity of timely and proper filing was harmless. DISSENT ASSERTS: I respectfully dissent because the language of Iowa Rule of Criminal Procedure 8(2)(b) compels a contrary result.

No. 89-473. **McNARY v. KIOWA CORP.**
Appeal from the Iowa District Court for Marshall County, Carl D. Baker, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Neuman, JJ. Per curiam. (5 pages $2.00)

Plaintiff was employed by Kiowa Corporation as a machine operator. She developed right carpal tunnel syndrome and ganglion dorsum of the right wrist. In addition to her physical problems plaintiff had a history of depression. Shortly after being diagnosed as having extreme or neurotic depression plaintiff gave Kiowa her notice to quit. The employment appeal board denied unemployment benefits and the district court reluctantly affirmed. Plaintiff appealed. OPINION HOLDS: I. On de novo review we might reach a conclusion opposite to that of the board. There was however sufficient evidence to support the board's factual findings that plaintiff's disability was neither caused nor aggravated by her employment. The district court correctly observed that the decision of the appeal board was supported by substantial evidence. II. Appellee's brief in this case is not printed on both sides of the paper. Appellee's counsel is required to refile, at their own expense, their appellate brief in proper form.

NO. 89-329. PETERSON v. POLK COUNTY TREASURER.
Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Carter, J. Special Concurrence by Schultz, J. (7 pages $2.80)

Plaintiff, Joan L. Peterson, appeals from an adverse judgment in an action seeking to force removal of a lien noted on the certificate of title for an automobile which she owned jointly with her husband, Lee Peterson. This purported lien arose from an execution which had been issued for purposes of satisfying a judgment against Lee Peterson. **OPINION HOLDS:** Plaintiff does not challenge the validity of 761 Iowa Administrative Code 400.11, which provides that "a sheriff's levy may be noted as a security interest on a certificate of title if the sheriff so desires." Rather, she asserts that, as a condition for notation of a lien under that administrative regulation, there must first be a valid levy of execution against the motor vehicle. Plaintiff contends that, in the present case, the sheriff failed to follow certain statutory procedures required for a valid levy. Plaintiff is correct in asserting that in the present case no valid levy was completed on the 1984 Ford automobile. The record reflects that the levying officer made no effort to comply with the procedures for a valid levy under Iowa Rule of Civil Procedure 260(a) or (b). The sheriff merely sent a notice of the outstanding execution to the county treasurer with the request that the latter officer cause a lien to be noted on the certificate of title. Until the steps required under rule 260(a) or (b) have been taken, there is no lien for any purpose. Because there was no valid levy on the automobile owned by plaintiff and her husband, the notation of a levy on the certificate of title should be voided as requested in plaintiff's action. **SPECIAL CONCURRENCE ASSERTS:** On appeal, plaintiff urges that there is no authority for noting a judgment lien as a security interest in a motor vehicle. I believe that the majority's failure to discuss this issue by inference approves this practice of using 760 Iowa Administrative Code 400.11 to note judgment liens on certificates of title and suggests that sheriffs can continue to do so incorrectly as long as they comply with the procedures for a valid levy under Iowa Rule of Civil Procedure 260(a) or (b). I would hold that this rule cannot be utilized on a judgment lien unless it involves a security transaction. When the sheriff garnishes the treasurer, section 321.50 does not provide the treasurer with authority to note a security interest on a title co-owned by a judgment debtor. Consequently, to be consistent with section 321.50, rule 400.11 must only apply when the sheriff's levy involves a judgment growing out of the enforcement of a security interest. I therefore only concur in the result arrived at by the majority.

NO. 89-798. HOLLINRAKE v. IOWA LAW ENFORCEMENT ACADEMY.
Appeal from the Iowa District Court for Monroe County, Richard J. Vogel, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Neuman, JJ. Opinion by Larson, J. (14 pages $5.60)

Edward J. Hollinrake was denied certification as a peace officer by the Iowa Law Enforcement Academy (academy) because his eyesight did not meet its minimum standards. In making this determination, the academy interpreted 501 Iowa Administrative Code 2.1(9) to require 20/20 corrected vision in each eye. Hollinrake challenged the agency action by seeking judicial review. The district court dismissed his petition, and he appealed. **OPINION HOLDS:** I. Hollinrake argues that, for purposes of the judicial review proceeding, the facts set out in his petition must be presumed to be true. Under our view of this case, even if we accept Hollinrake's argument on this procedural matter, it would make no difference in the outcome. Hollinrake's claims that the academy's action was unreasonable, arbitrary, or capricious and in violation of our civil rights statute, are rejected on the merits. II. Hollinrake argues that the academy's interpretation that each eye must be corrected to 20/20 is erroneous. Vision of 20/20 in each eye is a rational requirement because of a need for proper depth perception and reserve vision in the event of injury to one eye in the performance of the officer's duty. We conclude that the academy's interpretation of the rule should be sustained. III. Hollinrake's certification was denied without a hearing, and he contends this was error. In this case, there are no disputed adjudicative facts. Under the circumstances of this case, Hollinrake was not entitled to a hearing on either constitutional or statutory grounds. IV. Hollinrake contends that, while Iowa Code section 80B.11(4) gives the academy the authority to set minimum standards of physical fitness, that authority was administered in an unreasonable, arbitrary, or capricious manner. Reliance on rules, rather than on individualized determinations, is not unreasonable, arbitrary, or capricious. V. Hollinrake argues that, under Iowa Code section 601A.6(1), it is unlawful to discriminate against a disabled person if he is qualified. In the present case, it is clear that Hollinrake does not fit into a category that can be be defined as "disabled." We do not believe the action of the academy in this case violated the terms of chapter 601A.

