IOWA ADMINISTRATIVE BULLETIN

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CONTENTS IN THIS ISSUE

Pages 1695 to 1760 include **ARC 2886A** to **ARC 2934A**

Continued on page 1685

PREFACE

The Iowa Administrative Bulletin is published in pamphlet form biweekly pursuant to Iowa Code Chapter 17A and 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].

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee" include summaries of Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [453.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking--Notice of Application and Hearing [524.1905(2)].

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

GUIDE FOR RULE MAKING, see FIRST VOLUME IOWA ADMINISTRATIVE CODE (Gray, Yellow, Red, Blue and Green Tabs)

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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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, 1991, to June 30, 1992	$210.00 plus $8.40 sales tax
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Third quarter	January 1, 1992, to June 30, 1992	$105.00 plus $4.20 sales tax
Fourth quarter	April 1, 1992, to June 30, 1992	$ 52.50 plus $2.10 sales tax

Single copies may be purchased for $10.00 plus $0.40 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

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

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

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

"*A GUIDE TO RULE MAKING*" pamphlet available upon request from:

Administrative Code Division
Lucas State Office Building, 4th Floor

or

Administrative Rules Coordinator
Capitol, Ground Floor, Room 11

Schedule for Rule Making

1992

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
Dec. 6 '91	Dec. 25 '91	Jan. 14	Jan. 29	Feb. 19	Mar. 25	June 22
Dec. 20 '91	Jan. 8	Jan. 28	Feb. 12	Mar. 4	Apr. 8	July 6
Jan. 3	Jan. 22	Feb. 11	Feb. 26	Mar. 18	Apr. 22	July 20
Jan. 17	Feb. 5	Feb. 25	Mar. 11	Apr. 1	May 6	Aug. 3
Jan. 31	Feb. 19	Mar. 10	Mar. 25	Apr. 15	May 20	Aug. 17
Feb. 14	Mar. 4	Mar. 24	Apr. 8	Apr. 29	June 3	Aug. 31
Feb. 28	Mar. 18	Apr. 7	Apr. 22	May 13	June 17	Sep. 14
Mar. 13	Apr. 1	Apr. 21	May 6	May 27	July 1	Sep. 28
Mar. 27	Apr. 15	May 5	May 20	June 10	July 15	Oct. 12
Apr. 10	Apr. 29	May 19	June 3	June 24	July 29	Oct. 26
Apr. 24	May 13	June 2	June 17	July 8	Aug. 12	Nov. 9
May 8	May 27	June 16	July 1	July 22	Aug. 26	Nov. 23
May 22	June 10	June 30	July 15	Aug. 5	Sept. 9	Dec. 7
June 5	June 24	July 14	July 29	Aug. 19	Sep. 23	Dec. 21
June 19	July 8	July 28	Aug. 12	Sep. 2	Oct. 7	Jan. 4 '93
July 3	July 22	Aug. 11	Aug. 26	Sep. 16	Oct. 21	Jan. 18 '93
July 17	Aug. 5	Aug. 25	Sep. 9	Sept. 30	Nov. 4	Feb. 1 '93
July 31	Aug. 19	Sep. 8	Sep. 23	Oct. 14	Nov. 18	Feb. 15 '93
Aug. 14	Sep. 2	Sep. 22	Oct. 7	Oct. 28	Dec. 2	Mar. 1 '93
Aug. 28	Sep. 16	Oct. 6	Oct. 21	Nov. 11	Dec. 16	Mar. 15 '93
Sep. 11	Sept. 30	Oct. 20	Nov. 4	Nov. 25	Dec. 30	Mar. 29 '93
Sep. 25	Oct. 14	Nov. 3	Nov. 18	Dec. 9	Jan. 13 '93	Apr. 12 '93
Oct. 9	Oct. 28	Nov. 17	Dec. 2	Dec. 23	Jan. 27 '93	Apr. 26 '93
Oct. 23	Nov. 11	Dec. 1	Dec. 16	Jan. 6 '93	Feb. 10 '93	May 10 '93
Nov. 6	Nov. 25	Dec. 15	Dec. 30	Jan. 20 '93	Feb. 24 '93	May 24 '93
Nov. 20	Dec. 9	Dec. 29	Jan. 13 '93	Feb. 3 '93	Mar. 10 '93	June 7 '93
Dec. 4	Dec. 23	Jan. 12 '93	Jan. 27 '93	Feb. 17 '93	Mar. 24 '93	June 21 '93
Dec. 18	Jan. 6 '93	Jan. 26 '93	Feb. 10 '93	Mar. 3 '93	Apr. 7 '93	July 5 '93

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.

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
22	**Friday, April 10, 1992**	**April 29, 1992**
23	**Friday, April 24, 1992**	**May 13, 1992**
24	**Friday, May 8, 1992**	**May 27, 1992**

PLEASE NOTE:

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.

The Administrative Rules Review Committee will hold a special meeting Monday, April 13, 1992, 7:30 a.m. in Committee Room 22. This meeting will be in lieu of the regular, statutory date. The following rules will be reviewed:

Note: See Agenda published in Iowa Administrative Bulletin dated 3/18/92.

Bulletin

COMMUNITY ACTION AGENCIES DIVISION[427]
HUMAN RIGHTS DEPARTMENT[421]"umbrella"

Emergency community services homeless grant program, 23.3(1), 23.3(2) to 23.3(4), 23.5(5)"a" and "b," 23.7(1), Filed **ARC 2890A** 4/1/92

CORRECTIONS DEPARTMENT[201]

OWI programs, 47.1 to 47.4, Notice **ARC 2934A** 4/1/92

EDUCATION DEPARTMENT[281]

Community colleges — program and administrative sharing initiative, 21.64 to 21.71, Filed **ARC 2914A** 4/1/92

ELDER AFFAIRS DEPARTMENT[321]

Older Americans Act — Title III-G funds for elder abuse, 1.7, 6.4(2)"x," 6.8"21," 6.10(1), 7.7, Notice **ARC 2887A** 4/1/92

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Water quality standards — Big Creek, Henry County, 61.3(5)"e," Notice **ARC 2918A** 4/1/92

HUMAN SERVICES DEPARTMENT[441]

Model waiver service providers — camps accredited, 77.30(5)"e," 79.1(2), Notice **ARC 2897A** 4/1/92
Procedure and method of payment — screening services, 80.2(2)"f," Filed **ARC 2931A** 4/1/92
Abbreviated case plan, 130.7, 130.7(3)"a" and "b," Filed **ARC 2908A** 4/1/92
Child day care grants programs, ch 168, Notice **ARC 2909A**, also Filed Emergency **ARC 2910A** 4/1/92

INSPECTIONS AND APPEALS DEPARTMENT[481]

Consent for the sale of goods and services, ch 7, Notice **ARC 2900A** 4/1/92
Psychiatric services, domestic abuse, child and dependent adult abuse, 51.33, 51.37, 51.38, Filed **ARC 2899A** 4/1/92
Care facilities, 57.5(5), 57.14(7), 57.39(4), 58.4(6), 58.13(7), 58.43(9), 59.4(6), 59.9, 59.15(7), 59.48(9), 60.3(2)"f," 60.11(3)"e," 61.3(1)"e," 61.11(3)"c," 62.5(6), 62.17(2)"j," 62.23(23), 62.23(24), 63.4(5), 63.37(4), 64.4(5), 64.33, 65.5(4), 65.19(4), 65.25(3), 65.25(4), 65.29, Filed **ARC 2898A** 4/1/92

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181]"umbrella"

Medicare supplement insurance — protection and advocacy through community training(PACT), 37.18(1)"f," Notice **ARC 2902A** 4/1/92

LABOR SERVICES DIVISION[347]
EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

General industry safety and health rules, 10.20, Notice **ARC 2932A** 4/1/92
Construction safety and health rules, 26.1, Notice **ARC 2933A** 4/1/92

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Boating speed and distance zoning — Harpers Slough, 40.27(1), Notice **ARC 2917A** 4/1/92
State parks and recreation areas — Backbone and Wilson Island cabin rental, 61.2, 61.3(5)"a," 61.4(1)"a," 61.4(2)"a," "f," "h" to "j," "n" to "p," 61.4(3), 61.5(8)"a" and "d," Notice **ARC 2915A** 4/1/92
State parks and recreation areas — control of pets and equine animals, 61.5(7)"d," 61.6(4), Filed **ARC 2916A** 4/1/92

NURSING BOARD[655]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Nursing education — qualifications for heads of programs and faculty, elimination of consultant requirement, 2.3(2)"d"(1), 2.3(2)"d"(2), 2.3(2)"g," 2.3(2)"g"(1) and (2), 2.6(1), 2.6(2)"c," 2.6(2)"d"(1), Notice **ARC 2891A** 4/1/92

PERSONNEL DEPARTMENT[581]
Conduct of employees — selling of goods or services, 18.2, Filed **ARC 2896A** 4/1/92

PHARMACY EXAMINERS BOARD[657]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Label information, patient counseling, 8.3(1)"d," 8.16(3) Filed **ARC 2901A** 4/1/92
Pharmacist employment, 8.5(2), Notice **ARC 2905A** 4/1/92
Controlled substances — registration, 10.3, 10.3(2), 10.3(8), 10.3(9), Notice **ARC 2906A** 4/1/92
Controlled substances — sample distribution, 10.15, Filed **ARC 2903A** 4/1/92
Nonresident pharmacy licenses, ch 19, Filed **ARC 2904A** 4/1/92
Agency procedure for rule making, ch 28, Notice **ARC 2907A** 4/1/92

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Cosmetology, chs 60 to 68, Notice **ARC 2911A** 4/1/92
Podiatry residency, 220.1(2)"d" to "e," 220.1(4), 220.4(3) and (4), Filed **ARC 2919A** 4/1/92

PUBLIC HEALTH DEPARTMENT[641]
Lead exposure, 1.2(1)"e," 3.5, 3.5(1)"a," Notice **ARC 2922A** 4/1/92
Financial assistance to eligible HIV infected patients, 11.1 to 11.4, 11.6, 11.7(5) to 11.7(7), 11.9(6) to 11.9(8), 11.10(3), 11.10(11), 11.12 Appendix 1, Filed Emergency **ARC 2893A** 4/1/92
Emergency care providers exposed to contagious or infectious diseases, 11.45 to 11.53, Filed **ARC 2925A** 4/1/92
Radiation equipment — users, fees and penalties, 38.13(5), 38.13(6)"c," 42.1, Notice **ARC 2923A** 4/1/92
Nuclear medicine technologist, 42.2, Notice **ARC 2924A** 4/1/92
Radiation therapist, 42.3, Notice **ARC 2920A** 4/1/92
Radon testing and analysis, 43.3(3)"b"(1), Notice **ARC 2921A** 4/1/92
Emergency information system on pesticides for use by health care providers during medical emergencies, ch 71, Filed Emergency After Notice **ARC 2894A** 4/1/92
WIC program — health services application form, 73.6, 73.10(2), Filed **ARC 2927A** 4/1/92
WIC program — schedule of violations, 73.7(4)"e"(4) and (8), 73.18(1), 73.18(2)"a"(1), 73.18(2)"b" "2," Filed **ARC 2928A** 4/1/92
Maternal and child health, 76.2, 76.6(4), 76.7, Filed **ARC 2926A** 4/1/92
Financial assistance to eligible end-stage renal disease patients, ch 111 Appendix 1, Filed Emergency **ARC 2892A** 4/1/92
Training and certification of and services performed by advanced emergency medical technicians and paramedics, ch 132 title, 132.1, 132.3(1)"e," 132.4(4)"b," 132.4(5)"h," 132.4(9)"c," 132.4(10), 132.5(5)"a," 132.5(11)"h," 132.9(6)"b"(1), 132.15, Filed **ARC 2929A** 4/1/92
Criteria for awards or grants, ch 176, Filed **ARC 2930A** 4/1/92

REVENUE AND FINANCE DEPARTMENT[701]
Taxable and exempt sales — computer equipment, 18.34(1), 18.34(2)"c" and "j," 18.45(1), Filed **ARC 2913A** 4/1/92
Real estate transfer tax and declarations of value, 79.2(7), Filed **ARC 2912A** 4/1/92

SECRETARY OF STATE[721]
Alternative voting systems, 22.53, 22.53(1)"g" and "h," 22.53(2)"a," "b," "d," "e," "g," and "h," 22.53(5)"b" and "d," 22.53(8), Notice **ARC 2886A** 4/1/92

TRANSPORTATION DEPARTMENT[761]
Consent for the sale of goods and services, ch 26, Notice **ARC 2889A** 4/1/92
Utility accommodation, ch 115, Filed **ARC 2895A** 4/1/92

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the chairperson at any place in the state and at any time.

EDITOR'S NOTE: Terms ending April 30, 1995.

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Algona, Iowa 50511

Senator Donald V. Doyle
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Sioux City, Iowa 51102

Senator H. Kay Hedge
R.R. 1, Box 39
Fremont, Iowa 52561

Senator John P. Kibbie
R.R. 1, Box 139A
Emmetsburg, Iowa 50536

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Representative Ruhl Maulsby
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Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 15
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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

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
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261]		
Work force investment program, 18.3, 18.5, 18.6, 18.8 IAB 3/18/92 **ARC 2861A**	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	April 7, 1992 1 p.m.
Community development block grant nonentitlement program, 23.6(3) IAB 3/18/92 **ARC 2864A**	Conference Room – 2nd Floor 200 E. Grand Ave. Des Moines, Iowa	April 7, 1992 10 a.m.
HOME investment partnership program, ch 25 IAB 3/18/92 **ARC 2866A**	Conference Room – 2nd Floor 200 E. Grand Ave. Des Moines, Iowa	April 7, 1992 11 a.m.
Iowa targeted small business procurement program, amendments to ch 54 IAB 3/18/92 **ARC 2863A**	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	April 7, 1992 10 a.m.
ELDER AFFAIRS DEPARTMENT[321]		
Title III-G funds — elder abuse prevention, 1.7, 6.4, 6.8, 6.10, 7.7 IAB 4/1/92 **ARC 2887A**	Library 236 Jewett Bldg. Des Moines, Iowa	April 22, 1992 10 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Soil boring samples, solid waste comprehensive plans, amendments to chs 101, 110 IAB 3/18/92 **ARC 2877A**	Conference Room Fourth Floor West Wallace State Office Bldg. Des Moines, Iowa	April 8, 1992 10 a.m.
HUMAN SERVICES DEPARTMENT[441]		
Child day care grants programs, ch 168 IAB 4/1/92 **ARC 2909A** (See also **ARC 2910A** herein)	City View Plaza Conference Room 100 1200 University Des Moines, Iowa	April 22, 1992 9 a.m.
INSURANCE DIVISION[191]		
Medicare supplement insurance for Iowa seniors, 37.18 IAB 4/1/92 **ARC 2902A**	Conference Room – 6th Floor Lucas State Office Bldg. Des Moines, Iowa	April 23, 1992 10 a.m.
LABOR SERVICES DIVISION[347]		
OSHA rules for general industry, 10.20 IAB 4/1/92 **ARC 2932A**	Labor Services Division 1000 E. Grand Ave. Des Moines, Iowa	April 23, 1992 9 a.m. (If requested)
OSHA rules for construction, 26.1 IAB 4/1/92 **ARC 2933A**	Labor Services Division 1000 E. Grand Ave. Des Moines, Iowa	April 23, 1992 9 a.m. (If requested)

NATURAL RESOURCE COMMISSION[571]

Boating speed and distance zoning — Harpers Slough, 40.27(1) IAB 4/1/92 **ARC 2917A**	Conference Room Fourth Floor East Wallace State Office Bldg. Des Moines, Iowa	April 22, 1992 10:30 a.m.
State parks and recreation areas, amendments to ch 61 IAB 4/1/92 **ARC 2915A**	Conference Room Fifth Floor West Wallace State Office Bldg. Des Moines, Iowa	April 21, 1992 9 a.m.
Waterfowl and coot hunting seasons, 91.1 to 91.4 IAB 3/4/92 **ARC 2841A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 11, 1992 10 a.m.
Nonresident deer hunting, 94.1, 94.2, 94.8 IAB 3/4/92 **ARC 2842A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 11, 1992 10 a.m.
Pheasant, quail and gray (Hungarian) partridge hunting seasons, 96.1 to 96.3 IAB 3/4/92 **ARC 2848A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 11, 1992 10 a.m.
Common snipe, Virginia rail and sora, woodcock and ruffed grouse hunting seasons, 97.1 to 97.4 IAB 3/4/92 **ARC 2847A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 11, 1992 10 a.m.
Wild turkey fall hunting, 99.1, 99.3 to 99.5 IAB 3/4/92 **ARC 2846A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 11, 1992 10 a.m.
Deer hunting regulations, amendments to ch 106 IAB 3/4/92 **ARC 2845A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 11, 1992 10 a.m.
Rabbit and squirrel hunting, 107.1 to 107.3 IAB 3/4/92 **ARC 2844A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 11, 1992 10 a.m.
Mink, muskrat, raccoon, badger, opossum, weasel, striped skunk, fox (red and gray), beaver, coyote, otter and spotted skunk seasons, 108.1 to 108.5 IAB 3/4/92 **ARC 2840A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 11, 1992 10 a.m.

NURSING BOARD[655]

Nursing education programs, 2.3, 2.6 IAB 4/1/92 **ARC 2891A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 22, 1992 7 p.m.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

Reimbursement for tank system upgrades and replacements, 11.4 IAB 3/18/92 **ARC 2867A**	Conference Room Administrator's Office 1000 Illinois St. Des Moines, Iowa	April 10, 1992 10 a.m.

PUBLIC HEALTH DEPARTMENT[641]		
Lead exposure, 1.2, 3.5 IAB 4/1/92 **ARC 2922A**	Conference Room – 3rd Floor Lucas State Office Bldg. Des Moines, Iowa	April 22, 1992 9 a.m.
Radiation emitting equipment — users; fees and penalties, 38.13, 42.1 IAB 4/1/92 **ARC 2923A**	Hearing Room 2 First Floor Lucas State Office Bldg. Des Moines, Iowa	April 21, 1992 10:30 a.m.
Nuclear medicine technologist, 42.2 IAB 4/1/92 **ARC 2924A**	Hearing Room 2 First Floor Lucas State Office Bldg. Des Moines, Iowa	April 21, 1992 1 p.m.
Radiation therapist, 42.3 IAB 4/1/92 **ARC 2920A**	Hearing Room 2 First Floor Lucas State Office Bldg. Des Moines, Iowa	April 21, 1992 3 p.m.
Minimum requirements for radon testing and analysis, 43.3(3)"b"(1) IAB 4/1/92 **ARC 2921A**	Hearing Room 2 First Floor Lucas State Office Bldg. Des Moines, Iowa	April 21, 1992 9 a.m.
Emergency medical board, 84.1 to 84.8 IAB 3/18/92 **ARC 2868A**	Conference Room Third Floor, Side One Lucas State Office Bldg. Des Moines, Iowa	April 8, 1992 1 p.m.
SECRETARY OF STATE[721]		
Election forms — constitutional amendment on ballot, 21.1(4) IAB 3/18/92 **ARC 2852A**	Office of Secretary of State Second Floor Hoover State Office Bldg. Des Moines, Iowa	April 9, 1992 1:30 p.m.
Alternative voting systems, 22.53 IAB 4/1/92 **ARC 2886A**	Office of Secretary of State Second Floor Hoover State Office Bldg. Des Moines, Iowa	April 23, 1992 1:30 p.m.
TRANSPORTATION DEPARTMENT[761]		
Consent for the sale of goods and services, ch 26 IAB 4/1/92 **ARC 2889A**	Commission Room 800 Lincoln Way Ames, Iowa	April 30, 1992 10 a.m. (If requested)
UTILITIES DIVISION[199]		
Deregulation of voice messaging service IAB 2/19/92 **ARC 2789A**	Hearing Room – 1st Floor Lucas State Office Bldg. Des Moines, Iowa	April 29, 1992 10 a.m.
Filing requirements, amendments to ch 7 IAB 3/18/92 **ARC 2881A**	Hearing Room – 1st Floor Lucas State Office Bldg. Des Moines, Iowa	April 24, 1992 10 a.m.
Disposal of a public utility's assets, 32.2 IAB 2/19/92 **ARC 2788A**	Hearing Room – 1st Floor Lucas State Office Bldg. Des Moines, Iowa	April 10, 1992 10 a.m.

AGENCY IDENTIFICATION NUMBERS

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

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

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

Other autonomous agencies which were not included in the original reorganization legislation as "umbrella" agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA [101].

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

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
- Agricultural Development Authority[25]
- Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CAMPAIGN FINANCE DISCLOSURE COMMISSION[121]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]
- Alcoholic Beverages Division[185]
- Banking Division[187]
- Credit Union Division[189]
- Insurance Division[191]
- Professional Licensing and Regulation Division[193]
  - Accountancy Examining Board[193A]
  - Architectural Examining Board[193B]
  - Engineering and Land Surveying Examining Board[193C]
  - Landscape Architectural Examining Board[193D]
  - Real Estate Commission[193E]
  - Real Estate Appraiser Examining Board[193F]
- Savings and Loan Division[197]
- Utilities Division[199]

CORRECTIONS DEPARTMENT[201]
- Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]
- Arts Division[222]
- Historical Division[223]
- Library Division[224]
- Public Broadcasting Division[225]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
- City Development Board[263]
- Iowa Finance Authority[265]
- High Technology Council[267]

EDUCATION DEPARTMENT[281]
- Educational Examiners Board[282]
- College Student Aid Commission[283]
- Higher Education Loan Authority[284]
- Iowa Advance Funding Authority[285]
- School Budget Review Committee[289]

EGG COUNCIL[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPLOYMENT SERVICES DEPARTMENT[341]
- Industrial Services Division[343]
- Job Service Division[345]
- Labor Services Division[347]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HEALTH DATA COMMISSION[411]

HUMAN RIGHTS DEPARTMENT[421]
- Children, Youth, and Families Division[425]
- Community Action Agencies Division[427]
- Criminal and Juvenile Justice Planning Division[428]
- Deaf Services, Division of [429]
- Persons With Disabilities Division[431]
- Spanish-Speaking People Division[433]
- Status of Blacks Division[434]
- Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]
- Employment Appeal Board[486]
- Foster Care Review Board[489]
- Racing and Gaming Commission[491]

INTERNATIONAL NETWORK ON TRADE(INTERNET)[497]

LAW ENFORCEMENT ACADEMY[501]

LIVESTOCK HEALTH ADVISORY COUNCIL[521]

MANAGEMENT DEPARTMENT[541]
- Appeal Board, State[543]
- City Finance Committee[545]
- County Finance Committee[547]

NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]

NATURAL RESOURCES DEPARTMENT[561]
- Energy and Geological Resources[565]
- Environmental Protection Commission[567]
- Natural Resource Commission[571]
- Preserves, State Advisory Board[575]

PERSONNEL DEPARTMENT[581]

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

PUBLIC DEFENSE DEPARTMENT[601]
- Disaster Services Division[607]
- Military Division[611]
- Veterans Affairs Division[613]

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

PUBLIC HEALTH DEPARTMENT[641]
- Substance Abuse Commission[643]
- Professional Licensure Division[645]
- Dental Examiners[650]
- Medical Examiners[653]
- Nursing Board[655]
- Pharmacy Examiners[657]

PUBLIC SAFETY DEPARTMENT[661]

RECORDS COMMISSION[671]

REGENTS BOARD[681]
- Archaeologist[685]

REVENUE AND FINANCE DEPARTMENT[701]
- Lottery Division[705]

SECRETARY OF STATE[721]

SHEEP AND WOOL PROMOTION BOARD, IOWA[741]

TRANSPORTATION DEPARTMENT[761]
- Railway Finance Authority, Iowa[765]

TREASURER OF STATE[781]

UNIFORM STATE LAWS COMMISSION[791]

VETERINARY MEDICINE BOARD[811]

VOTER REGISTRATION COMMISSION[821]

WALLACE TECHNOLOGY TRANSFER FOUNDATION[851]

REORGANIZATION--NOT IMPLEMENTED

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

Citizens' Aide[210]

Iowa Advance Funding Authority[515]

Product Development Corporation[636]

Records Commission[710]

ARC 2934A

CORRECTIONS DEPARTMENT[201]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code Supplement section 246.513, the Department of Corrections hereby gives Notice of Intended Action to amend Chapter 47, "OWI Programs," Iowa Administrative Code.

These amendments bring the current rules into compliance with legislative changes as well as current practice. The changes:

- Authorize a continuum of programming, including residential facilities and institutions rather than a single standardized program.
- Authorize direct placement of OWI offenders to community-based correctional programs rather than admission to the Iowa Medical and Classification Center for assignment to community-based programs.
- Provide for admission to the Iowa Medical and Classification Center if medical treatment is necessary or at the request of a district if there is insufficient space in a community-based correctional program.
- Provide community release options to the court if there is insufficient space in a community-based correctional program until space is available.
- Provide for county confinement and reimbursement by the Department of Corrections for offenders held in jail due to insufficient space in a community-based correctional program or for offenders held in jail for allegedly violating the conditions of assignment to a community-based correctional program.

Persons may submit written comments to the Director no later than April 21, 1992, at 523 East 12th Street, Des Moines, Iowa 50319.

These amendments were approved by the Corrections Board at the regular meeting of the Board on March 5, 1992.

These rules are intended to implement Iowa Code Supplement section 246.513.

The following amendments are proposed.

ITEM 1. Amend 201—47.1(246) to read as follows:

201—47.1(246) OWI facilities.

47.1(1) Offenders convicted of an offense under Iowa Code chapter 321J, sentenced to the custody of the director of corrections and assigned to a ~~community facility for substance abuse treatment are in an inmate status~~ *continuum of programming, including treatment providers, residential facilities and institutions, for the supervision and treatment of offenders shall be* subject to the provisions of these rules and policies developed by the department of corrections.

47.1(2) The district department shall select appropriate facilities; *and treatment providers* subject to the approval of the department of corrections, for the ~~housing~~ *risk management and programming* of inmates defined in this chapter.

47.1(3) Any facility operated by a district department directly or through a contract shall comply with the provisions of ~~this chapter;~~ 201—Chapters 40 and 43, and policies developed by the department of corrections.

47.1(4) All facilities *and programs* operated pursuant to this chapter shall be ~~approved~~ *reviewed for approval* by the department of corrections initially and ~~annually~~ *biennially* thereafter. A district department which fails to maintain compliance with this chapter shall be subject to the provisions of Iowa Code section 905.9.

47.1(5) Any program operated pursuant to this chapter shall comply with ~~the~~ licensure standards for correctional facilities of the division of substance abuse, department of public health, *643—Chapter 6.*

47.1(6) Any facility operated in whole or in part under the provisions of this chapter shall ~~comply with~~ *review and consider the* American Corrections Association Standards for Adult Community Residential Facilities.

47.1(7) The district director is responsible for all ~~facilities~~ *programs* and inmates that are subject to these rules. Any change ~~or recommended change~~ in the custody status of inmates shall be approved by *the department of corrections in consultation with* a district department official.

ITEM 2. Rescind 201—47.2(246) and insert the following in lieu thereof:

201—47.2(246) Movement of inmates.

47.2(1) The judicial district departments of correctional services and the department of corrections shall utilize standardized placement criteria founded on the presumption that assignment will be made to the least restrictive and most cost-effective component of the continuum for the purposes of risk management, substance abuse treatment, education, and employment. The continuum is defined as consisting of three basic components, namely (1) incarceration until released by the board of parole or expiration of sentence, (2) short-term incarceration for approximately 21 days with subsequent transfer to a community corrections OWI residential program with differential levels of treatment and intervention, and (3) direct placement to a community corrections OWI residential program with differential levels of treatment and intervention. The criteria established to determine continuum assignment consists of the offender's previous criminal record, present charges and attitude toward treatment.

47.2(2) When there is insufficient bed space in the community-based correctional program to accommodate the offender, the court may order the offender to be released on personal recognizance or bond, released to the supervision of the judicial district department of correctional services, or held in jail.

47.2(3) Priority for placement in the treatment program will be based on the date of sentence unless an exception is made by the department of corrections or district department for special circumstances.

47.2(4) When the offender is sentenced to the director of the department of corrections and ordered to the supervision of the judicial district and space is not available in a community program, the district director or designee may request temporary placement at the Iowa Medical and Classification Center for classification and assignment. Final approval is granted by the deputy director of the division of institutions or designee until space is available in the community program.

47.2(5) If medical conditions prohibit program participation and community resources, including University Hospitals, are not available to sufficiently meet offender needs, the inmate may be assigned with the approval of the deputy director of the division of institutions or designee to the Iowa Medical and Classification Center at Oakdale for treatment until the inmate's health status permits placement into a community-based correctional program.

47.2(6) The transfer of inmates placed with the department of corrections to community facilities may be delayed by the department of corrections for security or medical reasons. Inmates with active detainers or inmates refusing to participate in the program may be transferred to an institution.

47.2(7) Inmates placed with the department of corrections shall be transferred in custody to their assigned facility unless an exception is approved by the department of corrections.

47.2(8) The district department shall comply with established policies and develop procedures for the temporary confinement of inmates who present a threat to the safety or security of the public, facility staff, or residents.

47.2(9) Inmates housed in community facilities may be transferred to the Iowa Medical and Classification Center on the recommendation of the district director or designee and with the approval of the deputy director of the division of institutions or designee for reclassification and assignment to an institution. Transfer recommendations may be made for security, disciplinary, treatment, or medical reasons.

47.2(10) The district department shall maintain a current contingency plan to ensure the continuation of programs or custody of inmates in the event of an emergency such as fire, tornado, chemical spill, or work stoppage.

47.2(11) Inmates who have been housed in a community facility for substance abuse treatment, subsequently granted parole or work release, and said parole or work release is revoked, shall upon being returned to the classification center, be reclassified for placement in an institution.

ITEM 3. Amend 201—47.3(246) to read as follows:

201—47.3(246) Fiscal.

47.3(1) The district department shall submit an annual budget on the forms required by the department of corrections which includes a ~~detailed~~ budget for all subcontractors participating in the program.

47.3(2) The district department shall maintain accounting records required by the department of corrections which account for revenues and expenditures *of daily fees, interest, insurance reimbursement, and any other miscellaneous funds collected* separately from ~~other~~ appropriated funds. ~~Daily fees, interest, insurance reimbursements and any other funds collected shall be accounted for separately.~~

47.3(3) The district department shall not enter into a subcontract for custody or treatment of offenders without the written approval of the deputy director *of the division of community services.*

a. Subcontractors shall only be paid for services provided on a reimbursement basis.

b. The district department shall not pay for substance abuse treatment otherwise available and funded from other sources.

c. The district department and any subcontractor shall, whenever possible, offset the cost of providing substance abuse treatment with ~~available~~ *third-party* reimbursements.

d. The district department shall include, in any contract for housing or treatment, provisions to protect the district department and the department of corrections from liability arising from the actions of any subcontractor.

47.3(4) The district department shall maintain a schedule of daily fees to be assessed to inmates. The fee schedules shall be based on a minimum *of* $10 per day; however, if in the opinion of the facility director or designee the inmate is unable to pay the full amount, a reduced fee will be set, and the balance of the fee up to $10 shall accumulate and be assessed at such time as the inmate is able to pay. If the inmate is directly paying the substance abuse treatment provider, the fee schedule shall be appropriately reduced but not be less than $5 per day.

47.3(5) Inmates may not be denied services due to an inability to pay the daily fee.

47.3(6) The district department shall ~~establish policies and procedures~~ *comply with established policies and develop procedures* which require that all inmates surrender their earnings to facility staff for the purpose of financial management and savings. Those policies and procedures shall provide for the proper accounting and disbursement of all inmate funds including, but not limited to, deduction of a daily fee where appropriate.

47.3(7) Upon request by the district director or designee, the county shall provide temporary confinement of offenders allegedly violating the conditions of the assignment to a treatment program. The department of corrections shall negotiate a reimbursement rate with each county for the temporary confinement of offenders.

47.3(8) A county holding offenders ordered to jail due to insufficient space in a community-based corrections program will be reimbursed by the department of corrections.

47.3(9) If an inmate escapes or participates in an act of absconding from the facility to which the inmate is assigned, the inmate shall reimburse the department of corrections for the cost of transportation.

ITEM 4. Amend 201—47.4(246) to read as follows:

201—47.4(246) Program structure.

47.4(1) The district department shall provide 24-hour housing and supervision of inmates either directly or through a contract with other agencies or individuals.

47.4(2) Each inmate shall sign a supervision agreement approved by the department of corrections. Failure to sign said agreement or abide by the requirements therein shall constitute reason to recommend returning the inmate to a ~~secure~~ *an* institution.

47.4(3) The district department shall ensure that all inmates are ~~enrolled in a treatment program which provides the minimum requirements established by the division of substance abuse, department of public health~~ *involved in an appropriate continuum of programming which has been approved by the department of corrections.*

47.4(4) ~~The district department shall ensure that all inmates are provided job readiness training and/or employment counseling, as needed.~~ *Rescinded.*

47.4(5) The district department shall ensure, to the extent possible, that all inmates are employed a minimum of 30 hours per week.

47.4(6) The district department shall ~~establish policies and procedures~~ *comply with established policies and procedures* to allow inmates to leave the facility for treat-

ment, employment, and food service when those activities are not provided at the facility. In all other circumstances, inmates may only leave the facility without supervision in accordance with department of corrections furlough procedures.

47.4(7) The district department, or subcontractor, shall utilize the department of corrections policies and procedures concerning inmate discipline.

47.4(8) The district department shall ~~establish policies and procedures~~ *comply with established policies and develop procedures* to ensure development and modification of a restitution plan of payment for each inmate ~~within 30 days of~~ entering the program. *Said* ~~The~~ plan shall comply with Iowa Code chapter 910. Restitution payments shall be an integral part of each inmate's financial management.

47.4(9) The district department shall ~~establish policies and procedures to ensure that all inmates receive recommended followup substance abuse treatment and correctional supervision following release from the facility.~~ *comply with established policies and develop procedures to ensure that the inmates who are identified as needing continuing care receive follow-up treatment according to their identified needs. All inmates will receive correctional supervision following their release from the facility unless their sentence has legally expired.*

47.4(10) The district department shall ~~establish procedures~~ *comply with established policies and develop procedures* to ensure that all nonemergency medical treatment required by *indigent* inmates is obtained at the University of Iowa hospitals.

47.4(11) The district department shall ~~establish procedures~~ *comply with established policies and develop procedures* to ensure that a written summary of the inmate's progress in ~~custody and treatment~~ *the program* is completed on all inmates who ~~are terminated from the facility.~~ *fail to satisfactorily complete the program and are placed at the Iowa Medical and Classification Center.* ~~The~~ *Said* report shall be forwarded to ~~any Iowa correctional program having custody or supervision of the inmate~~ *the Iowa Medical and Classification Center* immediately following termination from the program.

47.4(12) The district department shall ~~establish policies, procedures~~ *comply with established policies and develop procedures* and criteria for recommending discharge from the facility which shall include ~~at a minimum the requirement that the inmate has completed the treatment requirements established by the division of substance abuse, demonstrated a satisfactory work record of at least 90 days, and demonstrated that continued custody is no longer necessary for the protection of the community.~~ *the completion of a department of corrections approved continuum of programming. The recommendation for discharge shall specify the treatment hours completed and document that maximum benefits have been received. When physically able, the inmate must demonstrate a satisfactory work record for at least 90 days. This requirement may be reduced by the department of corrections when justification exists.*

47.4(13) Each inmate shall be awarded good time and work ~~time~~ *bonus* in accordance with department of corrections policies and procedures. The district director *or designee* may recommend the loss of earned *good* time pursuant to ~~that~~ *the* same policy.

47.4(14) The district department shall ~~establish policies and procedures~~ *comply with established policies and develop procedures* which provide for visitation of inmates. However, visiting privileges may be limited to the extent necessary for treatment, security, or management reasons.

47.4(15) ~~Inmates granted parole or work release shall be provided appropriate clothing or clothing allowance, transportation and release allowance as specified in Iowa Code section 906.9.~~ *Rescinded.*

47.4(16) The district department shall maintain and make available to the department of corrections requested data for the purpose of evaluating the facility and program.

47.4(17) The district department shall ~~follow the department of corrections policies and procedures~~ *comply with established policies and develop procedures* for escape when an inmate is absent from the facility without authorization ~~for more than 30 minutes or when the inmate is more than 2 hours late returning from furlough~~ *or there is probable cause to believe the inmate is taking flight or involved in criminal activity.*

These rules are intended to implement Iowa Code Supplement section 246.513.

ARC 2887A

ELDER AFFAIRS DEPARTMENT[321]

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 249D.14, the Department of Elder Affairs hereby gives Notice of Intended Action to amend Chapter 1, "Introduction," Chapter 6, "Area Agency on Aging Planning and Administration," and Chapter 7, "Area Agency on Aging Service Delivery," Iowa Administrative Code.

These amendments are proposed to bring the rules into compliance with the Older Americans Act concerning use of Title III-G funds for the prevention of elder abuse, neglect and exploitation.

Any interested person may make written comments or suggestions on or before April 21, 1992. Written comments should be directed to the Executive Director, Department of Elder Affairs, 236 Jewett Building, Des Moines, Iowa 50319.

Oral or written comments may be submitted at a public hearing to be held at 10 a.m. on Wednesday, April 22, 1992, in the Library, Department of Elder Affairs, 236 Jewett Building, Des Moines, Iowa.

These rules are intended to implement Iowa Code chapter 249D.

The following amendments are proposed:

ITEM 1. Amend rule **321—1.7(249D)** by adding the following new definition in alphabetical order:

"Title III-G" means Title III, part G, of the federal Older Americans Act for prevention of adult abuse, neglect and exploitation.

ELDER AFFAIRS DEPARTMENT[321](*cont'd*)

ITEM 2. Amend subrule **6.4(2)** by adding paragraph "x" as follows:

x. Coordinate planning by individuals, agencies and organizations interested in the prevention of abuse, neglect and exploitation of older persons and assist in implementation of educational and awareness activities, in coordination with the ombudsman program.

ITEM 3. Amend rule **321—6.8(249D)** by adding new numbered paragraph **"21"** as follows:

21. Educating and alerting the public in methods for the prevention of abuse, neglect and exploitation of older persons.

ITEM 4. Amend subrule 6.10(1) as follows:

6.10(1) Exceptions. The direct provision by an AAA of the following services does not require the submission by the AAA of a request to provide the service directly: information and referral, outreach, employment, case management, advocacy representation, mental health outreach, *public education and coordination of efforts concerning the prevention of elder abuse* and care review committee coordination.

ITEM 5. Amend 321—Chapter 7 by adding new rule 321—7.7(249D) as follows:

321—7.7(249D) Title III-G of the Act.

7.7(1) Prevention of abuse of older persons. Title III-G provides funding for activities directed toward the prevention of abuse, neglect and exploitation of older persons in conjunction with the ombudsman program and requires matching funds from AAAs of 15 percent. Funding for prevention activities is not limited to Title III-G funds.

7.7(2) Prevention activities. Program activities are to be public education and the dissemination of information, supplementing prior activities.

7.7(3) Coordination with local groups. AAAs shall implement the program in coordination with local groups, individuals and agencies, such as the department of human services' multidisciplinary committee.

7.7(4) Administration. The submission of reports and monitoring of Title III-G funds will be in accordance with the reporting manual issued annually by the department and the requirements of these rules.

a. Allocation of Title III-G funds will be made annually by the department as funds are available.

b. Assessment of the program will be made periodically in accordance with procedures issued by the department.

ARC 2918A

ENVIRONMENTAL PROTECTION COMMISSION[567]

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 455B.105 and 445B.173, the Environmental Protection Commission for the Department of Natural Resources gives Notice of Intended Action to amend Chapter 61, "Water Quality Standards," Iowa Administrative Code.

This Notice is made in response to a Petition for Rule Making from the city of Mt. Pleasant, requesting that the classification of a portion of Big Creek in Henry County as "A," "primary contact recreation," be removed. The stream segment was classified "A," among other things, by prior rule-making action, **ARC 2233A**, in July, 1991. However, the "A" classification was not proposed in the Notice of Intended Action of that rule-making action, but was added as a result of public comment. The Department agrees that the city and other public may not have had adequate notice of the possibility of the "A" classification, and therefore that issue should be reopened. The Department may remove the "A" classification as a result of this rule-making action, or may terminate this Notice, depending on the comments received.

Any person may submit written suggestions or comments on the proposed amendment through April 21, 1992. Such written material should be submitted to Ralph Turkle, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034, or FAX (515)281-8895. Persons who have questions may contact Mr. Turkle at (515)281-7025.

This amendment is intended to implement Iowa Code chapter 455B, division III, part 1 [455B.171 to 455B.191].

This amendment is intended to implement Iowa Code chapter 455B, division III, part 1 [455B.171 to 455B.191].

The following amendment is proposed.

Amend subrule **61.3(5)**, paragraph **"e,"** Skunk River Basin, Big Creek, "8b" and "8ba," by deleting the "A" designation for the respective Big Creek segments.

ARC 2897A

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 77, "Conditions of Participation for Providers of Medical and Remedial Care," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," appearing in the Iowa Administrative Code.

These amendments add camps accredited by the American Camping Association as a new category of respite providers for persons eligible for the Ill and Handicapped Model Waiver. Currently Camp Sunnyside is the only camp accredited in Iowa, but Camp Courageous has been accredited in the past.

The maximum fee per day for camps to provide respite services is established at $115.

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 22, 1992.

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

The following amendments are proposed.

ITEM 1. Amend subrule **77.30(5)** by adding the following new paragraph "**e**":

e. Camps accredited by the American Camping Association.

ITEM 2. Amend subrule **79.1(2)** by adding the following provider category under Model Waiver service providers, number 5, Respite care providers:

Provider category	Basis of reimbursement	Upper limit
(Camps—out of home)	Fee schedule	$115 per day

ARC 2909A

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 234.6 and 1991 Iowa Acts, chapter 267, section 109, subsection 3, paragraph c, and section 144, the Department of Human Services proposes to rescind Chapter 168, "Child Day Care Grants Program," and to adopt Chapter 168, "Child Day Care Grants Programs," Iowa Administrative Code.

The substance of these amendments is being Adopted and Filed Emergency as **ARC 2910A**, and published herein. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

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 22, 1992.

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

Des Moines - April 22, 1992 9 a.m.
Des Moines District Office
City View Plaza, Conference Room 100
1200 University
Des Moines, Iowa 50314

These rules are intended to implement Iowa Code section 234.6(5).

ARC 2900A

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) and Iowa Code Supplement section 68B.4(4), the Department of Inspections and Appeals gives Notice of Intended Action to adopt a new Chapter 7, "Consent for the Sale of Goods and Services," Iowa Administrative Code.

The proposed rules specify the procedures by which an official of the agency may be granted agency consent to sell goods or services to individuals, associations, or corporations subject to the regulatory authority of the agency.

Interested persons may make written comments or suggestions on the proposed rules on or before April 21, 1992. Written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; FAX (515)242-5022.

These rules are intended to implement Iowa Code Supplement section 68B.4.

The following new chapter is proposed.

CHAPTER 7

CONSENT FOR THE SALE OF GOODS AND SERVICES

481—7.1(68B) General prohibition. An official of the department shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations subject to the regulatory authority of the department without obtaining written consent as provided in these rules.

481—7.2(68B) Definitions.

"Compensation" means remuneration for the sale of goods and services, including cash or other forms of payment.

"Department" means the department of inspections and appeals.

"Official" means an officer of the state of Iowa receiving a salary or per diem, whether elected or appointed or whether serving full-time or part-time. Official includes, but is not limited to, supervisory personnel and members of state agencies and does not include members of the general assembly or legislative employees.

Where the term "official" is used in this chapter, it includes a firm of which any of those persons is a partner and a corporation of which any of those persons hold 10 percent or more of the stock, either directly or indirectly, and the spouse and minor children of any of those persons.

