IOWA ADMINISTRATIVE BULLETIN

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April 13, 1994 Pages 2033 to 2120

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

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 [12C.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.

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 Iowa Administrative 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, 1993, to June 30, 1994	$221.00 plus $11.05 sales tax
Second quarter	October 1, 1993, to June 30, 1994	$165.75 plus $8.29 sales tax
Third quarter	January 1, 1994, to June 30, 1994	$110.50 plus $5.53 sales tax
Fourth quarter	April 1, 1994, to June 30, 1994	$ 55.25 plus $2.76 sales tax

Single copies may be purchased for $15.00 plus $0.75 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

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

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

Iowa Administrative Code - $1,002.75 plus $50.14 sales tax

(Price includes 18 volumes of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders can be purchased for $9.00 plus $0.45 tax.)

Iowa Administrative Code Supplement - $350.00 plus $17.50 sales tax
(Subscription expires June 30, 1994)

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)281-5231

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

Schedule for Rule Making

1994

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. 3 '93	Dec. 22 '93	Jan. 11	Jan. 26	Feb. 16	Mar. 23	June 20
Dec. 17 '93	Jan. 5	Jan. 25	Feb. 9	Mar. 2	Apr. 6	July 4
Dec. 31 '93	Jan. 19	Feb. 8	Feb. 23	Mar. 16	Apr. 20	July 18
Jan. 14	Feb. 2	Feb. 22	Mar. 9	Mar. 30	May 4	Aug. 1
Jan. 28	Feb. 16	Mar. 8	Mar. 23	Apr. 13	May 18	Aug. 15
Feb. 11	Mar. 2	Mar. 22	Apr. 6	Apr. 27	June 1	Aug. 29
Feb. 25	Mar. 16	Apr. 5	Apr. 20	May 11	June 15	Sept. 12
Mar. 11	Mar. 30	Apr. 19	May 4	May 25	June 29	Sept. 26
Mar. 25	Apr. 13	May 3	May 18	June 8	July 13	Oct. 10
Apr. 8	Apr. 27	May 17	June 1	June 22	July 27	Oct. 24
Apr. 22	May 11	May 31	June 15	July 6	Aug. 10	Nov. 7
May 6	May 25	June 14	June 29	July 20	Aug. 24	Nov. 21
May 20	June 8	June 28	July 13	Aug. 3	Sept. 7	Dec. 5
June 3	June 22	July 12	July 27	Aug. 17	Sept. 21	Dec. 19
June 17	July 6	July 26	Aug. 10	Aug. 31	Oct. 5	Jan. 2 '95
July 1	July 20	Aug. 9	Aug. 24	Sept. 14	Oct. 19	Jan. 16 '95
July 15	Aug. 3	Aug. 23	Sept. 7	Sept. 28	Nov. 2	Jan. 30 '95
July 29	Aug. 17	Sept. 6	Sept. 21	Oct. 12	Nov. 16	Feb. 13 '95
Aug. 12	Aug. 31	Sept. 20	Oct. 5	Oct. 26	Nov. 30	Feb. 27 '95
Aug. 26	Sept. 14	Oct. 4	Oct. 19	Nov. 9	Dec. 14	Mar. 13 '95
Sept. 9	Sept. 28	Oct. 18	Nov. 2	Nov. 23	Dec. 28	Mar. 27 '95
Sept. 23	Oct. 12	Nov. 1	Nov. 16	Dec. 7	Jan. 11 '95	Apr. 10 '95
Oct. 7	Oct. 26	Nov. 15	Nov. 30	Dec. 21	Jan. 25 '95	Apr. 24 '95
Oct. 21	Nov. 9	Nov. 29	Dec. 14	Jan. 4 '95	Feb. 8 '95	May 8 '95
Nov. 4	Nov. 23	Dec. 13	Dec. 28	Jan. 18 '95	Feb. 22 '95	May 22 '95
Nov. 18	Dec. 7	Dec. 27	Jan. 11 '95	Feb. 1 '95	Mar. 8 '95	June 5 '95
Dec. 2	Dec. 21	Jan. 10 '95	Jan. 25 '95	Feb. 15 '95	Mar. 22 '95	June 19 '95
Dec. 16	Jan. 4 '95	Jan. 24 '95	Feb. 8 '95	Mar. 1 '95	Apr. 5 '95	July 3 '95
Dec. 30	Jan. 18 '95	Feb. 7 '95	Feb. 22 '95	Mar. 15 '95	Apr. 19 '95	July 17 '95

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
23	**Friday, April 22, 1994**	**May 11, 1994**
24	**Friday, May 6, 1994**	**May 25, 1994**
25	**Friday, May 20, 1994**	**June 8, 1994**

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.