NO. 88-1444. STATE v. TAYLOR.

Appeal from the Iowa District Court for Polk County, Harry Perkins, Judge. **AFFIRMED.** Considered en banc. Opinion by Larson, J. Dissent by Andreasen, J.

(14 pages $5.60)

Anthony Dawayne Taylor was convicted, in a jury-waived trial, of voluntary manslaughter in the death of the eight-month-old child of Taylor's fiancee. The district court found that the State has established by evidence beyond a reasonable doubt that defendant had "grabbed" the child victim by the arms and shaken him back and forth violently, resulting in the destruction of blood vessels surrounding his brain. The court then determined that the defendant was guilty of the crime of voluntary manslaughter, not murder, because the killing did not involve malice aforethought due to defendant's emotional state. Defendant appealed. **OPINION HOLDS:** I. Taylor's argument that malice aforethought is an element of voluntary manslaughter must be rejected on the basis of the clear wording of Iowa Code section 707.4, which provides that, when a crime would otherwise be murder, provocation will reduce it to voluntary manslaughter. Thus, malice is the only ingredient of murder not found in voluntary manslaughter. II. Taylor's second argument is that provocation is an "element" of voluntary manslaughter and that it was not established here. He argues that, as a matter of law, an eight-month-old child is incapable of such provocation. We agree with Taylor that the court erred in finding provocation. We do not agree, however, that the error was reversible. In the present case, there was adequate evidence to find second-degree murder, and the court applied the provocation principles in a case in which it was not applicable. The district court's erroneous finding of provocation merely gave Taylor a break to which he was not entitled. Taylor should not be allowed to complain of the court's error. Accordingly, we affirm. **DISSENT ASSERTS:** The trial court erred in two respects. First, the court failed to recognize that adequate provocation is an element of the offense of voluntary manslaughter. Second, the court failed to recognize that it cannot consider a statutorily included offense where there is no factual basis for doing so. The majority, after recognizing the district court had erred, finds the error was not reversible. I am unwilling to assume the trial court would have found Taylor guilty of murder had the court correctly applied the law of voluntary manslaughter. I would reverse the voluntary manslaughter conviction and remand to the district court in order that the district court may proceed under Iowa Rule of Criminal Procedure 23(2)(c) as to the lesser-included offense of involuntary manslaughter.

NO. 88-1283/89-432. ICKOWITZ v. IOWA DISTRICT COURT.

On review from the Iowa Court of Appeals (No. 88-1283). Certiorari to the Iowa District Court for Polk County, Theodore H. Miller (No. 88-1283) and Dick Strickler (No. 89-432), Judges. **DECISION OF COURT OF APPEALS VACATED; WRITS SUSTAINED IN PART AND ANNULLED IN PART.** Considered en banc. Opinion by Carter, J. Special Concurrence by Lavorato, J. (15 pages $6.00)

This case concerns two contempt proceedings against Maurice Ickowitz based on alleged failure to pay court-ordered child support and to meet child health care provisions imposed on him in a dissolution decree. **OPINION HOLDS:** I. In the first proceeding, we conclude that the defendant judge acted properly when he ordered contemner's imprisonment. In the absence of changed circumstances not within the court's contemplation at the time of the original punishment order, a court which has found that imprisonment is a proper sanction for past acts of contempt may withhold commitment conditioned on total and unwavering compliance with prescribed conditions. A commitment so withheld may later be imposed for failure to meet those conditions. Where, as in the present case, the time period for performing the conditions is so short as to negate any suggestion that the contemner's ability to perform has changed from the time of the original order, a reexamination of ability to perform is not a condition for imprisonment. II. Conditions of imprisonment in prior punishment orders may only be altered in a manner which is favorable to the imprisoned party. Consequently, the district court erred by removing a previously stated condition for releasing contemner at any time that all delinquent child support and subsequently accruing child support were paid in full. We hold that contemner's imprisonment in No. 88-1283 should remain subject to his being released at any time upon compliance with the conditions for release established in the initial imprisonment order. With respect to the alterations which change the consecutive thirty-day period of confinement to ten, three-day weekend confinements, that alteration, being favorable to the contemner, would ordinarily be sustainable. But, because we have determined that the contemner's confinement in No. 88-1283 is to be concurrent with the period of confinement imposed in No. 89-432, it is more expedient to reinstate the provision for confinement for thirty consecutive days contained in the September 1 order. III. In the second matter, the evidence established beyond a reasonable doubt the contemner's willful violation of the dissolution decree. IV. The requirements of Iowa Rule of Criminal Procedure 22(3)(d) in regard to stating the reasons for

NOS. 88-1283/89-432. ICKOWITZ (continued).
imposing a particular punishment do not apply to contempt punishments. Those requirements apply only to indictable offenses commenced by indictment or a prosecutor's trial information. V. The district court did not abuse its discretion by imposing consecutive thirty-day terms for the three violations of the dissolution decree which were found to have taken place. However, we believe that there may well have been only one violation of the decree with respect to the children's medical expenses rather than two. Consequently, we sustain the writ only to the extent that we direct the period of confinement in No. 89-432 be reduced from ninety to sixty days. **SPECIAL CONCURRENCE ASSERTS:** I specially concur with division I. I believe due process only requires a hearing to determine whether a contemner failed to pay the amount specified in the original contempt order that allowed purging. Due process does not require a reexamination of the contemner's ability to pay at the time of commitment.