"Sale of goods or services" means the receipt of compensation by an official for providing goods or services.

481—7.3(68B) Conditions of consent for officials. Consent to sell goods or services shall not be given to an official unless all of the following conditions are met:

1. The official's job duties or functions are not related to the department's regulatory authority over the individual, association, or corporation.
2. The selling of the goods or services does not affect the official's job duties or functions.
3. The selling of the goods or services does not include acting as an advocate on behalf of the individual, association, or corporation to the department.
4. The selling of the goods or services does not result in the official selling goods or services to the department on behalf of the individual, association, or corporation.

481—7.4(68B) Application for consent. A written application for consent shall be signed by the official and filed with the department in advance of the proposed sale of goods or services. An application shall be considered filed when all the information specified in subrule 7.4(1) is received by the department.

7.4(1) The written application shall include the following information:

a. The name and address of the prospective employer or recipient of the goods or services;
b. The direct or indirect relationship of the department to the regulated entity.
c. The anticipated date(s) of employment or delivery of the goods or services;
d. A description or list of the goods or services to be supplied, detailing the duties or functions to be performed;
e. The amount and form of compensation; and
f. An explanation of why the proposed sale of goods or services will not create a conflict of interest or provide financial gain by virtue of the official's position within the department.

7.4(2) Consent or denial of consent shall be given in writing by the department in a timely manner. If the consent is denied, the department shall state the reason(s) for the denial.

481—7.5(68B) Effect of consent. The consent is valid only in relation to the specific facts, dates, and circumstances described in the application. Consent can be revoked at any time by reasonable prior written notice to the official.

481—7.6(22,68B) Public information. The application and consent are public records and are available for public examination, except where the record is exempt from disclosure under Iowa law.

481—7.7(68B) Appeal. An official may grieve the decision in accordance with 581—Chapter 12 of the Iowa department of personnel rules.

These rules are intended to implement Iowa Code Supplement section 68B.4.

ARC 2902A

INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 505.8, the Iowa Division of Insurance gives Notice of Intended Action to amend Chapter 37, "Medicare Supplement Insurance Minimum Standards," Iowa Administrative Code.

The proposed amendment requires any insurer marketing Medicare Supplement insurance to advise prospective insureds of the state senior insurance counseling program (Protection and Advocacy through Community Training (PACT) thereby providing Iowa seniors with an opportunity to obtain impartial information and assistance, should they so desire, in Medicare Supplement purchasing decisions.

Interested parties may submit written comments no later than April 21, 1992, to Roger Strauss, Iowa Insurance Division, Lucas State Office Building, Sixth Floor, Des Moines, Iowa 50319.

A public hearing will be held on April 23, 1992, at 10 a.m. in the office of the Insurance Division, Lucas State Office Building, Sixth Floor Conference Room, Des Moines, Iowa.

This rule is intended to implement Iowa Code chapter 514D.

The following amendment is proposed.

Amend subrule **37.18(1)** by adding paragraph **"f"** as follows:

f. At solicitation, provide written notice to the prospective policyholder or certificate holder of the name, address, and telephone number of the senior insurance counseling program approved in Iowa by the commissioner of insurance. The written notice shall be in a form prescribed by the commissioner.

ARC 2932A

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 amend Chapter 10, "General Industry Safety and Health Rules," Iowa Administrative Code.

The amendment to rule 10.20(88) relates to process safety management of highly hazardous chemicals; explosives and blasting agents; and a correction; and occupational exposure to asbestos, tremolite, anthophyllite and actinolite, amendment.

If requested by April 21, 1992, a public hearing will be held on April 23, 1992, 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 23, 1992, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209.

The Division has determined that this Notice of Intended Action may have an impact on small business. This rule will not necessitate additional annual expenditures exceeding $100,000 by any political subdivision or agency or any contractor providing services to political subdivisions or agencies.

The Division will issue a regulatory flexibility analysis as provided by Iowa Code section 17A.31 if a written request is filed by delivery or by mailing postmarked no later than April 22, 1992, 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.

This rule is intended to implement Iowa Code section 88.5.

The following amendment is proposed.

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

57 Fed. Reg. 6403 (February 24, 1992)
57 Fed. Reg. 7847 (March 4, 1992)
57 Fed. Reg. 7878 (March 5, 1992)

ARC 2933A

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 amend Chapter 26, "Construction Safety and Health Rules," Iowa Administrative Code.

The amendment relates to occupational exposure to asbestos, tremolite, anthophyllite and actinolite.

If requested by April 21, 1992, a public hearing will be held on April 23, 1992, 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 amendment. Written data or arguments to be considered in adoption may be submitted by interested persons no later than April 23, 1992, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209.

The Division has determined that this Notice of Intended Action may have an impact on small business. This amendment will not necessitate additional annual expenditures exceeding $100,000 by any political subdivision or agency or any contractor providing services to political subdivisions or agencies.

The Division will issue a regulatory flexibility analysis as provided by Iowa Code section 17A.31 if a written request is filed by delivery or by mailing postmarked no later than April 22, 1992, 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.

This rule is intended to implement Iowa Code section 88.5

The following amendment is proposed.

Amend rule **347—26.1(88)** by inserting at the end thereof:

57 Fed. Reg. 7878 (March 5, 1992)

ARC 2917A

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

This amendment expands the existing speed and distance zone in Harpers Slough on the Mississippi River in Allamakee County.

Any interested person may make written suggestions or comments on the proposed amendment prior to April 22, 1992. Such written materials should be directed to the Law Enforcement Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; FAX (515)281-8895. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-4515 or at the enforcement

offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on April 22, 1992, at 10:30 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

This rule is intended to implement the provisions of Iowa Code section 106.26.

The following amendment is proposed:

Amend subrule 40.27(1) as follows:

40.27(1) All vessels operated in Harpers Slough between a point 200 feet above the state ramp and ~~a point~~ *200 feet out from the west shore* extending ~~200 feet~~ downstream ~~below Doc's Dock and extending 250 feet from shore on the Harpers Ferry side~~ *to a point known as Sandy Point Road Dead-End*, shall operate at a no-wake speed.

ARC 2915A

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455A.5(6)"a," the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 61, "State Parks and Recreation Areas," Iowa Administrative Code.

The proposed amendments make the following changes in the chapter:

1. Establish a winter season and procedures for rental of the new year-round cabins at Backbone State Park and Wilson Island State Recreation Area.
2. Raise the damage deposit for cabin rental from $25 to $50 for all cabins except the sleeping-only structure at Wilson Island State Recreation Area.
3. Limit the number of persons that can occupy a rental cabin based on the cabin's safe carrying capacity.
4. Change procedures and time limits in making cabin and group camp reservations.
5. Place a time limit on completing registration for a campsite.
6. Lengthen the vessel storage season with no change in fee.
7. Allow swimming from vessels in state park and recreation area artificial lakes under certain conditions.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 21, 1992. Such written materials should be directed to the Park Management Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; FAX (515)281-8895; TDD (515)242-5967. Persons who wish to convey their views orally should contact the Park Management Bureau at (515)281-6158 or at the Park Management Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 21, 1992, at 9 a.m. in the fifth floor west conference room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

These rules are intended to implement Iowa Code section 111.35.

The following amendments are proposed.

ITEM 1. Amend **571—61.2(111)** by adding the following definition in alphabetical order:

"Winter season" means from the second Saturday in October to the third Sunday in May.

ITEM 2. Amend subrule **61.3(5)**, paragraph **"a,"** to read as follows:

	Maximum Fee
a. Vessel storage space (wet or dry)	
(1) Pontoon boats—~~six~~ *eight* months or less	$125
year-round	$175
(2) Other boats—~~six~~ *eight* months or less	$100
year-round	$150

ITEM 3. Amend subrule **61.4(1)**, paragraph **"a,"** second paragraph, to read as follows:

Campers shall, *within one hour of arrival at the campground,* complete the registration form, place the appropriate fee or number of camping tickets in the envelope and place the envelope in the depository provided by the department of natural resources. One copy must then be placed in the holder provided at the campsite.

ITEM 4. Amend subrule **61.4(2)**, paragraph **"a,"** by adding the following sentence: Procedures for winter season rentals of the heated cabins at Backbone State Park and Wilson Island State Recreation Area shall be governed by paragraphs "a," "b," "c," "d," "e," "n," "o" and "p" of this subrule and by the provisions of 61.4(3).

ITEM 5. Amend subrule **61.4(2)**, paragraph **"f,"** to read as follows:

f. All reservations must be accompanied by a ~~$25~~ *$50 per cabin/per reservation period* deposit which will be refunded only if a cancellation notice is received at least ~~ten days~~ *two weeks (14 days)* prior to the date of reservation. *The deposit for the nonmodern cabin rental at Wilson Island Recreation Area shall be $25.*

ITEM 6. Amend subrule **61.4(2)**, paragraph **"h,"** to read as follows:

h. ~~Cabin~~ *Except as provided in 61.4(2)"p," cabin* and group camp reservations must be for a minimum of one week (Saturday p.m. to Saturday a.m.). *Reservations for more than a two-week stay will not be accepted.* These facilities, if not reserved, may be rented for a minimum of two ~~days~~ *nights* on a walk-in, first-come, first-served basis. *No walk-in rentals will be permitted after 6 p.m. of the first night of the rental period.*

ITEM 7. Amend subrule **61.4(2)**, paragraph **"i,"** to read as follows:

i. Persons renting cabins or group camp facilities must check in at or after 4 p.m. on Saturday and pay the entire rental fee at that time. Check-out time is ~~2 p.m.~~ *11 a.m.* or earlier on Saturday. The ~~$25~~ deposit will be refunded only after inspection by park personnel to assure the facility and furnishings are in satisfactory condition. *Expenses necessary for repair or replacement of state-owned property will be deducted prior to returning the deposit.*

ITEM 8. Amend subrule **61.4(2)**, paragraph **"j,"** by striking the paragraph and inserting in lieu thereof the following:

j. Except by arrangement for late arrival with the park ranger, no cabin or group camp reservation will be held past 6 p.m. on the first night of the reservation period if the person reserving the facility does not appear. When late arrival arrangements have been made, the person must appear prior to the park closing time established by Iowa Code section 111.46 and Iowa Administrative Code subrule 61.5(3) or access will not be permitted to the facility until 8 a.m. the following day. Arrangements must be made with the park ranger if next-day arrival is to be later than 9 a.m.

ITEM 9. Amend subrule **61.4(2)** by adding the following paragraphs **"n," "o,"** and **"p"**:

n. The number of persons occupying rental cabins is limited to six in cabins which contain one bedroom or less and eight in cabins with two bedrooms.

o. Except at Wilson Island State Recreation Area and Dolliver State Park, no tents or other camping units are permitted for overnight occupancy in the designated cabin area. Tents or camping units placed in the cabin area are subject to the occupancy requirements of subrule 61.5(9), paragraph "a."

p. Prior to May 1 and after Labor Day week, two-night reservations may be made in advance for cabin use. Such reservations and deposits must be received the Tuesday preceding the desired weekend.

ITEM 10. Amend 571—61.4(111) by adding the following subrule:

61.4(3) Winter cabin rental – Backbone State Park and Wilson Island Recreation Area. Procedures and conditions for winter season rental include the following:

a. All reservation requests must be accompanied by the full rental fee including tax plus the damage deposit and shall be for a minimum of two nights' stay.

b. All reservation requests including the fee and deposit must be received by the park ranger at least two weeks prior to the first night covered by the reservation in order to allow work schedule adjustments for park personnel.

c. Reservations made by telephone will be tentatively scheduled and held for five working days. If written confirmation and remuneration are not received by the end of that period, the reservation will be canceled. The five-working-day period must end prior to the two-week time constraint given in 61.4(3)"b."

d. Cabins, if not reserved, may be rented for a minimum of two nights on a walk-in, first-come, first-served basis. Check-in must occur during normal business hours (8 a.m. – 4:30 p.m.). Check-in will be subject to availability of staff.

e. Refunds of fees and deposits may be made under the following conditions:

(1) Inclement weather prohibits arrival at or entrance to the state park cabin area.

(2) Cancellation requests are received more than two weeks prior to the date of reservation.

(3) Personal emergency prevents arrival or requires departure prior to the end of the rental period. Rental fees may be refunded on a prorated basis in the case of early departure.

f. Reservations may not be held past 9 p.m. on the first night of the reservation period if the person reserving the facility does not appear or make arrangements with the park ranger for late arrival. The cabin may be rented on a first-come, first-served basis to another person if the original renter has not arrived or made other arrangements prior to 12 noon of the next day.

ITEM 11. Amend subrule **61.5(8)**, paragraph **"a,"** to read as follows:

a. Except as provided in ~~paragraph~~ *paragraphs* "b" *and "d"* of this subrule, all swimming and scuba diving shall take place in the beach area within the boundaries marked by ropes, buoys, or signs within state park and recreation areas. Inner tubes, air mattresses and other beach-type items shall be used only in designated beach areas.

ITEM 12. Amend subrule **61.5(8)** by adding the following new paragraph **"d"**:

d. Unless posted otherwise persons may swim outside the beach area under the following conditions:

(1) Within ten feet of a vessel which is anchored not less than 100 yards from the shoreline or the marked boundary of a designated beach.

(2) Sailboat or other vessel passengers who enter the water to upright or repair their vessel and remain within ten feet of that vessel.

(3) All vessels, except those being uprighted, must be attended at all times by at least one person remaining on board.

ITEM 13. The change in the deposit required by subrule **61.4(2)**, paragraph **"f,"** shall become effective for reservations in 1993 and beyond.

ITEM 14. The change in the length of rental period in subrule **61.3(5)**, paragraph "a," shall become effective January 1, 1993.

ARC 2891A

NURSING BOARD[655]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, and 258A.3, the Iowa Board of Nursing hereby gives Notice of Intended Action to amend Chapter 2, "Nursing Education Programs," Iowa Administrative Code.

These amendments specify the qualifications for heads of programs and faculty members of nursing education programs and eliminate consultant requirements.

Any interested person may make written suggestions or comments prior to April 22, 1992. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, State Capitol Complex, 1223 E. Court Avenue, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Executive Director at (515)281-3256 or in the office at 1223 E. Court Avenue by appointment.

Also, there will be a public hearing on Wednesday, April 22, 1992, at 7 p.m. in the auditorium of the Wallace State Office Building, East 9th and Grand Avenue, Des Moines, Iowa.

These rules are intended to implement Iowa Code section 152.5.

The following amendments are proposed.

ITEM 1. Amend subrule **2.3(2)**, paragraph "**d**," by rescinding subparagraph **(1)** in its entirety and inserting in lieu thereof the following:

(1) Heads of programs who are employed (at the time this rule is implemented) shall be considered adequately prepared as long as they remain in that position.

ITEM 2. Amend subrule **2.3(2)**, paragraph "**d**," subparagraph **(2)**, to read as follows:

(2) ~~A head~~ *Heads* of ~~the program~~ *programs* who ~~is~~ *are* hired after ~~September 1, 1993~~ *(implementation of this rule)*, shall have a master's or doctoral degree with a major in nursing at either level *at the time of hire. The date of hire is the first day employed with compensation at a particular nursing education program.* ~~(Enforcement of this subparagraph (2) is delayed until completion of the study mandated by 1990 Iowa Acts, chapter 1253, which is to be completed no later than July 1, 1991.)~~

ITEM 3. Amend subrule **2.3(2)**, paragraph "**g**," to read as follows:

g. Submission of a detailed description of qualifications to the board office. *A program head appointed after (implementation of this rule), shall submit a detailed description of qualifications by which the individual's compliance with this subrule can be determined. This information shall be submitted within one month of appointment.*

ITEM 4. Amend subrule **2.3(2)**, paragraph "**g**," by rescinding subparagraphs **(1)** and **(2)**.

ITEM 5. Amend subrule 2.6(1) to read as follows:

2.6(1) Faculty requirements for programs are as follows:

a. There shall be a sufficient number of ~~qualified~~ *adequately prepared* faculty to meet program objectives. ~~Until the program head and majority of the program's faculty are adequately prepared, the program shall review and revise its curriculum under the direction of an outside consultant.~~

~~(1)~~ Adequately prepared shall mean:

~~1.~~ *(1)* ~~A head of the program hired prior to September 1, 1993, shall have a master's or doctoral degree with a major in nursing or an applicable field.~~ A head of the program who is hired after ~~September 1, 1993~~ *(implementation of this rule)* shall have a master's or doctoral degree with a major in nursing at either level *at the time of hire.* ~~(Enforcement of this subparagraph (1)"1" is delayed until completion of the study mandated by 1990 Iowa Acts, chapter 1253, which is to be completed no later than July 1, 1991.)~~

~~2. A faculty member shall have a master's or doctoral degree with a major in nursing or an applicable field. The baccalaureate, master's or doctoral degree must be in nursing.~~

~~(2) The consultant requirement shall go into effect on September 1, 1993, and is as follows:~~

~~1. The review shall be done every three years and shared promptly with the board. The program shall show positive progression in meeting the recommendations of the consultant.~~

~~2. The consultant shall be a registered nurse who is doctorally prepared with an emphasis in education and experienced in nursing education. The consultant shall be approved by the board or as a site visitor for the National League for Nursing.~~

~~3. A program that meets the requirement in paragraph "a" shall be exempt from the consultant requirement.~~

(2) A faculty member who is hired after (implementation of this rule) shall meet the requirements set forth in subrule 2.6(2).

(3) Faculty members and heads of programs employed (at the time this rule is implemented) shall be considered adequately prepared as long as they remain in that position.

b. to f. No change.

ITEM 6. Amend subrule **2.6(2)**, paragraph "**c**," subparagraph **(1)**, to read as follows:

(1) A faculty member who is hired ~~after September 1, 1988, and before September 1, 1993~~ *to teach in a basic RN program after (implementation of this rule)*, shall have at least a baccalaureate degree with a major in nursing or an applicable field at the time of ~~employment~~ *hire*. This person shall ~~have a master's or doctoral degree with a major in nursing or applicable field by September 1, 1993. The baccalaureate, master's, or doctoral degree must be in nursing~~ *make annual progress toward the attainment of a master's or doctoral degree with a major in nursing or an applicable field. One degree shall be in nursing.*

ITEM 7. Amend subrule **2.6(2)**, paragraph "**c**," subparagraph **(1)**, by adding the following new numbered paragraph "**3**":

3. Annual progress shall mean a minimum of one course per year taken as part of an organized plan of study.

ITEM 8. Rescind subrule **2.6(2)**, paragraph "**c**," subparagraph **(2)**, and insert in lieu thereof the following:

(2) A faculty member who is hired to teach after (implementation of this rule) in a practical nursing program or the first level of an associate degree nursing program with a ladder concept shall have a baccalaureate degree in nursing or an applicable field at the time of hire. The date of hire is the first day employed with compensation at a particular nursing education program.

ITEM 9. Rescind subrule **2.6(2)**, paragraph "**c**," subparagraph **(3)** and renumber subparagraphs **(4)**, **(5)**, and **(6)** as **(3)**, **(4)**, and **(5)**, respectively.

ITEM 10. Amend subrule **2.6(2)**, paragraph "**c**," renumbered subparagraph **(4)**, to read as follows:

(4) Those faculty hired only to teach in the clinical setting shall be exempted from subparagraphs (1) ~~to (3)~~ *and (2)* if the faculty member is closely supervised to assure proper integration of didactic content into the clinical setting. ~~If hired after September 1, 1993, those hired only to~~

~~teach in the clinical setting shall have at least a baccalaureate degree with a major in nursing.~~ *If hired after (implementation of this rule), those hired to teach only in the clinical setting shall have a baccalaureate degree in nursing or an applicable field, or shall make annual progress toward the attainment of such a degree. Annual progress shall mean a minimum of one course per year taken as part of an organized plan of study.* The date of hire is the first day employed with compensation at a particular nursing education program.

ITEM 11. Amend subrule 2.6(2), paragraph "c," renumbered subparagraph (5), by rescinding the second paragraph.

ITEM 12. Amend the first sentence of subrule 2.6(2), paragraph "d," subparagraph (1), to read as follows:

(1) Each program head shall submit a list of all faculty teaching ~~on September 1, 1987~~ *(at the time this rule is implemented)*, along with a detailed description of qualifications by which each faculty member's compliance with this subrule can be determined.

ARC 2905A

PHARMACY EXAMINERS BOARD[657]

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 147.76 and 155A.12, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 8, "Minimum Standards for the Practice of Pharmacy," Iowa Administrative Code.

The amendment was approved at the March 4, 1992, regular meeting of the Iowa Board of Pharmacy Examiners.

The amendment identifies duties for which prescribers may employ pharmacists and which would not constitute unethical conduct or practice on the part of the pharmacist accepting such employment.

Any interested person may submit data, views, and arguments, orally or in writing, on or before April 21, 1992, to Lloyd K. Jessen, Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 155A.12.

The following amendment is proposed.

Amend subrule 8.5(2) as follows:

8.5(2) Undue influence. A pharmacist shall not accept professional employment or share or receive compensation in any form arising out of, or incidental to, the pharmacist's professional activities from a prescriber of prescription drugs or any other person or corporation in which one or more such prescribers have a proprietary or beneficial interest sufficient to permit them to directly or indirectly exercise supervision or control over the pharmacist in the pharmacist's professional responsibilities and duties or over the pharmacy wherein the pharmacist practices. It shall not be unethical in and of itself or be evidence of unethical behavior for a pharmacist to accept professional employment or share or receive compensation in any form arising out of, or incidental to, the pharmacist's professional activities from any persons or corporations in which one or more prescribers had the above described proprietary or beneficial interest as of April 23, 1981, and which were engaged in the operation of a pharmacy on April 23, 1981, for a period of 25 years from April 23, 1981. A prescriber may employ a pharmacist to provide *nondispensing*, drug information, *or other cognitive* services.

ARC 2906A

PHARMACY EXAMINERS BOARD[657]

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 204.301 and 204.303 and Iowa Code Supplement section 204.302, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendments were approved at the March 4, 1992, regular meeting of the Iowa Board of Pharmacy Examiners.

The amendments implement legislation providing that registrations issued under the Iowa Controlled Substances Act be for a period of two years rather than one year and provide for a biennial registration fee and a penalty for late applications.

Any interested person may submit data, views, and arguments, orally or in writing, on or before April 21, 1992, to Lloyd K. Jessen, Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319.

These amendments are intended to implement Iowa Code section 204.303 and 1991 Iowa Code Supplement section 204.302.

The following amendments are proposed.

ITEM 1. Amend rule 657—10.3(204), introductory paragraph, as follows:

657—10.3(204) Registration and reregistration fee. For each registration or reregistration to manufacture, distribute, dispense, conduct research or instructional activities and conduct chemical analysis with controlled substances listed in schedules I through V of chapter 204, registrants shall pay ~~an annual fee of $25~~ *a biennial fee of $50.*

PHARMACY EXAMINERS BOARD[657](*cont'd*)

ITEM 2. Amend subrule 10.3(2) as follows:

10.3(2) Late application. Persons required to register or ~~annually register~~ *reregister* under the provisions of chapter 204, division III, who file late application, shall pay an additional ~~five dollar~~ *$50* late payment fee.

ITEM 3. Amend subrule 10.3(8) as follows:

10.3(8) Expiration date for application for registration. Any person who is registered may apply to be reregistered not less than 30 days, nor more than 60 days, before the expiration date of the registration. A ~~registered person~~ *registrant* who fails to file for reregistration at least 30 days before the expiration date of the registration must apply for a new registration; the existing registration will expire on the date specified.

ITEM 4. Amend subrule 10.3(9) as follows:

10.3(9) Exemption of law enforcement officials. In order to enable law enforcement agency laboratories to obtain and transfer controlled substances for use as standards in chemical analysis, such laboratories must obtain ~~annually~~ *biennally* a registration to conduct chemical analysis. Such laboratories shall be exempted from payment of a fee for registration. Laboratory personnel, when acting in the scope of their official duties, are deemed to be officials exempted by this subrule. For purpose of this subrule, laboratory activities shall not include field or other preliminary chemical tests by officials exempted by this subrule.

ARC 2907A

PHARMACY EXAMINERS BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3, 17A.4, and 17A.22, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to adopt a new Chapter 28, "Agency Procedure for Rule Making," Iowa Administrative Code.

The new chapter was approved at the March 4, 1992, regular meeting of the Iowa Board of Pharmacy Examiners.

This action adopts the rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to agency procedure for rule making. Amendments adopted herein are for the purpose of identifying the Board, the Executive Secretary/Director of the Board, the office address of the Board, and other various items as identified for amendment within the uniform rules.

Any interested person may submit data, views, and arguments, orally or in writing, on or before April 21, 1992, to Lloyd K. Jessen, Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319.

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

The following chapter is proposed:

CHAPTER 28
AGENCY PROCEDURE FOR RULE MAKING

The Iowa board of pharmacy examiners hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to agency procedure for rule making which are printed in the first Volume of the Iowa Administrative Code.

28.3(2) Anticipated rule making. In lieu of the words "(commission, board, council, director)", insert "board".

28.4(3) Notices mailed. In lieu of the words "(specify time period)", insert "one year".

28.5(1) Written comments. In lieu of the words "(identify office and address)", insert "Executive Secretary/Director, Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319".

28.6(3) Mailing list. In lieu of the words "(designate office)", insert "Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319".

28.10(2) Categories exempt. In lieu of the words "(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them)." insert the following:

a. Temporary designation of controlled substances to maintain uniformity with federal laws and regulations pending enactment of legislation to reclassify the substances.

b. Designation of precursor substances.

c. Changes to citations of Iowa Code chapters and sections and citations or references to Iowa Administrative Code chapters, rules, or subrules when such changes are intended to clarify or correct inaccurate or incorrect citations or references.

28.11(1) General. In lieu of the words "(specify the office and address)", insert "Iowa Board of Pharmacy Examiners, 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319".

28.13(2) Contents.

c. In lieu of the words "(agency head)", insert "board".

ARC 2911A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF COSMETOLOGY EXAMINERS

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 157.14, the Board of Cosmetology Examiners hereby gives Notice

of Intended Action to rescind Chapter 60, "Cosmetology Examiners"; Chapter 61, "Sanitary Conditions for Beauty Salons and Schools of Cosmetology"; and Chapter 62, "Cosmetology Continuing Education," Iowa Administrative Code.

The Board hereby proposes to adopt new Chapter 60, "Licensure of Cosmetologists, Electrologists, Manicurists, and Instructors"; Chapter 61, "Licensure of Beauty Salons and Cosmetology Schools"; Chapter 62, "Fees"; Chapter 63, "Requirements for Beauty Salons and Schools of Cosmetology"; Chapter 64, "Cosmetology Continuing Education"; Chapter 65, "Disciplinary Procedures for Cosmetology Licensees"; Chapter 66, "Agency Procedure for Rule Making"; Chapter 67, "Petitions for Rule Making"; and Chapter 68, "Declaratory Rulings," Iowa Administrative Code.

New Chapters 60 to 65 are revisions and clarifications of the previous Chapters 60 to 62. New Chapters 66 to 68 are the adoption of the uniform rules on rule making, petitions for rule making and declaratory rulings.

Any interested person may make written comments on the proposed rules on or before April 21, 1992. Comments should be addressed to Barbara Charls, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code chapters 17A, 147, 157, 258A and 714.

The following amendments are proposed.

Rescind 645—Chapters 60, 61, and 62, and insert in lieu thereof the following:

CHAPTER 60

LICENSURE OF COSMETOLOGISTS, ELECTROLOGISTS, MANICURISTS, AND INSTRUCTORS

645—60.1(157) Definitions. For purposes of 645—Chapters 60 to 65, the following definitions shall apply:

"Approved program or activity" means a continuing education program activity meeting the standards set forth in these rules which has received advance approval by the board pursuant to these rules.

"Beauty salon" means a fixed establishment or place where one or more persons engage in the practice of cosmetology, electrology or manicuring.

"Board" means the Iowa board of cosmetology examiners.

"Cosmetologist" means a person qualified to perform practices of cosmetology or by occupation has knowledge or skill peculiar to the practice of cosmetology.

"Cosmetology" means practices performed with or without compensation by cosmetologists which include the practices listed in Iowa Code chapter 157. In addition to those practices listed in Iowa Code chapter 157, the practice of cosmetology includes the application of nail extensions, artificial nails or pedicuring.

"Cosmetology establishment" means a fixed location where one or more persons engage in the practice of cosmetology, electrology, manicuring, or manicuring—advanced curriculum.

"Cosmetology school" means an establishment operated by a person for the purpose of teaching cosmetology.

"Department" means the Iowa department of public health.

"Electrologist" means a person licensed to remove superfluous hair by use of electric needle or electronic process. This person shall perform the service in a licensed beauty salon.

"Electrolysis" means removal of superfluous hair by electric needle or electronic process.

"Instructor" means a person licensed to instruct students in a cosmetology school in any of the practices in this chapter.

"Lapsed licensee" means a licensee who has not renewed a license to practice cosmetology, electrology, manicuring or manicuring—advanced curriculum or an instructor's license within 30 days of the renewal date.

"Licensee" means any person or entity holding a license pursuant to Iowa Code chapter 157 and Iowa Administrative Code 645—Chapter 60 to 65.

"Manicuring" means the practice of cleansing, shaping, polishing the fingernails and massaging the hands and lower arms of any person. It does not include the application of nail extensions, artificial nails or pedicuring.

"Trainee" means any person who completes the requirements for licensure as a cosmetologist listed in Iowa Code section 157.3 except for the examination, and has a temporary permit.

645—60.2(157) Requirements for licensure to practice cosmetology.

60.2(1) All persons who practice cosmetology in the state of Iowa are required to be licensed as cosmetologists.

60.2(2) To be considered eligible for examination, an applicant shall:

a. Present to the department a diploma, or similar evidence, issued by a licensed school of cosmetology indicating that the applicant has completed the course of study prescribed by the board. For licensure of applicants licensed outside of Iowa, see rule 645—60.3(157).

Cosmetology course of study. The course of study in an approved school of cosmetology shall consist of not less than 2100 hours training. No school of cosmetology will be approved by the board of cosmetology examiners unless it complies with the requirements of study as provided in the following curriculum.

CURRICULUM	
DEMONSTRATIONS AND LECTURES	500 hours
Sanitation and sterilization	
Hygiene and grooming	
Professional ethics	
Salesmanship	
Public relations and psychology	
Anatomy	
Dermatology	
Trichology	
Nails	
Chemistry	
Chemical hair straightening	
Safety precautions	
State law and rules	
SUPERVISED PRACTICAL INSTRUCTION	1200 hours
Sanitation and sterilization	
Shampoos and rinses	
Scalp and hair treatments	
Hair shaping	
Hair styling	
Wiggery	

Manicuring	
Artificial nails (all aspects)	
Permanent waving	
Hair coloring and lightening	
Facial treatments and makeup	
Safety precautions	
UNASSIGNED–Specific needs	400 hours
TOTAL HOURS	2100 hours

b. Complete the application form prescribed by the board. Application must be filed with the cosmetology board at least 45 days preceding the examination. Application forms may be obtained from the cosmetology school at which the student is enrolled, or by contacting the Board of Cosmetology Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

60.2(3) Students who complete their training prior to the date of examination may qualify by complying with the above requirements; however, the exact date of graduation shall be shown on the application. Upon request, a temporary permit shall be issued to practice until the results of the next succeeding examination are available. Only one permit shall be issued to a person.

645—60.3(157) Licensure of applicants licensed as cosmetologists in other states and countries.

60.3(1) The board may enter into reciprocal agreements with other states pursuant to the provisions of Iowa Code sections 147.44 to 147.49.

a. Reciprocal agreements. The board may enter into a full reciprocal agreement with any state which, as determined by the examining board, has similar educational and examining standards and which shall reciprocate with this state. Each applicant shall show proof of licensure validity in the state with which this state has a full reciprocal agreement; upon acceptance of said proof, the applicant shall be issued a license to practice in this state.

b. Conditional reciprocal agreements. The board may enter into conditional reciprocal agreements with another state which conducts examinations. The terms of agreement may require one or both of the following:

(1) Furnish satisfactory proof to the department that the applicant has been licensed and actively engaged in the practice of any of the professions under the jurisdiction of the board for the period 12 months just prior to application.

(2) Pass a practical examination in the practice of any of the professions under the jurisdiction of the board.

c. For applicants licensed in a state having reciprocity with Iowa, the application procedures shall be as follows:

(1) Applicant shall submit a completed application form prescribed by the board and accompanied by the fee specified in 645—subrule 62.1(2).

(2) Applicant shall submit with application a certification of licensure in another state with which Iowa has a reciprocal agreement.

If the applicant satisfies proof of licensure by a state with which the Iowa board has a reciprocal agreement, the examination requirement for licensure will be waived for that applicant.

60.3(2) For applicants licensed in states which do not have reciprocity with Iowa the application procedure shall be as follows:

a. Applicant shall submit a completed application form prescribed by the board and accompanied by the fee as specified in 645—subrule 62.1(2).

b. Applicant shall submit a certification of licensure in another state for at least 12 months in the 24-month period preceding the application.

c. If the applicant completes the requirements of 60.3(2) "a" and "b," the applicant shall be allowed to take the practical and theory examinations given by the board.

60.3(3) Any applicant licensed in another state or country who does not meet the requirements of subrule 60.3(1) or 60.3(2) shall present a completed application and notarized copy of the license from the other state or country. The application shall be reviewed to determine if additional hours of training are necessary or if the applicant qualifies to take the examination.

60.3(4) Upon request, persons who are licensed in other states and countries who are determined to be eligible to take the practical and theory examination shall be issued a temporary permit to practice until the results of the next succeeding examination following the date of issuance of the permit are available. Only one permit shall be issued to a person.

645—60.4(157) Cosmetology examination.

60.4(1) Examinees taking state board examinations shall have at their disposal for the practical examination all necessary materials requested by the cosmetology board of examiners. No live models are permitted.

60.4(2) Before commencing the examinations, each applicant will be given a confidential number which shall be inscribed on the answer sheet.

60.4(3) Any graduate taking the state board examination, who desires to practice cosmetology prior to examination, shall obtain a temporary permit issued by the department.

60.4(4) A certificate of licensure shall be issued by the department to an applicant who has passed an examination conducted by the board determining minimum competency in the practice of cosmetology. The board shall not be confined to any specific system or method. The examination shall be consistent with the prescribed curriculum for the cosmetology schools of this state and shall include practical demonstrations and written and oral tests as the board deems appropriate. The examination is to be prepared and conducted by the board so as to determine whether or not the applicant possesses the requisite skill in such profession to perform properly all the duties thereof and has sufficient knowledge of the prescribed curriculum.

a. An applicant who has failed either the theory or practical section or both must be reexamined. The applicant receiving a failing grade may be reexamined in the portion of the examination where the failure occurred at a regularly scheduled state board examination and obtain a passing grade.

b. Failure to appear and take the examination shall result in forfeiture of the fee unless the failure to appear shall have been due to illness or similar cause in which written request setting forth reasons why forfeiture should not occur shall be made to the cosmetology board of examiners.

c. If the applicant who fails to appear holds a temporary permit, the temporary permit is forfeited after the results of the examination are available as stated in Iowa Code section 157.4.

d. An applicant who fails one section and does not pass that section within two years must be reexamined in both sections.

60.4(5) The examination rooms will be closed to everyone except examinees, examiners and personnel of the office.

645—60.5(157) Requirements for license to practice electrolysis.

60.5(1) A person applying for an electrologist license shall present to the board a diploma or similar evidence, indicating successful completion of a course of at least 250 hours of training related to electrolysis in a licensed school of cosmetology in Iowa, or from any school in another state which is recognized by the board, which teaches the practice of electrolysis. The board shall not require that a person be licensed as a cosmetologist in order to obtain a license to practice electrolysis; however, the board shall credit the holder of a current cosmetology license with 150 hours toward the electrolysis licensing course.

Electrolysis course of study. The electrolysis course of study shall consist of not less than 50 hours of instruction in the theory of electrolysis and not less than 50 hours of practical instruction in the tweezer method of electrolysis and 150 hours in the life sciences.

CURRICULUM	
LIFE SCIENCES	
Introduction	4 hours
Skin and hair structure	18 hours
Cells and amino acids	16 hours
Chemistry	8 hours
Bacteriology and sanitation	12 hours
Professionalism	8 hours
Retailing	8 hours
Salon management	10 hours
State law and rules	10 hours
Electricity	12 hours
Anatomy	40 hours
Skin disorders	4 hours
Total Life Sciences	150 hours
ELECTROLYSIS THEORY	
Needles or tweezers	3 hours
Thermolysis	8 hours
General treatment	4 hours
Galvanic treatment	8 hours
The blend	8 hours
Equipment	2 hours
Angiology and neurology	10 hours
Speaker (doctor, business or insurance)	3 hours
Field trip to a salon	4 hours
Total Theory	50 hours

200 hours are listed above; however, a total of 250 hours is required. The remaining 50 hours will be applied to practical application on models under strict supervision, unless the instructor feels an individual needs more than the minimum 50 hours of practice and supervision.

60.5(2) A person applying for a license shall pass an examination prescribed by the board.

60.5(3) The department may enter into a reciprocal agreement with any state with equal or similar requirements for licensure of electrologists.

60.5(4) The department may receive by endorsement any applicant from another state, territory, District of Columbia, province or foreign country who submits proof of current licensure with a state, territory, District of Columbia, province or foreign country having equivalent licensure requirements.

645—60.6(157) Requirements for license to practice manicuring.

60.6(1) Licensure requirements. All persons who practice manicuring in the state of Iowa are required to be licensed as a manicurist with the following exceptions:

a. A licensed cosmetologist.

b. An unlicensed person who was employed by a licensed barbershop to manicure fingernails prior to July 1, 1989, may continue such employment without meeting licensing requirements under Iowa Code chapter 157.

60.6(2) Manicurist license requirements. A person applying for a manicurist license to practice shall submit proof of successfully completing a course of at least 40 hours of training relating to manicuring in a licensed cosmetology or licensed barber school.

COURSE OF STUDY

MANICURIST PROGRAM

Class/Clinic Classification	HOURS
Theory–Introduction to Manicuring (Basic, Hot Oil, Male)	8
Theory–Nail and Skin Disorders	4
Theory–Bacteriology	4
Theory–Sterilization and Sanitation	6
(Practical Practice)	4
Public Relations and Attitudes	2
Iowa State Laws and Rules	2
Practical	10

Total hours of theory is 26 hours, total hours of practical is 14 hours. Students must complete 25 manicures.

645—60.7(157) Requirements for instructors' license.

60.7(1) Instructors in licensed schools of cosmetology shall:

a. Be a graduate of an accredited high school or the equivalent thereof.

b. Be licensed in the state of Iowa as a cosmetologist.

c. Have one thousand hours instructors' training with curriculum content to be determined by the board or two years active practice in the field of cosmetology proven by documentation from previous employers within the six years prior to application.

d. Submit application and fees with certification from school of training or affidavit of employment or proof of active practice in the field of cosmetology to the cosmetology board of examiners prior to the starting date of employment by school.

e. The department shall issue to the applicant a notice of registration which shall be displayed for public view. Such notice shall be valid until the applicant has complied with 60.7(1)"f."

f. Attend an instructors' institute prescribed by the cosmetology board of examiners within the first six months of employment to receive the original instructors' license.

g. An instructor in the field of electrolysis shall also hold an Iowa electrolysis license.

645—60.8(157) Reinstatement of inactive (exempt) practitioners of cosmetology, electrology, manicuring, manicuring—advanced curriculum and instructors. Inactive practitioners who have requested and been granted a waiver of compliance with the renewal requirements as outlined in this chapter or Iowa Code chapter 157 or 258A and who have obtained a certificate of exemption shall, prior to engaging in the practice of the profession in the state of Iowa, satisfy the following requirements for reinstatement:

60.8(1) Submit written application or letter requesting reinstatement to the board; and

60.8(2) Furnish in the application evidence of one of the following:

a. Verification of current active licensure in another state of the United States or the District of Columbia and a notarized statement of active practice of 12 months during the 24 months preceding application for reinstatement of Iowa license; or

b. Completion of a total number of hours of accredited continuing education computed by multiplying four hours by the number of years, with a maximum of four years, a certificate of exemption shall have been in effect for the applicant; or completion of a refresher course approved by the board; or

c. Successful completion of the Iowa state license examination conducted within one year immediately prior to the submission of such application for reinstatement.

645—60.9(258A) Reinstatement of lapsed license.

60.9(1) Those persons who have failed to renew a license to practice issued by the department pursuant to Iowa Code chapter 157 and have not previously received a certificate of exemption shall:

a. As outlined in 645—subrule 62.1(19), for a lapsed cosmetology license, pay past due renewal and penalty fees in addition to completion of all past due continuing education to a maximum of four years. If lapsed four or more years, shall complete a refresher course approved by the board and retake the practical portion of the state board examination.

b. As outlined in 645—subrule 62.1(19), for a lapsed electrology license, pay past due renewal and penalty fees in addition to completion of all past due continuing education to a maximum of four years. If lapsed four years or more, shall complete a refresher course approved by the board and retake the theory portion of the state board examination.

c. For a lapsed manicuring license, pay past renewal and penalty fees as outlined in 645—subrule 62.1(19), in addition to completion of all past due continuing education to a maximum of four years.

d. For a lapsed instructor license, pay past renewal and penalty fees up to four years and take a Micro Teaching Technical Skills Institute course within six months of date of reinstatement.

60.9(2) In lieu of the continuing education requirements of 645—Chapter 64, a lapsed licensee may provide verification of current licensure in another state of the United States or the District of Columbia and a notarized statement of active practice of 12 months during the 24 months preceding application for reinstatement of Iowa licensure.

60.9(3) A person applying for reinstatement of a license which has lapsed for four years or more shall be required to pay a maximum of four years' past due renewal fees and penalty fees then due and complete 16 hours of 30-day prior approved continuing education.

645—60.10(157) Display of license. The original practitioner's license and renewal (cosmetology, electrolysis, manicurist, manicurist—advanced curriculum, instructor or trainee permit) shall be displayed in the licensee's primary place of practice. Following the first renewal, a wallet-sized duplicate license, obtained from the department, shall be available at all satellite places of practice upon request by a client or inspector.

645—60.11(157) Notification of change of name or mailing addresses.

60.11(1) Each licensee or trainee shall notify the department of a change of address of the licensee's residence within 30 days after change.

60.11(2) Each licensee or trainee shall notify the department of a change of the licensee's name within 30 days after change.

These rules are intended to implement Iowa Code sections 147.29, 147.36, 147.44 to 147.49, 157.3, 157.4, 157.5, and chapter 258A.

CHAPTER 61

LICENSURE OF BEAUTY SALONS AND COSMETOLOGY SCHOOLS

645—61.1(157) Beauty salon–licensing.

61.1(1) An application for a beauty salon license shall be made in writing to the Board of Cosmetology Examiners, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. Application forms shall be obtained from the board. The following information shall be required on these forms:

a. A floor plan of proposed salon showing all entrances and exits, reception, styling, cleaning and toilet areas.

b. If the salon area is in a facility where other businesses are located, the salon relationship to the other businesses must be shown on the floor plan. (See subrule 645—63.3(2)).

c. If the salon is located in a residence, its relationship to the residence must be indicated. (See subrule 645—63.3(1)).

d. If a salon is located in a rural area, the applicant must provide directions to the salon.

e. If a salon is to be located in a facility such as an office building, complex or hotel, the exact address shall include the floor number, suite or room number.

f. The application for a salon license shall be submitted to the department at least 30 days prior to the anticipated opening day.

61.1(2) The application shall be accompanied by the license fee prescribed in 645—subrule 62.1(8).

61.1(3) Business may commence at the salon following receipt of written approval of the board and receipt of license.

61.1(4) Every beauty salon shall adhere to the sanitary rules established in 645—Chapter 63.