A T T E N T I O N

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Phyllis Barry, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Iowa Administrative Code Division is using a PC system to assist in the printing of the Iowa Administrative Bulletin. In order to most effectively transfer rules from the various agencies sending their rules on a diskette, please note the following:

1. We use a Windows environment with Lotus Ami Professional 3.0 as our word processing system and can import directly from any of the following:

Ami Pro 1.2	Manuscript	Rich Text Format
Ami Pro Macro	Microsoft Word	Samna Word
dBase	Microsoft Word for Windows	SmartWare
DCA/FFT	1.x, 2.0**	SuperCalc
DCA/RFT	MultiMate	Symphony Document
DIF	Navy DIF	Windows Write
Display Write 4	Office Writer	Word for Windows 1.x, 2.0**
Enable	Paradox	WordPerfect 4.1, 4.2, 5.0, 5.1*
Excel 3.0, 4.0	Peach Text	WordStar
Exec MemoMaker	Professional Write	WordStar 2000 ver 1.0, 3.0

* WordPerfect 6.0 filter is not yet available.
** Microsoft Word for Windows 6.0 filter is not yet available.

2. If you do not have any of the above, a file in an ASCII format is helpful.

3. Submit only 3 1/2" or 5 1/4" high density MSDOS or compatible format diskettes. Please indicate on each diskette the agency name, file name, the format used for exporting, chapter or chapters of rules being amended.

4. **Deliver this diskette to the Administrative Code Division, 4th Floor, Lucas Building when documents are submitted to the Governor's Administrative Rules Coordinator.**

Diskettes from agencies will be returned **unchanged** by the Administrative Code Division. Please refer to the hard-copy document which is returned to your agency by the Governor's office. This document reflects any changes in the rules—update your diskettes accordingly.

Your cooperation helps us to print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

To All Agencies:
The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)"b" by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]		
Pesticides—chemigation, ch 45 IAB 4/13/94 **ARC 4719A**	Conference Room — 2nd Floor Wallace State Office Bldg. Des Moines, Iowa	May 3, 1994 1:30 p.m.
Pesticides—civil penalties, 45.100 to 45.105 IAB 4/13/94 **ARC 4720A**	Conference Room — 2nd Floor Wallace State Office Bldg. Des Moines, Iowa	May 3, 1994 10 a.m.
BANKING DIVISION[187]		
Leasing, 9.3 IAB 4/13/94 **ARC 4722A**	Banking Division Conference Room 200 E. Grand Ave. Des Moines, Iowa	May 11, 1994 1:30 p.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
New jobs and income program, ch 62 IAB 4/13/94 **ARC 4717A**	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	May 4, 1994 1:30 p.m.
EDUCATION DEPARTMENT[281]		
Special education, ch 41 IAB 3/2/94 **ARC 4626A**	Conference Rooms 1-4 Heartland Area Education Agency 6500 Corporate Drive Johnston, Iowa	April 25, 1994 6 p.m.
	Fine Arts Center, High School 819 N. 16th St. Denison, Iowa	May 2, 1994 6 p.m.
	Auditorium Hempstead High School 3715 Pennsylvania Avenue Dubuque, Iowa	May 2, 1994 6 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Pollution—voluntary operating permit program, 22.200 to 22.207 IAB 4/13/94 **ARC 4750A**	Conference Room Fifth Floor East Wallace State Office Bldg. Des Moines, Iowa	May 24, 1994 9:30 a.m.
	Gold Room Oakdale Hall University of Iowa Oakdale Campus Oakdale, Iowa	May 25, 1994 10:30 a.m.
	Supervisor's Room — 2nd Floor Webster County Courthouse 703 Central Ave. Fort Dodge, Iowa	May 26, 1994 11 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567](*cont'd*)

Sewage sludge, new ch 67; amendments to chs 23, 68, 69, 100, 102, 103, 120, 121 IAB 3/16/94 **ARC 4678A**	Community Center Cherokee, Iowa	April 18, 1994 1 p.m.
	Community Meeting Room Clear Lake, Iowa	April 18, 1994 7 p.m.
	Community Room Farmers & Merchants Savings Bank Manchester, Iowa	April 19, 1994 1 p.m.
	YW Room Community YMCA Washington, Iowa	April 19, 1994 7 p.m.
	Municipal Utilities Bldg. Atlantic, Iowa	April 20, 1994 1 p.m.
	Conference Room — 4th Floor Wallace State Office Bldg. Des Moines, Iowa	April 21, 1994 1 p.m.
Variance criteria for protected streams, 72.2(1)"d," 72.31(3), 72.32, 72.50(1) IAB 4/13/94 **ARC 4749A**	Conference Room — 5th Floor Wallace State Office Bldg. Des Moines, Iowa	May 3, 1994 10 a.m.

GENERAL SERVICES DEPARTMENT[401]

Terrace Hill Commission, 14.1 to 14.3, 14.7, 16.4 IAB 4/13/94 **ARC 4742A**	Carriage House Terrace Hill Des Moines, Iowa	May 4, 1994 10 a.m.