NO. 88-1292. HUNT v. FS GRAIN AND FEED, LTD.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Ringgold County, Dale B. Hagen, Judge. **COURT OF APPEALS DECISION VACATED; ORDER OF DISTRICT COURT AFFIRMED; CASE REMANDED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Neuman, JJ. Per curiam. (3 pages $1.20)

The sole issue in this interlocutory appeal is whether attorney Arlen Hughes should be disqualified from representing the defendant in a pending district court case, FS Grain and Feed, Ltd. (FS), based on Hughes' prior dealings with the plaintiff's decedent. The plaintiff claims those prior dealings result in a conflict of interest. However, the district court concluded otherwise. **OPINION HOLDS:** We find no abuse of discretion in the district court's ruling. The plaintiff has failed to show a substantial relationship between any of the prior matters and the present litigation. We remand for further proceedings.

NO. 89-878. LEWIS v. ST. PAUL FIRE & MARINE INS. CO.

Appeal from the Iowa District Court for Polk County, Rod Ryan, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Neuman, JJ. Opinion by Carter, J. (9 pages $3.60)

The plaintiff who recovered judgment against a lawyer in a legal malpractice action. The plaintiff later brought this action against an insurance company which allegedly covered the lawyer's malpractice liability on a "claims made" basis. The district court determined that the insurance company had not provided coverage for the plaintiff's claim. The plaintiff has appealed. **OPINION HOLDS:** I. The parties agree that the policy in question is a "claims made" policy as opposed to an "occurrence" policy. The determinative policy coverage issue in cases of this type is not whether a particular claim is asserted against the insured during the policy period, but rather whether the claim was asserted against the insured prior to the effective date of the coverage at issue. Under a claims-made policy, coverage is effective if an assertion of potential liability for the negligent or omitted act is first communicated to insured during the policy term. Attorney Crawford (defendant in the legal malpractice action) was made aware of the potential claim long before the present policy went into effect, specifically, with the letters to him dated in 1983. The district court was correct in concluding that, under the circumstances of this case, the defendant's policy does not cover the act on which plaintiff's liability claim was predicated. II. Plaintiff also contends that the loss resulting from Crawford's actions in allowing the workers' compensation case to be dismissed did not arise until the decision of the industrial commissioner finally determined that the claim could not be reinstated. If plaintiff's review-reopening petition filed on October 3, 1977, was meritorious, it should have been pursued to a successful conclusion long before July 1, 1986, the date on which the industrial commissioner finally determined that the claim could not be reinstated. Thus, it is apparent that plaintiff suffered some injury prior to that time. Because the industrial commissioner ultimately concluded that jurisdiction to reinstate the claim ended on February 24, 1982, plaintiff's claim matured by all accounts no later than that date.

No. 88-1490. STATE v. BEAR.

Appeal from the Iowa District Court for Tama County, Lynne E. Brady, Judge. **AFFIRMED.** Considered by Harris, P.J., and Schultz, Lavorato, Snell and Andreasen, JJ. Opinion by Andreasen, J. (11 pages $4.40)

Archie Bear and Anna Bear are the parents of Barry Bear. They are native Americans, members of the Sac and Fox Tribe of Mississippi in Iowa, and residents of the Tama Indian Reservation. Anna and Archie were each charged with three counts of violating Iowa's compulsory school attendance laws, Iowa Code section 299.1 and 299.6 (1987), by failing to cause Barry to attend school during the 1987-88 school year. Anna Bear was also charged with the crime of harassment, in violation of Iowa Code section 708.7, as a result of a telephone call she made to a sheriff's radio operator regarding the compulsory school attendance charges. A magistrate convicted the Bears on all charges. The district court overturned the compulsory school attendance convictions but affirmed Anna Bear's harassment conviction. Anna Bear filed an application for discretionary review to challenge her harassment conviction. The State filed an application for discretionary review to challenge the reversal of the compulsory school attendance convictions. OPINION HOLDS: The courts of Iowa lack subject matter jurisdiction over violations of Iowa's compulsory school attendance law committed on an Indian reservation. The federal government, by statute, has reserved exclusive jurisdiction over school attendance by native American children on reservations. Due to the federal government's exclusive jurisdiction, the State may not exercise concurrent jurisdiction on that subject. II. The federal government has not, however, reserved exclusive jurisdiction over the crime of harassment on reservations. The application of Iowa's harassment statute in this case does not interfere with tribal self-government or impair a right granted or reserved by federal law. The Iowa courts have subject matter jurisdiction over the charge of harassment filed against Anna Bear. III. Anna Bear failed to meet her burden to prove that the magistrate who convicted her of harassment was not impartial.

No. 89-22. IN RE ESTATE OF RUHLAND.