61.1(5) Every cosmetology salon shall have a sign visible outside the entrance designating the place of business.

61.1(6) The original license shall be issued for that location only.

a. Any change of location shall necessitate an application for a new license and the fees required by 645—subrule 62.1(9).

b. A change of address without change of actual location shall not be construed as a new site.

c. A change in salon name shall be reported within 30 days of the change, accompanied by the fee required by 645—subrule 62.1(22).

d. A change of ownership of a salon shall necessitate an application for a new license and the fee required by 645—subrule 62.1(8).

e. Upon discontinuance of a salon, the salon license should be submitted to the board office within 30 days.

645—61.2(157) School of cosmetology—licensing. The board shall grant approval for the issuance of an original cosmetology school license to be issued by the department when the conditions set out below have been fully met. The annual renewal of a cosmetology school license shall be recommended by the board to the department when there is full compliance with this chapter and 645—Chapter 63.

61.2(1) An application shall be in writing and submitted to the Board of Cosmetology Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. The applicant shall submit the following information with the application:

a. The exact location of the proposed school;

b. A complete plan of the physical facilities to be utilized and specifying areas relative to classroom and clinic space;

c. Submit proof of research and a survey completed to substantiate the need for a school; and

d. A list of the names of licensed instructors for the proposed school. The number of instructors submitted must meet the requirement outlined in Iowa Code section 157.8.

61.2(2) The school owner will be requested to appear before the board for an interview regarding the school.

61.2(3) No student shall be accepted until the above requirements are met and approval granted and the board has received the original license fee as outlined in 645—subrule 62.1(4).

61.2(4) The original license shall be granted for that location only.

a. A change of location shall necessitate an application for a new license and the fee required by 645—subrule 62.1(5).

b. A change of address without change of actual location shall not be construed as a new site.

c. A change of ownership of a school shall necessitate an application for a new license and the fee required by 645—subrule 62.1(4).

61.2(5) A cosmetology school, before being issued a license, shall meet the following physical requirements:

a. A minimum floor space of 3000 square feet shall be provided in any school premises and, when the enrollment in a school exceeds 30 students, additional floor space of 30 square feet for each student over 30 will be required to adequately take care of that student;

b. Each licensed school shall be limited to providing one clinic floor where the paying public will receive their services; said clinic floor shall be confined to the premises occupied by the school;

c. A school room shall be large enough and be so equipped as to provide for practical work, lectures and demonstration purposes. A room or rooms separate from the clinic floor shall be provided for such a purpose;

d. A dispensary shall be equipped with lavatory and adequate closed storage for keeping sanitized articles. Chemicals and lotions shall be stored in the dispensary. A wet sterilizer and any other sanitation items that are required under 645—Chapter 63 shall be in place in the dispensary;

e. Two toilets shall be equipped with lavatories, soap and towel dispensers;

f. A laundry room shall be separated by a full wall or partition from the clinic area;

g. Locker facilities for each student shall be provided;

h. Closed cabinets or separate room shall be provided for extra supplies;

i. Covered waste containers shall be provided; and

j. An administrative office shall be provided.

61.2(6) Each cosmetology school shall have the following minimum equipment:

a. Work stations equipped with chair, dresserette, closed drawer or container for sanitized articles, and mirror (maximum of two students per unit);

b. One set of textbooks for each student and instructor;

c. Five shampoo bowls;

d. One large chalkboard or equivalent for each classroom;

e. Facial room equipment for instruction and practice (a separate room is recommended for this purpose);

f. One set of files for all required records;

g. Adequate chair and table area for students in the classrooms; and

h. Adequate equipment and supplies.

61.2(7) Each cosmetology school shall also meet the following miscellaneous requirements:

a. Instructors shall familiarize students with the different standard supplies and equipment used in cosmetology salons.

b. No school shall compensate students for cosmetological services.

c. When school services are displayed or in any other manner advertised by a school of cosmetology, such advertising or display shall indicate in prominent lettering that all services are performed by students under the supervision of instructors.

d. No school of cosmetology shall permit an instructor to perform cosmetological services, with or without compensation, on the school premises except for demonstration purposes. (Instructors shall not practice cosmetology on the school premises.)

e. Students shall be attired in clean and neat uniforms at all times during school hours. Instructors shall be attired in distinct and identifiable attire.

f. All bottles and containers in use shall be distinctly and correctly labeled, showing intended use of the contents.

g. No student shall be required to attend school more than eight hours a day. Schools may offer additional hours to those students that request them in written form.

h. Each school of cosmetology shall maintain a library for the students enrolled therein consisting of textbooks, current trade publications and business management materials. A list of such reference materials suggested by the board shall be obtained from the board office.

i. Each school shall maintain a complete set of student records.

645—61.3(157) Cosmetology course of study. The course of study in an approved school of cosmetology shall consist of not less than 2100 hours training. No school shall be approved by the board of cosmetology examiners unless it complies with the requirements of study

as provided in the curriculum established in 645—60.2(2)"a" and makes written application to the board.

645—61.4(157) Electrolysis course of study. No school shall be approved by the board to teach a course in electrolysis unless the school provides at least the curriculum required in 645—subrule 60.5(1) and makes written application to the board. Only a licensed cosmetologist holding a license in electrolysis and instructor's license shall instruct the theory and practical application of electrolysis.

645—61.5(157) Manicuring course of study. No school shall be approved by the board to teach a course in manicuring unless the school provides the curriculum as provided in 645—subrule 60.6(2) and makes a written application to the board.

645—61.6(157) Cosmetology salons shall not be operated in connection with the school. The licensed cosmetology school shall not be used during scheduled cosmetology instruction time or cosmetology work experience time for any use other than for student cosmetology instruction. Upon written request and approval of the board, classrooms while not being used for cosmetology instruction may be approved for other educational purposes. People may not pass through a classroom or clinic area while in use. The school shall annually submit the floor plan and list of classes to be held in the aforementioned classrooms. Noise level must not be disruptive to other classes. Use of classrooms shall not usurp the space available for cosmetology instruction.

645—61.7(157) Cosmetology school operations—instructors.

61.7(1) All persons working as instructors in a school of cosmetology in Iowa shall hold an Iowa cosmetology instructor's license.

61.7(2) An instructor shall be responsible for and in direct charge of all theory and practical classrooms and clinic at all times.

61.7(3) The number of instructors for each school shall be based upon total enrollment, with a minimum of two instructors employed on a full-time basis for up to 30 students and an additional instructor for each additional 15 students or fraction thereof. However, a school operated by an area community college prior to September 1, 1982, with only one instructor per 15 students is not subject to this subrule and may continue to operate with the ratio of one instructor to 15 students.

61.7(4) A school shall not permit its instructor to work on its patrons except when instructing or otherwise assisting students in said school.

645—61.8(157) Students.

61.8(1) A cosmetology school shall, prior to the time a student is obligated for payment of any moneys, inform the student and the board of all provisions provided in Iowa Code section 714.25 by submitting a statement signed by the student that the information has been passed on to the student.

61.8(2) School credit hours shall not be added or deducted from student hours earned for any reasons.

61.8(3) A student shall be given school credit on the basis of one hour credit for one hour of work in attendance. A student shall not receive credit for participating in demonstration of cosmetology for the sole purpose of recruiting students.

61.8(4) Students shall not be allowed to work on the public until such time as they have received 200 hours of training.

61.8(5) All work done by students on the public shall be under the supervision of an instructor at all times.

61.8(6) Examinations.

a. Students shall be given a final examination upon completion of at least 1800 hours of training for cosmetology.

b. Students shall be given a final examination upon completion of the course of study for manicuring or electrology.

c. Upon passage of the final examination and completion of the entire course of study, students shall be issued a certificate of completion of hours required for course of study.

61.8(7) No student shall be called from theory class or practical class to work on the public.

61.8(8) Upon successfully passing the school examination and receiving the certificate of completion of hours the student may, pending taking the state board examination, begin the instructor training course. Student instructors shall not be in charge of classes without direct supervision by a licensed instructor.

61.8(9) Anyone taking the instructor's course shall adhere to 61.2(7)"d" and 61.7(4).

61.8(10) All licensed schools of cosmetology shall prominently display in the entrance room a sign indicating that all service is performed exclusively by students.

61.8(11) An applicant for a cosmetology license shall be a high school graduate or shall have passed the general education development tests.

61.8(12) Monthly report. Cosmetology schools shall submit on or before the tenth day of each month to the cosmetology office of the Iowa department of public health a report of the names of students enrolled, the total hours for each student previously reported, the total number of hours completed during the month for each student and the total cumulative number of hours for each student at the end of the month. Individual student hours shall be kept on file in the department until the license is issued.

These rules are intended to implement Iowa Code sections 157.10, 157.11, and 714.25

CHAPTER 62
FEES

645—62.1(147,157) All fees are nonrefundable.

62.1(1) License to practice cosmetology issued upon the basis of examination by the board is $50.

62.1(2) License to practice cosmetology for out-of-state applicants by reciprocal agreement or examination is $50.

62.1(3) Examination fee for reexamination for any portion of the examination is $30.

62.1(4) License to conduct a school of cosmetology is $500.

62.1(5) Renewal of a license or change of location of a school of cosmetology is $200 annually.

62.1(6) License to instruct in a school teaching cosmetology is $30.

62.1(7) Renewal for a biennial period of instructor's license is $30.

62.1(8) License to establish a beauty salon is $30.

62.1(9) Renewal of a beauty salon license and change of location of an existing salon is $30 annually.

62.1(10) License to practice electrolysis by reciprocity or examination by the board is $50.

62.1(11) Renewal for a biennial period of license to practice electrolysis is $25.

62.1(12) Renewal for a biennial period of license to practice cosmetology is $20.

62.1(13) License to practice manicuring is $50.

62.1(14) Renewal for a biennial period of license to practice manicuring is $25.

62.1(15) Fee for a certified statement of licensure in this state is $10.

62.1(16) A temporary permit to practice cosmetology (must be filed with application for examination) is $10.

62.1(17) Fee for duplicate of any license is $10.

62.1(18) Delinquent penalty for nonpayment of renewal fee within 30 days after due date is $20.

62.1(19) Penalty fee for lapsed license is $30 per year.

62.1(20) Penalty fee for failure to submit required continuing education with renewal application by March 31 of the renewal year is $20.

62.1(21) Penalty fee for failure to complete required continuing education within the compliance period is $50. This penalty fee is paid before the license may be renewed.

62.1(22) Fee for a name change of beauty salon is $10.

62.1(23) Sponsor fee for continuing education program submitted is $2.50 per clock hour.

This rule is intended to implement Iowa Code chapter 157 and section 147.80.

CHAPTER 63

REQUIREMENTS FOR BEAUTY SALONS AND SCHOOLS OF COSMETOLOGY

645—63.1(157) Rules and inspection reports. The owner or manager of every cosmetology establishment (beauty salon or school of cosmetology) shall keep a copy of the most recent inspection report posted in a conspicuous place in each establishment for the information and guidance of all persons employed or studying therein and the public generally.

645—63.2(157) License. Each licensee shall visibly display at the licensee's work station or close proximity thereof the original license, duplicate license or temporary permit, and the current renewal certifying that the practitioner is licensed or a trainee certified by the board. Beauty salon and school of cosmetology licenses along with the current renewal shall be posted visible to the public therein.

645—63.3(157) Proper quarters.

63.3(1) A beauty salon shall not be maintained in a home unless a separate room is provided for that purpose. The room or rooms designated as the beauty salon shall not be permitted licensure unless it has direct ingress and egress from the outside of the residence. An exception to this rule is that an entrance may be through a nonliving area of the residence, i.e., hall, garage or stairway; in such an exception any doors leading to the living quarters from said beauty salon shall be closed during business hours. Any door leading directly from the licensed beauty salon to any portion of the living area of the residence shall be closed at all times during business hours.

63.3(2) Cosmetology establishments operated in connection with any other business, except where food is handled, shall be separated either by complete or at least a partial partition. Should the cosmetology establishment be operated immediately adjacent to a business where food is handled, such establishment shall be entirely separated and any doors between the aforesaid shall be rendered unusable except in an emergency.

63.3(3) Each beauty salon shall include a clinical, dispensary and reception area.

63.3(4) All establishments shall be kept well lighted with at least 10 foot candle power of natural or artificial light present at all work stations. All areas shall be well lighted.

63.3(5) All establishments shall be adequately ventilated. Special precautions must be taken when providing artificial nail services.

63.3(6) Toilet facilities shall be provided and made available and easily accessible within the building. They shall be maintained in sanitary condition. Soap or other cleansing agent must be available and individual cloth, paper towels or air blowers for drying hands must be provided. The common towel is strictly prohibited and the presence of same shall be prima facie evidence of its use.

63.3(7) A salon owner or supervisor may designate a smoking area, but a salon in its entirety may not be a designated smoking area. Signs must be posted indicating smoking and nonsmoking areas.

a. An entire salon may be designated as a nonsmoking area.

b. No person shall smoke or carry lighted smoking materials in a nonsmoking area or where flammable materials are being handled or dispensed.

c. The clinic area of all cosmetology establishments shall be designated nonsmoking areas.

d. The dispensary area of all cosmetology establishments shall be designated nonsmoking areas.

645—63.4(157) Sanitation.

63.4(1) All establishments shall be kept in a sanitary condition.

63.4(2) If a premises houses more than one licensed salon, the cleanliness and sanitary conditions of any common areas are the responsibility of each license holder and any violation found in the common area will be cited against all licensees occupying the premises.

63.4(3) Every cosmetology licensee, trainee or student engaged in serving the public shall be neat and clean in person and attire and free from communicable disease.

63.4(4) Except as set forth in 63.4(7), all styling, haircutting tools, instruments and equipment in a beauty salon or a school of cosmetology which come in contact with a patron's hair, nails or skin shall be sanitized before use on each patron by cleansing thoroughly with soap and hot water and then immersed at least 20 minutes in an approved germicidal solution in a covered flat container large enough to immerse completely all tools, instruments and equipment, after which they should be dried and place in a closed cabinet. All germicidal solutions shall be labeled. The solutions shall be:

a. From 70 to and including 90 percent isopropyl alcohol in water;

b. Quaternary ammonium compounds in one to five hundred solution in water; or

c. Other equivalent germicidal solutions with an EPA rating approved for this use.

63.4(5) Every licensee and student shall wash their hands with soap and water immediately before serving each patron.

63.4(6) Head coverings, hair pins, clips, rollers and curlers shall be sanitized after each use.

63.4(7) All metallic instruments shall be kept clean by wiping carefully after each use with cotton saturated with

an approved disinfectant solution. It is recommended that the solutions used with metallic instruments be isopropyl alcohol, 70 to and including 90 percent solution, which shall be kept at each occupied work station.

63.4(8) A disinfecting agent shall be available for immediate use at all times a salon is in operation.

63.4(9) Hair clippings shall not be allowed to accumulate and should be disposed of after each service as rules require.

63.4(10) Any disposable material coming into contact with blood or body fluids, such as discharge from open sores, pimples and sebaceous glands, shall be disposed of in a sealable plastic bag (separate from sealable trash or garbage liners) or in a manner that not only protects the licensee and the client but also others who may come into contact with the material such as sanitation workers.

63.4(11) Any disposable sharp objects that come in contact with blood or other body fluids shall be disposed of in a sealable rigid container (puncture proof) that is strong enough to protect the licensee and the client or others from accidental cuts or puncture wounds that could happen during the disposal process.

63.4(12) Sealable plastic bags and sealable rigid containers shall be available for use at all times when services are being performed. Absence of containers shall be prima facie evidence of noncompliance.

63.4(13) Emery boards, cosmetic sponges and orangewood sticks must be discarded after each use or given to the client.

645—63.5(157) Particular aspects of sanitizing.

63.5(1) Any material used to stop the flow of blood shall be used in liquid or powder form. The use of styptic pencils is strictly prohibited; its presence in the work place shall be prima facie evidence of its use.

63.5(2) All fluids, semifluids and powders must be dispensed with a shaker, dispenser pump or spray type container. All creams, lotions and other cosmetics used for patrons must be kept in closed containers and dispensed with disposable applicators.

63.5(3) The use of nail buffers or neck dusters is strictly prohibited. Presence of these articles in the work place shall be prima facie evidence of use.

63.5(4) No salon owner or supervisor shall allow any employee with a contagious disease or condition to be present in the workplace.

63.5(5) A licensee shall not undertake the treatment of any diagnosed disease or knowingly serve a client suffering from a communicable disease or condition, although head lice may be treated in the salon at the discretion of the licensed cosmetologist. Compliance with all applicable laws and rules shall be required.

63.5(6) All consumers must be protected from direct skin contact with multiuse capes or covers, by single-use towels, or paper neck strips. Neck strips must be disposed of immediately after use. All consumers must be protected with a nonabsorbent cover during chemical application.

63.5(7) Licensees shall wear rubber-latex gloves while working on a client if blood, pus or weeping is present or likely to occur. Gloves shall be disposed of after single use.

63.5(8) Licensees, salon owners and supervisors shall comply with all relevant federal, state workplace safety laws including all relevant requirements of federal and state hazard communication standards.

63.5(9) All sharp or pointed equipment shall be stored when not in use so as not to be readily available to consumers.

63.5(10) All heat producing appliances must be stored in proper containers in a sufficiently ventilated safe area.

63.5(11) Each licensee and salon owner shall comply with all other applicable state regulations pertaining to public health and safety.

645—63.6(157) Water. Every cosmetology school or beauty salon shall be supplied with an adequate supply of potable hot and cold water under pressure.

645—63.7(157) Laundry and storage facilities. All cosmetology establishments must maintain an adequate supply of sanitized linen for proper operation.

63.7(1) All sanitized linen must be kept in an enclosed, dustproof cabinet until used.

63.7(2) Any towel that has been used once shall be considered soiled and shall be placed in a closed receptacle until properly laundered and sanitized.

63.7(3) Freshly laundered towels shall be used for each client.

645—63.8(157) Workstands. All workstands shall be covered with nonabsorbent, washable material.

63.8(1) All bottles, jars, receptacles, compartments and containers of all kinds shall be properly labeled at all times.

63.8(2) All equipment shall be maintained in a sanitary condition.

645—63.9(157) Pets. No pets of any kind shall be permitted in a cosmetology establishment except guide dogs and fish in an aquarium.

645—63.10(157) Clients. Licensees in serving the public may exercise reasonable discretion in accepting clients in their practice; however, licensees shall not refuse to accept clients in to their practice or deny service to clients because of the client's race, creed, age, sex or national origin.

645—63.11(157) Records. Client records and appointment records shall be maintained for a period of no less than three years following the last date of entry. Proper safeguards shall be provided to ensure the safety of these records from destructive elements.

645—63.12(157) Electrolysis requirements and sanitation.

63.12(1) A beauty salon in which electrology is practiced shall follow all sanitation rules and requirements pertaining to all beauty salons and shall also follow these requirements:

a. Electrolysis room shall have an area of not less than 100 square feet and shall be adequately lighted and ventilated.

b. Floors in the immediate area where the electrolysis is performed shall have impervious, smooth, washable surface.

c. All refuse shall be stored in rigid containers with tight-fitting covers.

d. Closed cabinets for the exclusive storage of instruments and other equipment shall be provided for each practitioner.

e. All service table surfaces shall be constructed of easily cleanable material.

f. Needles shall be disposable, sterile and of single client use, or shall be reusable needles which shall be thoroughly cleaned and steam sterilized, or dry heat sterilized between clients. Sterilization shall be done as follows:

(1) Steam sterilization shall be at 250° F (121° C) for 15 minutes at a minimum pressure of 5 pounds per square inch.

(2) Dry heat sterilization shall be at 350° F (170° C) for one hour (60 minutes).

g. Razors shall be single-client use and disposable or shall be sterilized razors with a new blade used for each client.

h. After each use, tweezers, clippers, and similar tools shall be disinfected with 70 percent alcohol, iodophor solution, or other germicidal solution accepted by the board.

i. All electrologists shall scrub their hands thoroughly before and after each client service.

j. Disposable gloves or finger cots shall be worn by the electrologist during the electrology service.

k. The electrologist shall wear a clean, freshly laundered outer garment for each client.

645—63.13(157) Violations. If a violation of Iowa Code or these rules is detected within a premises owned or leased by or affiliated with the licensee in any way, then the violation shall be cited against the licensee.

These rules are intended to implement Iowa Code sections 147.7, 157.6 and 157.14.

CHAPTER 64
COSMETOLOGY CONTINUING EDUCATION

645—64.1(258A) Continuing education requirements.

64.1(1) Beginning January 1, 1989, each licensee in this state shall complete during each license renewal period a minimum of 8 hours of continuing education approved by the board. Each person holding an instructor's license shall complete a minimum of 16 hours of continuing education at an advanced instructor's institute prescribed by the board during each license renewal period, which will also fulfill the continuing education required for their cosmetology license. Compliance with the requirement of continuing education is a prerequisite for license renewal in the next license period.

64.1(2) Beginning January 1, 1991, the license renewal period shall consist of a period of two years, from April 1 of one year to March 31 of the second year following.

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

a. Renew licenses for half the licensees for a period of January 1, 1991, to March 31, 1992. Continuing education requirements and license fees will be prorated accordingly. The continuing education for licensees will be 4 hours instead of the 8 hours stated in subrule 64.1(1). The license renewal fee for each will be $12 instead of the $20 stated in 645—Chapter 62.

b. Renew licenses for half of the licensees for a period of January 1, 1991, to March 31, 1993. Continuing education requirements and fees will be prorated accordingly. The continuing education requirements for licensees will be 8 hours. The continuing education requirements for instructors will be 16 hours. The license renewal fee for each will be $22 instead of the $20 stated in 645—Chapter 62.

c. Notify all licensees at time of renewal whether they will be licensed accordingly to subrule 64.1(2), paragraph "a" or "b."

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

64.1(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity, either previously accredited by the board or which otherwise meets the requirement herein and is approved by the board pursuant to 64.7(258A).

Hours of credit for continuing education may also be received by active membership in a professional society relating to the profession in which the holder of the licensee practices. The licensee shall show proof that they have attended a minimum of 4 meetings consisting of educational activity provided by that professional society during the year, e.g., 8 one-hour educational meetings during a biennium.

64.1(4) It is the responsibility of each licensee to finance the costs of continuing education.

64.1(5) Those persons newly licensed during the license renewal period shall not be required to complete continuing education as a prerequisite for their renewal license.

64.1(6) Licensees currently licensed in Iowa but practicing in another state may comply with Iowa continuing education requirements for license renewal and reinstatement by meeting the continuing education requirements of the licensee's place of practice.

645—64.2(258A) Report of licensee. Each licensee shall file with the license renewal application a certificate of attendance furnished by the board, signed by the educational institution of professional society sponsoring the continuing education. The report shall be sent to the Board of Cosmetology Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

645—64.3(258A) Licensed instructors. Licensed instructors may use hours of attendance at the annual instructor's institute prescribed by the board of cosmetology examiners to fulfill continuing education requirements.

645—64.4(258A) Physical and mental disability or illness. The board may, in individual cases involving physical or mental disability or illness, grant waivers of the minimum education requirements or extension of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application thereof shall be made on forms provided by the board and signed by the licensee and a physician licensed by the board of medical examiners. Waivers of the minimum educational requirements may be granted by the board for a period of time not to exceed one calendar year. In the event that physical or mental disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must apply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

645—64.5(258A) Exemptions for inactive licensees. A licensee who is not engaged in the practice in the state of Iowa residing in or without the state of Iowa may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will

not engage in the practice in the state of Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board. A licensee must be currently licensed to apply for exempt status.

645—64.6(258A) Standards of approval. A continuing education activity shall be qualified for approval of the board if the board determines that:

64.6(1) It constitutes an organized program of learning which contributes directly to the professional competency of the licensee; and

64.6(2) It pertains to subjects which are integrally related to the practice and shall include such topics for instruction as prescribed by the board; and

64.6(3) It is conducted by individuals who hold an active cosmetology license and have special education, training and experience or by other persons who by reason of special education, training and experience said individuals would be considered experts concerning the subject matter of the program, and is accompanied by a paper, manual or written outline which substantively pertains to the subject matter of the program. At least one instructor or the person in charge shall be licensed in a practice under 645—Chapter 60. A resumé of all continuing education instructors shall be on file with the board.

645—64.7(258A) Accreditation of sponsors. An educational institution, e.g., cosmetology school, merged area school, university or professional society, not previously accredited by the board, which desires accreditation as a sponsor of courses, programs, or other continuing education activities, shall apply for accreditation to the board stating its education history relating to the practices under 645—Chapter 60 for the preceding two years, including approximate dates, subjects offered, total hours of instruction presented, and the names and qualifications of instructors.

64.7(1) An educational institution or professional society other than an accredited sponsor, which desires prior approval of a course, program or other continuing education activity or who desires to establish accreditation of such activity prior to attendance thereat, shall apply for approval to the board at least 90 days in advance of the commencement of the activity on a form provided by the board. The board shall approve or deny such application in writing within 60 days of receipt of such application. The application shall state the dates, subjects offered, total hours of instruction, names and qualifications of speakers, applicable fee and other pertinent information.

64.7(2) By March 31 of each year all accredited sponsors shall report to the board in writing the educational programs conducted during the preceding 12-month period on a form provided by the board.

64.7(3) Prior notice. All accredited sponsors shall submit to the board at least 30 days in advance of the program the dates, locations, instructors and appropriate fee as set forth in 645—subrule 62.1(23) for all intended educational programs. All promotional material shall prominently display the approved sponsor's name. Program credit may be denied if the foregoing is not complied with fully.

EXCEPTION: Approved cosmetology school sponsors may assist licensees to reinstate by providing an individual with continuing education classes, waiving the 30-day notice requirement upon written request to the board.

64.7(4) Reevaluation. The board may at any time reevaluate an accredited sponsor. If after such reevaluation, the board finds there is basis for consideration of revocation of the accreditation of an accredited sponsor, the board shall give notice by ordinary mail to that sponsor of a hearing on such possible revocation at least 30 days prior to said hearing.

64.7(5) Monitoring. The board may monitor or review any continuing education program already approved by the board and upon evidence of significant variation in the program presented from the program approved may disapprove all or any part of the approved hours granted the program.

64.7(6) Hearings. In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant or licensee shall have the right, within 20 days after the sending of notification of the denial by ordinary mail, to request a hearing which shall be held within 60 days after receipt of the request for a hearing. The hearing shall be conducted by the board or a qualified administrative law judge designated by the board. If the hearing is conducted by an administrative law judge, the administrative law judge shall submit a transcript or a tape recording of the hearing including exhibits to the board after the hearing with the proposed decision of the administrative law judge. The board adopts the rules of the Iowa department of public health, 641—Chapter 173, for hearings.

645—64.8(258A) Attendance record. The accredited sponsor of continuing education activities shall make a written record of the Iowa licensees in attendance and send a signed copy of such attendance record to the board upon completion of the educational activity, but in no case later than March 31 following the date of the continuing education activities. The report shall be sent to the Board of Cosmetology Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code sections 258A.1, 258A.2 and 258A.3.

CHAPTER 65

DISCIPLINARY PROCEDURES FOR COSMETOLOGY LICENSEES

645—65.1(258A) Complaint. A complaint of a licensee's professional misconduct shall be made in writing by any person to the Board of Cosmetology Examiners, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. The complaint shall include complainant's address and phone number, be signed and dated by the complainant, shall identify the licensee, and shall give the address and any other information about the licensee which the complainant may have concerning the matter.

645—65.2(258A) Report of malpractice claims or actions. Each licensee shall submit a copy of any judgment or settlement in a malpractice claim or action to the board within 30 days after the occurrence at the address given in rule 645—65.1(258A).

645—65.3(258A) Investigation of complaints or malpractice claims. The chair of the board of cosmetology examiners shall assign an investigation of a complaint or malpractice claim to a member of the board who will be

known as the investigating board member; or the board may request the department investigate the complaint or malpractice claim and the department may request that the Iowa department of inspections and appeals investigate the complaint or malpractice claim. The investigating board member or employee of the department or employee of the Iowa department of inspections and appeals may request information from any peer review committee which may be established to assist the board. The investigating board member or employee of the department or employee of the Iowa department of inspections and appeals may consult with the assistant attorney general concerning the investigation. The investigating board member (if the board member investigates the complaint), the board administrator, bureau chief of the bureau of professional licensure, or an assistant attorney general (if the department or the Iowa department of inspections and appeals investigates the complaint) shall make a written determination whether there is probable cause for a disciplinary hearing. If a board member investigates the complaint, that investigating board member shall not take part in the decision of the board, but may appear as a witness.

645—65.4(258A) Alternative procedure and settlement.

65.4(1) A disciplinary hearing before the licensing board is an alternative to the procedure provided in Iowa Code sections 147.58 to 147.71.

65.4(2) Informal settlement—parties.

a. A contested case may be resolved by informal settlement. Negotiation of an informal settlement may be initiated by the state of Iowa represented by the prosecuting attorney, the respondent or the board. The board may designate a board member with authority to negotiate on behalf of the board.

b. The board is not involved in negotiation until presentation of a final, written form to the full board for approval.

65.4(3) Informal settlement—waiver of notice and opportunity to be heard. Consent to negotiation by the respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during informal settlement negotiation. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board's designee.

65.4(4) Informal settlement—board approval. All informal settlements are subject to approval of a majority of the full board. No informal settlement shall be presented to the board for approval except in the final, written form executed by the respondent. If the board fails to approve the informal settlement, it shall be of no force or effect to either party.

65.4(5) Informal settlement—disqualification of designee. A board member who is designated to act in negotiation of an informal settlement is not disqualified from participating in the adjudication of the contested case.

645—65.5(258A) License denial. Any request for a hearing before the board concerning the denial of a license shall be submitted by the applicant in writing to the board at the address in rule 645—65.1(258A) by certified mail, return receipt requested, within 30 days of the mailing of a notice of denial of license.

645—65.6(258A) Notice of hearing. If there is a finding of probable cause for a disciplinary hearing by the investigating board member or by the department, the department shall prepare the notice of hearing and transmit the notice of hearing to the respondent by certified mail, return receipt requested, at least ten days before the date of the hearing.

645—65.7(21,258A) Hearings open to public. A hearing of a licensing board concerning a licensee or an applicant shall be open to the public unless the licensee or applicant or the attorney requests in writing that the hearing be closed to the public.

645—65.8(258A) Hearings. The board adopts the rules of the Iowa department of public health found in 641—Chapter 173, as the procedure for hearings before the board. The board may authorize an administrative law judge to conduct the hearings, administer oaths, issue subpoenas, and prepare written findings of fact, conclusions of law, and a decision at the direction of the board. If a majority of the board does not hear the disciplinary proceedings, a recording or a transcript of the proceedings shall be made available to the members of the board who did not hear the proceeding.

645—65.9(258A) Appeal. Any appeal to the district court from a disciplinary action of the board or denial of license shall be taken within 30 days from the issuance of the decision by the board. It is not necessary to request a rehearing before the board to appeal to the district court.

645—65.10(258A) Transcript. The party who appeals a decision of the board to the district court shall pay the cost of the preparation of a transcript of the administrative hearing for the district court.

645—65.11(258A) Publication of decisions. Final decisions of the board relating to disciplinary proceedings shall be transmitted to the appropriate professional association, the news media and employer.

645—65.12(258A) Discipline. For all acts and offenses listed in this rule, the board may impose any of the disciplinary methods outlined in Iowa Code section 258A.3(2) "a" to "f" including the imposition of a civil penalty which shall not exceed $1000. The board may discipline a licensee for any of the following reasons:

65.12(1) All grounds listed in Iowa Code section 147.55 which are:

a. Fraud in procuring a license.

b. Professional incompetency:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the licensee's practice; or

(2) A willful or repeated departure from, or the failure to conform to the minimal standard of, accepted or prevailing practice.

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

d. Habitual intoxication or addiction to the use of drugs.

e. Conviction of a felony related to the profession or occupation of the licensee or the conviction of a felony that would affect the licensee's ability to practice within a profession which includes, but is not limited to, a felonious act which is so contrary to honesty, justice or good morals and so reprehensible as to violate the public confidence and trust imposed upon the licensee.

f. Fraud in representations as to skill or ability.

g. Use of untruthful or improbable statements in advertisements.

h. Willful or repeated violations of the provisions of Iowa Code chapter 147.

65.12(2) Violation of the rules promulgated by the board.

65.12(3) Violation of the terms of a decision and order issued by the board.

65.12(4) Violation of the terms of a settlement agreement entered into and issued by the board.

65.12(5) Personal disqualifications:

a. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

b. Involuntary commitment for the treatment of mental illness, drug addiction or alcoholism.

65.12(6) Practicing the profession while the license is under suspension, lapsed or delinquent for any reason.

65.12(7) Suspension or revocation of license by another state.

65.12(8) Negligence by the licensee in the practice of the profession, which is a failure to exercise due care including negligent delegation to or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

65.12(9) Prohibited acts consisting of the following:

a. Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

b. Permitting another person to use the licensee's license for any other purpose.

c. Practice outside the scope of a license.

d. Obtaining, possessing, or attempting to obtain or possess a controlled substance without lawful authority; or selling, prescribing, giving away, or administering controlled substances.

e. Verbally or physically abusing clients.

65.12(10) Unethical business practices, consisting of any of the following:

a. False or misleading advertising.

b. Betrayal of a professional confidence.

c. Promotion for personal gain of an unnecessary drug, device, treatment, procedure, or service (directing or requiring an individual to purchase or secure a drug, device, treatment, procedure, or service from a person, place, facility, or business in which the licensee has a financial interest).

65.12(11) Failure to report a change of name or mailing address.

65.12(12) Failure to submit continuing education certificate with license renewal by March 31 of renewal year.

65.12(13) Failure to complete the required continuing education within the compliance period.

65.12(14) Submission of a false report of continuing education, or failure to submit the annual report of continuing education.

65.12(15) Failure to return, by ordinary mail, to the department the salon license within 30 days of discontinuance of business under that license.

65.12(16) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

65.12(17) Failure to comply with a subpoena issued by the board.

65.12(18) Failure to report to the board as provided in rule 645—65.1(258A) any violation by another licensee of the reasons for a disciplinary action as listed in this rule.

65.12(19) Performing any of those practices coming within the jurisdiction of the board pursuant to Iowa Code chapter 157 with or without compensation in any place other than a licensed beauty salon, a licensed school of cosmetology, or a licensed barbershop as defined in Iowa Code section 158.1 which has also been licensed as a beauty salon, except that a licensee may practice at a location which is not a licensed beauty salon or school of cosmetology under extenuating circumstances arising from physical or mental disability or death of a customer.

645—65.13(258A) Peer review committee.

65.13(1) Each peer review committee for the profession, if established, may register with the board of examiners within 30 days after the effective date of these rules or within 30 days after formation.

65.13(2) Each peer review committee shall report in writing within 30 days of the action, any disciplinary action taken against a licensee by the peer review committee.

65.13(3) The board may appoint peer review committees as needed consisting of not more than five persons who are licensed to practice cosmetology to advise the board on standards of practice and other matters relating to specific complaints as requested by the board. The peer review committee shall observe the requirements of confidentiality provided in Iowa Code section 258A.6.

645—65.14 to **65.100** Reserved.

645—65.101(258A) Conduct of persons attending meetings.

65.101(1) The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

65.101(2) Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding may request the person to discontinue use of the camera or device. If the person persists in use of the device or camera, that person shall be ordered excluded from the meeting by order of the board person presiding at the meeting.

These rules are intended to implement Iowa Code sections 21.7, 258A.4, 258A.5, and 258A.6.

CHAPTER 66
AGENCY PROCEDURE FOR RULE MAKING

The board of cosmetology examiners hereby adopts the agency procedure for rule making segment of the Uniform Rules, which is printed in the first Volume of the Iowa Administrative Code, with the following amendments:

645—66.3(17A) Public rule-making docket.

66.3(2) Anticipated rule making. In lieu of the words "(commission, board, council, director)", insert "Board of Cosmetology Examiners".

645—66.4(17A) Notice of proposed rule making.

66.4(3) Notices mailed. In lieu of the words "(specify time period)", insert "one year".

645—66.5(17A) Public participation.

66.5(1) Written comments. In lieu of the words "(identify office and address)", insert "Board of Cosmetology Examiners, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

645—66.6(17A) Regulatory flexibility analysis.

66.6(3) Mailing list. In lieu of the words "(designate office)", insert "Board of Cosmetology Examiners, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

645—66.10(17A) Exemptions from public rule-making procedures.

66.10(2) Categories exempt. In lieu of the words "(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them)", insert the following:

a. Rules which implement recent legislation, when a statute provides for an effective date which does not allow for the usual notice and public participation requirements.

b. Rules which confer a benefit or remove a restriction on licensees, the public, or some segment of the public.

c. Rules which are necessary because of imminent peril to the public health, safety or welfare.

d. Nonsubstantive rules intended to correct typographical errors, incorrect citations, or other errors in existing rules.

645—66.11(17A) Concise statement of reasons.

66.11(1) General. In lieu of the words "(specify the office and address)", insert "Board of Cosmetology Examiners, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

645—66.13(17A) Agency rule-making record.

66.13(2) Contents.

c. In lieu of the words "(agency head)", insert "Board of Cosmetology Examiners".

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

CHAPTER 67
PETITIONS FOR RULE MAKING

The board of cosmetology examiners hereby adopts the petitions for rule making segment of the Uniform Rules, which is printed in the first Volume of the Iowa Administrative Code, with the following amendments:

645—67.1(17A) Petition for rule making. In lieu of the words "(designate office)", insert "Board of Cosmetology Examiners, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

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

BEFORE THE
BOARD OF COSMETOLOGY EXAMINERS

645—67.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Cosmetology Board Administrator, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

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

CHAPTER 68
DECLARATORY RULINGS

The board of cosmetology examiners hereby adopts the declaratory rulings segment of the Uniform Rules, which is printed in the first Volume of the Iowa Administrative Code, with the following amendments:

645—68.1(17A) Petition for declaratory ruling. In lieu of the words "(designate office)", insert "Board of Cosmetology Examiners, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

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

BEFORE THE
BOARD OF COSMETOLOGY EXAMINERS

645—68.3(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert "the Cosmetology Board Administrator, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

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

ARC 2922A

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 135.11 and 139.35(4), the Iowa Department of Public Health gives Notice of Intended Action to amend Chapter 1, "Notification and Surveillance of Reportable Disease," and Chapter 3, "Clinical Laboratories," Iowa Administrative Code.

These amendments are designed to report results of all blood lead levels of anyone screened in Iowa regardless of age. Furthermore, the changes recognize recent revisions in national standards of assessment for lead exposure, surveillance of lead exposure and abatement of such exposure.

Any interested person may submit written comments or suggestions on or before the close of business on April 22, 1992. Such written materials should be addressed to: Donald A. Flater, Chief, Bureau of Environmental Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

Persons who wish to convey their views orally may attend the public hearing on April 22, 1992, at 9 a.m. in the Third Floor Conference Room, Lucas State Office Building, East Twelfth and Grand Avenue, Des Moines, Iowa. (Written testimony is recommended.)

PUBLIC HEALTH DEPARTMENT[641](*cont'd*)

These amendments are intended to implement Iowa Code sections 135.11 and 139.35(4).

The following amendments are proposed.

ITEM 1. Amend subrule **1.2(1)** by adding a new paragraph **"e"** as follows:

e. Blood lead testing. Report all blood lead levels for all patients by age, unless determined that the laboratory provides duplicate reports to the department.

ITEM 2. Amend 641—3.5(135,139), introductory paragraph, as follows:

641—3.5(135,139) Reportable laboratory findings. For those reportable conditions described in rule 641—3.3(135,139), the following subrules describe ~~threshold~~ values ~~at or above~~ which clinical laboratories must report ~~findings~~ to the Iowa department of public health. For all reportable findings listed, laboratories shall specify the analytic method and quality control measures used, as well as the values found.

ITEM 3. Amend subrule **3.5(1)**, paragraph **"a,"** as follows:

a. Lead ~~poisonings~~ *poisoning*. ~~Blood~~ *All blood* lead values *for all patients tested including age of patient.* ~~equal to or greater than 25 mcg/dL. Urine lead values equal to or greater than 80 mcg/L.~~

ARC 2923A

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 135.11(16) and 136C.3(4), the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 38, "General Provisions," and Chapter 42, "Operating Procedures and Standards for Use of Radiation Emitting Equipment," Iowa Administrative Code.

Amendments to Chapter 38 include radiation therapists and nuclear medicine technologists in fee and penalty requirements. The amendment to Chapter 42 clarifies operating procedures and standards for limited diagnostic radiographers, sets standards for recertification and expands disciplinary grounds and actions for all diagnostic radiographers.

Any interested person may submit written comments or suggestions on or before the close of business on April 21, 1992. Such written materials should be addressed to: Donald A. Flater, Bureau of Environmental Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

Persons who wish to convey their views orally may attend the public hearing on Tuesday, April 21, 1992, at 10:30 a.m. in Hearing Room 2, First Floor, Lucas State Office Building, East Twelfth and Grand Avenue, Des Moines, Iowa.

These rules are intended to implement Iowa Code chapter 136C.

ITEM 1. Amend subrule 38.13(5), introductory paragraph, as follows:

38.13(5) ~~Diagnostic radiographers.~~ *Fees for 641—Chapter 42 certification.* ~~General and limited diagnostic~~ *Diagnostic* radiographers, *radiation therapists, and nuclear medicine technologists,* other than licensed practitioners of the healing arts, are required to pay fees sufficient to defray the cost of administering ~~rule 42.1(136C)~~ *641—Chapter 42*. Fees are as follows:

ITEM 2. Amend subrule **38.13(6)** by adding a new paragraph **"c"** as follows:

c. Late fees for 641—Chapter 42 continuing education requirements.

(1) For any individual who completes the required continuing education before the continuing education due date, but fails to submit the required proof within 30 days after the continuing education due date, the certification shall be terminated and the renewal fee will not be refunded.

(2) For any individual who fails to complete the required continuing education before the continuing education due date, but submits a written plan of correction to obtain the required hours, that person shall be allowed no more than 60 days after the original continuing education due date to complete the plan of correction and submit the documentation of completion of continuing education requirements. After 60 days, the certification shall be terminated and the individual shall not function as a diagnostic radiographer, radiation therapist, or nuclear medicine technologist in Iowa.

(3) Once terminated, any individual who requests permission to function within six months of the initial continuing education due date must submit proof of continuing education hours and shall submit a late fee of $30 in addition to the annual fees in order to obtain reinstatement certification.

ITEM 3. Amend Chapter 42 as follows:

641—42.1(136C) Minimum training standards for diagnostic radiographers.

42.1(1) Definitions.

"Approved course of study" means a curriculum and associated training and testing materials which the ~~agency~~ *department* has determined is adequate to train students to meet the requirements of 42.1(136C).

"Chest" is defined as the lung fields including the cardiac shadow, as taught in the approved limited radiography curriculum. Radiography of the shoulder, clavicle, scapula, ribs, thoracic spine and sternum for diagnostic evaluation of these body structures is not allowed under this body part classification.

"Clinical education" means the direct participation of the student in completion of diagnostic studies.

"Contrast media" means material intentionally administered to the human body to define a part(s) which is not normally visualized radiographically.

"Diagnostic radiography" means the science and art of applying X-radiation to human beings for diagnostic purposes other than in dental radiography. It shall include adjustment or manipulation of X-ray equipment and appurtenances including image receptors, positioning of patients and processing of films so as to materially affect the radiation exposure of patients.

"Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, osteopathy, chiropractic, podiatry, dentistry or dental hygiene or certification as a physician assistant as defined in Iowa Code section 148C.1, subsection 6.

"Lower extremities" refers to those body parts from the distal phalanges of the foot to the head of the femur and its articulation with the pelvic girdle as taught in the approved limited radiographer curriculum. True hip radiographs are prohibited under this limited category.

"Spine" refers to the cervical, thoracic (dorsal), lumbar vertebrae and their articulations. It may also include the sacrum or coccyx and the sacral articulation with the pelvic girdle. True pelvis radiographs performed with the image receptor positioned perpendicular to the long axis of the torso are prohibited under this limited category. Lumbo-pelvic or full spine radiography may be performed if the long axis of the image receptor is positioned parallel with the long axis of the spine as taught in the approved limited radiographer curriculum.

"Student" means a person enrolled in and participating in an approved course of study.

"Supervision" means responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic or therapeutic purposes.

"Upper extremities" refers to those body parts from the distal phalanges of the hand to the head of the humerus. These projections may include the acromioclavicular or glenoidhumeral areas as taught in the approved limited radiographer curriculum. True shoulder radiography that includes both distal and proximal ends of the clavicle is prohibited under this category.

"X-radiation" means penetrating electromagnetic radiation with energy greater than 0.1 kV produced by bombarding a metallic target with fast electrons in a high vacuum.

42.1(2) Types of operators.

a. "General diagnostic radiographer" means a person, other than a licensed practitioner *or dental radiographer*, who applies X-radiation to any part of the human body for diagnostic purposes while under the supervision of a licensed practitioner.

b. "Limited diagnostic radiographer" means a person, other than a licensed practitioner or dental radiographer, who applies X-radiation to ~~one~~ *not more than two* ~~specific~~ body ~~part~~ *parts* while under the supervision of a licensed practitioner. *Chest and extremity radiographic examinations are considered as one body part.* ~~The exceptions to the one body part restriction are:~~

~~(1) The limited diagnostic radiographer may perform both chest and extremity radiographic examinations if that individual has received appropriate clinical experience during the didactic training required under 42.1(4)"b" and 42.1(5)"b," and~~

~~(2) When an individual gains the status of a limited diagnostic radiographer as outlined in 42.1(4)"b"(2), (3) or (4), that individual may perform the permitted radiographic procedures.~~

c. "Conditional diagnostic radiographer (hardship)" means a diagnostic X-ray machine operator who has minimal clinical competency but does not fully meet the appropriate requirements of 42.1(3) and 42.1(4) or is not otherwise covered under 42.1(5), 42.1(6) or 42.1(8), but in which case there is substantial evidence that the people in the locality of the state in which this exemption is sought would be denied adequate health care because of the unavailability of appropriately qualified persons under 42.1(136C). A conditional exemption shall be granted for limited periods of time to be prescribed by the ~~agency~~ *department* at the ~~agency's~~ *department's* discretion and in accordance with the purposes of 42.1(136C). A conditional diagnostic radiographer shall be limited by the ~~agency~~ *department* to those rights specified in the exemption notice and be under the direct supervision of a licensed practitioner.

42.1(3) Minimum eligibility requirements.

a. Graduation from high school or its equivalent.

b. Attainment of 18 years of age.

c. Ability to adequately perform necessary duties without constituting a hazard to the health or safety of patients or operators.

42.1(4) Training requirements.

a. General diagnostic radiographer. Successful completion of a Committee on Allied Health Education and Accreditation approved course of study or equivalent to prepare the student to demonstrate competency in the following areas:

(1) Radiation protection of patients and workers, including monitoring, shielding, units of measurement and permissible levels, biological effects of radiation, and technical consideration in reducing radiation exposure and frequency of retakes;

(2) Technique and quality control to achieve diagnostic objectives with minimum patient exposure, including X-ray examinations, X-ray production, films, screens, holders and grids, technique conversions, film processing, artifacts, image quality, film systems and control of secondary radiation for the specified category;

(3) Patient care including, but not limited to, aseptic techniques, emergency procedures and first aid, and contrast media;

(4) Positioning, including normal and abnormal anatomy and projections;

(5) Radiographic equipment and operator maintenance to include X-ray tubes, grids, standardization of equipment, generators, preventive maintenance, basic electricity, film processors and maintenance, collimators, X-ray control consoles, tilt tables, ancillary equipment, fluoroscopes and electrical and mechanical safety;

(6) Special techniques, including stereo, body section radiography, pelvimetry, image intensification, photo timing and mobile units; and

(7) Clinical experience sufficient to demonstrate competency in the application of the above as specified in the revised 1978 edition of the "Essentials and Guidelines of an Accredited Educational Program for the Radiographer" of the American Medical Association's Committee on Allied Health Education and Accreditation.

b. Limited diagnostic radiographer.

(1) Completion of an approved course of study to prepare the student to demonstrate competency in the following areas:

1. Radiation protection of patients and workers including monitoring, shielding, units of measurement and permissible levels, biological effects of radiation, and technical considerations in reducing radiation exposure and frequency of retakes;

2. Technique and quality control to achieve diagnostic objectives with minimum patient exposure to include X-ray examination, X-ray production, films, screens, holders and grids, technique conversions, film processing, artifacts, image quality, film systems and control of secondary radiation for the specified category;

3. Patient care including, but not limited to, aseptic techniques, emergency procedures and first aid;

4. Positioning, including normal and abnormal anatomy and projections for the specific category;

5. Radiographic equipment and operator maintenance to include X-ray tubes, grids, standardization of equipment, generators, preventive maintenance, basic electricity, film processors and maintenance, collimators, X-ray control consoles, tilt tables, ancillary equipment, ~~fluoroscopes~~ and electrical and mechanical safety;

6. Special techniques limited to those required by the specific category; and

7. Clinical experience sufficient to demonstrate competency in the application of the above as specified ~~in the revised 1978 edition of the "Essentials and Guidelines of an Accredited Educational Program for the Radiographer" of the American Medical Association's Committee on Allied Health Education and Accreditation.~~ *by the department. Clinical experience must be directly supervised by a two-year trained general radiographer or licensed physician who physically observes and critiques the actual X-ray procedures.*

~~(2) An individual may apply X-radiation to more than one specific part of the human body for diagnostic purposes if the individual meets the requirements of 42.1(4)"b"(1) and 42.1(5)"b" and receives a course of clinical training approved by the department from a radiologist who then certifies the individual's competency to perform certain specific radiographic procedures. The individual may only perform those diagnostic radiographic procedures certified by the radiologist. The following information and statements will need to be provided to the department:~~

~~1. The diagnostic radiographic procedures which the individual may perform;~~

~~2. The name and qualifications of the certifying radiologist and a list of the body part(s) and projection(s) they have certified the individual to perform;~~

~~3. If the individual has not successfully completed a training program which meets the requirements set forth in 42.1(4)"b" and 42.1(5)"b," a letter from the institution providing didactic training which indicates the employee's enrollment status and course dates; and~~

~~4.~~ *8.* Permission for a representative of the Iowa department of public health to comprehensively evaluate whether the individual meets the training standard.

(3) An individual employed in a diagnostic radiography facility which has a work load of less than ~~five thousand (5000)~~ examinations per year and which provides ~~twenty-four~~ *24*-hour service in a hospital will be permitted to apply X-radiation to any part of the human body at that facility if the individual completes a training program recognized by the department, as outlined in 42.1(4)"b"(1) ~~and 42.1(5)"b" and has received clinical training~~ *and submits a letter* from a *board-certified or board-eligible* radiologist who ~~then certifies~~ *verifies* in writing the specific procedures the individual is competent to perform. The training program must cover the areas outlined in 42.1(4)"b," the anatomy and physiology of the entire body, positioning and techniques relative to the procedures to be performed, and appropriate clinical training which includes all parts of the human body. ~~The certifying radiologist must be directly responsible for the individual's clinical training.~~ *Training received under this subrule is specific to the facility and must be reevaluated by the department before an individual may transfer to another facility.*

c. Certification by the American Registry of Radiologic Technologists or the American Registry of Clinical Radiography Technologist meets the minimum requirements of 42.1(136C).

42.1(5) School accreditation.

a. Graduates of schools accredited by the Committee on Allied Health Education and Accreditation who have successfully completed an appropriate course of study in diagnostic radiography will be considered to meet the requirements of 42.1(2)"a."

b. Graduates of programs recognized by the Iowa department of public health in consultation with the professional societies and boards of examiners for appropriate course of study in diagnostic radiography will be considered to meet the requirements of 42.1(2)"b."

42.1(6) Exemptions.

a. Students enrolled in and participating in an approved program or approved course of study for diagnostic radiography or an approved school of medicine, osteopathy, podiatry, and chiropractic, who as a part of their course of study, apply ionizing radiation to a human being while under the supervision of a licensed practitioner. The projected completion date of the *clinical portion of the* program or course of study shall be within a time period equal to or less than twice that required for ~~a full-time student.~~ *the original program or course of study.*

b. Licensed practitioners as defined in 42.1(1).

c. Conditional diagnostic radiographer as defined under 42.1(2)"c."

42.1(7) ~~Enforcement.~~ *Disciplinary grounds and actions. The following shall be grounds for disciplinary action involving possible suspension or revocation of certification or levying of fines:*

~~a. Any individual, except a licensed practitioner defined in subrule 42.1(1), who operates X-ray equipment in the practice of diagnostic radiography shall meet the requirements of 42.1(136C).~~

~~b. Any person including a licensed practitioner defined in 42.1(1) who employs an individual in the practice of diagnostic radiography may do so only if that individual meets the requirements of 42.1(136C).~~

a. Operating as a diagnostic radiographer without meeting the requirements of this rule.

b. Allowing any person, excluding a licensed physician, to operate as a diagnostic radiographer if that person cannot provide proof of certification by the department.

c. Failing to report to the department any person who the certificate holder knows is in violation of this rule.

d. Submitting false information in order to obtain certification or renewal certification as a diagnostic radiographer.

e. Any action that the department determines may jeopardize the public or therapist's health and safety.

~~42.1(8) Reciprocity. Any person who is the holder of a current certificate in diagnostic radiography issued by another state, jurisdiction, agency or recognized professional registry may be considered by the agency to meet the requirements of 42.1(136C), provided that the agency finds that the standards and procedures for certification in the state, jurisdiction, agency or recognized professional registry which issued the certificate, afford protection to the public equivalent to that afforded by 42.1(136C).~~

42.1(9) Technical advisory committee.

a. The department shall establish a technical advisory committee made up of two radiologic technologists, two physicians, including one radiologist and one private

practice practitioner, and a representative of the department.

b. The advisory committee shall assist the department in developing and establishing criteria for continuing education and examinations.

42.1(10) Examinations.

a. All individuals, except licensed practitioners, seeking to perform diagnostic radiography, must in addition to subrule 42.1(4), take and satisfactorily pass a written examination ~~including~~ *within one year of the date of the initial certification. Examination must include* the following subject matter for each category of radiographer:

(1) General radiographer and limited radiographer under provisions of 42.1(4)"b"(3)—radiation protection, radiation physics, radiographic and fluoroscopic techniques, special procedures, patient care, positioning, equipment maintenance, anatomy, contrast media, physiology, quality control, radiographic processing and clinical experience.

(2) Limited radiographer under the provisions of 42.1(4)"b"(1) ~~or 42.1(4)"b"(2)~~—radiation protection, radiation physics, radiographic techniques, patient care, positioning, equipment maintenance, anatomy, physiology, quality control, and radiographic processing and clinical experience for the specific permit to practice requested.

(3) Contents of the examinations will be established and periodically revised by the department in consultation with the technical advisory committee.

b. Examinations will be given by the department at least annually, or as necessary, at course of study location or other location determined by the department.

c. The department may accept, in lieu of its own examination, evidence of satisfactory performance in an examination given by an appropriate organization or testing service provided that the department finds the organization or service to be competent to examine applicants in the discipline of radiography. For purposes of this subrule, persons who are registered with the American Registry of Radiologic Technologists or American Registry of Clinical Radiography Technologists meet the testing requirements of 42.1(10).

42.1(11) Continuing education.

a. Each individual, other than a licensed practitioner, who operates diagnostic X-ray equipment shall, during a two-year period, obtain continuing education credit as follows:

(1) General diagnostic radiographer—24 clock hours.

(2) Limited diagnostic radiographer under the provisions of 42.1(4)"b"(3)—24 clock hours.

(3) Limited diagnostic radiographer under the provision of 42.1(4)"b"(1) ~~or 42.1(4)"b"(2)~~—12 clock hours.

b. Continuing education course approval.

(1) Thirty days prior to conducting a continuing education course, the sponsoring person must submit the following:

1. The course objectives.

2. An outline of the course which sets forth the subject ~~to be given~~, the course content, and the length of the course in clock hours.

3. The instructor's name and *short* resumé *detailing qualifications.*

(2) Following its review, the department may, in consultation with or under predetermined guidance of the technical advisory committee, approve, disapprove, or request additional information on the proposed course.

(3) The department may, from time to time, audit the continuing education course to verify the adequacy of program content and delivery.

~~(4) The department will recognize continuing education courses approved for credit by the American Society of Radiologic Technologists or the American Registry of Clinical Radiography Technologists.~~

c. Continuing education credit will be awarded under provisions of 42.1(11)"b" by the department to individuals:

(1) Who have successfully completed a continuing education course which has been approved by the department.

(2) Who present a continuing education course to diagnostic radiographers which has been approved by the department. Credit granted shall be at a rate of two times the amount of time it takes to present the course.

(3) Only once during a two-year period for the same continuing education course.

d. All continuing education must be directly related to diagnostic radiography.

e. It is required that proof of receiving continuing education be retained at each individual's place of employment for review by representatives of this department. Proof of continuing education must be maintained for at least three years.

f. All continuing education requirements shall be completed during the two-year period prior to the certification continuing education due date. Failure to complete the continuing education requirements prior to the due date may result in penalties or termination of certification as specified in 38.13(6)"d."

42.1(12) Recertification.

a. If a person who performs as a diagnostic radiographer in Iowa allows the certification to expire for any reason or if any person voluntarily terminates certification, the following will apply:

(1) Any individual who wishes to regain certification and makes application within six months of the termination date will be allowed to do so with no additional training or testing required.

(2) Any individual who wishes to regain certification after the six-month period will need to meet the current educational and testing requirements as outlined in 641—42.1(136C). Proof of possession of a previous certification may satisfy the training portion of this requirement.

(3) Any individual who has not renewed certification for at least five years and wants to regain certification, or who has not applied for certification within five years of the completion date of the radiography course, will need to complete a recertification program approved by the department of not less than 24 contact hours for general technologists and 12 contact hours for limited technologists which specifically applies to diagnostic radiography.

b. Recertification programs.

(1) The recertification program must review those basic principles necessary to ensure minimum competency in radiology and must also include the satisfactory completion of a written examination. Both the program and the examination must acquire prior approval from the department. Courses designed for use in the recertification program will not qualify for continuing education credit for those persons required to attend in order to recertify.

PUBLIC HEALTH DEPARTMENT[641](*cont'd*)

(2) If no approved programs are available, the department may require attendance for a minimum of 24 contact hours for general technologists and 12 hours for limited technologists at specific continuing education programs. The continuing education must be confined to subjects which apply to the area of certification limitation, if any, and would have to be completed within a specified time period.

c. Exemptions. Any or all of the above-mentioned requirements may be waived for a person who has been actively employed as a radiologic technologist in another state, country, or federal institution or who can prove circumstances above and beyond the norm. These cases will be reviewed on an individual basis and the decision of the department shall be final.

42.1(13) Fees. All diagnostic radiographers certified under this rule must pay fees as specified in 38.13(5).

ARC 2924A

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 135.11(16) and 136C.3(4), the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 42, "Operating Procedures and Standards for Use of Radiation Emitting Equipment," Iowa Administrative Code.

This amendment creates the guidelines for any person wishing to operate as a nuclear medicine technologist in Iowa. These include training, examination, continuing education, recertification, and penalties.

Any interested person may submit written comments or suggestions on or before the close of business on April 21, 1992. Such written materials should be addressed to: Donald A. Flater, Bureau of Environmental Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

Persons who wish to convey their views orally may attend the public hearing on Tuesday, April 21, 1992, at 1 p.m. in Hearing Room 2, First Floor, Lucas State Office Building, East Twelfth and Grand Avenue, Des Moines, Iowa.

This rule is intended to implement Iowa Code chapter 136C.

The following amendment is proposed.

Amend 641—Chapter 42 by adopting the following new rule:

641—42.2(136C) Minimum standards for nuclear medicine technologists.

42.2(1) Definitions.

"In vitro" means a procedure in which the radioactive material is not administered to a human being.

"In vivo" means a procedure in which the radioactive material is administered to a human being.

"NRC" means Nuclear Regulatory Commission.

"Nuclear medicine procedure" means any procedure utilizing radioactive material for diagnosis or treatment of disease in human beings and includes, but is not limited to:

1. Administration of any radiopharmaceutical to human beings for diagnostic purposes.
2. Withdrawal of blood samples for an in vitro test.
3. Administration of radioactive material to human beings for therapeutic purposes.
4. Use of radioactive material for diagnostic purposes involving transmission or excitation.
5. Quality control and quality assurance.

"Nuclear medicine technologist" means a person, other than a licensed physician, who performs nuclear medicine procedures while under the supervision of a physician who is authorized by NRC or Iowa to possess and use radioactive materials.

"Quality assurance" means all aspects of a nuclear medicine program that ensure the quality of imaging and therapy procedures.

"Quality control" means specific tests and measurements that ensure the purity, potency, product identity, biologic safety, and efficacy of radiopharmaceuticals.

"Radionuclide" means a radioactive element or a radioactive isotope.

"Radiopharmaceutical" means a substance defined by the Food and Drug Administration as a radioactive drug.

42.2(2) Minimum eligibility requirements.

a. Graduation from high school or its equivalent.

b. At least eighteen years of age.

c. Ability to adequately perform necessary duties without constituting a hazard to the health or safety of patients, self, other health care workers, or the general public.

42.2(3) Specific eligibility requirements.

a. Any person who is registered in nuclear medicine technology with the following organizations may meet the education and testing requirements of this rule.

(1) American Registry of Radiologic Technologists.

(2) Nuclear Medicine Technology Certification Board.

b. Any person, other than a licensed physician, who has completed all educational requirements of this rule but has not yet successfully completed the required examination will be issued temporary certification valid for one year from completion of a training program approved by the department.

c. Any person, other than a licensed physician, who has been employed as a nuclear medicine technologist in other than a student capacity before the effective date of these rules shall submit the following to the department:

(1) Details of on-job training, to include the areas of 42.2(4)"a."

(2) Name and position of on-job instructor.

(3) Date of initial employment as a nuclear medicine technologist.

(4) A statement of competency from a licensed physician who is an authorized user of radioactive material on an Iowa or NRC license.

(5) A statement of permission to allow a representative of the department to comprehensively evaluate whether the individual meets the training standard.

42.2(4) Training requirements.

a. General nuclear medicine technologist. Successful completion of a Committee on Allied Health Education

and Accreditation (CAHEA) approved course of study or equivalent designed to prepare the student to demonstrate competency in the following:

(1) Basic anatomy, physiology, and pathology.

(2) Intravenous injections and radiopharmaceutical toxicology.

(3) Radiation physics and mathematics.

(4) Nuclear instrumentation.

(5) Radiation biology.

(6) Radiation protection and radiation protection standards and codes.

(7) Laboratory procedures and techniques (in vivo and in vitro).

(8) Clinical application of radionuclides, diagnostic and therapeutic.

(9) Records and administrative procedures.

(10) Medical ethics.

(11) Patient care.

b. Limited nuclear medicine technologist. Successful completion of a department-approved training program that prepares the student to demonstrate competency in a specified area. Each program shall include the items in 42.2(4)"a" that are specific to the limited area. Included are laboratory technologists who perform nuclear medicine procedures unless the material handled is regulated under 641—39.25(136C).

c. Graduates of programs recognized by the department in consultation with the professional societies and others as being adequate and appropriate courses of study in nuclear medicine technology may be considered to meet the requirements of this subrule.

d. Any person submitting a training program to the department for approval must provide the following:

(1) An outline of the didactic and clinical studies to meet the requirements of this subrule.

(2) Proof that the instructor meets the requirements of this rule as a nuclear medicine technologist or is a licensed physician who is authorized to possess and use radioactive materials.

(3) A time schedule of the training program.

(4) A description of the mechanism to be used to determine competency.

e. Upon the completion of the training in 42.2(4)"d," the following must be submitted:

(1) A statement of competency from a licensed physician who is an authorized user on an Iowa or NRC radioactive materials license.

(2) A statement of permission to allow a representative of the department to comprehensively evaluate whether the individual meets the training standard.

42.2 (5) Examinations.

a. Any person, other than a licensed physician, seeking certification as a general nuclear medicine technologist shall, in addition to the requirements of 42.2(4)"a," successfully complete a written examination including the subject matter specified in 42.2(4)"a." The following organizations offer approved general examinations:

(1) American Registry of Radiologic Technologists.

(2) American Society of Clinical Pathologists.

(3) Nuclear Medicine Technology Certification Board.

b. Any person seeking to perform as a nuclear medicine technologist under 42.2(3)"c" shall successfully complete an approved examination within two years of the effective date of these rules.

c. Any person, other than a licensed physician, seeking certification as a limited nuclear medicine technologist shall, in addition to the requirements of 42.2(4)"b," successfully complete a written examination approved by the department which includes the subject matter specified in 42.2(4)"b."

d. Any person holding temporary certification must successfully complete an approved examination within one year of the issuance date of the certification.

42.2(6) Exemptions.

a. Students enrolled in and participating in an approved program or approved course of study for nuclear medicine technology or an approved school of medicine, osteopathy, podiatry, or chiropractic who, as a part of their course of study, administer radioactive material to a human being while under the supervision of a licensed physician who appears as an authorized user on an Iowa or NRC radioactive materials license. Clinical experience must be directly supervised by a certified nuclear medicine technologist or by a physician who appears as an authorized user on an Iowa or NRC radioactive materials license.

b. A licensed physician who appears as an authorized user on an Iowa or NRC radioactive materials license.

42.2(7) Continuing education.

a. Every two years a certificate holder shall complete a total of 24.0 continuing education hours and present proof of completion to the department at the time of renewal. Hours are to be distributed as follows:

(1) One clock hour in principles of radiation protection and exposure each year, a total of two hours each two-year period.

(2) One clock hour in quality assurance each year, a total of two hours each two-year period.

(3) The remaining 20 clock hours of continuing education in each two-year period may be in any other subjects directly related to nuclear medicine and approved by the department.

b. Continuing education course approval.

(1) Thirty days prior to conducting a continuing education course, the sponsoring person shall submit the following to the department:

1. The course objectives.

2. An outline of the course which sets forth the subject, the course content, and the length of the course in clock hours.

3. The instructor's name and short resumé detailing qualifications.

(2) Any program submitted within 30 days of presentation will not be guaranteed a complete review before the presentation date.

(3) Following its review, the department may approve, disapprove, or request additional information on the proposed course.

(4) The department may, from time to time, audit the continuing education course to verify the adequacy of program content and delivery.

c. Continuing education credit will be awarded under provisions of 42.2(7) by the department to individuals who:

(1) Successfully complete a continuing education course which has been approved by the department.

(2) Attend an approved course only once during a two-year period, except for those required in 42.2(7)"a"(1) and (2).

(3) Present a continuing education course to nuclear medicine technologists which has been approved by the department. Credit granted shall be two times the amount of time it takes to present the course.

d. All continuing education must be directly related to the subject area stated in 42.2(4)"a."

e. Proof of receiving continuing education is to be retained at each individual's place of employment for review by representatives of the department. Proof of continuing education hours must be maintained for at least three years.

f. All continuing education requirements shall be completed during the two-year period prior to the certificate continuing education due date. Failure to complete the continuing education requirements prior to the due date may result in termination of certification as specified in 641—38.13(6)"d."

42.2(8) Recertification.

a. If a person who holds certification as a nuclear medicine technologist in Iowa allows the certification to expire for any reason or if any person voluntarily terminates certification, the following will apply:

(1) Any individual who wishes to regain a valid certification and makes application within six months of the termination date will be allowed to do so with no additional training or testing required.

(2) Any individual who wishes to regain certification after the six-month period will need to meet the current educational and testing requirements as outlined in this rule. Proof of possession of a previous certification may satisfy the training portion of this requirement.

(3) Any individual who has not renewed certification for at least five years and wants to regain certification or who has not applied for certification within five years of the completion date of the nuclear medicine training shall complete a recertification program approved by the department of not less than 12 contact hours which specifically applies to nuclear medicine.

b. The recertification program.

(1) Must review those basic principles necessary to ensure minimum competency in nuclear medicine technology.

(2) Must include the satisfactory completion of a written examination.

(3) Both the program and the examination must acquire prior approval from this department.

(4) Courses designed for use in the recertification program will not qualify for continuing education credit for those persons required to attend in order to recertify.

(5) If no approved programs are available, this department may require attendance for a minimum of 12 contact hours at continuing education programs specific to nuclear medicine.

(6) Exemptions. Any or all of the above-mentioned requirements may be waived for an individual who has been actively employed as a nuclear medicine technologist in another state, country, or federal institution or who can prove circumstances above and beyond the norm. These cases will be reviewed on an individual basis and the decision of the department shall be final.

42.2(9) Disciplinary grounds and actions. The following shall be grounds for disciplinary action involving possible suspension or revocation of certification or levying of fines:

a. Operating as a nuclear medicine technologist without meeting the requirements of this rule.

b. Allowing any person to operate as a nuclear medicine technologist, excluding a licensed physician who is an authorized user, if that person cannot prove certification by the department.

c. Failing to report to the department any person who the certificate holder knows is in violation of this rule.

d. Submitting false information in order to obtain a certificate or renewal certificate as a nuclear medicine technologist.

e. Any action that the department determines may jeopardize the public or technologist's health and safety.

42.2(10) Fees. All nuclear medicine technologists certified under this chapter shall pay fees as specified in 641—subrule 38.13(5).

This rule is intended to implement Iowa Code chapter 136C.

ARC 2920A

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 135.11(16) and 136C.3(4), the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 42, "Operating Procedures and Standards for Use of Radiation Emitting Equipment," Iowa Administrative Code.

This amendment creates the guidelines for any person wishing to operate as a radiation therapist in Iowa. These include training, examination, continuing education, recertification, and penalties.

Any interested person may submit written comments or suggestions on or before the close of business on April 21, 1992. Such written materials should be addressed to: Donald A. Flater, Bureau of Environmental Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

Persons who wish to convey their views orally may attend the public hearing on Tuesday, April 21, 1992, at 3 p.m. in Hearing Room 2, First Floor, Lucas State Office Building, East Twelfth and Grand Avenue, Des Moines, Iowa.

This rule is intended to implement Iowa Code chapter 136C.

The following amendment is proposed.

Amend 641—Chapter 42 by adopting the following new rule:

641—42.3(136C) Minimum standards for radiation therapists.

42.3(1) Definitions.

"Radiation therapist" means a person, other than a physician, who performs radiation therapy technology under the supervision of a licensed physician.

"Radiation therapy technology" means the science and art of performing simulation radiography or applying ion-

izing radiation emitted from X-ray machines, particle accelerators, or radioactive materials (sealed sources, I131, P32) to human beings for therapeutic purposes.

"Simulation radiography" means the science and art of applying X-radiation to human beings for the purpose of localizing treatment fields and isotopes and for treatment planning.

"Simulation therapist" means a person, other than a physician, who applies X-radiation to human beings for the purpose of localizing treatment fields and isotopes and for treatment planning.

42.3(2) Minimum eligibility requirements.

a. Graduation from high school or its equivalent.

b. At least 18 years of age.

c. Ability to adequately perform necessary duties without constituting a hazard to the health or safety of patients, self, other health care workers and the general public.

42.3(3) Specific eligibility requirements. Each person shall meet one of the following:

a. Any person who is registered in radiation therapy with the American Registry of Radiological Technologists in radiation therapy meets the education and testing requirements of this rule.

b. Any person, other than a licensed physician, who has completed all educational requirements of this rule but has not successfully completed the required examination will be issued temporary certification valid for one year from the date of completion of a training program approved by the department.

c. Any person, other than a licensed physician, who has been employed as a radiation therapist or simulation therapist in other than a student capacity before the effective date of these rules shall submit the following to the department:

(1) Details of on-job training, to include the areas of 42.3(4)"a."

(2) Name, position, and qualifications of on-job instructor.

(3) Date of initial employment as a radiation therapist.

(4) A statement of competency from a physician of oncology.

(5) A statement of permission to allow a representative of the department to comprehensively evaluate whether the individual meets the training standard.

42.3(4) Training requirements.

a. General radiation therapist. Successful completion of a Committee on Allied Health Education and Accreditation (CAHEA) approved course of study or equivalent designed to prepare the student to demonstrate didactic and clinical competency in radiation therapy including, but not limited to, anatomy, physiology, radiation physics, radiation protection and exposure, quality assurance, radiation oncology treatment techniques, dosimetry, radiation oncology and pathology, radiology, oncologic patient care and management.

b. Limited radiation therapist. Successful completion of a training program approved by the department to prepare the student to demonstrate competency in a specified area only. This includes the simulation therapist. Each program shall include the items in 42.3(4)"a" that are specific to the limited area.

c. Graduates of programs recognized by the department in consultation with the professional societies and others as being adequate and appropriate courses of study in radiation therapy technology may be considered to meet the requirements of this subrule.

d. Any person submitting a training program to the department for approval must include the following:

(1) An outline of the didactic and clinical studies to meet the requirements of 42.3(4)"a."

(2) Proof that the instructor meets the requirements of this rule as a radiation therapist or is a licensed physician who has had additional training in radiation therapy.

(3) An approximate time schedule of the training program.

(4) A description of the mechanism to be used to determine competency.

e. Upon completion of the training in 42.3(4)"d," the following must be submitted:

(1) A statement of competency from a licensed physician who has had additional training in radiation therapy.

(2) A statement of permission to allow a representative of the department to comprehensively evaluate whether the individual meets the training standard.

42.3(5) Examinations.

a. Any person, other than licensed physicians, seeking certification as a radiation therapist shall, in addition to the requirements of 42.3(4), satisfactorily complete a written examination in radiation therapy technology approved by the department. An approved examination is offered by the American Registry of Radiologic Technologists.

b. Any person seeking to perform radiation therapy under 42.3(3)"c" shall successfully complete an approved examination within two years of the effective date of these rules.

c. Any person seeking to perform simulation radiography only must successfully complete an approved examination in either diagnostic radiography or radiation therapy.

d. Any person holding a temporary certification must successfully complete an approved examination within one year of the date of completion of the training.

42.3(6) Exemptions.

a. Students enrolled in and participating in an approved program or approved course of study for radiation therapy technology or an approved school of medicine, osteopathy, podiatry, or chiropractic who, as a part of their course of study, administer radiation therapy to a human being while under the supervision of a licensed physician in the state of Iowa. Clinical experience must be directly supervised by a radiation therapist or licensed physician who physically observes and critiques the actual radiation therapy procedure.

b. A licensed physician in the state of Iowa.

42.3(7) Continuing education.

a. Every two years a certificate holder shall complete continuing education hours for submission at the time of renewal:

(1) Radiation therapist: proof of 24.0 clock hours of continuing education courses in subjects directly related to radiation therapy.

(2) Simulation therapist: proof of 24.0 clock hours of continuing education courses with at least 12.0 hours directly related to radiation therapy. 12.0 hours may be in specified diagnostic radiography courses.

b. Continuing education course approval.

(1) Thirty days prior to conducting a continuing education course, the sponsoring person must submit the following to this agency:

1. The course objectives.
2. An outline of the course which sets forth the subject, the course content, and the length of the course in clock hours.
3. The instructor's name and short resumé detailing qualifications.

(2) Any program submitted within 30 days of presentation will not be guaranteed a complete review before the presentation date.

(3) Following its review, the agency may approve, disapprove, or request additional information on the proposed course.

(4) The department may, from time to time, audit the continuing education course to verify the adequacy of program content and delivery.

c. Continuing education credit will be awarded under provisions of 42.3(7) by the department to individuals who:

(1) Successfully complete a continuing education course which has been approved by this department.

(2) Present an approved continuing education course to radiation therapists. Credit granted shall be at a rate of two times the amount of time it takes to present the course.

(3) Attend an approved course only once during each two-year period.

d. All continuing education must be directly related to the subject area stated in 42.3(4)"a."

e. Proof of receiving continuing education is to be retained at each individual's place of employment for review by representatives of the department. Proof of continuing education hours must be maintained for at least three years.

f. All continuing education requirements shall be completed during the two-year period prior to the certificate continuing education due date. Failure to complete the continuing education requirements prior to the due date may result in termination of certification as specified in 38.13(6)"d."

42.3(8) Recertification.

a. If a person who holds certification as a radiation therapist in Iowa allows the certification to expire for any reason or if any person voluntarily terminates certification, the following will apply:

(1) Any individual who wishes to regain a valid certification and makes application within six months of the termination date will be allowed to do so with no additional training or testing required.

(2) Any individual who wishes to regain certification after the six-month period will need to meet the current educational and testing requirements as outlined in this rule. Proof of possession of a previous certification may satisfy the training portion of this requirement.

(3) Any individual who has not renewed the certification for at least five years and wants to regain certification or who has not applied for certification within five years of the completion date of the radiation therapy training shall complete a recertification program approved by the department of not less than 12 contact hours which specifically apply to radiation therapy.

b. Recertification programs.

(1) The recertification program must review the basic principles necessary to ensure minimum competency in radiation therapy and must also include the satisfactory completion of a written examination. Both the program and the examination shall acquire prior approval from the department. Courses designed for use in the recertification program will not qualify for continuing education credit for those persons required to attend in order to recertify.

(2) If no approved programs are available, the department may require attendance for a minimum of 12 contact hours at continuing education programs specific to radiation therapy.

(3) Exemptions. Any or all of the above-mentioned requirements may be waived for an individual who has been actively employed as a radiation therapist in another state, country, or federal institution or who can prove circumstances above and beyond the norm. These cases will be reviewed on an individual basis and the decision of the department shall be final.

42.3(9) Disciplinary grounds and actions. The following shall be grounds for disciplinary action involving possible suspension or revocation of certification or levying of fines:

a. Operating as a radiation therapist without meeting the requirements of this rule.

b. Allowing any person, excluding a licensed physician, to operate as a radiation therapist in the state of Iowa, if that person cannot prove certification by the department.

c. Failing to report to the department any person who the radiation therapist knows is in violation of this rule.

d. Submitting false information in order to obtain certification or renewal certification as a radiation therapist.

e. Any action that the department determines may jeopardize the public or radiation therapist's health and safety.

42.3(10) Fees. All radiation therapists certified under this chapter shall pay fees as specified in 641—subrule 38.13(5).

This rule is intended to implement Iowa Code chapter 136C.

ARC 2921A

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 136B.4, the Iowa Department of Public Health gives Notice of Intended Action to amend Chapter 43, "Minimum Requirements for Radon Testing and Analysis," Iowa Administrative Code.

When Chapter 43 was amended in February 1991, reference to the federal standard requiring listing by the U.S. Environmental Protection Agency (EPA) in its Radon/Radon Progeny Measurement Proficiency Program (RMPP) for all individual testing specialists was inadvertently deleted. This amendment will clarify that certified radon testers must be listed by the EPA on its radon measurement proficiency program.

Any interested person may submit written comments or suggestions on or before the close of business on April 21, 1992. Such written materials should be addressed to: Donald A. Flater, Bureau of Environmental Health, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

Persons who wish to convey their views orally may attend the public hearing on Tuesday, April 21, 1992, at 9 a.m. in Hearing Room 2, First Floor, Lucas State Office Building, East Twelfth and Grand Avenue, Des Moines, Iowa.

This rule is intended to implement Iowa Code chapter 136B.

The following amendment is proposed.

Amend subparagraph **43.3(3)"b"(1)** to read as follows:

(1) ~~Conduct testing in conformance with E.P.A. protocols and guidelines~~ *Be successfully enrolled in the E.P.A.'s RMPP,*

ARC 2886A

SECRETARY OF STATE[721]

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 52.28, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 22, "Alternative Voting Systems," Iowa Administrative Code.

The purpose of the proposed amendments is to remove restrictive and unnecessarily specific language in the existing rules in order to make them applicable to all types of voting systems which are used to tabulate special paper ballots. The proposed amendments also expand the rules about centralized tabulation of special paper ballots.

Written suggestions or comments regarding the proposed amendments will be considered if they are received not later than Tuesday, April 21, 1992. Written comments or suggestions should be sent to the Director of Elections, Office of the Secretary of State, Second Floor, Hoover State Office Building, Des Moines, Iowa 50319.

A public hearing will be held on Thursday, April 23, 1992, at 1:30 p.m. at the Office of the Secretary of State, Second Floor, Hoover State Office Building, Des Moines. Anyone wishing to present oral comments at the public hearing should notify the Director of Elections by 4:30 p.m. on Tuesday, April 21, 1992. Notice of intention to present oral comments at the hearing may be made by telephoning (515)281-5865.

These amendments are intended to implement Iowa Code chapter 52.

The following amendments are proposed.

ITEM 1. Amend rule 721—22.53(52), introductory paragraph, to read as follows:

721—22.53(52) Special paper ballots, ~~and~~ portable vote tallying ~~system~~ ***systems, and central count systems.*** As an alternative to mechanical voting machines and paper ballots, the board of supervisors of any county may authorize, purchase and order the use of special paper ballots and a portable vote tallying system for voting at any or all of the regular polling places within a county at any election. *The supervisors may also authorize the use of special paper ballots in conjunction with a central count system.*

ITEM 2. Amend subrule **22.53(1)** by adding new paragraphs **"g"** and **"h"**:

g. "Central count system" means a system employing special paper ballots under which votes are cast by voters marking special paper ballots with a vote marking device and are counted by use of automatic tabulating equipment at a counting center pursuant to Iowa Code section 52.37.

h. "Voting target" means the space on a special paper ballot which the voter marks to cast a vote for a candidate, judge or question. This target shall be printed according to the requirements of the voting system to be used to read the ballots.

ITEM 3. Amend subrule **22.53(2)**, paragraphs **"a," "b," "d," "e," "g"** and **"h"** to read as follows:

a. The special paper ballots may be printed on both sides. If both sides are used, the words "VOTE BOTH SIDES" shall be clearly printed in ~~red~~ *letters at least 3/16 inch high* on the front and back of the special paper ballot, at the bottom.

b. At the top of the front side of the special paper ballot, the name and date of the election for which the special paper ballot is intended shall be stated, and shall include the words, "Official Ballot." ~~and a~~ *A* designation of the ballot rotation, if any, *shall also be included on the front of the ballot.*

d. ~~An open, rectangular shaped space ([ ])~~ *The voting target* shall be printed opposite each candidate's name and write-in line on the special paper ballot, and opposite the "yes" and "no" for each public measure *and judge.*

e. Immediately preceding the offices to be voted upon on the general election special paper ballot, the names of political parties or groups of petitioners having candidates on the ballot shall be printed in capital letters. ~~An open oval shaped space ( )~~ *A voting target* shall be printed opposite each name of a political party or group of petitioners for the purpose of straight ~~party~~ *ticket* voting.

g. For partisan primary elections, the names of candidates representing each political party shall be printed on separate special paper ballots. ~~A different color shall be used for the special paper ballot for each party.~~ *The ballots shall be uniform in color, quality, texture and size. The name of the political party shall be printed in letters at least 1/4 inch tall at the top of the ballot.*

h. ~~Following the names of all candidates and all public measures to be voted upon at an election, there~~ *There* shall be printed *on the ballot* a facsimile of the signature of the commissioner who has caused the ballot to be printed pursuant to Iowa Code section 49.51, and a line to accommodate the initials of the precinct election official who endorses the ballot as provided in Iowa Code sections 43.36 and 49.82.

ITEM 4. Amend subrule **22.53(5)**, paragraphs **"b"** and **"d"** to read as follows:

b. The voter shall vote upon the special paper ballot by marking the appropriate ~~rectangular ([ ]) or oval ( ) spaces~~ *voting target* with a vote marking device or a #2 pencil in the manner described in the instructions printed on the ballot.

When a write-in vote has been cast, the special paper ballot must also be marked in the corresponding ~~rectangular space ([ ])~~ in order to be counted.

d. The voter shall at once deposit the ballot, still enclosed in the secrecy envelope, in the tabulating device so that the special paper ballot is automatically removed from the secrecy envelope, the votes tabulated, and the special paper ballot deposited in the ballot box. *Where a central count system is used, the voter shall give the ballot to a precinct election official. The precinct election official shall at once, in the presence of the voter, deposit the ballot into the ballot box.*

ITEM 5. Amend subrule 22.53(8) to read as follows:

22.53(8) Absentee voting instructions. A printed copy of instructions to the voter shall be included in the materials furnished to each person to whom *an* absentee ~~balloting materials are~~ *ballot is* sent. The instructions to the voter shall be in substantially the following form:

ABSENTEE VOTING INSTRUCTIONS
READ ALL INSTRUCTIONS CAREFULLY
BEFORE VOTING!

If your ballot is not properly marked, your vote cannot be counted.

DO NOT MARK, FOLD OR PUNCH YOUR BALLOT ~~CARD~~ EXCEPT AS OUTLINED IN THESE INSTRUCTIONS.

Your ballot packet contains:

1. Official special paper ballot or ballots.
2. Secrecy envelope for ballot.
3. Affidavit envelope.
4. Return carrier envelope.

Follow all instructions carefully. If you spoil your ballot, you may return the entire ballot packet and request a new packet.

VOTING WITH ASSISTANCE

Voters who are blind, cannot read, or because of any other physical disability, are unable to mark their own ballots may have the assistance of any person the voter chooses.

MARKING YOUR BALLOT

1. Vote in secrecy. Iowa law requires that absentee voters mark their ballots so that no other person will know how the ballot is marked.

2. Study ballot carefully. Study the ballot carefully before voting. Once you have marked your ballot, the mark cannot be erased without spoiling the ballot. After you have determined the candidates and public measures for which you wish to vote, locate the ~~rectangle~~ *voting target* opposite the names or questions.

3. Use ~~a #2 pencil~~ *the enclosed marker.* Using only ~~a #2 pencil~~ *the enclosed marker,* mark the appropriate ~~rectangle~~ *voting target* ~~following~~ *in the manner described by* the example *printed* on the ballot. Marks made by other pens ~~or pencils~~ may not be readable by the machine that will tabulate your votes. To vote a straight party ticket in the general election, mark the ~~oval (—)~~ *voting target* opposite the name of the party or group of petitioners for whom you wish to vote. *(If no marker was provided with this ballot use a #2 pencil.)*

4. Write-in votes. If you wish to vote for any person whose name is not printed on the ballot, write the name of that person in the appropriate blank space and mark the ~~rectangle~~ *voting target* opposite the name you have written. If you do not mark the ~~rectangle~~ *voting target* opposite the name you have written on the ballot, your write-in vote cannot be detected and therefore, will not be counted. Marking the ~~rectangle~~ *voting target* without writing in a name will not spoil the rest of your ballot.

5. Overvoting. If you mark ~~rectangles~~ *voting targets* next to the names of more candidates than can be elected to any single office, your vote for that office will not be counted.

6. No extra marks. Put no mark of any kind on the ballot other than voting marks inside ~~rectangles or an oval~~ *voting targets* or writing a person's name as described above.

RETURNING YOUR BALLOT

1. Affidavit. After marking your ballot, carefully read the affidavit on the back of the ~~ballot~~ *affidavit* envelope ~~(Form No. 4-C)~~, fill in the information requested, and sign your name. If the ballot was folded when you received it, fold it exactly as it was folded before. Place the ballot in the secrecy envelope, insert the secrecy envelope containing the ballot(s) in the ~~carrier~~ *affidavit* envelope ~~(Form No. 4-B)~~ and securely seal the envelope. *Enclose the affidavit envelope in the return carrier envelope addressed to the county auditor and securely seal the envelope.*

2. Postmark before election day. The *return* carrier envelope must be postmarked no later than the day before the election and must be received by the county ~~commissioner~~ *auditor* ~~by 9 a.m.~~ *not later than noon* on the Monday following the election in order to be counted.