Appeal from the Iowa District Court for Plymouth County, Terry L. Huitink, Judge. **AFFIRMED.** Considered by Harris, P.J., and Schultz, Lavorato, Snell, and Andreasen, JJ. Opinion by Snell, J. (14 pages $5.60)

John and Elizabeth M. Ruhland executed a joint will. John's wife Elizabeth was devised a life estate in the parties' farm. The will then provided that the remainder interests in the farm be devised to their son, Francis Ruhland, providing he pay their daughter, Elizabeth Meylor, $9000 within two years after the death of Elizabeth Ruhland. If the $9000 is not paid, the property would go to Elizabeth Meylor outright. John Ruhland died in 1959; his son Francis died in 1971. John's wife, Elizabeth Ruhland, died in 1986. The heirs of Francis L. Ruhland tendered the sum of $9000 to Elizabeth Meylor after the death of Elizabeth Ruhland. Elizabeth Meylor claimed that this tender was ineffective since Francis died before his mother. The trial court disagreed and held that the remainder interest to Francis was a vested remainder subject to complete divestment only if the $9000 was not paid. Elizabeth Meylor has appealed. OPINION HOLDS: We believe that viewing the language used in the entire will in light of our authorities cited leads to the conclusion that the survivorship of Francis was not intended. Accordingly, we hold that the joint will provisions concerning the farm created a vested remainder in Francis L. Ruhland subject to divestment in the event $9000 is not paid to Elizabeth M. Meylor.

No. 89-701. STATE v. DALLEN.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Schultz, Lavorato, Snell and Andreasen, JJ. Opinion by Andreasen, J. (5 pages $2.00)

Steven Louis Dallen was charged with the crime of going armed with a dangerous weapon with intent to use without justification such weapon against the person of another, in violation of Iowa Code section 708.8 (1987). The "weapon" used was a .177-caliber CO_2 revolver capable of firing either pellets or BB's. A jury found Dallen guilty of the crime charged. However, prior to sentencing the district court granted Dallen's motion in arrest of judgment because it found insufficient evidence was presented to permit the jury to find the BB gun was a dangerous weapon. The State appeals from the district court order. OPINION HOLDS: We conclude the evidence would permit the jury to find the BB gun used here was a dangerous weapon as defined in Iowa Code section 702.7. A motion in arrest of judgment may not be used to challenge the sufficiency of evidence.

No. 89-1225. **COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT v. BAUDINO.**

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered en banc. Opinion by Snell, J. Special concurrence by Harris, J. Dissent by Schultz, J. (25 pages $10.00)

Robert J. Baudino appeals the recommendation of the Grievance Commission that his license to practice law be suspended for six months. After a full hearing at which Baudino was represented by counsel, the commission found a failure to timely file his federal and Iowa income tax returns for 1984, 1985 and 1986. The commission also found Baudino falsely certified that he had filed these returns on the client security questionnaire and thereby violated DR 1-102(A)(1) and (4). OPINION HOLDS: Members of this bar have been given notice for years to file tax returns on time, a matter of professional duty, or be subject to disciplinary action. This is neither unfair nor vague. The remedy in this area lies not with better direction from this court but in attention to the rules before rather than after the fact. We suspend respondent's license to practice law indefinitely with no possibility for a reinstatement for six months. Costs are assessed to respondent pursuant to court rule 118.22. SPECIAL CONCURRENCE ASSERTS: It is conceded that the respondent swore to false answers when certifying he had filed income tax returns he had not. This fact reflects adversely on the respondent, and this reflection is not affected by how one views the appropriateness of the falsely-answered questions. Could we seriously suppose that a lawyer who would falsely swear to a statement to a commission of this court would be any less likely to tell a "white" lie to his client or to another attorney? It is disappointing that even an extremely small number of lawyers continue to fail to comply with our tax laws and are willing to falsely certify they have complied. But to abandon our policy at this time would adversely affect public confidence in our determination to police the profession. DISSENT ASSERTS: I cannot agree that the imposition of a six-month suspension is in line with the reasoning behind the imposition of the penalty. The preeminent issue is whether respondent's conduct was so improper that it casts doubts on his fitness to practice law. The majority is merely following a long line of cases without stopping to consider the individual respondent's conduct to determine whether the sanction is required. If his filing difficulties do not involve the evasion or avoidance of his tax liability and do not affect his ability to handle his legal business, I question whether this affects his fitness to practice law to the point where we should suspend his license. We should fashion a lesser and more innovative sanction that would protect the public while serving as a deterrent to lawyers as well as not devastating the respondent financially.

No. 88-1470. SERAJI v. PERKET.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Johnson County, Thomas M. Horan, Judge. **DECISION OF COURT OF APPEALS AFFIRMED; DISTRICT COURT JUDGMENT REVERSED AND REMANDED.** Considered by Harris, P.J., and Schultz, Lavorato, Snell, and Andreasen, JJ. Opinion by Snell, J. (9 pages $3.60)

The plaintiffs were injured when their car was hit by a truck. The plaintiffs sued the owner of the truck, Lenertz, Inc., and also the Lenertz employee who was driving the truck, Michael Perket. The plaintiffs recovered compensatory damages, not involved in this appeal, from both defendants. The jury also awarded punitive damages against defendant Lenertz on a theory that Lenertz had acted recklessly in hiring and retaining a driver with Perket's poor driving record. However, the jury declined to award any punitive damages against defendant Perket. Lenertz has appealed from the adverse judgment, challenging only the award of punitive damages. OPINION HOLDS: I. There was no error in instructing the jury that punitive damages could be awarded against Lenertz even though they were not awarded against Perket. An employer should not be insulated from punitive damages when he or she has acted with legal malice, while the act of the employee which gave rise to the tort claim was merely negligent. Punitive damages may be assessed against an employer because of the employer's own recklessness in hiring an unfit employee, if an act by that employee results in damages to a third party. II. However, the award of punitive damages against Lenertz was not supported by substantial evidence. The evidence adduced by the plaintiffs shows that Lenertz was at most negligent in hiring and retaining Perket. Its conduct does not show the type of reckless disregard for the safety of others that justifies punitive damages.