3. Return postage. Return postage for this ballot is ___ cents.

(Substitute the following paragraph "3" for instructions sent with ballots mailed to voters who are in the armed forces or who are overseas:

3. Return postage. No postage is needed if this ballot is mailed in the FPO or APO system.)

4. Personal return of ballot. Ballots may be returned to the county auditor's office by the voter or by any person the voter chooses. Ballots returned in person must be received at the auditor's office no later than the hour that polls close on election day.

WARNING: DO NOT return a voted absentee ballot to your polling place. Absentee ballots delivered to polling places are not counted.

IF YOUR BALLOT IS REJECTED BEFORE THE OPENING OF THE BALLOT ENVELOPE, YOU WILL BE NOTIFIED OF THE REASON FOR THE REJECTION.

THIS BALLOT MUST BE RETURNED TO THE COUNTY ~~COMMISSIONER~~ *AUDITOR* WHETHER VOTED OR NOT VOTED.

ITEM 6. Amend rule 721—22.53(52), implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~section 52.5~~ *chapter 52.*

ARC 2889A

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 section 307.12 and Iowa Code Supplement section 68B.4, the Department of Transportation hereby gives Notice of Intended Action to adopt Chapter 26, "Consent for the Sale of Goods and Services," Iowa Administrative Code.

These rules implement Iowa Code Supplement section 68B.4, as it relates to sales by officials to individuals, associations or corporations subject to the regulatory authority of the Department of Transportation. Section 68B.4 requires each regulatory agency to adopt rules regarding the granting of consent to agency officials for such sales. Pursuant to Iowa Code section 68B.2, the Department of Transportation is a regulatory agency.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Bureau of Policy and Information, 800 Lincoln Way, Ames, Iowa 50010.
5. Be received by the bureau no later than April 27, 1992.

A meeting to hear requested oral presentations is scheduled for Thursday, April 30, 1992, at 10 a.m. The meeting will be held in the Commission Room of the Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa. The meeting will be canceled without further notice if no oral presentation is requested.

Proposed rule-making action:

Adopt the following new chapter:

CHAPTER 26

CONSENT FOR THE SALE OF GOODS AND SERVICES

761—26.1(68B) Applicability and definitions.

26.1(1) Applicability. These rules apply to the sale of goods or services by officials to individuals, associations or corporations subject to the regulatory authority of the department.

26.1(2) Definitions.

"Individual," "association" and "corporation" do not include the United States, a state, or a political subdivision of a state.

"Official" means the director of transportation or a member of the transportation commission. The term "official" includes the individual's spouse and minor children, any firm of which the individual is a partner, and any corporation of which the individual holds 10 percent or more of the stock either directly or indirectly.

"Sale of goods or services" means the receipt of compensation for providing goods or services. The term does not include outside employment activities that constitute an employer-employee relationship.

761—26.2(68B) Prohibitions and conditions.

26.2(1) General prohibition. An official shall not sell, either directly or indirectly, any good or service to an individual, association or corporation subject to the regulatory authority of the department except when consent is granted pursuant to rule 26.3(68B) or 26.4(68B).

26.2(2) Conditions for consent. Consent may be granted only when all of the following conditions are met:

a. The official's job duties or functions are not related to the department's regulatory authority over the individual, association or corporation, or the selling of the good or service does not affect the official's job duties or functions.

b. The selling of the good or service does not include acting as an advocate on behalf of the individual, association or corporation to the department.

c. The selling of the good or service does not result in the official selling a good or service to the department on behalf of the individual, association or corporation.

761—26.3(68B) Consent granted by rule. The department finds that the sales described in this rule do not, as a class, constitute sales that affect an official's job duties or functions. Consent is hereby granted for these sales, and individual application and approval pursuant to rule 26.4(68B) are not required unless there are unique facts surrounding a particular sale which would cause that sale to affect the official's duties or functions, would give the buyer an advantage in its dealings with the department, or would otherwise present a conflict of interest.

Sales for which consent is granted by rule:

1. A sale in the ordinary course of business to a person subject to driver licensing laws unless the sale relates to driver licensing functions.
2. A sale in the ordinary course of business to a person subject to vehicle registration or titling laws unless the sale relates to vehicle registration or titling functions.
3. A sale in the ordinary course of business to a person subject to aircraft registration laws unless the sale relates to aircraft registration functions.

761—26.4(68B) Individual consent required. Except as provided in rule 26.3(68B), an official who wishes to sell a good or service to an individual, association or corporation subject to the regulatory authority of the department must have prior written consent for the sale.

26.4(1) Application for consent. Consent must be applied for and received in advance of the sale. To obtain consent, the official shall apply in writing, describing the good or service to be sold, the anticipated clientele, the approximate form and amount of compensation, and any other relevant facts concerning the sale.

26.4(2) Who may consent. The special assistant attorney general for the department is authorized to consent to sales by the director of transportation. The director of transportation is authorized to consent to sales by a member of the transportation commission.

26.4(3) Consent. Consent must be in writing. Consent may be granted for a particular sale or for a class of sales involving specified goods, services or clientele.

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

26.4(4) Effect of consent. Consent is valid only to the extent that all relevant facts relating to the sale have been disclosed and remain unchanged.

761—26.5(68B) Public records. An application for consent and the resultant consent granted or denial issued are public records and are open to examination and copying.

761—26.6(68B) Effect of other laws. These rules do not authorize any activity that constitutes a conflict of interest at common law or that violates any applicable statute or rule.

These rules are intended to implement Iowa Code Supplement section 68B.4.

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:

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%
May 1, 1990 – May 31, 1990	10.50%
June 1, 1990 – June 30, 1990	10.75%
July 1, 1990 – July 31, 1990	10.75%
August 1, 1990 – August 31, 1990	10.50%
September 1, 1990 – September 30, 1990	10.50%
October 1, 1990 – October 31, 1990	10.75%
November 1, 1990 – November 30, 1990	11.00%
December 1, 1990 – December 31, 1990	10.75%
January 1, 1991 – January 31, 1991	10.50%
February 1, 1991 – February 28, 1991	10.00%
March 1, 1991 – March 31, 1991	10.00%
April 1, 1991 – April 30, 1991	9.75%
May 1, 1991 – May 31, 1991	10.00%
June 1, 1991 – June 30, 1991	10.00%
July 1, 1991 – July 31, 1991	10.00%
August 1, 1991 – August 31, 1991	10.25%
September 1, 1991 – September 30, 1991	10.25%
October 1, 1991 – October 31, 1991	10.00%
November 1, 1991 – November 30, 1991	9.75%
December 1, 1991 – December 31, 1991	9.50%
January 1, 1992 – January 31, 1992	9.50%
February 1, 1992 – February 29, 1992	9.00%
March 1, 1992 – March 31, 1992	9.00%
April 1, 1992 – April 30, 1992	9.25%

ARC 2910A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6 and 1991 Iowa Acts, chapter 267, section 109, subsection 3, paragraph "c," and section 144, the Department of Human Services hereby rescinds Chapter 168, "Child Day Care Grants Program," and adopts Chapter 168, "Child Day Care Grants Programs," Iowa Administrative Code.

In 1991 the Department of Human Services applied for and received a $7.19 million Child Care and Development Block Grant from the federal Department of Health and Human Services. Federal regulations require that 18.75 percent ($1,348,363 for federal fiscal year 1993) of the total amount of the Block Grant for each fiscal year be used for grants or contracts with early childhood development programs or before and after school child care programs.

In state fiscal year 1991 funding for day care program grants was largely state money. A total of $683,548 in state funds was allocated to the 99 county boards of social welfare for distribution to various day care centers and day care homes. Most applicants received a grant of some amount, usually from $200 to $500. An additional $50,000 in state money was reserved for start-up and expansion of day care programs in rural counties with populations of less than 20,000 and towns with populations of less than 5,000. An additional $105,812, consisting of $79,360 in federal funds and $26,452 in state funds, was reserved for start-up and expansion of before and after school programs. This $155,812 was administered by Central Office.

These amendments define and structure the two child day care grants programs which will be administered by the Department of Human Services. Grants shall be available for start-up and expansion of school-age child care programs and for wrap-around child care programs. In federal fiscal year 1992 the $1,348,363 shall be divided equally between the two programs.

School-age child care programs serve children who are enrolled in a public or approved nonpublic school program. Wrap-around child care programs serve children who are enrolled in core Head Start programs, Department of Education At-Risk programs, Chapter 1 preschools, or Early Childhood Special Education programs and must be designed to provide basic care for enrolled children before and after the core program, including summers and other breaks in the core program.

Eligible providers for these grants are limited to child care facilities licensed under Iowa Code chapter 237A or child day care programs established by a school pursuant to Iowa Code section 279.49. Day care homes will not be eligible to apply. The maximum amount of a school-age child care grant shall be $10,000. The maximum amount of a wrap-around child care grant shall be $40,000. Increasing the dollar amount of the individual grants over previous programs will reduce the number of grants available, but the grants will have more of an impact on the delivery of day care.

Federal regulations require states to give the highest priority in awarding grants to geographic areas with concentrations of poverty and to areas with very low population density. Therefore, grants for facilities in communities in which more than 25 percent of the children receive free or reduced price school lunches, or geographic areas by zip code in which 30 percent or more families receive aid to dependent children or food stamp benefits and in counties with fewer than 20,000 people or towns with fewer than 5,000 people will be given priority. In addition, facilities in communities with a high incidence of teen pregnancy and teen parenting will have priority for programs established specifically to serve these teens and their children, facilities with a high proportion of low-income families among all families served by the facility, and facilities willing to serve children with special needs will be given priority.

Expansion costs are available for a school-age child care program which has been in operation 24 months or more as of July 1 of the year in which the application is made, and which will increase the number of school-age children served or will allow participation of school-age special needs children. Start-up costs are available for a school-age child care program which has been in operation less than 24 months as of July 1 of the year in which the application is made.

Funds for school-age child care programs are available for direct care staff costs, staff training, equipment, transportation for children's activities, materials, books, play equipment, rent and utilities. Funds will not be available for construction or modification of the building (except to serve children with special needs), administrative costs over 10 percent, and certain other items. Programs receiving these grants will be allowed to receive child care subsidy moneys for children eligible for child day care services.

Funds awarded for wrap-around child care programs shall cover the total program costs for one calendar year for 16 children. Costs for construction or building modification shall not be allowed, except to allow access for special needs children. All children enrolled in the program shall be eligible for child day care services, but no child care assistance shall be requested as the total costs of the program shall be provided by the grant.

The Department established a Statewide Child Care Advisory Committee, with a wide representation of parents, child care providers, state agency representatives, and organizations concerned with child care to assist the Department in developing plans and policies for the distribution of these funds.

The Department of Human Services finds that notice and public participation are impracticable because there is not adequate time to implement the regular rule-making process and to allow for distribution of these federal funds by the end of the federal fiscal year October 1. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

These rules are also published herein as a Notice of Intended Action, ARC 2909A, to allow for public comment.

The Department finds that 1991 Iowa Acts, chapter 267, section 109, subsection 3, paragraph "c," and section 144 allow these amendments to be effective immediately upon filing, unless a later effective date is specified. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(1).

The Council on Human Services adopted these rules March 11, 1992.

These rules are intended to implement Iowa Code subsection 234.6(5).

These rules became effective March 12, 1992.

The following amendments are adopted.

Rescind **441—Chapter 168** and insert the following in lieu thereof:

CHAPTER 168
CHILD DAY CARE GRANTS PROGRAMS

PREAMBLE

These rules define and structure the child day care grants programs. The grants shall be available for start-up and expansion for school-age child care programs and for wrap-around child care programs.

441—168.1(234) Definitions.

"Administrator" means the administrator of the division of adult, children and family services.

"Applicant" means any child care facility which makes application for a grant.

"Child care facility," for the purpose of this chapter, means a facility licensed or with licensing in process under Iowa Code chapter 237A or a child day care program established by a school pursuant to Iowa Code section 279.49.

"Child day care services" means services for children of low-income parents who are in vocational training; or employed 20 or more hours per week, or are employed an average of 20 or more hours per week during the month; or who are unable to provide adequate and necessary care for a child with special needs, or for a limited period of time, when the caring person is absent due to hospitalization, physical or mental illness, or death; or for protective services (without regard to income).

"Department" means the Iowa department of human services.

"Director" means the director of the department of human services.

"Grantee" means an applicant who has received a grant.

"Grant review committee" means a committee appointed by the chief of the bureau of individual and family support and protective services.

"School-age child care program" means a program which is serving children who will be five years of age by September 15 to 13 years of age who are enrolled in a public or approved nonpublic school program. School-age child care shall provide basic care for enrolled children before and after school, including summers and other breaks in the regular school schedule.

"Wrap-around" means a program which is serving children who are enrolled in core head start programs, department of education at-risk programs, Chapter 1 preschools, or early childhood special education programs. Core services, which include education, social services, parent involvement and family development, health, dental, nutrition, special needs and mental health, are to be provided by the program which is being expanded upon, not the wrap-around program. Wrap-around care shall provide basic care for enrolled children before and after the core program, including summers and other breaks in the core program schedule.

441—168.2(234) Availability of grants. In any year in which funds are available for child day care grants, the department shall administer grants to eligible applicants. The maximum amount of a school-age child care grant shall be $10,000. The maximum amount of a wrap-around child care grant shall be $40,000. If sufficient qualified proposals are not received the department reserves the right to not allocate all grant funds.

441—168.3(234) Grant eligibility.

168.3(1) School-age child care programs. Grants shall be awarded for expansion and start-up costs to child care facilities providing a school-age child care program as defined in this chapter. Expansion costs are available for a school-age child care program which has been in operation 24 months or more as of July 1 of the year in which the application is made, and which will increase the number of school-age children served or will allow participation of school-age special needs children. Start-up costs are available for a school-age child care program which has been in operation less than 24 months as of July 1 of the year in which the application is made.

a. Funds shall be available for the following costs: direct care staff costs, training for staff, equipment, transportation for children's activities, materials, books, play equipment, rent and utilities.

b. Nonallowable expenditures include construction or modification of the facility (except to serve children with special needs); administrative costs over 10 percent (including nondirect care staff); payment on interest or organizational membership; excessive computer costs; actual food purchases; medical or health services for children; staff travel which includes mileage, food or hotel.

c. Programs receiving school-age child care grants shall be allowed to receive child care subsidy moneys for children eligible for child day care services as set forth in 441—Chapter 130.

168.3(2) Wrap-around child care programs. Grants shall be awarded to child care facilities providing a wrap-around child care program as defined in this chapter.

a. Funds for this grant shall cover the total program costs for one calendar year for 16 children.

b. Costs for construction or building modification shall not be allowed, except to allow access for special needs children.

c. All children enrolled shall meet eligibility guidelines for child care assistance as set forth in 441—Chapter 130. However, no child care assistance subsidy shall be requested since the total costs of the program shall be provided by this grant.

441—168.4(234) Request for proposals for grant applications. All applicants shall submit an original and four copies of the application, with all five documents having original signatures, to the Iowa Department of Human Services, Bureau of Individual and Family Support and Protective Services, Hoover State Office Building, Des Moines, Iowa 50319-0114. To be qualified, the applications must have arrived in the above office by 4:30 p.m. on the date specified in the announcement.

168.4(1) School-age child care grants. The department shall announce through public notice the opening of an application period. Applicants for school-age child care shall request Form 470-2937, Application for School-Age Child Care Grants, and shall submit a grant proposal using this form by the deadline specified in the announcement.

168.4(2) Wrap-around child care grants. The department shall announce through public notice the opening of an application period. Applicants for wrap-around child

care shall request Form 470-2938, Application for Wrap-Around Child Care Grants, and shall submit a grant proposal using this form by the deadline specified in the announcement.

168.4(3) Project proposal requirements. Requirements for project proposals are specified in each application packet. If a proposal does not contain the information specified in the application packet or if it is late, it shall be disqualified. Proposals shall contain the following information:

a. Program narrative.
b. Needs assessment.
c. Staffing plan.
d. Facility.
e. Curriculum.
f. Behavior management and positive guidance.
g. Transportation.
h. Linkages and community support.
i. Staff training plans.
j. Food and nutrition.
k. Health and safety plan.
l. Parental involvement.
m. Program stability and future.
n. Organizational chart.
o. Budget.
p. Overall quality and impact of program.

441—168.5(234) Selection of proposals.

168.5(1) All qualified proposals received by the department shall be evaluated by the grant review committee, which shall make funding recommendations to the administrator. The administrator shall make the final funding decisions.

168.5(2) Facilities serving the following priority areas will be given first priority if sufficient funding is not available for all proposals:

a. Communities with high concentrations of poverty (areas in which more than 25 percent of the children receive free or reduced price school lunches, or geographic areas by zip code in which 30 percent or more families receive aid to dependent children or food stamp benefits).

b. Areas with very low population density (counties with fewer than 20,000 people, or towns with fewer than 5,000 people).

c. Communities with a high incidence of teen pregnancy and teen parenting will have priority for programs established specifically to serve these teens and their children.

d. A high proportion of low-income families among all families served by the facility.

e. Children with special needs.

168.5(3) A weighted scoring criteria shall be used to determine grant awards. The maximum amount of points possible is 165. Determination of final point awards shall be based on the following:

a. Program narrative - 10 points
b. Needs assessment - 10 points
c. Staffing plan - 10 points
d. Facility - 10 points
e. Curriculum - 10 points
f. Behavior management and positive guidance - 10 points
g. Transportation - 10 points
h. Linkages and community support - 10 points
i. Staff training plans - 10 points
j. Food and nutrition - 10 points
k. Health and safety plan - 10 points
l. Parental involvement - 10 points
m. Program stability and future - 10 points
n. Organizational chart - 10 points
o. Budget - 10 points
p. Overall quality and impact of program - 15 points

441—168.6(234) Grant contracts. The approved "Application for School-Age Child Care Grants," Form 470-2937, or "Application for Wrap-Around Child Care Grants," Form 470-2938, shall serve as the contract between the department and the applicant. The grantee receiving funds under these rules shall:

168.6(1) Use the funds only as prescribed in the application and approved in writing by the department.

168.6(2) Return any unused funds to the department.

168.6(3) Submit a report of actual expenditures per line item of the approved budget six months and one year after the grant is awarded.

168.6(4) Keep fiscal records of services provided and any other records as required by the department and specified in the contract. All records pertaining to programs funded by the grant shall be made available to the department upon request.

441—168.7(234) Evaluation. The department may evaluate the grantee at least once prior to the end of the contract year to determine how well the purposes and goals are being met. Funds are to be spent to meet the program goals as provided in the contract. The grantee shall receive a written report of the evaluation.

441—168.8(234) Termination of contract. The contract may be terminated by either party at any time during the contract period by giving 30 days' notice to the other party.

168.8(1) The department may terminate a contract upon ten days' notice when the grantee fails to comply with the grant award stipulations, standards, or conditions.

168.8(2) Within 45 days of the termination, the grantee shall supply the department with a financial statement detailing all costs up to the effective date of the termination.

168.8(3) The department shall administer the funds for this program contingent upon their availability. If the department lacks the funds necessary to fulfill its fiscal responsibility under this program, the contracts shall be terminated or renegotiated.

441—168.9(234) Appeals. Applicants dissatisfied with the grant review committee's decision may file an appeal with the Appeals Section, Bureau of Policy Analysis, Hoover State Office Building, Des Moines, Iowa 50319-0114. The letter of appeal must be received within ten working days of the date of the notice of decision; must be based on a contention that the process was conducted outside of statutory authority, violated state or federal law, policy or rule, did not provide adequate public notice, was altered without adequate public notice, or involved conflict of interest by staff or committee members; and must include a request for the director to review the decision and the reasons for dissatisfaction. The amount of the grant is not grounds for appeal. Within ten working days of the receipt of the appeal the director, or the director's designee, shall review the appeal request and issue a final decision.

No disbursements shall be made to any applicant for a period of ten working days following the notice of decision. If an appeal is filed within the ten working days, all

disbursements shall be held pending a final decision on the appeal.

These rules are intended to implement Iowa Code subsection 234.6(5).

[Filed Emergency 3/12/92, effective 3/12/92]
[Published 4/1/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/1/92.

ARC 2893A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 135.11 and Iowa Code Supplement sections 139B.1(2)"f" and 141.22A(17), the Iowa Department of Public Health amends Chapter 11, "Acquired Immune Deficiency Syndrome (AIDS)," Iowa Administrative Code.

These rules revise the procedures to follow when a person who is positive to the human immunodeficiency virus (HIV) applies for financial assistance for approved medication for HIV-related conditions.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to public interest because a new funding period begins April 1, 1992, and delay would interrupt funds to those currently being served. Current funds will be unavailable and expended March 31, 1992.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived. These amendments confer a benefit upon a narrowly defined group of persons in need of these medications.

These amendments are intended to implement Iowa Code sections 135.11 and 135.39.

These amendments shall become effective April 1, 1992.

The following amendments are adopted.

ITEM 1. Amend rule **641—11.1(135)**, definitions, as follows:

"Applicant" means a person who ~~applied~~ *applies* to the department for financial assistance *and is HIV positive.* An application from or on behalf of an unemancipated minor under 18 years of age, or any disabled person who is 18 years of age or older who is still dependent and living in the home, shall be processed as if the applicant were a minor.

"Approved medications" means those drugs approved by ~~FDA~~ *the Food and Drug Administration (FDA)* for the treatment of HIV infection and opportunistic infections.

"Family member" means the applicant, the applicant's spouse, any children under 18 years of age, and any disabled ~~children~~ *persons* 18 years of age or older who are still dependent and living in the home. If the applicant is an unemancipated minor, family member means the applicant's parent(s) or guardian(s), any siblings under 18 years of age, and any disabled siblings under 18 years of age or older who are still dependent and living in the home.

"Financial status" means the level of income into which applicants are categorized ~~for purposes of determining their eligibility to receive financial assistance~~.

"Laboratory analysis" means blood test analysis by a public, private, or hospital clinical laboratory confirming antibodies to the ~~AIDS virus~~ *human immunodeficiency virus by confirmatory western blot.*

"Program" means the HIV ~~antiviral~~ drug reimbursement program conducted by the department.

ITEM 2. Amend 641—11.2(135), 11.3(135) and 11.4(135) to read as follows:

641—11.2(135) Program ~~established—purpose~~. The purpose of the program is to provide financial assistance to ~~eligible~~ *HIV positive persons* who are ~~HIV positive~~ *eligible and who require approved medications for HIV-related conditions but are unable to pay for those medications.*

641—11.3(135) Residency requirements.

11.3(1) To be eligible for financial assistance, applicants shall be residents of the state of Iowa. Residence is that place in which a person is living for other than a temporary purpose. Residence once acquired continues until the person abandons it and acquires residence elsewhere.

11.3(2) Temporary absence is the absence of a person during which time there is intent to return~~, or because of a change in intent, the person does return~~. A temporary absence from the state of Iowa shall not be deemed to have interrupted residency requirements.

641—11.4(135) Application procedures.

11.4(1) Persons seeking financial assistance shall apply on forms provided by the department. The address is: ~~Bureau of Disease Assessment,~~ Iowa Department of Public Health, *Division of Health Protection, Bureau of Infectious Diseases,* Lucas State Office Building, Des Moines, Iowa 50319-0075.

11.4(2) The date of application shall be the date the application is received by the department.

11.4(3) The department shall approve or deny the application or request additional information within 60 days from the date the application is received. Applicants shall be notified by mail of the department's decision.

11.4(4) Approved applicants will receive financial assistance for time periods not to exceed 12 months. If during an approved period the patient experiences a change in financial status, the patient shall notify the department in writing within 30 days of the date and nature of the change. Upon receipt of this information, the department shall evaluate the patient in accordance with the eligibility criteria and any subsequent change in financial assistance shall become effective the month following the change in medical or financial status. Patients shall be notified by mail of any change in financial assistance. Failure of the patient to notify the department of any change in financial status during an approved period of eligibility may deny to that patient any increase in financial assistance that may otherwise have been allowed. Similarly, failure of the patient to notify the department of any change in financial status during an approved period of eligibility which would have caused a decrease in financial assistance may result in the recovery of financial assistance as set forth in subrule 11.5(6).

11.4(5) There is no automatic right to receive continued financial assistance from one period of eligibility to the next. Eligibility for continued financial assistance shall be redetermined ~~in the same manner as initial eligibility~~ *annually on forms provided by the department.*

ITEM 3. Amend rule 641—11.6(135) to read as follows:

641—11.6(135) Financial assistance and limitations.

11.6(1) Financial assistance shall be limited to the retail price of the approved medications. Reimbursement shall be provided according to the financial status category and the corresponding percentage rate as shown below:

Financial Status Category and Corresponding Percentage Rate of Reimbursement for Approved Medications

Financial status category	1	2	3	4	~~5~~	~~6~~
Rate of reimbursement	100%	90%	80%	70%	~~60%~~	~~50%~~

~~For patients with other third-party payor resources, reimbursement shall not exceed the average retail price not paid in full by those resources. Any charges that exceed the reimbursed amount shall be the responsibility of the patient.~~

11.6(2) Income guidelines published by the U.S. Department of Health and Human Services (DHHS) will be adjusted following any change in Department of Health and Human Services poverty income guidelines.

11.6(3) For patients with other third-party payer resources, reimbursement shall not exceed the average retail price not paid in full by those resources. Any charges that exceed the retail reimbursed amount shall be the responsibility of the patient.

~~11.6(2)~~ *11.6(4)* Should program funds be insufficient to meet all eligible requests for financial assistance, it shall be the responsibility of the department to take appropriate and necessary action to ensure that program expenses do not exceed program funds. This action may include, but need not be limited to:

a. Reducing the amount of financial assistance provided to each patient.

b. Setting a maximum limit on the amount of financial assistance which may be provided to each patient.

11.6(5) Reimbursement for FDA-approved medications as referenced in subrule 11.9(8) to treat HIV-related conditions shall not exceed an average of $500 per month per recipient and shall be based on availability of funds.

ITEM 4. Amend subrules 11.7(5), 11.7(6), and 11.7(7) to read as follows:

11.7(5) Based on the evaluation of each application, financial assistance shall be determined and made known to the applicant by mail. Financial assistance shall be available for approved medications ~~obtained no more than three months prior to the month~~ *from the date* the application is ~~received~~ *approved* by the department.

11.7(6) The criteria that follow shall be the criteria utilized to determine the applicant's financial status and eligibility:

a. All income shall be included in the determination of gross income.

b. ~~Six~~ *The* financial status categories shall be used as set forth in Appendix 1. These categories are presented in dollar ranges based on percentage increases of the 1991 Department of Health and Human Services poverty income guidelines. Each range is increased proportionately by the number of family members. The financial status category into which the applicant is placed for eligibility purposes is determined upon evaluation of the applicant's gross income and other financial and medical resources.

c. The applicant's financial status category determines the level of financial assistance as shown in subrule 11.6(1).

~~11.7(7) Eligible applicants who qualified and participated in the treatment investigational new drug program will be given priority to receive financial assistance.~~

ITEM 5. Amend subrules 11.9(6), 11.9(7), and 11.9(8) to read as follows:

11.9(6) When other financial or medical resources are available to the patient, the program will consider for payment any eligible expense claim or portion thereof provided the claim is for approved expenses incurred no more than ~~six months~~ *90 days* prior to the month the claim is received by the program.

11.9(7) ~~The department shall consider the~~ *The* date of *the* claim ~~to be~~ *is* the date ~~the extent~~ of ~~the department's liability has been determined~~ *receipt of a completed claim in the department's drug reimbursement program.* ~~Funds allocated to this program for the fiscal year in which such determinations are made shall also be the funds from which payment is made.~~

11.9(8) Reimbursement of approved expenses shall be for FDA-approved medication and based on a formulary established by the department.

ITEM 6. Amend subrules **11.10(3)** and **11.10(11)** by striking "Bureau of Disease Assessment," and inserting "Division of Health Protection, Bureau of Infectious Diseases," as listed in the address.

ITEM 7. Amend rule **641—11.12(135)** by striking the current Appendix 1 and inserting a revised Appendix 1 in lieu thereof.

PUBLIC HEALTH DEPARTMENT[641](*cont'd*)

~~APPENDIX 1~~

~~HIV DRUG REIMBURSEMENT~~

~~FINANCIAL STATUS CATEGORIES~~

~~NUMBER IN FAMILY~~	~~(1) 250% OF BASE~~	~~(2) 300% OF BASE~~	~~(3) 350% OF BASE~~	~~(4) 400% OF BASE~~	~~(5) 450% OF BASE~~	~~(6) 500% OF BASE~~
~~1~~	~~0 - 16,550~~	~~16,551 - 19,860~~	~~19,861 - 23,170~~	~~23,171 - 26,480~~	~~26,481 - 29,790~~	~~29,791 - 33,133~~
~~2~~	~~0 - 22,200~~	~~22,201 - 26,640~~	~~26,641 - 31,080~~	~~31,081 - 35,520~~	~~35,521 - 39,960~~	~~39,961 - 44,400~~
~~3~~	~~0 - 27,850~~	~~27,851 - 33,420~~	~~33,421 - 38,990~~	~~38,991 - 44,560~~	~~44,561 - 50,130~~	~~50,131 - 55,700~~
~~4~~	~~0 - 33,500~~	~~33,501 - 40,200~~	~~40,201 - 46,900~~	~~46,901 - 53,600~~	~~53,601 - 60,300~~	~~60,301 - 67,000~~
~~5~~	~~0 - 39,150~~	~~39,151 - 46,980~~	~~46,981 - 54,810~~	~~54,811 - 62,640~~	~~62,641 - 70,470~~	~~70,471 - 78,300~~
~~6~~	~~0 - 44,800~~	~~44,801 - 53,760~~	~~53,761 - 62,720~~	~~62,721 - 71,680~~	~~71,681 - 80,640~~	~~80,641 - 89,600~~
~~7~~	~~0 - 50,450~~	~~50,451 - 60,540~~	~~60,541 - 70,630~~	~~70,631 - 80,720~~	~~80,721 - 90,810~~	~~90,811 - 100,900~~
~~8~~	~~0 - 56,100~~	~~56,101 - 67,320~~	~~67,321 - 78,540~~	~~78,541 - 89,760~~	~~89,761 - 100,980~~	~~100,981 - 112,200~~

~~BASE - FEDERAL POVERTY INCOME GUIDELINES FOR 1981.~~
~~ADD $2,260 TO BASE FOR EACH ADDITIONAL FAMILY MEMBER.~~

APPENDIX I

HIV DRUG REIMBURSEMENT

FINANCIAL STATUS CATEGORIES

NUMBER IN FAMILY	*(1) 250% OF BASE*	*(2) 300% OF BASE*	*(3) 350% OF BASE*	*(4) 400% OF BASE*
Reimbursement Rate	*100%*	*90%*	*80%*	*70%*
1	*-0- - 16,550*	*16,551 - 19,860*	*19,861 - 23,170*	*23,171 - 26,480*
2	*-0- - 22,200*	*22,201 - 26,640*	*26,641 - 31,080*	*31,081 - 35,520*
3	*-0- - 27,850*	*27,851 - 33,420*	*33,421 - 38,990*	*38,991 - 44,560*
4	*-0- - 33,500*	*33,501 - 40,200*	*40,201 - 46,900*	*46,901 - 53,600*

BASE = FEDERAL POVERTY INCOME GUIDELINES.
ADD $2,260 TO BASE FOR EACH ADDITIONAL FAMILY MEMBER.

[Filed Emergency 3/11/92, effective 4/1/92]
[Published 4/1/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/1/92.

ARC 2894A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code Supplement subsection 139.35(7), the Iowa Department of Public Health hereby adopts Chapter 71, "Emergency Information System on Pesticides for Use by Health Care Providers During Medical Emergencies," Iowa Administrative Code.

Notice of Intended Action regarding Chapter 71 was published in the Iowa Administrative Bulletin on February 5, 1992, as **ARC 2726A**. At the same time, this chapter was Adopted and Filed Emergency as **ARC 2725A** in an attempt to meet a legislative mandate.

This chapter is based on written comments and information received at the public hearing held on February 27, 1992. Changes from the Notice are as follows:

1. Rule 641—71.1(139) was expanded to further clarify to whom Chapter 71 is applicable.

2. In rule 641—71.2(139), the following definitions were modified or deleted.

"Emergency Information System (EIS)." The reference to poison control center was removed because it was determined that the reference was not appropriate for the EIS.

"Poison Control Center (PCC)." The definition was deleted because it was determined that Chapter 71 does not deal with the requirements for a PCC. The definition is found in Chapter 139.

"Registrant." This definition was revised so that it coincided with the definition found in Iowa Code chapter 206.

3. Paragraph 641—71.3(1)"a" was revised by adding the words "the appropriate" in the second sentence because some inert ingredients are in such small quantity that they really have no impact on medical treatment.

4. Paragraph 641—71.3(1)"b" was revised to clarify when additional information on industrial ingredients would be provided.

5. Paragraph 641—71.3(1)"c" was revised to further define what a toll-free number is.

6. In 641—71.3(1)"d," the reference to the use of pagers, etc., was removed because it was determined that the use of these devices was an acceptable means for contacting persons for purposes of emergency response.

7. In 641—71.3(1)"d"(1), the five-year experience request was dropped to two years based on discussion with emergency response groups and after further inventory of the information to be provided to the health care provider.

8. Subparagraph 641—71.3(1)"d"(2) was revised to provide additional flexibility so that companies running their own EIS could use properly supervised and trained personnel in the response process.

9. In 641—71.3(1)"d"(3), the requirement for a provider of information to be bondable was deleted. After considerable research, it was determined that this request was unenforceable.

10. Paragraph 641—71.3(1)"e" was revised to require a contingency plan instead of backup equipment. This seemed to be more reasonable and would better address the different means of ensuring operation in the event o equipment or power failure.

11. Subparagraph 641—71.3(1)"g"(5) was amended to clarify when the registrant must provide additional information on inert ingredients.

12. Paragraph 641—71.3(1)"h" was added to ensure that health care providers in Iowa would have prompt access to emergency treatment information.

13. Rule 641—71.4(139) was deleted because it was no longer necessary after March 1, 1992.

The Department of Public Health finds that these rules confer a benefit to the citizens of the state by providing a means for health care professionals to obtain emergency health care information regarding persons exposed to pesticides. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The State Board of Health adopted this chapter on March 11, 1992.

These rules became effective March 13, 1992, at which time Chapter 71 previously Adopted and Filed Emergency on February 5, 1992, as **ARC 2725A** was rescinded.

These rules are intended to implement Iowa Code Supplement subsection 139.35(7).

The following chapter is adopted.

CHAPTER 71

EMERGENCY INFORMATION SYSTEM ON PESTICIDES FOR USE BY HEALTH CARE PROVIDERS DURING MEDICAL EMERGENCIES

641—71.1(139) Scope. Except as otherwise specifically provided, these rules apply to requirements for the operation of an emergency information system operated by providers of pesticides in Iowa who register with the Iowa department of agriculture and land stewardship (IDALS). These rules do not pertain to registrants who do not operate their own emergency information system.

641—71.2(139) Definitions. As used in this chapter, these terms have the definition set forth below.

"Department" means the Iowa department of public health.

"Emergency information system (EIS)" means a system developed by a registrant that is accessible by Iowa health care providers and poison control centers 24 hours per day, every day of the year. The system must provide ready access to pesticide product profiles of the registrants to include but not be limited to characterization of inert ingredient(s) and their general proportion whether openly defined or confidentially maintained as a trade secret.

"Registrant" means the person registering any pesticide or device or who has obtained a certificate of license from IDALS pursuant to the provisions of Iowa Code chapter 206.

641—71.3(139) Operation of EIS.

71.3(1) Registrants operating their own EIS shall:

a. Provide emergency treatment information to health care providers engaged in the emergency care of a real-time human exposure to a registrant's product(s) upon request 24 hours per day, every day of the year. These services shall identify the appropriate inert ingredients, even if they are considered trade secret, for the sole purpose of assisting in the medical management of persons exposed to pesticides;

b. Ensure that information response time to provide appropriate pesticide ingredient information, which may be responsible for the medical emergency, to a health care provider or poison control center, as defined in Iowa Code section 206.2, does not exceed 15 minutes. All inert ingredients not previously provided and required for the sole purpose of treating a specific patient shall be provided upon request;

c. Have in operation a toll-free number (800 number, reverse charges number, etc.) which can be accessed anywhere in Iowa;

d. Have qualified responders on duty at all times. A qualified responder who provides the information to the inquiring health care provider shall:

(1) Have a college degree in one of the life sciences or its equivalent and have a minimum of two years' experience in the hazardous chemical (pesticide) field. This experience shall be in the routine handling and working with hazardous substances of the type that would, in the normal course of events, require emergency response; or

(2) Be an individual who is under the direct supervision of an individual who meets the requirements of 71.3(1)"d"(1); and

(3) Have comprehensive emergency response and accident mitigation training.

e. Have an adequate contingency plan to continue operation in the event of equipment or power failure;

f. Have facsimile (FAX) capabilities;

g. Provide at a minimum:

(1) The immediate health hazards posed by internal or external exposure to a given pesticide,

(2) Risks of fire or explosion of a material,

(3) Immediate precautions to take in the event of an accident or incident,

(4) Preliminary first-aid measures, and

(5) A comprehensive list of compounds in a given product including identification, when necessary, of the inert ingredients only upon request from the health care provider who is treating a real-time human exposure to a registrant's product.

h. Provide to poison control centers, defined in Iowa Code Supplement subsection 206.2(22), the telephone number(s) to be used to obtain treatment information for a person exposed to a registrant's product.

71.3(2) Reserved.

These rules are intended to implement Iowa Code Supplement subsection 139.35(7).

[Filed Emergency After Notice 3/11/92, effective 3/13/92]
[Published 4/1/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/1/92.

ARC 2892A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby amends Chapter 111, "Financial Assistance to Eligible End-Stage Renal Disease Patients," Iowa Administrative Code.

This amendment corrects a typographical error in Appendix 1, Column (3), for Types of Assistance, "Pharmaceuticals," and "Travel for outpatient home dialysis, transplantation and three months posttransplant period." The percentage of reimbursement is 50 percent not 150 percent as published in the Iowa Administrative Bulletin on February 5, 1992, as **ARC 2718A**.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation would be unnecessary to correct a typographical error. The reimbursement level has always been 50 percent for these services in Column (3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment be made effective upon filing with the Administrative Rules Coordinator on March 11, 1992, as it confers a benefit upon the public by allowing continuation of payment for services at the correct percentage.

This amendment was adopted by the Board of Health at the March 11, 1992, meeting.

The amendment is intended to implement Iowa Code section 135.11.

Amend **641—Chapter 111**, Appendix 1, Types of Financial Assistance Available, as follows:

Types of Assistance, "Pharmaceuticals," Column (3), by striking "150%" and inserting "50%".

Types of Assistance, "Travel for outpatient dialysis home dialysis, transplantation and three months posttransplant period only," Column (3), by striking "150%" and inserting "50%".

[Filed Emergency 3/11/92, effective 3/11/92]
[Published 4/1/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/1/92.

ARC 2890A

COMMUNITY ACTION AGENCIES DIVISION[427]

Adopted and Filed

Pursuant to the authority of Iowa Code section 601K.92B, the Division of Community Action Agencies hereby amends Chapter 23, "Emergency Community Services Homeless Grant Program," appearing in the Iowa Administrative Code.

Chapter 23 relates to the program established by Public Law 100-77, the Stewart B. McKinney Homeless Assistance Act of 1987. It is the purpose of this legislation "...to meet the critically urgent needs of the homeless of the Nation." Public Law 100-77 has been amended by Public Law 100-628 dated November 7, 1988, and Public Law 101-645 dated November 29, 1990. The change adopted concerning state level administrative cost financing is a result of the changes in the program contained in Public Law 101-645.

The other amendments are an effort to "fine tune" the program as a result of the experience of community action agencies which have been operating the program since January 1, 1988.

The changes will make it clear that assistance provided to the homeless and near-homeless with program funds can include the payment of utility payments, including deposits and reconnect fees, and other housing deposits.

Rescission of subrule 23.7(1) will delete the income eligibility requirement. It has been the experience of providers that certain homeless families require assistance even though their incomes may exceed the poverty level. It is the determination of the Division of Community Action Agencies that the definitions of "Homeless" and "Near-homeless" combined with the "Degree of Need" requirement at subrule 23.7(3) are sufficiently stringent to ensure that assistance is provided only to those truly in need.

Notice of Intended Action was published in the Iowa Administrative Bulletin February 5, 1992, as ARC 2733A. Public comment was accepted for consideration through February 25, 1992. There were no public comments received on the amendments.

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

These amendments will become effective July 1, 1992.

These rules are intended to implement Iowa Code sections 601K.91 to 601K.110 and Public Law 101-645.

The following amendments are adopted.

ITEM 1. Amend subrule 23.3(1) as follows:

23.3(1) Formula. Funds shall be awarded on a noncompetitive basis to the existing community action agencies using the following formula: ~~Fifty~~ *Forty-seven and one-half* percent of the total state award will be distributed equally among the CAA areas. ~~Fifty~~ *Forty-seven and one-half* percent of the total state award will be distributed among the CAA areas based on their relative share of the state's poverty population.

ITEM 2. Adopt a new subrule 23.3(2) as follows and renumber subrules 23.3(2) and 23.3(3) as **23.3(3)** and **23.3(4)**, respectively:

23.3(2) State administrative costs. DCAA shall reserve for its administrative expenses of the program no more than 5 percent of the state's apportioned amount.

ITEM 3. Amend subrule **23.5(5)**, paragraph **"a,"** firs sentence, as follows:

a. For the near-homeless, this assistance would be limited to mortgage ~~or~~ , rental *or utility* payments *(including deposits and reconnect fees)* for individuals who have re ceived a notice of foreclosure or eviction.

ITEM 4. Amend subrule **23.5(5)**, paragraph **"b,"** as follows:

b. For the homeless, this assistance would be limited to the payment of housing or shelter costs for an individual who is living on the street, in an abandoned building, house, tent, car, etc., living in an emergency shelter, o living in substantially similar conditions. *The payment of utility payments, including deposits and reconnect fees, and other housing deposits is an allowable use of funds, provided that other program requirements are met.*

ITEM 5. Rescind and reserve subrule **23.7(1)**.

[Filed 3/10/92, effective 7/1/92]
[Published 4/1/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/1/92.

ARC 2914A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa Department of Education hereby amends Chapter 21, "Community Colleges," Iowa Administrative Code.

These rules create a new division which establishes eligibility requirements, timelines and evaluation and selection criteria for program and administrative sharing agreements between two or more community colleges or between a community college and a regent institution.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 8, 1992, as ARC 2694A.

Interested persons were allowed to comment on the proposed rules. A public hearing was held but no one appeared to comment. No public comments were received and there are no changes from the Notice of Intended Action.

The State Board of Education adopted these rules on March 12, 1992.

These rules will become effective on May 6, 1992.

These rules are intended to implement Iowa Code section 280A.46.

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 [21.64 to 21.71] is being omitted. These rules are identical to those published under Notice as ARC 2694A, IAB 1/8/92.

[Filed 3/13/92, effective 5/6/92]
[Published 4/1/92]

[For replacement pages for IAC, see IAC Supplement 4/1/92.]

ARC 2931A

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 80, "Procedure and Method of Payment," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this amendment March 11, 1992. Notice of Intended Action regarding this amendment was published in the Iowa Administrative Bulletin on February 5, 1992, as ARC 2740A.

This amendment provides that practitioners and institutions providing screening services shall submit claims on the Health Insurance Claim Form, Form HCFA 1500, rather than the Screening Claim, Form XIX SCR-1.

This amendment is identical to that published under Notice of Intended Action.

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

This amendment shall become effective July 1, 1992.

The following amendment is adopted.

Amend subrule **80.2(2)**, paragraph **"f,"** as follows:

f. Practitioners and institutions providing screening services shall submit claims on Form ~~XIX SCR-1, Screening Claim~~ *HCFA 1500, Health Insurance Claim Form.*

[Filed 3/12/92, effective 7/1/92]
[Published 4/1/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/1/92.

ARC 2908A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 130, "General Provisions," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments March 11, 1992. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on February 5, 1992, as ARC 2741A.

These amendments allow for use of an abbreviated case plan for placements lasting less than 30 days and extend the time frames for developing the initial full plan from 30 to 45 days.

Much of the information required on the Case Permanency Plan may not be readily available to the worker at the time of initial placement. Using the abbreviated plan would provide a working document while the information is collected. Federal Guidelines do not require a detailed Case Plan for placements of less than 60 days.

Client services will not be affected by this change. However, advocates and parents' attorneys may raise concerns that this change could result in delays in focusing services and accountability. This change does not preclude earlier development of a more detailed plan, however, if more appropriate information is available.

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

These amendments are intended to implement Iowa Code section 234.6.

These amendments shall become effective May 6, 1992.

The following amendments are adopted.

Amend rule **441—130.7(234)** as follows:

Amend the third introductory paragraph as follows:

The case plan shall become part of the client's case record. The client shall participate in the development of this plan to the extent possible. The case plan shall be consistent with other service or program plans. A copy of the case plan shall be provided to the client, or when indicated, to the parent or representative of the client. For adult services the case plan shall be recorded using Form SS-0607-0, Individual Client Case Plan. For children's services the case plan shall be known as the case permanency plan and shall be prepared using Forms 427-1020, Case Permanency Plan Face Sheet, 427-1021, Case Permanency Plan Review, 427-1022, Case Permanency Plan Initial Assessment, and 427-1023, Case Permanency Plan Problem and Responsibility List; *or Forms 427-1020, Case Permanency Plan Face Sheet and 470-2921, Emergency Placement Document for Goal of Family Reunification.*

Amend subrule **130.7(3)**, paragraphs **"a"** and **"b,"** as follows:

a. The department receives judicial notice that services have been court-ordered. The date of this notice shall be stated on Form 427-1022. The case plan shall be filed within ~~30~~ *45* days from the date the notice is received or within 60 days from the date the child entered foster care, whichever is the earlier date. If the service ends before 30 days the minimum case plan requirement for children's services is completion of Form 427-1020, Face Sheet and of Form ~~427-1022, Part B~~ *470-2921, Emergency Placement Document for Goal of Family Reunification.* Assessment shall begin at the time of the notice.

b. An unanticipated provision of service is provided for the protection and well-being of a client. Assessment shall begin immediately. The case plan shall be filed within ~~30~~ *45* days from the date services are initiated or within 60 days from the date the child entered foster care, whichever is the earlier date. If the service ends before 30 days the minimum case plan requirement for children's services is completion of Form 427-1020, Face Sheet and of Form ~~427-1022, Part B~~ *470-2921, Emergency Placement Document for Goal of Family Reunification.*

[Filed 3/12/92, effective 5/6/92]
[Published 4/1/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/1/92.

ARC 2899A

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 135B.7, the Department of Inspections and Appeals hereby amends Chapter 51, "Hospitals," Iowa Administrative Code.

Item 1 updates and more accurately reflects the current practice of the Department regarding psychiatric services provided by hospitals; identifies required staff and their qualifications; and sets out the requirements for an individual written plan of care.

Item 2 requires hospitals to establish and implement protocols for responding to the needs of patients who are victims of domestic abuse.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 11, 1991, as **ARC 2624A**. A public hearing was held on January 10, 1992; however, no comments were received. No changes were made to the Notice, except that a statutory reference was updated.

The Hospital Licensing Board approved the adoption of these amendments on February 26, 1992. The Board of Health approved the adoption of these amendments on March 11, 1992.

These rules will become effective on May 6, 1992.

These rules are intended to implement Iowa Code section 135B.6 and Iowa Code Supplement 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 [51.33, 51.37, 51.38] is being omitted. These rules are identical to those published under Notice as **ARC 2624A**, IAB 12/11/91.

[Filed 3/12/92, effective 5/6/92]
[Published 4/1/92]

[For replacement pages for IAC, see IAC Supplement 4/1/92.]

ARC 2898A

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 135B.14, 135C.2(3), and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 57, "Residential Care Facilities"; Chapter 58, "Intermediate Care Facilities"; Chapter 59, "Skilled Nursing Facilities"; Chapter 60, "Minimum Physical Standards for Residential Care Facilities"; Chapter 61, "Minimum Physical Standards for Nursing Facilities"; Chapter 62, "Residential Care Facilities for Persons with Mental Illness (RCF/PMI)"; Chapter 63, "Residential Care Facilities for the Mentally Retarded"; Chapter 64, "Intermediate Care Facilities for the Mentally Retarded"; and Chapter 65, "Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI)," Iowa Administrative Code.

Items 1, 9 and 12 make rules consistent with Department of Human Services policy regarding the holding of and payment for care facility beds while a resident is hospitalized, on recreational or therapeutic leave.

Items 2, 10, 11 and 13 add language to allow the Department to issue a fine when a facility fails to separate an accused abuser and victim of dependent adult abuse; to prohibit resident abuse; and to require the separation of a reported victim of dependent adult abuse and the accused abuser until an abuse investigation is completed.

Item 3 adds to several chapters a rule that requires a facility to post a citation issued for a Class I or Class II violation.

Item 4 rescinds a rule for utilization review as it is no longer a requirement of the federal program or the Iowa Code.

Items 5 and 7 add exceptions to construction standards for facilities built prior to the May 6, 1992, effective date of requirements being added for heating and cooling systems.

Items 6 and 8 modify language to achieve consistency in requirements for heating and cooling systems in a facility that houses both a nursing facility and a residential care facility.

Item 14 allows another business or activity to be conducted in a health care facility with prior approval of the Department.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 11, 1991, as **ARC 2623A**. No comments were received on the amendments.

At the request of the Administrative Rules Review Committee, language was clarified in paragraphs "e" and "f" under a new rule pertaining to the factors considered by the Department in the approval of a proposed business or activity in a health care facility. In addition, statutory references were updated and effective dates were inserted in Items 5 and 7.

The Board of Health approved the adoption of the amendments on March 11, 1992.

These amendments will become effective on May 6, 1992, with the exception of Item 14 which will become effective on July 1, 1992, which will allow time for implementation of rules proposed by the Iowa Department of Public Safety, Fire Marshal Division, addressing fire safety standards for other businesses operating in health care facilities. (See **ARC 2806A**, IAB 2/19/92)

These rules are intended to implement Iowa Code sections 135C.10(1), 135C.14, 135C.14(8)"c," 135C.19(2), 135C.36(2), 235B.1(12) and Iowa Code Supplement section 135C.5.

The following amendments are adopted.

ITEM 1. Rescind subrules **57.14(7)**, **58.13(7)** and **59.15(7)** and insert in lieu thereof the following:

[Insert no. (7)] State the terms of agreement concerning the holding and charging for a bed when a resident is hospitalized or leaves the facility temporarily for recreational or therapeutic reasons. The terms shall contain a provision that the bed will be held at the request of the resident or the resident's responsible party.

a. The facility shall ask the resident or responsible party if they want the bed held. This request shall be made before the resident leaves or within 48 hours after the resident leaves. The inquiry and the response shall be documented. (II)

b. The facility shall reserve the bed when requested for as long as payments are made in accordance with the contract. (II)

ITEM 2. Add classification of violation codes "(I, II)" at the end of subrules **57.39(4), 58.43(9), 59.48(9)** and **63.37(4)**.

ITEM 3. Add the following as new subrules **57.5(5), 58.4(6), 59.4(6), 62.5(6), 63.4(5)**, and insert new subrules **64.4(5)** and **65.5(4)**, and renumber subsequent subrules accordingly:

[Insert no.] Each citation or a copy of each citation issued by the department for a class I or class II violation shall be prominently posted by the facility in plain view of the residents, visitors, and persons inquiring about placement in the facility. The citation or copy of the citation shall remain posted until the violation is corrected to the satisfaction of the department. (III)

ITEM 4. Rescind and reserve rule **481—59.9(135C)**.

ITEM 5. Amend subrule **60.3(2)** by adding a new paragraph **"f"** as follows:

f. Exception 6: Rule does not pertain to facilities built according to plans approved by the department prior to May 6, 1992.

ITEM 6. Rescind subrule **60.11(3)**, paragraph **"e,"** and insert in lieu thereof the following:

e. All central systems designed to heat and cool the building with recirculation of air shall be equipped with a minimum 2-inch deep, 8- to 11-pleat per foot, class 2 Underwriters' Laboratories, self-extinguishing, nonwoven, cotton, downstream, or final filter with a minimum efficiency of 25 to 30 percent and average arrestance of 90 percent, tested in accordance with ASHRAE Standard 52-76. This does not preclude the additional use of a prefilter upstream of the air handling equipment to extend the service life of the downstream, or final filter. (III) (Exception 6)

ITEM 7. Amend subrule **61.3(1)** by adding a new paragraph **"e"** as follows:

e. (Exception 5): Rule does not pertain to facilities built according to plans approved by the department prior to May 6, 1992.

ITEM 8. Amend subrule **61.11(3)**, paragraph **"c,"** as follows:

c. All central systems designed to heat and cool the building with recirculation of air shall be equipped with a *minimum* 2-inch deep, 8- to 11-pleat per foot, class 2 Underwriters' Laboratories, self-extinguishing, nonwoven, cotton, *downstream, or final* filter with a minimum efficiency of 25 to 30 percent *and average arrestance of 90 percent,* tested in accordance with ASHRAE Standard 52-76. *This does not preclude the additional use of a prefilter upstream of the air handling equipment to extend the service life of the downstream, or final filter.* (III) (Exception ~~3~~ 5)

ITEM 9. Rescind subrule **62.17(2)**, subparagraph **"j,"** and insert in lieu thereof the following:

j. State the terms of agreement concerning the holding and charging for a bed when a resident is hospitalized or leaves the facility temporarily for recreational or therapeutic reasons. The terms shall contain a provision that the bed will be held at the request of the resident or the resident's legal representative.

(1) The facility shall ask the resident or legal representative if they want the bed held. This request shall be made before the resident leaves or within 48 hours after the resident leaves. The inquiry and the response shall be documented. (II)

(2) The facility shall reserve the bed when requested for as long as payments are made in accordance with the contract. (II)

ITEM 10. Amend rule 481—62.23(135B) by adding the following new subrules:

62.23(23) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from physical, sexual, mental and verbal abuse, exploitation, and physical injury. (I, II)

62.23(24) Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain the separation until the abuse investigation is completed. (I, II)

ITEM 11. Amend 481—Chapter 64 by adding the following new rule:

481—64.33(135B) Separation of accused abuser and victim. Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain the separation until the abuse investigation is completed. (I, II)

ITEM 12. Amend rule 481—65.19(135C) by adding the following new subrule:

65.19(4) The contract shall state the terms of agreement concerning the holding and charging for a bed when a resident is hospitalized or leaves the facility temporarily for recreational or therapeutic reasons. The terms shall contain a provision that the bed will be held at the request of the resident or the resident's legal representative.

a. The facility shall ask the resident or legal representative if they want the bed held. This request shall be made before the resident leaves or within 48 hours after the resident leaves. The inquiry and the response shall be documented. (II)

b. The facility shall reserve the bed when requested for as long as payments are made in accordance with the contract. (II)

ITEM 13. Amend rule 481—65.25(135C) by inserting the following new subrules and renumbering subsequent subrules accordingly:

65.25(3) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from physical, sexual, mental and verbal abuse, exploitation, and physical injury. (I, II)

65.25(4) Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser immediately and maintain the separation until the abuse investigation is completed. (I, II)

ITEM 14. Amend 481—Chapter 65 by adding the following new rule:

481—65.29(135C) Another business or activity in a facility. Another business or activity shall not be carried on in a health care facility or in the same physical structure with a health care facility unless:

1. The business or activity is under the control of and is directly related to and incidental to the operation of the health care facility; or

2. The business or activity is approved by the department and the state fire marshal. (I, II, III)

65.29(1) The following factors will be considered by the department in determining whether a business or activity will interfere with the use of the facility by residents, interfere with services provided to residents, or be disturbing to residents:

a. Health and safety risks for residents;

b. Compatibility of the proposed business or activity with the facility program;

c. Noise created by the proposed business or activity;

d. Odors created by the proposed business or activity;

e. Use of entrances and exits for the business or activity in regard to safety and disturbance of residents and interference with delivery of services;

f. Use of the facility's corridors or rooms as thoroughfares to the business or activity in regard to safety and disturbance of residents and interference with delivery of services;

g. Proposed staffing for the business or activity;

h. Sharing of services and staff between the proposed business or activity and the facility;

i. Facility layout and design; and

j. Parking area utilized by the business or activity.

65.29(2) Approval of the state fire marshal shall be obtained before approval of the department will be considered.

65.29(3) A business or activity conducted in a health care facility or in the same physical structure as a health care facility shall not reduce space, services or staff available to residents below minimums required in these rules and Chapter 61. (I, II, III)

[Filed 3/12/92, effective 5/6/92]
[Published 4/1/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/1/92.

ARC 2916A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.5(6)"a," the Natural Resource Commission hereby adopts amendments to Chapter 61, "State Parks and Recreation Areas," Iowa Administrative Code.

The amendments make the following changes in the chapter:

1. Establish requirements for animal control in recreation area campgrounds.

2. Limit the number of equine animals per campsite at Brushy Creek State Recreation Area.

3. Designate an area within Brushy Creek State Recreation Area for use as an overflow camping area and establish a maximum number of camping units permitted.

4. Prohibit hitching equine animals to the exterior of trailers in the campground at Brushy Creek for extended periods of time.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 25, 1991, as ARC 2646A. A public hearing was held in Des Moines on January 14, 1992, with an additional hearing on February 15, 1992, in Fort Dodge.

The following comments were received on the amendments:

1. Clarify the rule to allow bedding of horses inside a trailer.

2. Objections to the limitation on the number of horses per hitching rail.

The following changes have been made from the Notice of Intended Action:

1. Allow direct voice control of animals in addition to the leash requirement if the animal and owner are leaving the campground.

2. Remove the requirement of paying for an additional campsite to accommodate equine animals in excess of the number allowed at a particular hitching rail.

These amendments are intended to implement Iowa Code section 111.35.

These amendments shall become effective May 6, 1992.

The following amendments are adopted.

ITEM 1. Amend **61.5(7)** by adding the following new paragraph **"d"**:

d. Pets such as dogs or cats shall not be allowed to run at large within the designated camping area in recreation areas. Such animals shall be deemed running at large unless under the direct voice control of the owner or the owner carries the animal or leads it by a leash or chain not exceeding six feet in length or keeps it confined in or attached to a vehicle. Chains or other restraints used at campsites ensure that the animal is confined to the designated campsite.

ITEM 2. Amend **571—61.6(111)** by adding the following new subrule:

61.6(4) Brushy Creek Recreation Area, Webster County.

a. When the campsites in the designated camping area are filled, the day-use area located south of the designated campground may be used as an overflow camping area. The maximum number of camping units permitted in this overflow is 30.

b. In the designated campground, the maximum number of equine animals to be hitched to the new, larger hitching rails is six and the maximum number for the older, smaller rails is four. Persons with a number of equine animals in excess of the number permitted on the hitching rail at their campsite shall be allowed to stable their additional animals in a trailer or at a nearby, unrented campsite.

c. In the designated campground, equine animals may be hitched to trailers for short periods of time to allow grooming or saddling; however, the hitching of equine animals to the exterior of trailers for extended periods of time or stabling is not permitted.

[Filed 3/13/92, effective 5/6/92]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/1/92.

ARC 2896A

PERSONNEL DEPARTMENT[581]

Adopted and Filed

Pursuant to the authority of Iowa Code section 19A.9 and Iowa Code Supplement section 68B.4, the Iowa Department of Personnel hereby adopts amendments to 581—Chapter 18, "Conduct of Employees," Iowa Administrative Code.

Iowa Code Supplement section 68B.4 prohibits employees or officials in state regulatory agencies from selling goods or services to individuals, associations, or corporations that are regulated by the agency unless certain conditions are met. Previously, Iowa Code section 68B.4 required each regulatory agency to adopt rules that specify the method by which its employees and officials may obtain agency consent.

During the 1991 session, the Seventy-fourth General Assembly amended Iowa Code section 68B.4 by directing the Department of Personnel to adopt rules specifying the method by which employees may obtain agency consent from their respective regulatory agency. Each regulatory agency is responsible for adopting rules specifying consent procedures for its officials.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 21, 1991, as **ARC 2278A**. Public comments were solicited and a public hearing was scheduled on September 17, 1991; however, no persons appeared at the hearing. Written comments were received by the State Board of Regents and the Department of Transportation during the public comment period. Comments were also received by the Department of Employment Services and the Department of Justice after the comment period.

In response to these comments, the following changes were made from the Notice:

Amend the definition of "Sales of goods or services" in subrule 18.2(1) to denote that outside employment relationships do not fall within the scope of Iowa Code Supplement section 68B.4 as determined by a previous Attorney General's opinion.

Change language in subrule 18.2(2), paragraph "b," in order to clarify the specific information that is required in an employee's written request to sell goods or services.

Reword the statement in subrule 18.2(2), paragraph "d," to require grievants to substantiate why the proposed sale of goods or services will not create a conflict of interest.

Revise language in subrule 18.2(2), paragraph "e," to eliminate redundant wording and to clarify its meaning.

Add a new paragraph "f."

Revise 18.2(2), paragraph "g," to note that written requests and responses are open, public records.

Add subrule 18.2(4) to allow an agency to identify classes of sales of goods or services that are expressly prohibited or permitted by the agency.

Add subrule 18.2(5) which addresses the effect of other laws in relation to this rule.

The Department of Personnel adopted this rule as revised on March 12, 1992. This rule shall become effective May 8, 1992.

This rule is intended to implement Iowa Code Supplement section 68B.4.

The following rule is adopted.

Amend 581—Chapter 18 by adding the following rule, and renumbering existing rules **581—18.2(19A), 581—18.3(19A), and 581—18.4(19A)** as **581—18.3 (19A), 581—18.4(19A), and 581—18.5(19A).**

581—18.2(68B) Selling of goods or services. Employees in state regulatory agencies shall not sell, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the agency of employment except as authorized by the appointing authority in accordance with Iowa Code Supplement section 68B.4 and provisions of this rule.

18.2(1) Definitions.

"Agency" means one of the state executive branch regulatory agencies as defined in Iowa Code sections 68B.2(1) and 68B.2(13).

"Compensation" means remuneration for the sale of goods or services, including cash or other forms of payment.

"Employee" means a nontemporary employee of an executive branch regulatory agency of state government. The provisions of this rule shall also apply to the spouse and minor children of an employee, a firm in which the employee is a partner, and any corporation in which the employee, either directly or indirectly, holds 10 percent or more of the stock. Employee, as used in this rule, shall not mean an independent contractor, or an official in a regulatory agency who is (1) elected or appointed to serve on a board, commission, or elective office; (2) a department head; or (3) any other individual who by law is appointed by the governor.

"Sale of goods or services" means the receipt of compensation by an employee for providing goods or services. For purposes of this rule, the sale of goods or services shall not apply to outside employment activities that constitute an employer-employee relationship.

18.2(2) Requests for agency consent. Requests for the sale of goods or services shall be subject to the following:

a. A written request for the sale of goods or services shall be filed with the appointing authority at least 20 calendar days in advance of the proposed sale of goods or services. A request shall not be considered filed until all information specified below is received.

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

(1) The prospective recipient(s) of the goods or services and the recipient's relationship to the agency's regulatory authority;

(2) Anticipated date(s) of delivery of the goods or services;

(3) Description of the goods or services;

(4) Approximate amount and form of compensation; and

(5) Statement by the employee explaining why the proposed sale of goods or services will not create a conflict of interest.

c. Consent or denial of the request shall be issued in writing by the appointing authority within 14 calendar days following the date the request was filed. If the request is denied, the appointing authority shall state the reason(s) for the denial and the employee's right to grieve the decision in accordance with rule 581—12.1(19A).

d. If the decision is grieved, the employee shall be required to substantiate, as part of the grievance, why the proposed sale of goods or services will not create a con-

flict of interest within the meaning of Iowa Code Supplement section 68B.4.

e. Approved requests are valid only to the extent that all relevant facts have been disclosed and the relevant facts under which consent was granted remain unchanged.

f. Approved requests are subject to immediate revocation at any time with written notice by the appointing authority to the requester.

g. Requests and responses are public records within the meaning of Iowa Code section 22.1 and are open for public examination.

18.2(3) Agency guidelines. Agencies that are subject to this rule shall develop written guidelines concerning the selling of goods or services by their employees. The guidelines shall be consistent with the provisions of this rule and shall include, but not be limited to, the following:

a. A description of the regulatory authority of the agency and the types of individuals, associations, or corporations that are subject to this authority;

b. The conditions for granting consent as provided in Iowa Code Supplement section 68B.4;

c. A procedure for submitting requests to sell goods or services consistent with subrule 18.2(2); and

d. The name or position of the appointing authority who will review and approve or deny such requests.

The guidelines shall be made known and available to employees throughout the agency through well-publicized means.

18.2(4) Expressly prohibiting or permitting classes of sales. An agency may adopt rules which identify sales of goods or services that are expressly prohibited (or permitted) by the agency, based on the agency's conclusion that the sales do (or do not), as a class, constitute a conflict of interest. Classes of sales that are expressly permitted by the agency shall not require individual requests and approval as provided in subrule 18.2(2) unless there are unique factors that otherwise present a conflict of interest.

18.2(5) Effect of other laws. Neither this rule nor any consent provided under this rule constitutes consent for any activity which would constitute a conflict of interest at common law or which would violate any applicable statute or rule. Despite consent under this rule, the sale of goods or services to someone subject to the jurisdiction of the agency may violate the gift, bribery, or corruption laws of the state of Iowa. It is the responsibility of the employee to assure compliance with all applicable laws and to avoid both impropriety and the appearance of impropriety.

This rule is intended to implement Iowa Code Supplement section 68B.4.

[Filed 3/13/92, effective 5/8/92]
[Published 4/1/92]

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ARC 2901A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76, 155A.28, and 155A.35, the Iowa Board of Pharmacy Examiners hereby amends Chapter 8, "Minimum Standards for the Practice of Pharmacy," Iowa Administrative Code.

The amendments clarify the label information required in the pharmacy's packaging control record of prepackaged drugs and, effective January 1, 1993, require pharmacists to counsel or offer patient counseling when new prescriptions are filled.

Notice of Intended Action was published in the January 8, 1992, Iowa Administrative Bulletin as **ARC 2661A**. Item 1 of the adopted amendments is identical to that published under Notice. Item 2 differs from that published under Notice by the addition of the words "counsel or" in the statement requiring that pharmacists "counsel or offer to counsel patients."

The amendments were approved during the March 4, 1992, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on May 6, 1992.

These amendments are intended to implement Iowa Code sections 155A.28 and 155A.35.

The following amendments are adopted.

ITEM 1. Amend subrule **8.3(1)**, paragraph **"d,"** as follows:

d. Copy of ~~the~~ *a sample* label.

ITEM 2. Amend rule 657—8.16(155A) by adding the following new subrule:

8.16(3) Effective January 1, 1993, pharmacists shall counsel or offer to counsel patients with each new prescription.

[Filed 3/12/92, effective 5/6/92]
[Published 4/1/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/1/92.

ARC 2903A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76, 204.301, and 204.306, the Iowa Board of Pharmacy Examiners hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendment modifies the information required on the record of controlled substances sample distributions.

Notice of Intended Action was published in the January 8, 1992, Iowa Administrative Bulletin as **ARC 2662A**. The adopted rule is identical to Item 2 of the published Notice. Item 1 of the Notice is dropped pursuant to discussion with interested parties on the state and federal level pending final determination from the Drug Enforcement Administration regarding the registration of Physician Assistants under federal law.

The amendment was approved during the March 4, 1992, meeting of the Board of Pharmacy Examiners.

This amendment becomes effective on May 6, 1992.

This amendment is intended to implement Iowa Code section 204.306.

The following amendment is adopted.

Amend 657—10.15(204) as follows:

657—10.15(204) Records form—complimentary packages. The records form for the distribution of complimentary packages of controlled substances shall contain the name, address, *Iowa wholesale drug license number, and DEA* registration number of the supplier ~~and~~*; the name, address, Iowa controlled substance registration number, and DEA registration number of the* practitioner; the name and quantity of the specific controlled substances delivered; and the date of that delivery.

This rule is intended to implement Iowa Code section 204.308.

[Filed 3/12/92, effective 5/6/92]
[Published 4/1/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/1/92.

ARC 2904A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76, 155A.13, and 155A.14, and Iowa Code Supplement sections 155A.13A and 155A.15, the Iowa Board of Pharmacy Examiners hereby adopts a new Chapter 19, "Nonresident Pharmacy Licenses," Iowa Administrative Code.

The rules establish standards for nonresident or out-of-state pharmacies including license fees, conditions of licensure, and grounds for discipline.

Notice of Intended Action was published in the January 8, 1992, Iowa Administrative Bulletin as **ARC 2663A**. The adopted rules differ from those published under Notice as follows:

Paragraph 19.2(2)"d" is changed to clarify the information required to be submitted with applications for licensure and relicensure. Comments received from interested parties indicated confusion as to the information required by this paragraph.

Rule 657—19.3(155A) is changed to identify prevailing law when the laws, administrative rules, or regulations of the nonresident pharmacy's home state conflict with the Iowa Code or Iowa Administrative Code.

The new chapter was approved during the March 4, 1992, meeting of the Board of Pharmacy Examiners.

These rules will become effective on May 6, 1992.

These rules are intended to implement Iowa Code Supplement section 155A.13A.

The following chapter is adopted.

CHAPTER 19
NONRESIDENT PHARMACY LICENSES

657—19.1(155A) Definitions.

"Board" means the Iowa board of pharmacy examiners.

"Home state" means the state in which a pharmacy is located.

"Nonresident pharmacy" means a pharmacy located outside the state of Iowa which delivers, dispenses, or distributes, by any method, prescription drugs or devices to an ultimate user physically located in this state. "Nonresident pharmacy" shall include a pharmacy located outside the state of Iowa which provides routine pharmacy services to an ultimate user in this state.

"Nonresident pharmacy license" means a pharmacy license issued to a nonresident pharmacy.

657—19.2(155A) Application and license requirements. A nonresident pharmacy shall apply for and obtain a nonresident pharmacy license from the board prior to delivering, dispensing, or distributing prescription drugs to an ultimate user in this state.

19.2(1) A nonresident pharmacy license shall expire on December 31 of each year. The fee for a new or renewal license shall be $100. A nonresident pharmacy license form shall be issued upon receipt of the license application information required in subrule 19.2(2) and payment of the license fee.

Failure to renew the license before February 1 following expiration shall require a renewal fee of $200. Failure to renew the license before March 1 following expiration shall require a renewal fee of $300. Failure to renew the license before April 1 following expiration shall require a renewal fee of $400. Failure to renew the license before May 1 following expiration shall require an appearance before the board and a renewal fee of $500. In no event shall the fee for late renewal of the license exceed $500.

19.2(2) A nonresident pharmacy shall submit all of the following in order to obtain or renew a nonresident pharmacy license:

a. A completed application form, available from the board, and an application fee of $100.

b. Evidence of possession of a valid license, permit, or registration as a pharmacy in compliance with the laws of the home state. Such evidence shall consist of one of the following:

(1) Copy of the current license, permit, or registration certificate issued by the regulatory or licensing agency of the home state;

(2) Letter from the regulatory or licensing agency of the home state certifying the pharmacy's compliance with the pharmacy laws of that state.

c. A copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the home state.

d. Evidence of correction of any noncompliance noted on inspection reports of the regulatory or licensing agency of the home state and all other regulatory agencies.

e. A list of the names, titles, and home addresses of all principal owners, partners, or officers of the nonresident pharmacy.

f. A list of the names and license numbers of all pharmacists and, if available, the names and license or registration numbers of all supportive personnel employed by the nonresident pharmacy who deliver, dispense, or distribute, by any method, prescription drugs to an ultimate user in this state, and of the pharmacist in charge of the nonresident pharmacy.

g. A copy of the nonresident pharmacy's policies and procedures regarding the records of controlled substances delivered, dispensed, or distributed to ultimate users in this state to be maintained and detailing the format and location of those records.

h. A copy of the nonresident pharmacy's policies and procedures evidencing that the pharmacy provides, during its regular hours of operation for at least 6 days and for at least 40 hours per week, toll-free telephone service to facilitate communication between ultimate users in this

state and a pharmacist who has access to the ultimate user's records in the nonresident pharmacy, and that the toll-free number is printed on the label affixed to each container of prescription drugs delivered, dispensed, or distributed in this state. A copy of a prescription label including the toll-free number shall be included.

19.2(3) A nonresident pharmacy shall update lists required by subrule 19.2(2), paragraphs "e" and "f," within 30 days of any addition, deletion, or other change to a list.

657—19.3(155A) Discipline. Pursuant to 657—Chapter 9, the board may deny, suspend, or revoke a nonresident pharmacy license for any violation of Iowa Code Supplement section 155A.13A; Iowa Code Supplement section 155A.15, subsection 2, paragraph "a," "b," "d," "e," "f," "g," "h," or "i"; Iowa Code chapter 203B, 204, 204A, 204B, or 205; or a rule of the board promulgated thereunder unless the Iowa Code or Iowa Administrative Code conflicts with law, administrative rule, or regulation of the home state. The more stringent of the two shall apply when there is a conflict of law regarding services to Iowa residents.

These rules are intended to implement Iowa Code Supplement section 155A.13A.

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[Published 4/1/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/1/92.

ARC 2919A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF PODIATRY EXAMINERS

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Podiatry Examiners hereby amends Chapter 220, "Podiatry Examiners," Iowa Administrative Code.

The proposed amendments are to clarify requirements for licensure and implement Iowa Code section 149.3 requiring a one-year residency or preceptorship.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 25, 1991, as **ARC 2649A.**

These amendments were adopted by the Board of Podiatry Examiners on February 28, 1992.

These amendments will become effective May 6, 1992.

These rules are intended to implement Iowa Code section 149.3.

ITEM 1. Amend subrule **220.1(2)** by adding a new paragraph **"d"** as follows and renumbering existing paragraphs **"d"** and **"e"** as **"e"** and **"f."**

d. For any applicant who graduates from podiatric college on or after January 1, 1995, present documentation of successful completion of a one-year residency or preceptorship approved by the American Podiatric Medical Association's Council on Podiatric Medical Education or a college of podiatric medicine approved by the American Association of Colleges of Podiatric Medicine.

ITEM 2. Add a new subrule 220.1(4) as follows and renumber existing subrules accordingly.

220.1(4) Applicants who graduated from podiatric college in 1961 or before that year, are currently licensed in another state and have practiced for the immediate 24 months prior to application may be exempted from the application requirement listed in 220.1(2)"c" based on their credentials and the discretion of the board.

ITEM 3. Add a new subrule 220.4(3) as follows and renumber existing subrule 220.4(3) as 220.4(4).

220.4(3) Applicants who graduated from podiatric college in 1961 or before that year, are currently licensed in another state and have practiced for the immediate 24 months prior to application may be exempted from the application requirement listed in 220.4(2)"c" based on their credentials and the discretion of the board.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/1/92.

ARC 2925A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.11 and Iowa Code Supplement sections 139B.1(2)"f" and 141.22A(17), the Iowa Department of Public Health hereby amends Chapter 11, "Acquired Immune Deficiency Syndrome (AIDS)," Iowa Administrative Code.

The amendment adds a new segment to be captioned "Emergency Care Providers Exposed to Contagious or Infectious Diseases." These rules establish the procedures to follow when emergency care providers are exposed to contagious or infectious diseases or HIV.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 5, 1992, as **ARC 2727A.** A public hearing was held on February 27, 1992.

Comments from the public hearing included concern from Mercy Hospital, Des Moines, that the space on the prehospital form to be used by emergency service providers to indicate possible exposure (in addition to filing the significant exposure form) is not easily seen by the infection control practitioner and a possible exposure may be overlooked. Another concern expressed was the basis for keeping records for five years. The Iowa Dental Association voiced concern to the specific reference to saliva in dental settings and saliva in nondental settings and suggested rewording to saliva contaminated with blood. Written comment from the Iowa Medical Society recommended changing the term "bodily fluids" to "body fluids," as this is the preferred dictionary and medical term. They also recommended changing the reference to saliva in dental settings to saliva contaminated with blood.

The State Board of Health adopted these rules with the above changes at its meeting held March 11, 1992.

These rules are intended to implement Iowa Code Supplement sections 139B.1(2)"f" and 141.22A(17).

These rules will become effective May 6, 1992.

The following rules are adopted.

Amend 641—Chapter 11 by adding the following new rules:

EMERGENCY CARE PROVIDERS
EXPOSED TO CONTAGIOUS OR
INFECTIOUS DISEASES

641—11.45(139B,141) Purpose. The purpose of these rules is to implement Iowa Code Supplement sections 139B.1(2)"f" and 141.22A(17), relating to emergency care providers who are exposed to contagious or infectious diseases.

641—11.46(139B,141) Definitions. For the purpose of rules 641—11.45(139B,141) to 11.53(139B,141) the following definitions shall apply:

"AIDS" means acquired immunodeficiency syndrome.

"Contagious or infectious disease" means blood-borne viral hepatitis, meningococcal disease, tuberculosis, and any other disease with the exception of AIDS or HIV infection as defined in Iowa Code section 141.21, determined to be life-threatening to a person exposed to the disease as established by the department based upon a determination by the state epidemiologist and in accordance with guidelines of the Centers for Disease Control of the U.S. Department of Health and Human Services.

"Department" means the Iowa department of public health.

"Designated officer" means a person who is designated by a department, agency, division, or service organization to act as an infection control liaison officer.

"Emergency care provider" means a person who renders direct emergency aid without compensation or a person who is trained and authorized by federal or state law to provide emergency medical assistance or treatment, for compensation or in a voluntary capacity including, but not limited to, all of the following:

1. A basic emergency medical care provider as defined in Iowa Code section 147.1.
2. An advanced emergency medical care provider as defined in Iowa Code section 147A.1.
3. A health care provider as defined in this rule.
4. A fire fighter.
5. A peace officer.
6. Any other person who is not part of an emergency care provider service who renders direct emergency aid without compensation.

"Exposure" means the risk of contracting disease.

"Health care provider" means a person licensed or certified under Iowa Code chapter 148, 148C, 150, 150A, 152, or 153 to provide professional health care services to a person during the person's medical care, treatment or confinement.

"HIV infection" means human immunodeficiency virus infection as defined in Iowa Code section 141.21.

"Infectious body fluids" means body fluids capable of transmitting HIV infection as listed in "Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public-Safety Workers," found in Morbidity and Mortality Weekly Report, dated June 23, 1989, Volume 38, Number S-6, published by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333, or subsequent Centers for Disease Control statements on this topic. To prevent HIV and blood-borne viral hepatitis B disease transmission, this reference indicates that universal precautions should be followed for exposure to the following infectious body fluids: blood, amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, vaginal secretions, and saliva contaminated with blood. HIV and hepatitis B disease transmission has not occurred from feces, nasal secretions, sputum, sweat, tears, urine, vomitus, and saliva when it is not contaminated with blood.

"Report of exposure to infectious disease" means the report form provided by the department and is the only form authorized for the reporting of an exposure to blood-borne hepatitis B or the reporting of a significant exposure to HIV. The report form may be incorporated into the Iowa prehospital care report, the Iowa prehospital advanced care report, or a similar report used by an ambulance, rescue, or first responder service or law enforcement agency.

"Significant exposure" means the risk of contracting HIV infection by means of exposure to a person's infectious body fluids in a manner capable of transmitting HIV infection as determined by the Centers for Disease Control of the U. S. Department of Health and Human Services. Exposure includes contact with blood or other infectious body fluids to which universal precautions apply through percutaneous inoculation or contact with an open wound, nonintact skin, or mucous membranes during the performance of normal job duties. Significant exposures for HIV reportable to the hospital, or to the office or clinic of a health care provider to initiate the notification procedure regarding an exposure to an infectious body fluid are:

1. Transmission of blood or bloody fluids of the patient onto a mucous membrane (mouth, nose, or eyes) of the emergency care provider.
2. Transmission of blood or bloody fluids onto an open wound or lesion with significant breakdown in the skin barrier, including a needle puncture with a needle contaminated with blood.

641—11.47(139B,141) General provisions.

11.47(1) A hospital licensed under Iowa Code chapter 135B shall have written policies and procedures for notification of an emergency care provider who renders assistance or treatment to a patient when in the course of admission, care, or treatment of that patient, the patient is diagnosed or is confirmed as having a contagious or infectious disease.

11.47(2) If a patient is diagnosed or confirmed as having a contagious or infectious disease, the hospital shall notify the designated officer of an emergency care provider service who shall notify persons involved in attending or transporting the patient. For blood-borne contagious or infectious diseases, notification shall only take place upon the filing of a report form with the hospital.

11.47(3) The person who renders direct emergency aid without compensation as identified in rule 11.46(139B, 141), "emergency care provider," paragraph "6," who is exposed to a patient who has a contagious or infectious disease shall also receive notification from the hospital when the hospital has received a report form.

11.47(4) The notification shall advise the emergency care provider of possible exposure to a particular contagious or infectious disease and recommend that the provider seek medical attention. The notification shall be

provided as soon as reasonably possible following determination that the patient has a contagious or infectious disease.

11.47(5) The emergency care provider shall file exposure and significant exposure reports with the hospital or health care provider as soon as reasonably possible following the exposure.

11.47(6) The hospital shall maintain a record of all exposure or significant exposure reports it receives and shall retain each report for a period of five years.

11.47(7) The report form "Report of Exposure to Infectious Disease" is a confidential record pursuant to Iowa Code section 141.22A.

11.47(8) The employer of an emergency care provider who submits a report form pursuant to these rules shall pay the cost of HIV counseling and testing for the emergency care provider and testing of the patient pursuant to subrule 11.50(1) or 11.51(2). The department shall provide HIV counseling and testing at alternate testing sites for an emergency care provider who has rendered direct emergency aid without compensation as identified in rule 11.46(139B,141), "emergency care provider," paragraph "6."

641—11.48(139B,141) Contagious or infectious diseases, not including HIV—hospitals.

11.48(1) Notification for blood-borne viral hepatitis shall take place only upon the filing of an exposure report form with the hospital.

11.48(2) Notification shall take place whether or not an exposure report form has been filed for the following contagious or infectious diseases if the identity of the emergency care provider or the designated officer is known:

a. Meningococcal meningitis.

b. Tuberculosis (communicable). Tuberculosis may require six to ten weeks for disease confirmation.

11.48(3) These rules do not require a hospital to administer a test for the express purpose of determining the presence of a contagious or infectious disease.

11.48(4) The notification shall not include the name of the patient with the contagious or infectious disease unless the patient gives written consent.

11.48(5) These rules do not preclude a hospital from providing notification to an emergency care provider or health care provider under circumstances in which the hospital's policy provides for notification of the hospital's own employees of an exposure to a disease that is not life-threatening. The exposure report shall not reveal the patient's name unless the patient gives written consent.

11.48(6) A hospital's duty of notification under these rules is not continuing. It is limited to a diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of emergency assistance or treatment for which the notification requirements of these rules apply.

641—11.49(139B,141) Contagious or infectious diseases, not including HIV—health care providers.

11.49(1) A health care provider may provide the notification required of hospitals in these rules to emergency care providers if a patient who has a contagious or infectious disease is transported by an emergency care provider to the office or clinic of a health care provider.

11.49(2) These rules do not require a health care provider to administer a test for the express purpose of determining the presence of a contagious or infectious disease.

11.49(3) Notification shall not include the name of the patient who has the contagious or infectious disease unless the patient gives written consent.

11.49(4) A health care provider's duty of notification under these rules is not continuing, but is limited to a diagnosis of a contagious or infectious disease made in the course of care and treatment following the rendering of emergency assistance or treatment for which the notification requirements of these rules apply.

641—11.50(139B,141) HIV infection—hospitals.

11.50(1) These rules do not require or permit a hospital to administer a test for the express purpose of determining the presence of HIV infection except that testing may be performed if the patient consents and if the requirements of Iowa Code section 141.22 are satisfied.

11.50(2) Following submission of a significant exposure report by the emergency care provider to the hospital and a determination that the exposure reported was a significant exposure as defined in rule 11.46(139B,141), and a diagnosis or confirmation by the attending physician that the patient has HIV infection, a hospital shall provide notification of possible exposure to HIV pursuant to subrule 11.50(3) to the designated officer of the emergency care provider who provided assistance or treatment to the patient.

11.50(3) Notification to the emergency care provider of exposure to HIV infection shall be made in accordance with both of the following:

a. The hospital shall inform the patient, when the patient's condition permits, that a significant exposure occurred to an emergency care provider and that a significant exposure report has been filed.

b. The patient may provide consent for HIV testing or voluntarily disclose HIV status to the hospital and consent to the provision of notification.

11.50(4) Notwithstanding subrule 11.50(3), notification shall be made when the patient denies consent for or consent is not reasonably obtainable for serological testing, and in the course of admission, care, and treatment of the patient, the patient is diagnosed or is confirmed as having HIV infection.

11.50(5) The hospital shall notify the designated officer of the emergency care provider service. The designated officer shall notify those emergency care providers who submitted a significant exposure report and attended or transported the patient. The identity of the designated officer shall not be revealed to the patient.

11.50(6) The designated officer shall advise the emergency care providers who are notified to seek immediate medical attention and of the provisions of confidentiality under rule 11.53(139B,141).

11.50(7) The designated officer shall inform the hospital of the names of the emergency care providers to whom notification was made.

11.50(8) Hospitals shall inform the patient that they have a record of the names of the emergency care providers to whom notification was provided and, if requested by the patient, the hospital shall inform the patient of those names.

11.50(9) A person who renders direct emergency aid without compensation as identified in rule 11.46(139B,141), "emergency care provider," paragraph "6," who is exposed to a patient who has HIV infection, shall receive notification directly from the hospital in accordance with the procedures established in subrules 11.50(1) to 11.50(4).

11.50(10) The process for notification under these rules shall be initiated as soon as reasonably possible consistent with protocols for postexposure prophylaxis, according to "Public Health Service Statement on Management of Occupational Exposure to Human Immunodeficiency Virus, Including Considerations Regarding Zidovudine Postexposure Use," found in the Morbidity and Mortality Weekly Report, dated January 26, 1990, Volume 39, Number RR-1, published by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333, or subsequent Centers for Disease Control statements on this topic.

11.50(11) A hospital's duty of notification under these rules is not continuing. It is limited to the diagnosis of HIV infection made in the course of admission, care, and treatment following the rendering of emergency assistance or treatment of the patient with the disease.

11.50(12) Notwithstanding subrule 11.50(11), if, following discharge or completion of care or treatment, a patient, for whom a report form was submitted that did not result in notification, wishes to provide information regarding their HIV infection status to the emergency care provider, the hospital shall provide a procedure for notifying the emergency care provider.

641—11.51(139B,141) HIV infection—health care providers.

11.51(1) A health care provider, with written consent of the patient, may provide the notification required of hospitals in these rules to emergency care providers if a patient who has HIV infection is transported by an emergency care provider to the office or clinic of the health care provider. Notification shall take place only upon submission of a significant exposure report by the emergency care provider to the health care provider and after determination by the health care provider that a significant exposure has occurred.

11.51(2) These rules do not require or permit a health care provider to administer a test for the express purpose of determining the presence of HIV infection except that testing may be performed if the patient consents and if the requirements of Iowa Code section 141.22 are satisfied.