No. 89-20. LaFLEUR V. LaFLEUR.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge. **REVERSED AND REMANDED WITH DIRECTIONS.** Considered by Harris, P.J., Schultz, Lavorato, Snell, and Andreasen, JJ. Opinion by Lavorato, J.

(12 pages $4.80)

The plaintiff was injured when his father ran over him while the family was delivering newspapers published by the defendant newspaper company. After the plaintiff became of age, he sued his father and the newspaper company. The plaintiff alleged that his father was negligent. He also alleged that the company--on the theory of respondeat superior--was responsible for the father's actions because the father was an employee of the company. The district court thought there was enough record evidence to generate a material fact question on the theory of action against the company. So the court overruled the company's motion for summary judgment. The company has appealed. OPINION HOLDS: We conclude as a matter of law that the plaintiff's father was not an employee of the company. The district court erred when it found that a material issue of fact existed as to the status of the father at the time of Frank's injuries. So we reverse the district court's ruling and remand for an order sustaining the company's motion for summary judgment.

No. 88-1106. Kerr-McGee Refining Corp. v. Don Harrison Trenching Co.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Raymond Hanrahan, Judge. **DECISION OF COURT OF APPEALS AFFIRMED AND JUDGMENT OF DISTRICT COURT AFFIRMED.** Considered by Harris, P.J., Schultz, Lavorato, Snell, and Andreasen, JJ. Per Curiam.

(3 pages $1.20)

One defendant appeals from a district court ruling in an interpleader action involving conflicting claims, one a security interest in accounts receivable and the other a mechanic's lien. OPINION HOLDS: Although we do not necessarily subscribe to all of the legal reasoning in the court of appeals decision, we are convinced upon our de novo review that the court of appeals decision is correct. It is clear from the district court's ruling on the motion for new trial that the court's decision in the interpleader action precludes the plaintiffs in the foreclosure action from any recovery.

No. 88-1429. **HENSE v. G.D. SEARLE & CO.**
Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge. **AFFIRMED ON BOTH APPEALS.** Considered en banc. Opinion by Neuman, J. (16 pages $6.40)

This appeal and cross-appeal arise out of a products liability action brought against G.D. Searle & Co., the manufacturer of an intrauterine contraception device. The controversy centers on the parties' dispute over the method by which plaintiff should conduct discovery of the corporate defendant's 750,000 product-related documents. The wrangling has resulted in six continuances of trial over the six-year life of the litigation. When plaintiff's request for a seventh continuance was denied on the eve of trial, she invited the court to grant Searle's motion for summary judgment in a strategic attempt to avoid a potentially disastrous proceeding and obtain immediate review by this court. Plaintiff now appeals the resulting dismissal of her cause. She claims that it was an abuse of discretion for the trial court to deny the seventh continuance in light of the defendant's repeated discovery abuses. On cross-appeal, the defendant seeks to reverse the trial court's order imposing monetary sanctions for willful failure to compel production of documents. OPINION HOLDS: I. The dispositive question on plaintiff's appeal is whether she may appeal at all from a final judgment to which she has consented. A number of states adhere to a strict rule that precludes appeal from interlocutory rulings by a litigant who consents to the final judgment. In Iowa, we today recognize an exception where the litigant's consent is not truly voluntary when viewed in the light of prior rulings which have precluded recovery. Even applying this standard, however, plaintiff cannot prevail. Neither the trial court's final denial of a continuance--nor any other rulings preceding plaintiff's invited summary judgment--can fairly be said to have precluded plaintiff from recovering. To the contrary, plaintiff's undoing was her inability over a period of six years to find an expert supporting her claim of medical causation. Having invited the final judgment herself, plaintiff cannot now successfully challenge the court's earlier rulings. She has waived her appeal. II. On Searle's cross-appeal, we conclude that the district court did not abuse its discretion by imposing a discovery sanction on Searle. Moreover, the amount of the sanction was not excessive.

No. 89-754. **ADAMS v. THORP CREDIT, INC.**

Appeal from the Iowa District Court for Marshall County, Carl E. Peterson, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Schultz, Neuman, and Andreasen, JJ. Opinion by Neuman, J. (9 pages $3.60)

In June 1987, Bryant purchased real estate at a tax sale. Thorp Credit held two mortgages on the property. After the sale, the treasurer issued a certificate signifying Bryant's purchase. Nine months later, in accordance with Iowa Code section 447.9, Bryant served notices of expiration of the right of redemption on the previous owner. She also mailed notice to the mortgagee of record, Thorp. Thorp then paid the treasurer the amount reported by the treasurer to be the cost of redemption. The treasurer then issued Thorp a certificate of redemption from tax sale. Three days later, Bryant filed an affidavit with the treasurer regarding the notices served and a statement of costs for title search and sheriff's service fees. The treasurer verbally advised Thorp of these costs which had not been previously reported by Bryant. However, Thorp did not pay the costs of the title search and service of notice before the end of the ninety-day period of redemption. Bryant demanded that a tax deed be issued to her because of Thorp's failure to complete redemption in accordance with Iowa Code section 447.13. The treasurer then commenced this declaratory judgment action. The trial court ruled that redemption was completed when Thorp paid the correct amount of costs as shown by the treasurer's records. Bryant has filed this appeal. OPINION HOLDS: In equity, Bryant may justly expect reimbursement for costs she advanced to give statutory notice to interested parties. However, we hold that the trial court correctly determined that redemption was completed when Thorp paid the correct amount as evidenced by the treasurer's records.

No. 89-238. **DECORAH STATE BANK v. WANGSNESS**

Appeal from the Iowa District Court for Winneshiek County, L.D. Lybbert, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Schultz, Neuman, and Andreasen, JJ. Opinion by Neuman, J. (8 pages $3.20)

The Wangsnesses defaulted on their financial obligation to the Decorah State Bank. In lieu of foreclosure, they gave the bank a deed to the agricultural land securing their indebtedness. The Wangsnesses made plain, however,

No. 89-238. **DECORAH STATE BANK v. WANGSNESS** (continued). their desire to repurchase the property. Nevertheless, the bank sold the land, without notice, to the Gehlings. A dispute arose concerning who was entitled to the property. The bank then commenced this action to determine the rights and obligations of the parties. The trial court determined that the conveyance from the bank to the Gehlings was valid but subject to Wangsnesses' rights under Iowa Code section 524.910(2) to repurchase agricultural land. The trial court then determined that a conveyance made in violation of the statute gives rise to an action for damages but not specific performance. The Wangsnesses appealed. OPINION HOLDS: We hold that a real estate conveyance made in violation of Iowa Code section 524.910(2) is not void as a matter of law but may be set aside on equitable grounds. We are persuaded that ample justification for such relief exists in this case. We remand for entry of judgment on Wangsnesses' claim for specific performance.

No. 88-1651. **KILLIAN v. IOWA DISTRICT COURT.**
Certiorari to the Iowa District Court for Linn County, August F. Honsell, Judge. **WRIT ANNULLED.** Considered by Harris, P.J., and Schultz, Lavorato, Snell, and Andreasen, JJ. Opinion by Harris, J. (10 pages $4.00)

We granted certiorari to consider this challenge to a trial court ruling which disqualified an attorney from further participation in probate litigation. OPINION HOLDS: I. The trial court's factual findings in attorney disqualification cases will not be disturbed on appeal if they are supported by substantial evidence. II. In the present case attorney Riley has placed himself in a situation which creates a potential conflict of interest. A potential conflict is enough to warrant disqualification. The district court did not abuse its discretion by ordering attorney Riley's disqualification.

No. 88-886. IN RE TRUST OF ROTHROCK.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Hamilton County, Timothy J. Finn, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by Harris, P.J., and Schultz, Lavorato, Snell, and Andreasen, JJ. Opinion by Schultz, J. (8 pages $3.20)

Mr. Rothrock died on January 20, 1981. Rothrock's will provided for several small bequests to individuals. The remainder of his estate was given in trust to his two unmarried sisters. Upon their death, a portion of the remaining property was to go to a Blairsburg church. The remainder of the property was to be paid to a Webster City church "to be used, however, solely for the building of a new church." After the last sister died, the trustee filed a final report asking that the trust be closed, the trustee discharged and its bond exonerated. The Webster City church then filed a petition to construe the trust provisions of the will. The church asked that the provisions be construed to allow the trust be used for the remodeling, improvement and/or expansion and extension of the existing church facilities, including the parsonage. Two cousins of the deceased filed a resistance to the church's petition, claiming that the church had to use the funds to build a new church. The district court granted the church's petition, concluding that the doctrine of cy pres would apply under these circumstances, and approved the final report of the trustee. The cousins have filed this appeal. OPINION HOLDS: We conclude that the trial court properly applied the cy pres doctrine. The property was held by the trustee for a charitable purpose, the building of a new church, and is a charitable trust. The evidence clearly indicated that it was impractical to carry out this particular purpose. We believe that the alternate disposition of the property made by the court, including the decision to allow remodeling of the parsonage, falls within the testator's general charitable intention. We conclude that the court framed a scheme which is well suited to accomplish this charitable purpose.

No. 89-657. BANKERS TRUST COMPANY v. FIDATA TRUST COMPANY

Appeal from the Iowa District Court for Polk County, Gene Needles, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Schultz, Lavorato, Snell and Andreasen, JJ. Opinion by Schultz, J. (15 pages $5.50)