641—11.52(139B,141) Immunity. Hospitals, health care providers, or other persons participating in good faith in making a report under these rules, upon filing of a report form or a report under similar procedures to notify their own employees, or in failing to make a report under these rules, are immune from any liability, civil or criminal, which may otherwise be incurred or imposed.

641—11.53(139B,141) Confidentiality.

11.53(1) Notifications made pursuant to these rules shall not disclose the identity of the patient who is diagnosed or confirmed as having HIV infection unless the patient provides a specific written release as provided in Iowa Code section 141.23, subsection 1, paragraph "a."

11.53(2) If during these notification procedures an emergency care provider determines the identity of a patient with confirmed HIV infection, the identity of the patient shall be confidential information and shall not be disclosed by the emergency care provider to any other person unless a specific written release is obtained from the patient.

11.53(3) The procedures followed under rules 11.50(139B,141) and 11.51(139B,141) shall provide for the anonymity of the patient and all documentation shall be maintained in a confidential manner.

641—11.54 to 11.69 Reserved.

These rules are intended to implement Iowa Code Supplement sections 139B.1(2)"f" and 141.22A(17).

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ARC 2927A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.11(13), the Iowa Department of Public Health hereby adopts amendments to Chapter 73, "Special Supplemental Food Program for Women, Infants, and Children (WIC)," Iowa Administrative Code.

Notice of Intended Action was published in the February 5, 1992, Iowa Administrative Bulletin as **ARC 2766A**. No public hearing was held. A comment period was provided but no comments were received. The Board adopted these amendments on March 11, 1992. These amendments are identical to those published under Notice.

These amendments are intended to increase coordination between the WIC Program, MCH Program, and Medicaid by requiring local contract agencies to use a combined Health Services Application Form for all applicants for services. The combined application does not in itself provide for complete determination of WIC eligibility, but is used in conjunction with the WIC Certification Form.

Item 2 clarifies that the processing time frames do not begin when an applicant completes a combined application form in an MCH or Medicaid office.

Item 3 stipulates exceptions to the requirement for obtaining a release of information prior to making a referral. It also clarifies that while a custodian who is not a legal guardian may enroll a minor applicant, a parent or legal guardian is required to sign a release of information.

These amendments will become effective May 6, 1992.

These amendments are intended to implement federal law 42 U.S.C. section 1786, Iowa Code sections 10A.202(1)"h" and 135.11(1).

The following amendments are adopted.

ITEM 1. Amend rule 641—73.6(135) as follows:

641—73.6(135) Certification of participants. The certification process to determine eligibility for WIC services, as defined in 7 CFR ~~See.~~ 246.7, shall include the following ~~additional~~ procedures and definitions:

73.6(1) Application. The combined Health Services Application Form (Form #470-2927) and the WIC Certification Form shall be completed by every family at the initial certification. The Health Services Application is not completed at subsequent certifications. Certification forms are signed and dated by the applicant or parent/custodian. Health Services Applications are signed and dated by the participant or parent/legal guardian. A copy of both forms shall be maintained in the participant's file.

If the applicant indicates on the Health Services Application that the applicant wishes to also apply for MCH or Medicaid, the contract agency shall forward the appropriate copy to the indicated agency within two working days.

Further amend 641—73.6(135) by renumbering subrules 73.6(1) to 73.6(6) as **73.6(2)** to **73.6(7)**.

ITEM 2. Amend renumbered subrule **73.6(3)**, paragraph **"a,"** as follows:

a. The date of initial visit shall be the day on which an applicant first appears in person at any of the contracted agency's offices. *A visit to an MCH or Medicaid office to complete a common application form does not constitute an initial visit.*

ITEM 3. Amend subrule 73.10(2) as follows:

73.10(2) Referral procedures. The local WIC agency shall be responsible for referral of WIC participants to appropriate health care providers, as determined by the WIC health professional's assessment of their condition.

a. Authorization for release of information. ~~Before~~ *Except as indicated below, before* referring medical or other personal information, including name, to an outside ~~health~~ agency, the local WIC agency shall secure the participant's *or parent/legal guardian's* written authorization to release such information. A separate statement shall be signed for each specific ~~health or other service~~ provider to which information is being sent. The information contained in individual participant records shall be confidential pursuant to 7 CFR 246.~~15~~ *26*.

Referrals to the department of human services' child protective services for investigation of potential child abuse or to a law enforcement agency conducting an active criminal investigation may be made without obtaining a written release of information.

b. The referral form. A standard referral form, ~~of format approved~~ *as provided* by the state WIC office, shall be completed and sent to the referral agency. Documentation and follow-up ~~is~~ *are* made in accord with the Iowa WIC Policy and Procedure Manual.

These amendments are intended to implement federal law 42 U.S.C. section 1786, Iowa Code Sections 10A.202(1)"h" and 135.11(1).

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ARC 2928A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.11(13), the Iowa Department of Public Health hereby adopts amendments to Chapter 73, "Special Supplemental Food Program for Women, Infants, and Children (WIC)," Iowa Administrative Code.

Notice of Intended Action was published in the January 22, 1992, Iowa Administrative Bulletin as **ARC 2714A**.

A public hearing was held on February 14, 1992, to accept comments on the Notice. No comments were received, either at the hearing or in writing. In response to a question raised by the Administrative Rules Review Committee, the relative point values of the schedule of violations in Item 3 were reviewed. It was determined that the point values were appropriate as assigned. The Board adopted these amendments on March 11, 1992. These rules are identical to those published under Notice.

Item 1 deletes the reference to the specific maximum amount for which a WIC check may be redeemed and provides the department the authority to change the amount as needed.

Item 2 shortens the length of time that a vendor has in which to present a WIC food check for payment from 60 days following issue to 45 days following issue. This will allow WIC financial records to be closed out one month earlier than under the current rules.

Item 3 revises the schedule of program violations for program participants to make it parallel the schedule of violations for retail vendors.

These amendments will become effective May 6, 1992.

These amendments are intended to implement Iowa Code section 135.11(19).

The following amendments are adopted.

ITEM 1. Amend **73.7(4)"e"(4)** as follows:

(4) The amount of money written onto the check for repayment does not exceed ~~$30 or other~~ *the* maximum amount as designated by the state office and printed on the check;

ITEM 2. Amend **73.7(4)"e"(8)** as follows:

(8) Checks are presented to the state's agent (bank) for payment within ~~60~~ *45* days of the issue date;

ITEM 3. Rescind subrule 73.18(1) and insert in lieu thereof the following:

73.18(1) Individual participant violation. Violations may be detected by local agency staff, by vendors, or by state staff. Information obtained by the state WIC office is forwarded to the local agency for appropriate action.

a. Whenever possible, the participant is counseled in person concerning the violation. Documentation is maintained through the use of the Notice of Program Violation. The original is given to the participant and the carbon is maintained on file. The violation number and the point value from the schedule must be entered in the blanks of the form. The blank lines are used to write an explanation of the violation. The bottom section of the form is used only if the participant is to be suspended from the program. To avoid confusion, this part should be crossed out when not applicable. The form must be signed by the WIC coordinator or other designated staff person. If presented to the participant at a clinic, the participant is asked to sign to acknowledge receipt of the notice. If the participant refuses or the form is mailed, notation to that effect is made on the form.

b. Participants who violate program regulations are subject to sanction in accord with the schedule below:

Violation	Points Per Event
1. Attempting to purchase unauthorized brands/types of foods (i.e., incorrect brands of cereal, juices, etc.).	3

2. Attempting to cash check for more than the possible value of the foods listed.	3
3. Not countersigning the check at the time of purchase.	3
4. Attempting to cash checks after the last valid date.	4
5. Redeeming WIC checks at an unauthorized vendor.	4
6. Attempting to countersign a check signed by spouse or proxy, or allowing a proxy to countersign a check signed by the authorized person.	5
7. Attempting to cash checks that were countersigned prior to redemption at the vendor.	5
8. Redeeming WIC checks that were reported as lost or stolen.	5
9. Attempting to purchase more than the quantity of foods specified on the check.	5
10. Verbal abuse or harassment of WIC or vendor employees.	5
11. Threat of physical abuse of WIC or vendor employees.	10
12. Attempting to sell, return, or exchange foods for cash or credit.	10
13. Attempting to purchase unauthorized (non-WIC) foods, such as meat, canned goods, etc.	10
14. Attempting to purchase items that are not food.	10
15. Sale or exchange of WIC checks for cash or credit.	10
16. Altering the food items or quantities of food on a check.	10
17. Attempting to redeem check issued to another participant.	10
18. Receiving more than one set of benefits for the same time period.	10
19. Knowing and deliberate misrepresentation of circumstances to obtain benefits (resulting in a false determination of eligibility).	10
20. Attempting to steal WIC checks from a local agency or participant.	10
21. Physical abuse of WIC or vendor employees.	10
22. Attempting to pick up checks for a child that is not currently in their care.	10

c. The accumulation of 10 violation points within a 12-month period will result in a 2-month suspension. The accumulation of 10 additional violation points within a 12-month period following the suspension will result in a 3-month suspension. The participant must then reapply for the program and be scheduled for a certification.

d. Fifteen days' notice must be given prior to all suspensions. If notice is mailed, it should be received prior to the start of the cycle in which the participant would receive the next set of checks in order to comply with the 15-day provision. In all cases, the participant must be informed of the reason for the suspension and of the right to appeal the decision through the fair hearing process. A participant who appeals within 15 days is entitled to continue receiving benefits until the appeal is settled.

e. A suspension generally applies to all members of a family who are on the program. The competent professional authority may waive the suspension for one or more members of the family if it is determined that a serious health risk may result from program suspension. The reason for this waiver must be documented in the participant's file.

f. One or more checks cashed at the same time constitutes a single violation. Participants will not be charged with a second violation for minor violations worth 5 or less points for subsequent checks cashed between the first instance and the receipt of the violation notice if the violation is the same. If a major violation greater than 5 points occurs during this period, the participant will be suspended. Violations are cumulative.

g. When a participant improperly received benefits as a result of intentionally making a false or misleading statement, or intentionally misrepresenting, concealing, or withholding facts, the department shall collect the cash value of the improperly used food checks. Collection of overpayment is not required when the department determines it is not cost-effective to do so. It is not cost-effective unless the participant received at least two months' benefits for a woman or child, one month's benefits for two or more women or children, or one month's benefits for infant.

The local WIC agency shall issue a Statement of Restitution along with the suspension notice. The statement lists the serial numbers and dollar value of the checks for which payment is required. The participant is required to surrender any unspent checks and send payment to the department in check or money order for those checks that have been cashed.

h. Each local agency shall maintain a master list of all participant violation notices, suspensions, and statements of restitution. The participant's notice of violation must also indicate when it is a second offense.

ITEM 4. Amend **73.18(2)"a"(1)** as follows:

(1) As a result of prepayment reviews conducted by the state's bank, improperly completed food items are refused payment and returned to the vendor. Items screened during prepayment are authorized vendor stamp not present *or legible* in the "Pay to the Order of:" box on face of check, missing or mismatched signature and countersignature, price ~~exceeding $30.00~~ *exceeds maximum established by department.*

ITEM 5. Amend **73.18(2)"b" "2"** as follows:

2. Redeeming five checks over ~~60~~ *45* days old within the agreement period.

These rules are intended to implement federal law 42 U.S.C. section 1786, Iowa Code sections 10A.202(1)"h" and 135.11, subsections 1 and 15.

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ARC 2926A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.11(19), the Department of Public Health amends Chapter 76, "Maternal and Child Health," Iowa Administrative Code.

The changes are intended to update the federal legislative reference. The federal Maternal and Child Health

Block legislation was amended in 1989. The new legislation will now be the standard reference for federal requirements on the program.

Another change will improve the coordination between the MCH program, WIC and Medicaid by requiring contract agencies to use the combined application form for all applicants for service. An additional requirement concerning the determination of pregnancy is also included to conform with Medicaid requirements for the presumptive eligibility program. This change is in response to Iowa Code subsection 135.11(19), which directed the Department to work with the Department of Human Services to establish common intake proceedings.

These amendments were published as a Notice of Intended Action in the February 5, 1992, Iowa Administrative Bulletin as **ARC 2767A**. No comments were received. These amendments were adopted by the Board of Health on March 11, 1992, and are identical to those published under Notice.

The amendments are intended to implement Iowa Code section 135.11(19) and 1990 Iowa Acts, chapter 1259.

These amendments shall become effective May 6, 1992.

The following amendments are adopted.

ITEM 1. Amend rule 641—76.2(135), introductory paragraph, as follows:

641—76.2(135) Adoption by reference. Federal requirements contained in the Omnibus Reconciliation Act of ~~1981 (P.L.97-35)~~ *1989 (P.L.101-239)*, Title V, maternal and child health services block grant shall be the rules governing the Iowa MCH program and are incorporated by reference herein.

ITEM 2. Amend rule 641—76.6(135) by adding the following new subrule:

76.6(4) Pregnancy. An applicant for the prenatal program shall have verification of pregnancy either by an independent provider or by the maternal health agency.

ITEM 3. Rescind rule 641—76.7(135) and insert in lieu thereof the following:

641—76.7(135) Application procedures.

76.7(1) A person desiring services under this program or the parent or guardian of a minor desiring such care may apply to the contract agency approved to cover the person's county of residence, using Health Services Application, Form 470-2927.

76.7(2) The applicant shall provide the following information to be considered for eligibility under this program:

a. The information requested on the application form under "Household Information."

b. Income information for all family members or proof of eligibility for Title XIX (Medicaid).

c. Information about health insurance coverage.

d. The signature of the applicant or responsible adult, dated and witnessed.

e. For pregnant women, denial of benefits under Title XIX (Medicaid) due to economic or categorical ineligibility.

76.7(3) If an applicant has completed a Health Services Application, Form 470-2927, at another program site, the maternal or child health agency shall accept a copy of that application and determine eligibility without requiring the completion of any other application form.

76.7(4) If an applicant indicates on the Health Services Application, Form 470-2927, that the applicant wishes to also apply for WIC or Medicaid, the contract agency shall forward the appropriate copy to the indicated agency within two working days.

76.7(5) The contract agency shall determine the eligibility of the applicant and the percent of the cost of care that is the applicant's responsibility. The applicant shall be informed in writing of eligibility status prior to incurring costs for care.

76.7(6) Once an applicant has been determined to be eligible, the applicant shall report any changes in income, family composition, or residency to the contract agency within 30 days from the date the change occurred.

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ARC 2929A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147A.4, the Iowa Department of Public Health hereby adopts the following amendments to Chapter 132, "Training and Certification of and Services Performed By Advanced Emergency Medical Technicians and Paramedics," Iowa Administrative Code.

These amendments implement American Heart Association recommendations regarding Advanced Cardiac Life Support training, permit the issuance of temporary certifications in certain circumstances, and extend training program approval periods from two to five years. In addition, paramedic level service programs would be able to make on-scene determinations as to whether nonemergency transportation would be more appropriate.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 11, 1991, as **ARC 2609A**. The Iowa Department of Public Health held a public hearing on Monday, January 6, 1992. As a result of the oral and written comments received, the definition of "Nonemergency medical transportation" and new rule 132.15(147A) regarding transport options for paramedic level service programs were revised for purposes of clarification.

The Iowa State Board of Health adopted these amendments on March 11, 1992.

These amendments are intended to implement Iowa Code chapter 147A.

These amendments shall become effective May 6, 1992.

The following amendments are adopted.

ITEM 1. Amend rule **641—132.1(147A)**, definitions, as follows:

"ACLS" or "advanced cardiac life support" means training and ~~certification~~ *successful course completion* in

advanced cardiac life support according to American Heart Association standards.

"CPR" means training and ~~certification~~ *successful course completion* in cardiopulmonary resuscitation and obstructed airway procedures according to American Heart Association or American Red Cross standards. This includes one rescuer, two rescuer, and child/infant cardiopulmonary resuscitation and adult and child/infant obstructed airway procedures.

"Physician designee" means any registered nurse licensed under Iowa Code chapter 152, or any physician assistant licensed under Iowa Code chapter 148C and approved by the board of physician assistant examiners, who ~~is currently certified~~ *holds a current course completion card* in ACLS. The physician designee may act as an intermediary for a supervising physician in directing the actions of advanced emergency medical care personnel in accordance with written policies and protocols.

"Supervising physician" means any physician licensed under Iowa Code chapter 148, 150, or 150A who ~~is currently certified~~ *holds a current course completion card* in ACLS. The supervising physician is responsible for medical direction of advanced emergency medical care personnel when such personnel are providing advanced emergency medical care.

"Training program medical director" means any physician licensed under Iowa Code chapter 148, 150, or 150A who is responsible for directing an advanced emergency medical care training program and ~~is currently certified~~ *who holds a current course completion card* in ACLS.

Further amend rule **641—132.1(147A)** by adding the following new definitions in alphabetical order:

"Emergency medical transportation" means the transportation, by ambulance, of sick, injured or otherwise incapacitated persons who require emergency medical care.

"Nonemergency transportation" means transportation that may be provided for those persons determined to need transportation only.

"Protocols" means written directions and guidelines established and approved by the service program's medical director that address the procedures to be followed by emergency medical care providers in emergency and nonemergency situations.

ITEM 2. Amend subrule **132.3(1)**, paragraph **"e,"** as follows:

e. ~~Be currently certified~~ *Hold a current course completion card* in CPR.

ITEM 3. Amend subrule **132.4(4)**, paragraph **"b,"** as follows:

b. Have a current CPR ~~certificate~~ *course completion card* or a signed and dated statement from a ~~certified~~ *recognized* CPR instructor that documents current ~~certification~~ *course completion* in CPR. Paramedics ~~must~~ *shall* also have a current ACLS ~~certification~~ *course completion card* or a signed and dated statement from a ~~certified~~ *recognized* ACLS instructor that documents current ~~certification~~ *course completion* in ACLS.

ITEM 4. Amend subrule **132.4(5)**, paragraph **"h,"** as follows:

h. ACLS training *and successful course completion* (6 hours maximum).

ITEM 5. Amend subrule **132.4(9)**, paragraph **"c,"** as follows:

c. Provide verification of current ~~certification~~ *course completion* in CPR. Applicants for paramedic endorsement shall also provide verification of ~~certification~~ *current course completion* in ACLS.

ITEM 6. Amend rule 641—132.4(147A) by adding the following new subrule:

132.4(10) Temporary certification through endorsement. Upon written request, the endorsement applicant may be issued temporary certification by the board. Justification for issuance of the temporary certification must accompany the request. Temporary certification shall not exceed six months.

ITEM 7. Amend subrule **132.5(5)**, paragraph **"a,"** as follows:

a. The training program medical director shall be a physician who ~~is currently certified~~ *holds a current course completion card* in ACLS.

ITEM 8. Amend subrule **132.5(11)**, paragraph **"h,"** as follows:

h. Training program approval shall not exceed ~~two~~ *five* years.

ITEM 9. Amend subrule **132.9(6)**, paragraph **"b,"** subparagraph **(1)**, as follows:

(1) Ensure that the supervising physicians or physician designees *who are* trained and ~~currently certified~~ *hold a current course completion card* in ACLS will be available to provide on-line medical direction via radio communications on a 24-hour-per-day basis.

ITEM 10. Amend 641—Chapter 132 by adding the following new rule:

641—132.15(147A) Transport options for fully authorized paramedic service programs.

132.15(1) Upon responding to an emergency call, ambulance, rescue or first response paramedic level services may make a determination at the scene as to whether emergency medical transportation or nonemergency transportation is needed. The determination shall be made by a paramedic and shall be based upon the nonemergency transportation protocol approved by the service program's medical director. When applying this protocol, the following criteria, as a minimum, shall be used to determine the appropriate transport option:

a. Primary assessment,

b. Secondary assessment (including vital signs and history),

c. Chief complaint,

d. Name, address and age, and

e. Nature of the call for assistance.

Emergency medical transportation shall be provided whenever any of the above criteria indicate that treatment should be initiated.

132.15(2) If treatment is not indicated, the service program may make arrangements for nonemergency transportation. If arrangements are made, the service program shall remain at the scene until nonemergency transportation arrives. During the wait for nonemergency transportation, however, the ambulance, rescue or first response service may respond to an emergency.

These rules are intended to implement Iowa Code ~~subsections 10A.202(1)"g" and "h," 147A.4(11), and section 147A.5~~ *chapter 147A*.

ITEM 11. Amend the title of **641—Chapter 132** as follows:

CHAPTER 132

~~TRAINING AND CERTIFICATION OF AND SERVICES PERFORMED BY ADVANCED EMERGENCY MEDICAL TECHNICIANS AND PARAMEDICS~~
ADVANCED EMERGENCY MEDICAL CARE

[Filed 3/13/92, effective 5/6/92]
[Published 4/1/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/1/92.

ARC 2930A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby adopts a new Chapter 176, "Criteria for Awards or Grants," Iowa Administrative Code

The Administrative Rules Review Committee adopted an informal policy on criteria for awards or grants which is contained in the Committee Rules of Procedure, IAC 1.3(3). In order to comply with the Committee's policy, the Department hereby establishes a new chapter requiring all Department programs to include certain content, at a minimum, within their grant application materials. Programs which award competitive contracts shall also include the review criteria within the grant application materials to ensure an objective review and selection process for all applicants.

Notice of Intended Action was published in the January 8, 1992, Iowa Administrative Bulletin as **ARC 2699A**. A copy of the proposed rules was provided to the contract agencies of the Division of Family and Community Health.

A public hearing was held January 28, 1992. Seventeen individuals representing eleven organizations attended, and seven provided comments. Written comments were also received from seven organizations, including the Maternal and Child Health Grantee committee.

The Notice of Intended Action was reviewed by the Administrative Rules Review Committee at its February 1992 meeting. Comments received during the public comment period and public hearing and the Department's plan to accommodate them were shared with the Committee.

A draft revision of the Noticed rules was distributed to Department programs and contract agencies on February 13, 1992. In response to the second comment opportunity, minor changes were made to the draft revision.

Changes made from the original Notice of Intended Action are as follows:

1. Clarification of definitions with additional definitions included for project period and service delivery area.
2. Editorial changes.
3. Expanded description of review process and who will be involved in the review.

The State Board of Health adopted this chapter at their meeting held March 11, 1992.

These rules will become effective May 6, 1992.

These rules are intended to implement Iowa Code chapters 17A and 135.

The following new chapter is adopted:

CHAPTER 176
CRITERIA FOR AWARDS OR GRANTS

641—176.1(135,17A) Purpose. The department provides funds to a variety of entities throughout the state for the support of public health programs. The department considers that all funds, unless proscribed by appropriation language, the Iowa Code, Iowa Administrative Code or federal regulations, are subject to competition. To ensure equal access and objective evaluation of applicants for these funds, grant application materials shall contain, at a minimum, specific content. Competitive grant application packets shall contain the review criteria to be used, including the number of points allocated per required component.

641—176.2(135,17A) Definitions. For the purpose of these rules, the following terms shall have the meaning indicated in this rule:

"Competitive grant" means the competitive grant application process to determine the grant award for a project period.

"Continuous grant" means the subsequent grant years within a project period following a competitive grant process.

"Department" means the Iowa department of public health.

"Project" means the activities or program(s) funded by the department.

"Project period" means the period of time which the department intends to support the project without requiring the recompetition for funds. The project period is specified within the grant application period and may extend to three years. Exceptions to this definition are as follows:

1. New funds (including pilot studies and demonstration grants) that become available for new services.
2. An organization failed to meet conditions and performance standards specified in the contract awards.
3. Mutual agreement among department and contract organizations.
4. Federal or private funding source to the department has specified a sole source.

"Service delivery area" means the defined geographic area for delivery of project services. Competitive applications shall not fragment existing integrated service delivery within the defined geographic area.

641—176.3(135,17A) Requirements. The following shall be included in all grant application materials made available by the department.

1. Funding source.
2. Project period.
3. Services to be delivered.
4. Service delivery area.
5. Funding purpose.
6. Funding restrictions.
7. Funding formula (if any).
8. Matching requirements (if any).
9. Reporting requirements.
10. Performance criteria (experience of applicant in administering grants).

11. Description of eligible applicants.
12. Need for letters of support or other materials (if applicable).
13. Application due date.
14. Anticipated date of award.
15. Eligibility guidelines for those receiving the service or product and the source of those guidelines, including fees or sliding fee scales (if applicable).
16. Target population to be served (if applicable).
17. Appeal process in the event an application is denied.

641—176.4(135,17A) Review process (competitive applications only). The review process to be followed in determining amount of funds to be approved for award of contract shall be described in the application. The review criteria and point allocation for each shall also be described in the grant application material. Program advisory committees (if applicable) shall be provided with an opportunity to review and comment upon the criteria and point allocation prior to implementation.

The competitive grant application review committee shall be determined by the bureau chief, with oversight from the respective division director. Staff of the bureau administering the program shall allocate points per review criteria in conducting the review.

In the event competitive applications for a service delivery area receive an equal number of points, a second review shall be conducted by two division directors and the respective bureau chief administering the program.

641—176.5(135,17A) Public notice of available grants. The program making funds available through a competitive grant application process shall, at least 60 days prior to the application due date, issue a public notice that identifies the availability of funds and how to request the application packet. A written request for the packet shall serve as the letter of intent. Services, delivery areas and eligible applicants shall also be described in the public notice.

These rules are intended to implement Iowa Code chapters 17A and 135.

[Filed 3/13/92, effective 5/6/92]
[Published 4/1/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/1/92.

ARC 2913A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," Iowa Administrative Code.

The amendments concern certain definitions of computer equipment and are necessary due to the nature of computer software, transmission of computer programs and recent issues presented to the Department in regard to the taxation of computer programs and software. These amendments were proposed following discussion with computer consultant Dr. Bernard Galler.

Notice of Intended Action was published in IAB, volume XIV, number 16, on February 5, 1992, page 1318, as **ARC 2751A**.

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

These amendments will become effective May 6, 1992, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code sections 422.23, 422.42, 422.45 and 423.2.

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 [18.34(1), 18.34(2)"c," 18.34(2)"j," 18.45(1)] is being omitted. These amendments are identical to those published under Notice as **ARC 2751A**, IAB 2/5/92.

[Filed 3/13/92, effective 5/6/92]
[Published 4/1/92]

[For replacement pages for IAC, see IAC Supplement 4/1/92.]

ARC 2912A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 421.14, the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 79, "Real Estate Transfer Tax and Declarations of Value," Iowa Administrative Code.

Notice of Intended Action was published in IAB, volume XIV, number 16, on February 5, 1992, page 1320, as **ARC 2750A**.

This amendment is being made to clarify that real estate transfer tax is due each time a deed is given in fulfillment of a contract and that separate taxes are to be computed and paid based upon the full purchase price stated in each contract when a single deed is given at the time of completion of multiple successive real estate contracts.

This amendment is identical to that published under Notice of Intended Action.

This amendment will become effective May 6, 1992, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This amendment is intended to implement Iowa Code chapter 428A.

The following amendment is adopted.

Amend subrule 79.2(7) as follows:

79.2(7) Completion of contract. A deed or other conveyance instrument given at the time of completion of a *single* real estate contract is subject to the real estate transfer tax. The tax is to be computed on the full amount

of the purchase price as stated in the contract and not solely on the last installment payment made prior to the issuance of the deed or other conveyance instrument. *If the original contract is assigned to a third party or parties prior to fulfillment of such contract, the* ~~The~~ tax is to be computed only on the original contract ~~purchase~~ price~~, even though the contract may have been assigned prior to fulfillment of such~~ *upon completion of the* contract. ~~(Federal Rule)~~

When a single deed or other conveyance instrument is given at the time of completion of multiple successive real estate contracts, separate taxes are to be computed and paid based upon the full purchase price stated in each contract. For example, if: A sells real estate to B on an installment contract, and then B sells the same property to C on another installment contract, and subsequently both A and B transfer their respective interests in the property to C via one deed, A is liable for a tax computed on the full purchase price stated in the original contract to which A was a party and B is liable for a tax computed on the full purchase price stated in the subsequent contract to which B was a party.

[Filed 3/13/92, effective 5/6/92]
[Published 4/1/92]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/1/92.

ARC 2895A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code section 307.12 and Iowa Code Supplement section 306A.3, the Department of Transportation, on March 11, 1992, rescinded Chapter 115, "Utilities Within the Right-of-Way," and adopted in lieu thereof Chapter 115, "Utility Accommodation," Iowa Administrative Code.

A Notice of Intended Action for these rules was published in the February 5, 1992, Iowa Administrative Bulletin as **ARC 2732A**.

This revised chapter of rules contains the full text of the Department's utility accommodation policy. The old chapter adopted the policy by reference. Many editorial changes have been made. Substantive revisions include the following:

A utility agreement by itself no longer constitutes a utility accommodation permit nor does it grant permission to occupy the primary highway right-of-way. The utility facility owner is responsible for obtaining a utility accommodation permit prior to commencing work within the right-of-way.

A provision has been added stating that the Department will act on a utility accommodation permit application within 30 days after its filing with the resident maintenance engineer.

A provision has been added stating that construction work performed on utility facilities within the right-of-way shall be performed between the hours of 30 minutes after sunrise to 30 minutes before sunset, unless otherwise authorized.

A provision has been added regarding the transfer of utility accommodation permits.

For longitudinal utility facility occupancy of freeways, the following provisions have been added:

- A maximum 12-inch distance from the right-of-way fence is specified for signs identifying the occupancy route.
- Communication pedestals may be placed within six inches of the right-of-way fence.

For longitudinal utility facility occupancy of nonfreeway highways, the exception provided for a natural gas distribution system has been changed to a natural gas line with an operating pressure of 150 pounds per square inch or less. The exception allows occupancy.

For transverse occupancies, the encasement requirement for a natural gas pipeline operated at "high pressure" has been clarified to one with an operating pressure exceeding 60 pounds per square inch.

For transverse occupancies of nonfreeway highways, an exception to the encasement requirement has been provided for certain gravity flow sewer lines installed subsequent to highway construction.

The clear zone requirements for jacking and boring pits have been modified.

The procedures for backfilling untrenched construction have been modified.

Specific references to external regulatory and industry standards have been deleted. The utility facility owner is responsible for assuring that its installation meets applicable standards.

These rules are identical to the ones published under Notice except for the following:

In rule 115.2(306A), the following definition of "agreement" has been added.

> "Agreement." A contract between the department and a utility facility owner relative to utility facility relocation and reimbursement.

In paragraph 115.32(2)"c," the words "and having an inside diameter of two inches or less," have been deleted as follows:

> c. Encasement of a natural gas pipeline with an operating pressure of 60 pounds per square inch or less, of copper, steel or plastic, ~~and having an inside diameter of two inches or less,~~ is not required if:
>
> (1) The pipeline is protected and installed in accordance with accepted industry standards.
>
> (2) The utility facility owner certifies, as a part of the permit, that such standards will be met.

In the implementation clause at the end of the chapter, a reference to Iowa Code chapter 320 has been added.

These changes are in response to comments received.

These rules are intended to implement Iowa Code chapters 306A and 320 and section 314.20 and Iowa Code Supplement section 319.14.

These rules will become effective May 6, 1992.

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 115] is being omitted. With the ex-

ception of the changes noted above, these rules are identical to those published under Notice as **ARC 2732A**, IAB 2/5/92.

[Filed 3/11/92, effective 5/6/92]
[Published 4/1/92]

[For replacement pages for IAC, see IAC Supplement 4/1/92.]

ARC 2888A

TRANSPORTATION DEPARTMENT[761]

Note: Rules not subject to Iowa Code chapter 17A

Pursuant to the authority of Iowa Code subsections 321.454(2) and 321.457(3), the Transportation Commission, on March 3, 1992, amended 761—Chapter 510, "Designated Highway System," by amending rule 761—510.1(321). This rule lists the highways that may be used by longer and wider vehicles. The amendment adds eight routes to the list of highways and became effective March 3, 1992. This rule is exempt from the rule-making provisions of Iowa Code chapter 17A, but is published in the Iowa Administrative Code as a convenience to persons who need to use the rule.

Rule-making action:

Amend subrule **510.1(1)** by striking the words:
"IA 9 South Dakota E. to Rock Rapids
IA 9 IA 60 E. to Lansing"
and inserting in lieu thereof the words:
"IA 9 South Dakota E. to Lansing";
and by striking the words:
"IA 44 Hamlin E. to IA 141"
and inserting in lieu thereof the words:
"IA 44 Harlan E. to IA 141";
and by striking the words:
"IA 136 Delmar W. to Lost Nation"
and inserting in lieu thereof the words:
"IA 136 Charlotte W. to Lost Nation";
and by striking the words:
"IA 141 I-29 E. to S. Jct. U.S. 59
IA 141 Manning E. to I-35"
and by inserting in lieu thereof the words:
"IA 141 I-29 E. to I-35";
and by striking the words:
"U.S. 169 E. Jct. IA 2 N. to Winterset
U.S. 169 DeSoto N. to E. Jct. IA 9"
and inserting in lieu thereof the words:
"U.S. 169 IA 2 N. to IA 9";
and by striking the words:
"IA 173 IA 83 N. to Elk Horn"
and inserting in lieu thereof the words:
"IA 173 IA 83 N. to IA 44";
and by striking the words:
"IA 928 U.S. 20 W. of Webster City E. to U.S. 20 N. of Williams"
and by inserting in lieu thereof the words:
"IA 928 (old U.S. 20) IA 17 W. of Webster City E. to Iowa 941 N. of Williams";
and by inserting after:
"IA 930 U.S. 30 E. to Ames"
the words:
"IA 941 (old U.S. 20) I-35 E. to U.S. 65".

[Filed 3/7/92, effective 3/3/92]
[Published 4/1/92]

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GOVERNOR'S TASK FORCE ON UNIFORM ADMINISTRATIVE RULES

PREAMBLE

The Governor's Task Force on Uniform Administrative Rules has adopted the following model rules for contested case hearings. The Governor appointed a Task Force to recommend uniform administrative rules; its uniform rules on rule making, petitions for rule making, declaratory rulings, and fair information practices are printed in the first Volume of the Iowa Administrative Code. Members of the Task Force are: Professor Arthur Bonfield, Chair, Elizabeth M. Osenbaugh, Julie F. Pottorff, Robert Holz, Kathryn Hove, Dennis J. Nagel, Joseph A. Royce, Randy Carrigan, and Paula Dierenfeld. Others who have assisted the task force in the development of the uniform rules are: Amy Couch, Susan Allender, Allen Kniep, Diane Munns and Larry Bryant.

The Task Force has developed this set of contested case rules to serve as a model for state agencies. Although the wide variety of statutory hearings may preclude the adoption of all of these rules by every agency to cover every hearing, the goal of the Task Force is to develop rules which can serve as a model for most agency hearings.

Each agency would designate the appropriate entity or time period in lieu of the language marked by parentheses. For example, wherever the word "agency" or phrase "board, commission, director" appears in the draft rules, the agency would need to carefully consider whether the rule should designate a particular entity within the agency. In the rules governing interagency appeals, the agency should generally substitute the entity designated by statute as having final decision-making authority in a contested case for the parenthetical phrase "board, commission, director."

[Published pursuant to the authority of Iowa Code section 17A.6(1)"c." See minutes of the Administrative Rules Review Committee, September 1991.]

CHAPTER X
CONTESTED CASES

Agency No.—X.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the (agency name).

Agency No.—X.2(17A) Definitions. Except where otherwise specifically defined by law.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(2).

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the (designate official).

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the (agency name) did not preside.

Agency No.—X.3(17A) Time requirements.

X.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(22).

X.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by (specify rule number). Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

Agency No.—X.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

Agency No.—X.5(17A) Notice of hearing.

X.5(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure; or

e. (other options).

X.5(2) Contents. The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the agency or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding; and

g. Reference to the procedural rules governing informal settlement.

Agency No.—X.6(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

Agency No.—X.7(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an

opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

Agency No.—X.8(17A) Disqualification.

X.8(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally prosecuted or advocated, in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or pending factually related controversy that may culminate in a contested case involving the same parties.

c. Is subject to the authority, direction or discretion of any person who has personally prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has personally investigated the pending contested case by taking affirmative steps to interview witnesses directly or to obtain documents directly. The term "personally investigated" does not include either direction and supervision of assigned investigators or unsolicited receipt of oral information or documents which are relayed to assigned investigators.

e. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

f. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

g. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

h. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

(In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is inappropriate.)

X.8(2) If a party asserts disqualification on any appropriate ground, including those listed in subrule X.8(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(4). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule X.24(17A) and seek a stay under rule X.28(17A).

Agency No.—X.9(17A) Consolidation—severance.

X.9(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

X.9(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

Agency No.—X.10(17A) Pleadings.

X.10(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

X.10(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

(1) The persons or entities on whose behalf the petition is filed;

(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and law relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

X.10(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

X.10(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

Agency No.—X.11(17A) Service and filing of pleadings and other papers.

X.11(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall

be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

X.11(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

X.11(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with (specify office and address). All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the (agency name).

X.11(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the (designate office), delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

X.11(5) Proof of mailing. Proof of mailing includes either: a legible United States postal service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mail box with correct postage properly affixed or state interoffice mail).
> (Date) (Signature)

Agency No.—X.12(17A) Discovery.

X.12(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

X.12(2) Any motion relating to discovery shall allege that the moving party has previously made a good faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule X.12(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

X.12(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

Agency No.—X.13(17A) Subpoenas.

X.13(1) Issuance.

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

X.13(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

Agency No.—X.14(17A) Motions.

X.14(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought. Any motion for summary judgment shall comply with the Iowa Rules of Civil Procedure and is subject to disposition according to the requirement of those rules.

X.14(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

X.14(3) The presiding officer may schedule oral argument on any motion.

X.14(4) Motions pertaining to the hearing, including motions for summary judgment, must be filed and served at least ten days (or other time period designated by the agency) prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

Agency No.—X.15(17A) Prehearing conference.

X.15(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days (or other time period designated by the agency) prior to the hearing date. A prehearing conference shall be scheduled not less than three business days (or other time period designated by the agency) prior to the hearing date.

Written notice of the prehearing conference shall be given by the (designate office) to all parties. For good cause the presiding officer may permit variances from this rule.

X.15(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

X.15(3) In addition to the requirements of subrule X.15(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

X.15(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

Agency No.—X.16(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

X.16(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days (or other time period designated by the agency) before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The agency may waive notice of such requests for a particular case or an entire class of cases.

X.16(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

Agency No.—X.17(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with agency rules. Unless otherwise provided, a withdrawal shall be with prejudice.

Agency No.—X.18(17A) Intervention.

X.18(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

X.18(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

X.18(3) Grounds for intervention. The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

X.18(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

Agency No.—X.19(17A) Hearing procedures.

X.19(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

X.19(2) All objections shall be timely made and stated on the record.

X.19(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

X.19(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

X.19(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

X.19(6) Witnesses may be sequestered during the hearing.

X.19(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceeding;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

Agency No.—X.20(17A) Evidence.

X.20(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

X.20(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

X.20(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

X.20(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

X.20(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

X.20(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

Agency No.—X.21(17A) Default.

X.21(1) If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, proceed with the hearing and render a decision in the absence of the party.

X.21(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

Agency No.—X.22(17A) Ex parte communication.

X.22(1) Prohibited communications. Following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between any party or representative of any party in connection with any issue of fact or law in a case and any person assigned to render a proposed or final decision or to make findings of fact or conclusions of law except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude persons assigned to render a proposed or final decision in a contested case or to make findings of fact or conclusions of law in such a case from seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule X.8(1), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as that advice or help does not violate Iowa Code subsection 17A.12(8).

X.22(2) Disclosure of prohibited communications. Any person who receives a communication prohibited by subrule X.22(1) shall disclose that communication to all parties. A copy of any prohibited written communication or a summary of any prohibited oral communication shall be submitted for inclusion in the record.

X.22(3) The presiding officer or the agency may impose appropriate sanctions for violations of this rule. Possible sanctions include a decision against the offending party; censure, suspension, or revocation of the privilege to practice before the agency; and censure, suspension, dismissal, or other disciplinary action against agency personnel.

Agency No.—X.23(17A) Recording costs. Upon request, the (agency name) shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

Agency No.—X.24(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the (board, commission, director) may review an interlocutory order (of the presiding officer). In determining whether to do so, the (board, commission, director) shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days (or other time period designated by the agency) of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

Agency No.—X.25(17A) Final decision.

X.25(1) When (the agency) (or a quorum of the agency) presides over the reception of evidence at the hearing, its decision is a final decision.

X.25(2) When the (agency name) does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the (agency name) within the time provided in rule X.26(17A).

DRAFTER'S NOTE: Licensing boards should not adopt rule X.25(17A). A possible substitute would be 653 IAC 12.50(26) to 12.50(29).

Agency No.—X.26(17A) Appeals and review.

X.26(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the (board, commission, director) within 30 days (or other time period designated by the agency) after issuance of the proposed decision.

X.26(2) Review. The (board, commission, director) may initiate review of a proposed decision on its own motion at any time within 30 days (or other time period designated by the agency) following the issuance of such a decision.

X.26(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the (agency name). The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

X.26(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days (or other time period designated by the agency) of service of the notice of appeal. The (board, commission, director) may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

X.26(5) Scheduling. The (agency name) shall issue a schedule for consideration of the appeal.

X.26(6) Briefs and arguments. Unless otherwise ordered, within 20 days (or other time period designated by the agency) of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, (or other time period designated by the agency) any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The (board, commission, director) may resolve the appeal on the briefs or provide an opportunity for oral argument. The (board, commission, director) may shorten or extend the briefing period as appropriate.

Agency No.—X.27(17A) Applications for rehearing.

X.27(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

X.27(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule X.26(4), the applicant requests an opportunity to submit additional evidence.

X.27(3) Time of filing. The application shall be filed with the (agency name) within 20 days after issuance of the final decision.

X.27(4) Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the (agency name) shall serve copies on all parties.

X.27(5) Disposition. Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

Agency No.—X.28(17A) Stays of agency actions.

X.28(1) When available.

a. Any party to a contested case proceeding may petition the (agency name) for a stay of an order issued in that proceeding, pending review by the agency. The petition for a stay shall be filed with the notice of appeal and shall state the reasons justifying a stay. The (board, commission, director) may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the (agency name) for a stay pending judicial review, of all or part of that proceeding. The petition for a stay shall state the reasons justifying a stay.

X.28(2) When granted. In determining whether to grant a stay, the presiding officer or (board, commission, director), as appropriate, shall consider whether substantial questions exist as to the propriety of the order for which a stay is requested, whether the party will suffer substantial and irreparable injury without the stay, and whether, and the extent to which, the interests of the public and other persons will be adversely affected by such a stay.

X.28(3) Vacation. A stay may be vacated by the issuing authority upon application of the (agency name) or any other party.

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA

FILED MARCH 18, 1992

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. 90-1547. DENNIS v. CHRISTIANSON.

Appeal from the Iowa District Court for Polk County, Ray S. Fenton, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Larson, Schultz, Carter, and Snell, JJ. Opinion by McGiverin, C.J. (9 pages $3.60)

Defendants Jill Christianson and Jan's Vans filed motions to dismiss plaintiff Deborah Jean Dennis' lawsuit. Defendants claimed they were entitled to dismissal, due to untimely service, because they were not served with original notices of the filing of Dennis' petition until over two and one-half years after the petition was filed. The district court overruled defendants' motions to dismiss, reasoning that Dennis had shown adequate justification for her failure to timely serve defendants. **OPINION HOLDS:** I. This appeal is governed by the principles we recently enunciated in Bean v. Midwest Battery & Metal, Inc., 449 N.W.2d 353 (Iowa 1989). In Bean, we held that an eight-month delay in serving a defendant was presumptively abusive. We also held that a plaintiff carries the burden of justifying such a presumptively abusive delay in service, and that dismissal of the action is appropriate where the plaintiff fails to carry that burden. Although this case is factually distinguishable from Bean insofar as plaintiff Dennis apparently complied with the requirements of Iowa Rule of Civil Procedure 49, it is nevertheless undisputed that Dennis did not serve defendants Jill Christianson and Jan's Vans until approximately two and one-half years after Dennis filed her petition. Based upon our holding in Bean, we conclude that this delay was presumptively abusive. Furthermore, our review of the record leads us to conclude that plaintiff Dennis failed to carry her burden of justifying this delay. We note that Dennis, through her attorney, initiated only one attempt to locate and serve defendants during the two and one-half year period subsequent to January 1988. II. Dennis also argues that certain acts of the defendants came close to intentional evasion of service which justified Dennis' delay in serving them. However, we do not agree with Dennis that Jan's Vans or Jill Christianson in any way evaded service of process.