General Growth Limited Partnership (General) hired Bankers Trust Company (Bankers) to act as its agent for a stock offering. Both General and Bankers have their principal places of business in Des Moines, Iowa. Bankers engaged Fidata Trust Company New York (Fidata) to act as its New York agent. A Maryland stockholder sustained a loss when its subscription was misdelivered in New York. It recovered $76,000 against Fidata; Fidata commenced an action against Bankers for indemnification in federal court in New York. While this action was pending, Bankers brought this action for a declaratory judgment and breach of contract, joining General and Fidata as defendants. General filed a counterclaim against Bankers and a cross-claim against Fidata. In its amended answer and later by a motion to dismiss, Fidata claimed that it did not have sufficient minimum contacts with Iowa to give the Iowa courts jurisdiction. The district court overruled the motion and Fidata appealed. OPINION HOLDS: I. We do not believe Fidata had sufficient minimum contacts with Iowa to permit jurisdiction under Iowa Rule of Civil Procedure 56.2 or under due process principles. In connection with the subscription offering at issue here, it is undisputed that Fidata had no duties in Des Moines, that none of its employees or representatives had physical contact with the state of Iowa, and that its only contact with Bankers was by telephone and mail. We believe these telephone and mail contacts, while plentiful in quantity, were too trifling in nature and quality to support jurisdiction under the minimum contacts test. Fidata could not have anticipated that these activities would have placed it before the Iowa court. Moreover, we do not believe Fidata submitted to the personal jurisdiction of the Iowa court by its in-state activities that are unrelated to this particular subscription offering. The general statements made in Bankers' affidavit do not form substantial evidence of a continuous and systematic presence in Iowa which would subject Fidata to the jurisdiction of this state's courts. II. We conclude that there was not substantial evidence in the record to support a finding of fact that Fidata had consented to jurisdiction in Iowa. III. We reverse the ruling of the district court and remand for the entry of an order dismissing Fidata as a party to this action.

No. 88-774. **TOLANDER v. FARMERS NATIONAL BANK**

Appeal from the Iowa District Court for Henry County, John C. Miller, Judge. **AFFIRMED.** Considered by Harris, P.J., and Schultz, Lavorato, Snell, and Andreasen, JJ. Opinion by Harris, J. (12 pages $4.80)

In 1983 the Farmers Bank agreed to loan Tolander up to $100,000 for use in Tolander's farming operation. The bank then loaned him $74,000. In 1984 Tolander opened a checking account at the bank. Tolander agreed to certain terms concerning application of his accounts to payments owed the bank. In December 1984 the bank restructured Tolander's loan by dividing the loan into a short-term note due May 1985 and a longer term note with payments to commence in December 1985. The notes allowed the bank to accelerate payment due if it deemed itself insecure. In 1985 Tolander received a series of checks in payment for seed corn he had raised. The checks were issued jointly to Tolander and the bank. The last seed corn check, however, was delivered to the bank and not Tolander. The bank deposited this check in Tolander's account. It then withdrew from Tolander's account the balance remaining from the third seed corn check, along with the entire amount of the fourth check, and applied it to the unpaid balance on the small note. The bank wrote to Tolander informing him of what it had done. Tolander then filed the present action against the bank seeking unspecified general, special, and punitive damages under various theories. The district court dismissed Tolander's petition and he filed this appeal. OPINION HOLDS: I. We give no consideration to Tolander's agency theory since reference to this theory in trial briefs alone is insufficient to preserve error. II. We conclude that the trial court judgment must be affirmed. Although the bank obviously collects no plaudits, it remains that Tolander has not shown that the bank acquired anything to which it was not entitled. Notwithstanding its insensitivity to Tolander, the bank was fully justified in considering itself insecure. Thus, under the terms of the financing agreements, the bank was entitled to the check proceeds.

No. 89-55. PREFERRED MARKETING ASSOCIATES CO. v. HAWKEYE NATIONAL LIFE INSURANCE CO.

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge. **AFFIRMED IN PART, REVERSED IN PART AND REMANDED.** Considered by McGiverin, C.J., and Harris, Larson, Carter and Neuman, JJ. Opinion by McGiverin, C.J. (22 pages $8.80)

Plaintiff Preferred Marketing Associates Co. (PMA) is an independent insurance agency which represented defendant Hawkeye National Life Insurance Co. (Hawkeye). In June 1984, Hawkeye terminated its contracts with PMA. In July 1986, PMA filed this law action, essentially alleging that Hawkeye had breached its contract with PMA and had tortiously interfered with PMA's business. The jury returned special verdicts awarding PMA $250,000 for breach of contract and $100,000 for tortious interference with prospective contractual relations. The jury found for Hawkeye on the other submitted claims. Hawkeye appealed and PMA cross-appealed. OPINION HOLDS: I. The district court allowed PMA to call an expert witness at trial who was designated only one week before trial and seven months after the court-imposed deadline for designating experts had passed. We narrowly find no abuse of discretion in allowing the expert to testify. II. Viewing the evidence in the light most favorable to PMA, we think that a jury question was engendered as to whether Hawkeye breached its contract with PMA by wrongfully refusing to pay renewal commissions to PMA following termination of the contract. The district court correctly overruled Hawkeye's motion for a directed verdict on this claim. III. However, there was no evidence that Hawkeye tortiously interfered with prospective contractual or business relationships of PMA. Hawkeye's motion for a directed verdict on this claim should have been granted. IV. On cross-appeal, PMA argues first, that Hawkeye converted money that belonged to PMA by refusing to pay renewal commissions due PMA; and, second, that Hawkeye converted a sales force that belonged to PMA by retaining the services of some of the representatives in the PMA hierarchy after PMA was terminated. The district court correctly directed a verdict for Hawkeye on this claim. V. PMA further argues on cross-appeal that the district court erred by directing a verdict on the claim which PMA now styles "negligent breach of contract." There is no relationship between Hawkeye and PMA which gives rise to a legal duty to pay renewal commissions, independent of the contract between them. PMA's cause of action for Hawkeye's refusal to pay renewal commissions lies in contract, not in tort. VI. The issue concerning