No. 90-1637. SCHNOOR v. DEITCHLER.

Appeal from the Iowa District Court for Pottawattamie County, Charles L. Smith III, Judge. **REVERSED.** Considered by McGiverin, C.J., and Harris, Schultz, Carter, and Snell, JJ. Opinion by Schultz, J. Dissent by Lavorato, J.

(15 pages $6.00)

This litigation was commenced by the Schnoors to recover damages resulting from injuries Bernard Schnoor received when his leg became entangled in a grain auger. Deitchler owns the grain auger in question. Plaintiffs allege that co-defendant Ford New Holland, Inc. (Ford), is the successor corporation to Versatile Farm Equipment Operations, manufacturer of the grain auger. The jury determined damages and apportioned fault. The trial court entered judgments against each defendant. Defendants separately appealed. **OPINION HOLDS:** I. We disagree with plaintiffs' claim that the interrogatory answers show that Ford agreed to assume Versatile's liability. The answers to the interrogatories expressly state the New Holland of Canada, Ltd., acquired Versatile's assets and assumed responsibility for product liability claims involving Versatile's products. New Holland of Canada, Ltd., then merged with Ford New Holland Canada, a subsidiary of defendant Ford. There are no admissions that defendant Ford assumed any liability. Ownership by a parent corporation of the stock of another corporation does not create an identity of corporate interest between the two corporations so as to render acts by one to be the acts of another. Consequently, we conclude that the record does not contain substantial evidence that defendant Ford assumed responsibility for the product liability claims of Versatile. We also disagree with both of plaintiffs' claims of estoppel. The trial court erred in failing to direct a verdict in favor of Ford. II. Plaintiffs alleged in their petition that defendant Deitchler was negligent in failing to have a guard on the loading end of the grain auger and in failing to warn Bernard of this defect. However, the evidence shows that Bernard knew of the auger's condition and its dangers. Bernard has hauled all of Deitchler's beans for several years and was familiar with Deitchler's auger. We conclude that when Bernard voluntarily walked in the vicinity of the open auger, he assumed the risk of harm. The facts here fall squarely within the general rule that a possessor of land is not liable for obvious or known dangers. Consequently, we hold that the trial court erred in not directing a verdict in favor of both defendants. **DISSENT ASSERTS:** I dissent to division II. On a motion for directed verdict, we view the evidence in the light most favorable to the party against whom the motion is made. In doing that here, I think the plaintiffs generated a jury question on whether the

No. 90-1637. SCHNOOR v. DEITCHLER (continued).
defendant Deitchler should have anticipated Bernard D. Schnoor's approach to the auger. I think a jury could reasonably find that Deitchler should have anticipated Schnoor's approach to the auger. The majority's error is in deciding this issue as a matter of law. I would affirm as to the defendant Deitchler.

No. 91-119. FARMERS ELECTRIC COOPERATIVE, INC. v. UTILITIES BOARD.

Appeal from the Iowa District Court for Polk County, Arthur A. Gamble, Administrative Law Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Schultz, Carter, and Snell, JJ. Per curiam. Harris, J. dissents.

(20 pages $8.00)

Farmers Electric Cooperative and Anita Municipal Utilities dispute the utilities' relative rights and responsibilities to provide electric service within the city of Anita. Farmers challenges the Board's determination that the disputed boundary line lies within Anita's exclusive service area. On appeal, Farmers contends that the Board's determination that the true boundary is twenty rods north of the section twenty-eight line, not forty rods as indicated on the official map, impermissibly violates and modifies an administrative rule embodied in the official map. Farmers also insists that the Board's actions were an improper modification of an existing administrative rule, the Board's official map. **OPINION HOLDS:** We hold that the Board need not make a preliminary finding of ambiguity--in either the official map or the detail map submitted by Farmers--prior to construing their official map as it applies to the dispute herein. To the extent the Board's ruling constitutes a "reformation" of the administrative rule embodied in their official map, the Board's actions cannot be characterized as violating an agency rule. We conclude that there was substantial evidence to support the Board's determination that the official map failed to accurately incorporate the actual agreement reached by the parties and was thus in need of reformation. When the disputed area was subdivided and platted Anita expanded into the area to provide electrical service; Farmers did not. In fact, if Farmers were now to run the necessary lines into the area, this would necessitate a redundant expenditure of at least $8500 to make connections that have already been made by Anita. The Board's reformation of their rule so as to conform with utilities' actual agreement is appropriately characterized as interpretative, and, as such, cannot be termed an administrative action in violation of an existing rule. Finally, the Board's ruling does not constitute a modification of an existing exclusive service area boundary.

No. 90-1723. WELTE v. BELLO.

On appeal from the Iowa District Court for Scott County, L.D. Carstensen, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Andreasen, J. Concurrence in part and dissent in part by McGiverin, C.J. Dissent by Snell, J. (21 pages $8.40)

Sharalan Welte was admitted to Mercy Hospital for surgery on her nose. During surgery, she was unintentionally burned on the arm when an anesthetic, sodium pentothal, that was injected into her vein, infiltrated the surrounding tissue. Welte and her husband brought malpractice actions against the anesthesiologist, Dr. Bello, and the hospital. The claims alleged negligence in the administration of the anesthetic and also negligence in failing to secure informed consent of the patient. The Weltes urged the doctrine of res ipsa loquitur would support submission of their general negligence claim. Prior to trial the district court granted partial summary judgment to the anesthesiologist upon the general negligence claim. The district court determined an expert witness was necessary as to this negligence claim. Appeal is taken by the Weltes from the summary judgment and the judgments entered by the district court upon jury verdicts for the anesthesiologist and the hospital. **OPINION HOLDS:** The chemical burn to Welte's arm was caused by sodium pentothal that Dr. Bello injected into her vein which then infiltrated or escaped from the vein into the surrounding tissues. We believe it is within the common experience of laypersons that such an occurrence in the ordinary course of things would not have happened if reasonable care had been used. We conclude the court erred in granting partial summary judgment on the general negligence claim against Dr. Bello. The record establishes circumstances of the occurrence sufficient, based on a res ipsa loquitur theory, to defeat summary judgment without the necessity of expert medical evidence. However, even if expert evidence were required, the record was sufficient, based on Dr. Bello's answer and the deposition of his retained medical expert, to defeat the summary judgment motion. II. In its res ipsa loquitur instruction, the district court required proof of the common experience as experienced by health care professionals. We find that the underlined portion of the instruction effectively denied Welte of the benefit of the res ipsa inference of negligence and required her to establish the common experience of the health care professional. On retrial the jury must be instructed that proof of the second foundational element rests on common experience. If expert medical evidence is offered and received upon this element, the uniform instruction may be tailored to provide that proof of the second foundation of fact rests on common experience or the common experience of the health care provider. III. Welte argues communications between the court and the jury following

No. 90-1723. WELTE v. BELLO (continued).
submission of the case were improper. Because this issue is not likely to recur on retrial we decline to address it. On retrial, we believe it would be appropriate for the court to instruct the jury as to concurrent negligence. Where the evidence shows more than one cause contributing to injury or damage, the following sentence should be added to the instruction on proximate cause: "There can be more than one proximate cause of an injury or damage." We believe it would be appropriate to submit such an instruction where the claim alleges more than one party was negligent. Ordinarily, the trial court should include in its instructions the admissions in the pleadings of a party. Although identical testimony may be offered at trial, the jury is not required to believe the testimony of a witness. IV. We have reviewed the issues raised on appeal as they relate to Welte's informed consent claim against Dr. Bello and the specific negligence claim against Mercy and find no reversible error. We reverse and remand the cases for trial on the general negligence claim. **CONCURRENCE IN PART AND DISSENT IN PART ASSERTS:** I would reverse and remand for a new trial as to defendant Mercy Hospital. I would affirm as to defendant Bello for the reasons stated in the dissent. **DISSENT ASSERTS:** I do not believe the res ipsa loquitur doctrine is applicable to the claims raised by the Weltes against Dr. Bello. The majority has ignored our law and has effectively expanded the application of the res ipsa loquitur doctrine well beyond its recognized purpose. Further, the common experience exception to the requirement of expert testimony also does not apply here. I believe that expert testimony was required for the Weltes to pursue their negligence claim against Dr. Bello. When none was proffered by the plaintiff, Dr. Bello was entitled to summary judgment on this issue. I also believe the district court properly instructed the jury concerning the "common experience" aspect of the res ipsa loquitur doctrine. I disagree with the majority's decision that the jury must infer negligence without judging the resulting injury against the standard of care recognized by those most knowledgeable in the field--the health care professionals. Thus, to the majority, the jurors' "common knowledge" of negligence, even if totally erroneous, is adequate to find liability since no expert testimony is required.

No. 91-324. **WEST DES MOINES STATE BANK v. MILLS.**
Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge. **REVERSED AND REMANDED WITH INSTRUCTIONS.** Considered by McGiverin, C.J., and Harris, Schultz, Carter, and Snell, JJ. Opinion by Harris, J.
(11 pages $4.40)

In 1982, George Mills signed several notes with the plaintiff Bank to finance his insulation business. As security, the Mills executed a second mortgage on their home. In 1986 the Mills executed the existing second mortgage. The mortgage waived the Mills' homestead rights. Subsequently, the Mills defaulted on their obligations to the Bank. The Bank then filed this action, seeking to foreclose the second mortgage. In defense, the Mills claimed the protection of Iowa Code section 561.22 as originally adopted in 1986 and not as retroactively amended in 1987. That specified certain requirements for a proper waiver of homestead rights that were clearly not met in this case. In 1987, the legislature limited the application of the section to agricultural land and made this amendment retroactive to the 1986 effective date. The district court found this retroactive amendment unconstitutional and thereby did not foreclose the Bank's mortgage. The Bank appeals. **OPINION HOLDS:** I. We have previously held that a retroactive Act, which significantly altered the law with respect to redemption of homesteads situated on agricultural land, constituted a denial of equal protection and an impairment of contracts by the state. We are convinced, however, the amendment to section 561.22 did not terminate any homestead rights. The amendment addressed a mere procedural step intended for those who undertake to waive homestead rights. All the amendment did was to remove the requirement of specific additional wording in waivers. These words did not alone create or terminate a homestead; they were intended to remind the person signing the waiver that it was important. Further, the Mills have no contract which incorporates the original version of section 561.22. The trial court erred in finding a violation of the contract clauses. II. The district court also found a due process violation in the amendment. Even if the Mills had a homestead right which became vested, there would still be no due process violation here. The only property described in the mortgage signed by plaintiffs in 1986 was their home. The Mills do not deny they freely intended to waive their homestead exemption. There is no merit in the Mills' due process challenge. III. We likewise see no merit in the equal protection challenge. To prevail on this challenge the Mills would have to prove that no conceivable state of facts could justify the statute. The legislature was entitled to accord farmers an additional reminder that they were giving up important rights when signing an

No. 91-324. **WEST DES MOINES STATE BANK v. MILLS** (continued). instrument containing a homestead waiver. IV. We have held that the legislature, in limited situations, may enact curative legislation which has retroactive effect. The retroactive amendment here was a legitimate and proper use of legislative authority.

No. 90-1598. **HUSKER NEWS CO. v. SOUTH OTTUMWA SAVINGS BANK.**

Appeal from the Iowa District Court for Wapello County, Phillip R. Collett, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Schultz, Carter, and Snell, JJ. Opinion by Harris, J. (13 pages $5.20)

This tort suit, asserting a conversion claim under the uniform commercial code and seeking recovery for negligence, is an attempt by an employer, Husker News, to collect for the fraudulent appropriation of funds by one of its own employees, Walter Hopf. Defendants are plaintiff's customers, the customers' banks, and the employee's bank. The trial court dismissed the present claims and Husker News appeals. **OPINION HOLDS:** I. Prior to trial, Husker moved for separate trials, seeking to sever its conversion claims from its negligence claims. The trial court separated plaintiff's actions by party, separating plaintiff's claims against the bank defendants from its claims against its customers. An attempted appeal from this ruling was dismissed as interlocutory and the manner in which the trials had been separated was then ignored for five months until the very morning of trial. Husker News then sought to try its negligence claims together. The trial court had almost unfettered discretion on the day of trial to deny this motion and clearly did not abuse its discretion in denying Husker's request. II. The district court properly dismissed Husker's negligence claims against Pella Super Valu by reasoning that the customer owed no duty to Husker. We do not recognize a good-Samaritan obligation to prevent the perpetration of a tort by another on a third party. Pella Super Valu had no common-law duty to prevent Hopf from harming Husker. III. We conclude that the drawee banks are entitled to dismissal of Husker News' claims against them pursuant to Iowa Code section 554.3406 since Husker's negligence substantially contributed to Hopf's unauthorized signature and the banks acted in good faith and in accordance with reasonable business procedures. IV. The trial court dismissed Husker's common-law negligence claims against the defendants. We need not resolve the issue, however, because on this de novo review we find negligence on the part of Husker greatly exceeds the combined negligence on the part of the defendants.

No. 90-760. **STATE V. REED.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Black Hawk County, George Stigler, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by Larson, P.J., and Schultz, Carter, Neuman, and Snell, JJ. Opinion by Neuman, J. (11 pages $4.40)

Defendant Dwight Charles Reed appealed his conviction of possession of cocaine with intent to deliver. See Iowa Code § 204.401(1)(a) (1987). The court of appeals reversed the conviction, and we granted further review. **OPINION HOLDS:** I. On the first day of defendant's trial, during a preliminary voir dire of the jury panel, the district court introduced counsel and defendant and then named the persons scheduled to be called as witnesses. The district court told the jury that one of the witnesses, police officer Eddie Denton, was himself the subject of pending criminal charges. Defendant claims that Officer Denton was his key witness and that the comment by the district court discredited Denton and thus entitles him to a new trial. In making the comment, the district court unnecessarily enlightened the jury about a piece of impeachment evidence that would be otherwise inadmissible at trial. No good reason therefore appears. The district court clearly erred. However, we find that the error was harmless beyond a reasonable doubt. A reasonable jury could convict defendant of the crime charged, even with the knowledge that Officer Denton was under criminal indictment. His testimony was not that favorable to the defense, the matter was mentioned only once before trial and not again repeated, and the balance of the transcript reveals nothing but neutrality toward defendant by this judge. II. Defendant also claims that his trial counsel rendered ineffective assistance because he failed to request a jury instruction based on Iowa Code section 704.11. We entertain grave doubts about whether the facts before us even furnish a basis for the instruction defendant seeks. We customarily reserve such claims for postconviction proceedings, however, so that counsel may respond to the defendant's charges with an evidentiary record. Accordingly, we affirm defendant's conviction in this case without prejudicing his right to pursue a postconviction action to litigate his claim of ineffective assistance of counsel.

No. 91-206. **STATE v. LUDVIGSON.**

Appeal from the Iowa District Court for Polk County, Ross A. Walters, Judge. **AFFIRMED.** Considered by Larson, P.J., and Schultz, Carter, Neuman, and Snell, JJ. Opinion by Neuman, J. (12 pages $4.80)

Ludvigson was hired in January 1988 as chief executive officer of Leopard Enterprises, a group of companies engaged in the sale of "pre-need" funeral contracts. Under such contracts, customers pay a fixed sum for funeral services and merchandise guaranteed to be provided when needed. Under Iowa Code section 523A.1, at least eighty percent of all pre-need contract payments must be kept in trust until the death of the covered person. The seller must deposit these funds into an insured account within thirty days. In June 1988, Ludvigson and the company's owner began using all pre-need contract payments to cover operational expenses. Even with this infusion of cash, the company soon fell into bankruptcy and receivership. Following an investigation, Ludvigson was charged with five counts of second-degree theft in violation of Iowa Code section 714.1(2). The jury convicted Ludvigson on all five counts, and Ludvigson has appealed. **OPINION HOLDS:** I. A. We believe the district court correctly overruled Ludvigson's motions for judgment of acquittal. Chapter 523A's nominal penalty for violating the ministerial duties of that chapter does not preclude prosecution under section 714.1(2) for failing to segregate the requisite funds. We are also convinced that the purpose of chapter 523A would be largely eviscerated were we to adopt Ludvigson's argument that sellers have free use of pre-need payments for thirty days. We therefore hold that the trustee's duties created by section 523A.1 attach upon receipt of the funds. We firmly reject Ludvigson's claim that no violation of chapter 714 "trust" duties can be proven until payments become part of a trust account. Receipt of the funds triggers the trustee's obligation to manage the funds consistent with the beneficiary's interests. B. We believe that ample evidence supports the jury's verdict on the element that a benefit or value was lost or that Ludvigson knowingly disposed of property for his own or another's benefit. II. The district court did not abuse its discretion in sustaining the State's motion in limine, preventing defense counsel from delving into the State agents' failure to advise Ludvigson that he was suspected of criminal activity since he was not in custody when he made the incriminating statements.

No. 90-1658. **GALLARDO v. FIRESTONE TIRE & RUBBER CO.**
On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT REVERSED AND REMANDED WITH INSTRUCTIONS.** Considered by Harris, P.J., and Carter, Lavorato, Neuman, and Snell, JJ. Opinion by Neuman, J. (9 pages $3.60)

For over thirty years John Gallardo worked in the factory owned by Firestone Tire in Des Moines, Iowa. While building tires in April 1980, Gallardo suffered a severe back injury. He began receiving weekly workers' compensation benefits pursuant to a negotiated settlement with the company. In 1984 Gallardo filed his first review-reopening petition. The deputy industrial commissioner concluded in a proposed agency decision that Gallardo was suffering a fifty percent industrial disability. On administrative appeal by the company, the industrial commissioner determined that Gallardo proved entitlement to forty percent industrial disability based on the company's professed willingness to accommodate Gallardo's medical restrictions with continued employment. Immediately following final ruling in the first proceeding, Gallardo filed this second review-reopening petition. Shortly after the first hearing, Gallardo returned to the plant but found himself physically unable to complete his work assignment. The company then authorized fifty-two weeks of accident and disability payments. Thereafter Gallardo applied for and began receiving a medical disability retirement pension. In his ruling on Gallardo's second petition, the industrial commissioner rejected Gallardo's claim that his worsening condition and disability retirement warranted an adjustment to the benefits established by the first review-reopening proceeding. The commissioner ruled that although Gallardo's earnings had changed by virtue of his retirement, his earning capacity had not. Both the district court and court of appeals affirmed the commissioner's ruling. We granted further review. **OPINION HOLDS:** We think the record in this case is entirely inconsistent with the commissioner's conclusion that Gallardo "unilaterally concluded that his physical impairment made it dangerous for him to work near equipment." We also think it clear from this record that Gallardo's decision to retire early was not unilateral. According to company policy, it could not be. The record belies the suggestion that only his earnings had diminished; his capacity to earn had changed markedly as well. Because the company reversed itself concerning employment opportunities for Gallardo and placed him on accident and disability leave, the commissioner's finding of "no change" since the prior hearing is without substantial support. We are convinced that the

No. 90-1658. **GALLARDO v. FIRESTONE TIRE & RUBBER CO.** (continued).

commissioner should have adjusted Gallardo's award upward by ten percent to reflect the full impact of the industrial disability determined at the first hearing. Thus we reverse and remand to the agency for recomputation of Gallardo's benefits consistent with this opinion.

NO. 91-51. NUTTING v. ZIESER.

Appeal from the Iowa District Court for Benton County, Thomas L. Koehler, Judge. **AFFIRMED.** Considered en banc. Opinion by Carter, J. Dissent by Schultz, J.

(6 pages $2.40)

Plaintiff, Daniel Nutting, appeals from an adverse judgment in an action seeking damages from defendant, Keith Zeiser, a liquor licensee doing business as Zeiser's Tap. The action stems from injuries sustained by plaintiff after consuming alcoholic beverages at defendant's place of business. At the time of such consumption, plaintiff, at age nineteen, was under the age at which he could legally be sold intoxicating beverages. The district court granted defendant's motion for summary judgment on the authority of our decisions in Fuhrman v. Total Petroleum, Inc., 398 N.W.2d 807 (Iowa 1987), and Connolly v. Conlan, 371 N.W.2d 832 (Iowa 1985). **OPINION HOLDS:** Our cases recognizing civil liability in situations where social hosts have dispensed intoxicating beverages to minors are not dispositive. The Fuhrman and Connolly cases were decided on the basis of a perceived legislative preemption of the field of liquor licensee liability. As a result of that recognition, inconsistencies may indeed exist between the liability of liquor licensees under the preemptive legislation contained in Iowa Code section 123.92 and the liability of social hosts, which is unaffected by that preemptive legislation. As a final matter, we consider and reject plaintiff's contention that, because the recipients of alcoholic beverages from liquor licensees are not themselves granted a right of recovery under the dramshop legislation contained in section 123.92, claims by those persons are outside the scope of the statutory scheme and thus free of any preemption attributable thereto. After considering the arguments presented, we conclude that the district court judgment was correct based on our decisions in Fuhrman and Connolly. **DISSENT ASSERTS:** I believe that the reasons advanced in my dissents in Fuhrman and Connolly are still valid. I do not believe the legislature, in enacting the Dram Shop Act, intended to preempt other common-law action against licensees.

NO. 91-32. STATE v. JAMISON.

Appeal from the Iowa District Court for Scott County, Edward B. deSilva, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Carter, J. Dissent by Harris, J. (18 pages $7.20)

Anthony Jamison challenges an order denying his motion to suppress evidence in a pending criminal prosecution. Davenport police officers received information from a confidential informant that Rodriguez was trafficking in controlled substances. A determination was made to place his residence under surveillance. The warrant application contained three sworn assertions by a Davenport police detective concerning Rodriguez. The warrant authorized the police to search "the person and vehicles of any other subjects at the Rodriguez residence after the signing of the search warrant." The officers conducting surveillance at the Rodriguez residence maintained a log of vehicles stopping at the house after the warrant was issued. Defendant's automobile was the second automobile to arrive. A police detective was dispatched to follow, stop, and search that vehicle. The stop was accomplished a few blocks from the Rodriguez house so that the occupants would not be apprised. Defendant was arrested and later charged with possession of cocaine, a schedule II controlled substance. **OPINION HOLDS:** I. Where a warrant calls for the search of multiple places or persons, probable cause must exist as to each location or person sought to be searched under authority of the warrant. Based on our review of the warrant application and the additional record made at the suppression hearing, we find a complete absence of probable cause for a warrant authorizing the search of defendant's person or his automobile. II. In the present situation, involving a dragnet search warrant, the deterrent aspects of the exclusionary rule are well served by exclusion of the challenged evidence. This is because a refusal to exclude the evidence will certainly have the effect of encouraging similar dragnet search warrants in the future. We conclude that the district court should have sustained the motion to suppress evidence derived from the seizure and search of defendant's automobile and evidence derivative therefrom. **DISSENT ASSERTS:** I dissent from the reversal because I am convinced the warrant was issued by a neutral and detached magistrate and that the officers reasonably relied on it. It is impossible for me to agree that the officers could not believe in the validity of the warrant. By including the controlled buy in the warrant application, the police contended they established drug trafficking at the Rodriguez residence. They believed that, having done so, they were justified in searching any vehicles driven by people who stopped briefly at the residence. This is because customers of drug dealers typically carry drugs away from the place where they purchased them. The officers' actions strike me as having been in good faith. I would affirm.

NO. 91-427. IN THE INTEREST OF S.L.B.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Black Hawk County, Walter W. Rothschild, District Associate Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by McGiverin, C.J., and Harris, Schultz, Carter, and Snell, JJ. Per curiam. (7 pages $2.80)

The mother and father of Stacy seek to reverse an order of the district court terminating their parental rights. Stacy was removed from her parents' care at birth, following the father's abuse of her sister. The court of appeals reversed the district court's termination order, and we have granted further review. **OPINION HOLDS:** We believe the juvenile court was properly impressed by the fact that there are no noticeable events that have occurred since the CINA adjudication that demonstrate an improved parenting potential on the part of either the mother or the father. Moreover, a potential danger to the child in the event she were returned to the home may easily be inferred from the evidence presented. We vacate the decision of the court of appeals and affirm the judgment of the district court.

NO. 91-1192. IN RE MARRIAGE OF SPURGEON.

Appeal from the Iowa District Court for Polk County, Jack Levin, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Neuman, and Andreasen, JJ. Per curiam. (3 pages $1.20)

A former wife, Penny, appeals from a judgment that construed the lien provision of the 1980 decree dissolving the parties' marriage. The decree gave the former husband, Richard, physical care of the parties' child and title to the parties' house, subject to a lien in Penny's favor. The lien was to vest upon the happening of specified events, one of which was the child ceasing to live with Richard. The decree was silent on the matter of interest. In 1990, the decree was modified to transfer physical care of the child to Penny. Penny moved to construe the decree, asking the district court to rule that the lien began to accrue interest on the date of the original decree. The court instead ruled that the lien began to accrue interest on the date of the modification order. **OPINION HOLDS:** Iowa Code section 535.3 (interest on judgments and decrees) provides for interest only from the date payment is due. Here, the lien did not become due until the decree was modified to change custody. We therefore affirm the district court's ruling.

No. 91-17. IN RE PROPERTY SEIZED FROM WAGNER.

Appeal from the Iowa District Court for Jackson County, James R. Havercamp, Judge. **REVERSED.** Considered by McGiverin, C.J., and Harris, Schultz, Carter and Snell, JJ. Opinion by Schultz, J. Dissent by Snell, J.

(13 pages $5.20)

The issue in this appeal concerns the ownership of currency seized by police from a drug dealer. The police department was garnished by a judgment creditor of the drug dealer after seizure of the currency but before the State gave notice of forfeiture. The trial court ruled that the title to derivative contraband, such as the currency in this case, does not vest in the State by virtue of seizure alone, and that the creditor acquired a superior lien on the currency by garnishing the police department before the State filed notice of forfeiture. The State appeals. **OPINION HOLDS:** We believe that legislative intent and the plain language of Iowa Code section 809.6 give the State ownership rights to seized forfeitable property, including derivative contraband, at the time of seizure, provided the State complies with the statutory forfeiture procedures in Iowa Code chapter 809. In this case, the State gave timely notice of forfeiture in compliance with Iowa Code section 809.8(2). There was no showing that the seizure and forfeiture proceedings were declared a nullity by a court. Therefore, we conclude that the State's seizure of the currency placed it first-in-line to perfect its title to the currency. Our legislature has indicated that title to derivative contraband relates back and vests in the State at the time of seizure. Subject to perfection, title to the currency in this case vested in the State on the date of seizure prior to the judgment creditor's garnishment of the seized property. The creditor herein cannot show a legal or equitable ownership interest in the seized currency that existed at or before the time of seizure. Consequently, the State's ownership right is superior to the creditor's garnishment action and the State is entitled to perfect that ownership right pursuant to the statutory forfeiture proceedings in Iowa Code chapter 809. **DISSENT ASSERTS:** I believe a proper construction of section 809.14 is that the property "becomes forfeitable" when the county attorney or attorney general claims it by filing a notice of forfeiture. Iowa Code § 809.8. Since the judgment creditor established her lien through the garnishment proceedings prior to the filing of the notice of forfeiture, the lien should be deemed valid and superior to the state's right to the money. This construction carries out the purpose of the forfeiture statutes, protects the rights of innocent persons and is faithful to our principles of statutory construction.

No. 90-130. STATE v. TRACY.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Jackson County, James E. Kelley, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT REVERSED AND REMANDED.** Considered en banc. Opinion by Snell, J. Dissent by Andreasen, J.

(15 pages $6.00)

Defendant Ronald R. Tracy appealed his conviction of third-degree sexual abuse in violation of Iowa Code section 709.4(2)(c)(1) (1991). The court of appeals affirmed the conviction, and we granted further review. **OPINION HOLDS:** I. Defendant was accused of sexually abusing his sixteen-year-old stepdaughter, K.A. K.A. initially reported sexual abuse but later denied that it had occurred. At trial, the State offered K.A.'s testimony in its case in chief, knowing that she intended to deny the sexual abuse. The State then proceeded to impeach K.A. by introducing some otherwise inadmissible evidence. We have previously condemned as reversible error this sort of prosecutorial maneuvering, in which the State places a witness on the stand who is expected to give unfavorable testimony solely for the purpose of introducing otherwise inadmissible evidence. Defense counsel objected to some of the above evidence, thus preserving error. We find that the failure to object to the remainder of the above evidence constitutes ineffective assistance of counsel. Thus, even though error was not preserved with respect to the evidence counsel did not object to, we conclude that the cumulation of this evidence with the other inadmissible evidence entitles defendant to a new trial. II. The State offered as part of its case in chief the testimony of a pediatrician that her vaginal examination of K.A. led her to conclude K.A. was sexually active. We find no merit in defendant's argument that this evidence was irrelevant, or alternatively, unduly prejudicial. The pediatrician also testified that K.A. had identified defendant as her abuser. Defendant argues that this testimony was hearsay which did not fall within the Iowa Rule of Evidence 803(4) exception (hearsay statements made for the purpose of medical diagnosis or treatment). In United States v. Renville, 779 F.2d 430, 436 (8th Cir. 1985), the court used a two-part test for establishing the admissibility of hearsay statements under rule 803(4): first, the declarant's motive in making the statement must be consistent with the purposes of promoting treatment, and second, the content of the statement must be such as is reasonably relied on by a physician in treatment or diagnosis. We approve of the Renville analysis and suggest that it be used to rule on the admissibility of the pediatrician's testimony should that issue arise in defendant's new trial. **DISSENT ASSERTS:** I agree with the majority opinion that counsel did not err in failing to

No. 90-130. STATE v. TRACY (continued).
object to the testimony of the pediatrician concerning her examination of K.A. or to the expert testimony of another doctor relating to sexual abuse accommodation syndrome. In consideration of the remaining preserved issues I, like the trial court and the court of appeals, find Tracy has failed to prove that prejudice resulted. I would affirm the district court judgment and the decision of the court of appeals.

No. 90-1487. CONKLIN v. DISTRICT COURT.
Certiorari to the Iowa District Court for Scott County, James E. Kelley, Judge. **WRIT ANNULLED.** Considered by McGiverin, C.J., and Harris, Schultz, Carter, and Snell, JJ. Opinion by Schultz, J. (8 pages $3.20)

The issue in this case is whether a bankrupt who has received a bankruptcy discharge may recover uncondemned funds held by the district court clerk pursuant to a judgment creditor's prebankruptcy garnishment of the bankrupt's wages. The district court ruled that Conklin waived any right to claim the funds because Conklin failed to report the funds in his bankruptcy petition and condemned the funds in favor of the judgment creditor. **OPINION HOLDS:** We agree with the district court's ruling and believe that Conklin's failure to identify the funds in his bankruptcy petition estopped him from asserting title to the funds. We hold that the creditor had a valid prebankruptcy lien upon the garnished funds surrendered by the garnishee, Conklin's employer. Conklin was unable to show that he possessed title to the funds or that the funds qualified as a bankruptcy exemption. The creditor's lien was not otherwise affected by the bankruptcy proceedings. Therefore, the creditor was entitled to condemn the funds held by the district court clerk and to apply them to his judgment against Conklin.

NO. 91-1860. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT v. SCHOOLER.
On review of a report by the Grievance Commission of the Supreme Court. **LICENSE SUSPENDED.** Considered by Harris, P.J., and Larson, Lavorato, Neuman, and Andreasen, JJ. Opinion by Larson, J. (7 pages $2.80)

Our Grievance Commission recommended the suspension of respondent William Schooler's license as a sanction for neglecting estate matters, misrepresenting the status of the estates, and failing to advise his clients of a possible conflict of interest in his dual role as executor and creditor of the estate. **OPINION HOLDS:** We do not hold that a lawyer may never act as a banker, but the respondent in this case clearly overstepped the bounds of propriety. He encouraged the executor of the estate he represented as an attorney to borrow funds from his bank to pay expenses

NO. 91-1860. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT v. SCHOOLER (continued).

of the estate. As the commission noted, the respondent's role as shareholder and officer of the bank had interests adverse to those of the estate and, in view of the potential problem, he should have had consents from all parties affected. The committee also found that the respondent was guilty of misconduct by misrepresenting the status of the proceedings in the estate. Specifically, his statement on his application for fees that the estate is subject to federal estate taxes "which have been filed," was not true. The respondent also prepared a final report that falsely stated that all estate taxes had been paid and that all statutory requirements relating to taxes had been satisfied. We believe that, based primarily on Schooler's failure to divulge the dual nature of his representation, his intentional misstatements to the court regarding the status of estate proceedings, and his tacit approval of his client's decision to violate state and federal tax filing laws, a one-year suspension of his license to practice law is justified.

NO. 91-344. KLEIDOSTY v. EMPLOYMENT APPEAL BOARD.

Appeal from the Iowa District Court for Mahaska County, James P. Rielly, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Neuman, and Andreasen, JJ. Opinion by Larson, J. (6 pages $2.40)

Toni Kleidosty was an employee of Rolscreen Company in its Oskaloosa, Iowa, plant when she pled guilty to delivery of cocaine, a class "C" felony. Rolscreen fired Kleidosty for violating a company rule that prohibited "illegal, immoral, or indecent" conduct by its employees. A job service hearing officer ruled that Kleidosty was entitled to unemployment benefits, and an administrative law judge agreed. The Employment Appeal Board reversed, ruling that Kleidosty's misconduct caused her unemployment and that her conduct was work connected. On Kleidosty's petition for judicial review, the district court agreed with the board. Kleidosty filed this appeal. **OPINION HOLDS:** An individual is disqualified from receiving unemployment benefits if the individual has been discharged for misconduct. Misconduct has been defined by the administrative rules to include a deliberate violation of the employer's rules. We believe it is clear under the evidence in this case that the employer's rules prohibiting "illegal, immoral, or indecent" conduct were clear and that Kleidosty's act of selling cocaine in the face of a rule constitutes a "deliberate violation" under the definition of misconduct. The fact that the conduct occurred off the work premises and may not have affected Rolscreen's business is not relevant to this case. Kleidosty's act constituted misconduct under the administrative rules, and the denial of unemployment compensation was proper.

No. 90-1203. FELLER v. SCOTT COUNTY CIVIL SERVICE COMM'N.
Appeal from the Iowa District Court for Scott County, Edward B. de Silva, Jr., Judge. **REVERSED AND REMANDED WITH DIRECTIONS.** Considered by Harris, P.J., and Larson, Lavorato, Neuman, and Andreasen, JJ. Opinion by Lavorato, J. (16 pages $6.40)

A civil service employee appeals from a district court ruling upholding civil service commission's decision denying the employee a closed hearing regarding his alleged constructive discharge as deputy sheriff. Upon remand from Feller v. Scott Co. Civil Serv. Comm'n, 435 N.W.2d 387 (Iowa App. 1989) the district court refused to order a closed hearing, determined that the commission had not abused its discretion in its decision, and denied the employee any relief. OPINION HOLDS: Our Iowa court of appeals held in the prior appeal that (1) an aggrieved party has a remedy under Iowa's open meetings law, Iowa Code chapter 21, when a governmental body refuses that party's request for a closed meeting; (2) the commission abused its discretion when it denied the employee's request for a closed hearing; and (3) employee's remedy on remand was a closed hearing before the commission. Even though we now doubt whether the open meeting law provides a remedy when a government body refuses to close a hearing, all three determinations in Feller became the law of the case. As such, they were binding on remand and in any subsequent appeal. We reverse and remand the district court's ruling with directions to (1) order a closed hearing before the commission and (2) following a hearing on attorney fees and costs, to award the employee such attorney fees and costs as he is entitled to under the open meetings law.

No. 89-1962. TERRELL v. REINECKER.
On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge. **DECISION OF COURT OF APPEALS AFFIRMED; DISTRICT COURT JUDGMENT REVERSED AND REMANDED.** Considered en banc. Opinion by Harris, J. Dissent by Andreasen, J.
(9 pages $3.60)

The plaintiffs appealed, following a defendant's verdict in this tort suit arising from a collision of motor vehicles. The court of appeals reversed the district court judgment, holding the district court erred by permitting an investigating officer to testify he believed the plaintiffs' vehicle had "failed to yield the right-of-way." We granted further review. **OPINION HOLDS:** The court of appeals correctly concluded the officer's testimony exceeded the proper scope of expert testimony because it involved a legal conclusion concerning a statutory violation. Although the testimony stopped short of stating

No. 89-1962. **TERRELL v. REINECKER (continued).**
negligence had occurred, it did extend too far into the realm of legal conclusion. Although defendants contend otherwise, we cannot find the error was harmless. **DISSENT ASSERTS:** Because I believe the term "failure to yield" is a commonly used descriptive phrase with ordinary meaning, which does not necessarily imply a legal conclusion, I respectfully dissent.

No. 90-1774. IN RE ESTATE OF CLAUSSEN.
Appeal from the Iowa District Court for Scott County, John Nahra, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Schultz, Carter, and Snell, JJ. Opinion by McGiverin, C.J. (12 pages $4.80)

In May 1975, Clarence and Leona Claussen sold eighty acres of farm land to Delmar and Evelyn Claussen. One provision of the parties' real estate contract granted to Delmar and Evelyn the option to purchase an additional forty acres adjacent to the farm land which they were then purchasing. The option clause established a payment plan for the forty acres and required that all principal and interest be paid by March 1, 1991. The option also provided that if it was not exercised during the lifetime of the seller, the option shall continue for six months after the death of the survivor of the seller, and if not exercised in that time shall no longer be effective or valid. Clarence died in July 1982 and Delmar died in October 1983. Leona Claussen died on December 22, 1989. Her estate was opened and Verna Feldpausch and Gladys Helkenn were appointed executors. Shortly thereafter, on February 19, 1990, Evelyn mailed to the executors and their attorney a notice of her election to exercise the option to purchase the forty acres of farm land. The executors responded that they did not believe that the option was legally valid, whereupon Evelyn filed in the estate proceeding an application for specific performance of the option. The district court disagreed with the executors' assertions and ordered that Evelyn was entitled to specific performance of the option. The executors have appealed. **OPINION HOLDS:** We conclude that the district court did not err in ruling that the option clause contained in the May 1975 real estate contract was supported by consideration. We also conclude that Evelyn properly exercised the option by delivering to the executors and their attorney a notice of her intent to exercise. Finally, we conclude that the option clause does not violate the rule against perpetuities. We therefore hold that there is nothing precluding Evelyn's right to specific performance of the option. Accordingly, we affirm the ruling of the district court ordering specific performance of the option contract.

No. 91-387. IOWA CIVIL RIGHTS COMMISSION v. DEERE & COMPANY
Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Neuman, and Andreasen, JJ. Opinion by Andreasen, J. (10 pages $4.00)

This case involves the decision of the Iowa Civil Rights Commission to sua sponte reopen an investigation into alleged age discrimination at John Deere. The investigation was reopened more than three years after the commission had issued a no-probable-cause order involving the same persons and complaints. After reopening the investigation, the commission issued a subpoena duces tecum. When Deere refused to abide by the subpoena, the commission filed an action in the district court to have the subpoena enforced. The district court determined that the commission did not have the underlying authority to reopen the investigation at the time it did, and therefore denied the petition to enforce the subpoena. The commission filed this appeal. **OPINION HOLDS:** 161 Iowa Administrative Code section 3.15(1) provides in pertinent part that the commission may, whenever justice requires, reopen any matter previously closed by it, upon notice of the reopening being given to all parties. The commission asserts this section gives it the authority to reopen a previously closed investigation whenever justice requires. This assertion, however, appears to conflict with a statutory provision legislating specific time periods for seeking review of a no-probable-cause order. Iowa Code section 601A.17(1) provides that a petition for judicial review of no-probable-cause decisions and other final agency actions must be filed within thirty days of the final agency action. The commission cannot circumvent this statute by creating a rule and interpreting such that it may reopen a case after the issuance of a no-probable-cause order, whenever justice requires. We equate a reopening of an investigation to a petition for rehearing in a contested case. A reopening cannot be granted if the specific time for finality as determined by the legislature has been surpassed.

No. 90-1871. STATE v. DOMINGUEZ.

Appeal from the Iowa District Court for Pottawattamie County, Glen M. McGee, Judge. **AFFIRMED.** Considered en banc. Opinion by Andreasen, J. (9 pages $3.60)

Thomas A. Dominguez lost control of his pickup truck and ran into a tree after he had been drinking at a company picnic. He survived the accident but another person in his pickup did not. Approximately four hours after the accident, an alcohol breath test was administered to Dominguez. The results of this test indicated that he had an alcohol concentration more than .10 at the time of the test. Dominguez was eventually charged with homicide by vehicle. Following trial, the jury found Dominguez guilty. The defendant appeals from his conviction of vehicular homicide. **OPINION HOLDS:** I. We conclude that involuntary manslaughter under Iowa Code section 707.5(2) is not a lesser included offense of vehicular homicide under Iowa Code section 707.6A. Vehicular homicide requires proof of an act which is a public offense while involuntary manslaughter requires proof of an act which is not a public offense. The court correctly denied defendant's requested instruction on involuntary manslaughter as a lesser included offense. II. There was sufficient substantial evidence from which a jury could conclude that the defendant was under the influence of alcohol at the time of the accident. Under Iowa Code section 321J.18, results of a breath test taken longer than two hours after the defendant was driving may be used to prove that the defendant was under the influence. III. The State introduced photographs taken of the pickup at the scene of the crime showing a beer bottle on the seat and bottles and cans in the bed. Over defense counsel's objection, the defendant was asked if he ever just put empty cans in the bed of the pickup. We do not believe that such evidence was so prejudicial as to outweigh its probative value since the evidence was relevant in explaining the presence of beer cans in the pickup.

No. 90-1801. HOFCO, INC. V. NATIONAL UNION FIRE INS. CO.
Appeal from the Iowa District Court for Polk County, Richard A. Strickler, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Neuman, and Andreasen, JJ. Opinion by Lavorato, J. (18 pages $7.20)

The issue here is whether a liability insurance policy covers an excise tax levied against an employer because of a transaction between the employer and its employee profit sharing plan and trust. Here the IRS ultimately determined that Hofco's transactions with its employee profit sharing plan and trust were prohibited transactions under 26 U.S.C. § 4975. As a result, IRS assessed an excise tax against Hofco. Hofco then filed this lawsuit, seeking indemnification from its pension trust liability insurer, National Union, for the excise tax. The district court granted summary judgment for National Union. Hofco appeals. **OPINION HOLDS:** Hofco's liability insurance provides coverage for losses resulting from any breach of fiduciary duty. The policy further provides, however, that "loss" shall not include fines or penalties imposed by law. The question here is whether the excise tax imposed is a loss or a penalty under the policy. We agree with National Union that the excise tax is a penalty and is therefore not a "loss" covered by the liability policy. First, according to legislative history, the substantial purpose of taxes imposed pursuant to section 4975 is to prohibit certain conduct, not to raise revenue. Second, Congress has attempted to accomplish this purpose by imposing a tax on the individuals involved in the prohibited transactions. Last, unless the wrong is undone, the tax increases to almost confiscatory rates. Because we hold that the assessment under section 4975 is a "penalty" rather than a "tax," we conclude the policy here affords no coverage for the section 4975 assessment against Hofco.

IOWA ADMINISTRATIVE BULLETIN
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