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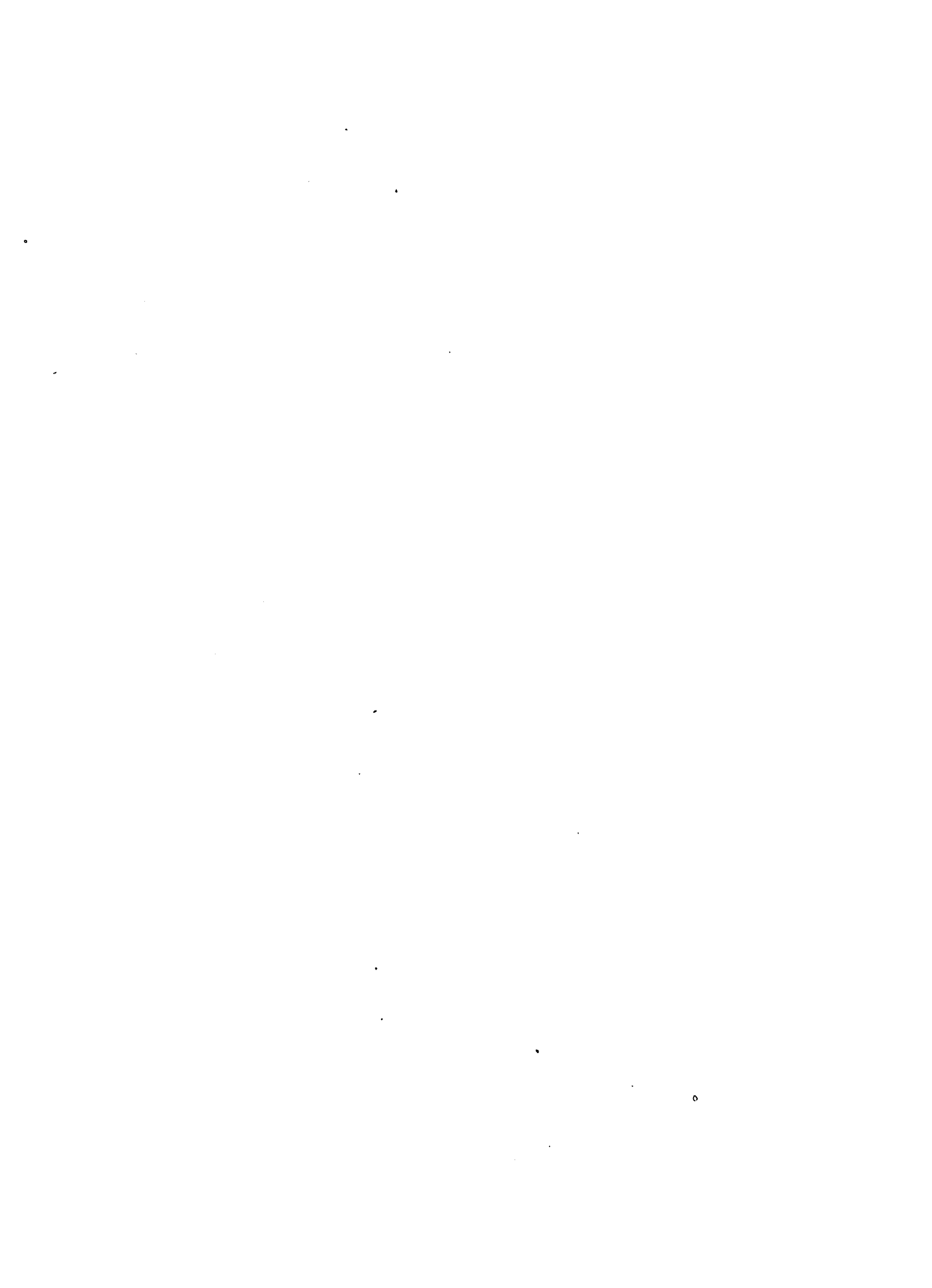
prejudgment interest was not raised before the district court. Accordingly, we will not consider it here. VII. That portion of the district court's judgment relating to PMA's claim for tortious interference with prospective contractual relations is reversed. In all other respects, the judgment is affirmed. The case is remanded for entry of a new judgment consistent with this opinion.

No. 88-1017. IN RE MARRIAGE OF RYMAN.

Appeal from the Iowa District Court for Polk County, Michael J. Streit, Judge. **AFFIRMED AS MODIFIED.** Considered by McGiverin, C.J., and Harris, Larson, Carter and Neuman, JJ. PER CURIAM. (4 pages $1.60)

Jacqueline and Arthur Ryman, Jr., were married in 1952. In September 1986, Jacqueline filed a petition for dissolution of marriage. The marriage was dissolved by decree of the district court in May 1988. Both parties appealed from the economic portions of the decree. OPINION HOLDS: After carefully examining the record and the decree, and considering the arguments of counsel, we find only one aspect of the decree which warrants modification. The decree is modified so that Arthur's alimony obligation and the related life insurance obligation shall end at the death of either Arthur or Jacqueline. If Jacqueline remarries, it shall then be her burden to show that extraordinary circumstances exist which require continuation of the same obligations.



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