LIBRARIES AND INFORMATION SERVICES DIVISION[286]

Organization, rescind 224—chs 1 to 6; adopt 286—chs 1 to 3 and 6 IAB 3/30/94 **ARC 4687A** (See also **ARC 4680A**)	Conference Room — 2nd Floor Old Historical Bldg. Des Moines, Iowa	May 3, 1994 1 p.m.

NATURAL RESOURCE COMMISSION[571]

Game management areas, 51.7(2) IAB 3/30/94 **ARC 4704A**	Conference Room Fourth Floor West Wallace State Office Bldg. Des Moines, Iowa	April 19, 1994 2 p.m.
Waterfowl and coot hunting seasons, 91.1 to 91.4 IAB 3/2/94 **ARC 4643A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Nonresident deer hunting, 94.1, 94.2, 94.7, 94.8 IAB 3/2/94 **ARC 4644A**	Conference Room — 4th Floor Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Pheasant, quail and gray (Hungarian) partridge hunting seasons, 96.1 to 96.3 IAB 3/2/94 **ARC 4645A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Common snipe, Virginia rail, sora, woodcock and ruffed grouse hunting seasons, 97.1 to 97.4 IAB 3/2/94 **ARC 4646A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Wild turkey fall hunting, 99.1, 99.4 IAB 3/2/94 **ARC 4647A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.

NATURAL RESOURCE COMMISSION[571](*cont'd*)

Falconry regulations for hunting game, ch 102 IAB 3/2/94 **ARC 4648A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Deer hunting, ch 106 IAB 3/2/94 **ARC 4649A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Rabbit and squirrel hunting, 107.1 to 107.3 IAB 3/2/94 **ARC 4650A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
Mink, muskrat, raccoon, badger, opossum, weasel, striped skunk, fox, beaver, coyote, otter and spotted skunk seasons, 108.1 to 108.5 IAB 3/2/94 **ARC 4651A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 16, 1994 10 a.m.
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Employee drug testing — proficiency test survey specimens, 12.1 to 12.7, 12.11 to 12.15, 12.17 to 12.23 IAB 3/30/94 **ARC 4681A**	Conference Room (Side 2) Third Floor Lucas State Office Bldg. Des Moines, Iowa	April 19, 1994 1:30 p.m.
RACING AND GAMING COMMISSION[491]		
Thoroughbred racing — minimum wagers on exotic wagering, 8.2(20), 8.3(13)"h," 10.1, 10.5(2)"c" IAB 3/30/94 **ARC 4686A**	Commission Office Second Floor Lucas State Office Bldg. Des Moines, Iowa	April 19, 1994 9 a.m.
TRANSPORTATION DEPARTMENT[761]		
Administrative rules and declaratory rulings, amendments to ch 10 IAB 4/13/94 **ARC 4745A**	Commission Room 800 Lincoln Way Ames, Iowa	May 5, 1994 10 a.m. (If requested)
UTILITIES DIVISION[199]		
Ex parte communications, 7.14 IAB 3/30/94 **ARC 4705A**	Hearing Room — 1st Floor Lucas State Office Bldg. Des Moines, Iowa	May 10, 1994 10 a.m.
Energy adjustment clause, 20.9(2) to 20.9(4) IAB 4/13/94 **ARC 4737A**	Hearing Room — 1st Floor Lucas State Office Bldg. Des Moines, Iowa	June 7, 1994 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:

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- Soil Conservation Division[27]

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  - Engineering and Land Surveying Examining Board[193C]
  - Landscape Architectural Examining Board[193D]
  - Real Estate Commission[193E]
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CULTURAL AFFAIRS DEPARTMENT[221]
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- Historical Division[223]
- Public Broadcasting Division[225]

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- High Technology Council[267]
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- Iowa Advance Funding Authority[285]
- Libraries and Information Services Division[286]
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- Criminal and Juvenile Justice Planning Division[428]
- Deaf Services, Division of [429]
- Persons With Disabilities Division[431]
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- Natural Resource Commission[571]
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PREVENTION OF DISABILITIES POLICY COUNCIL[597]

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REORGANIZATION—NOT IMPLEMENTED

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

Iowa Advance Funding Authority[515]

Records Commission[710]

* It is recommended that all white tabs be moved to a separate binder rather than interspersed with the colored tabs, which implemented state government reorganization.

NOTICE--AVAILABILITY OF PUBLIC FUNDS

Agency	Program	Service Delivery	Eligible Applicants	Services	Application Due Date	Contract Period*
Public Health	Child Health and Supplemental Food Program for Women Infants and Children (WIC)	Woodbury County	Private nonprofit and public agencies	Child Health and Supplemental Food Program for Women, Infants and Children (WIC)	June 30, 1994	October 1, 1994 through September 30, 1996

***Contract to be renewed annually during the 2-year project period ending September 30, 1996.**

Request application packet from:

Jane Borst
Bureau of Family Services
Division of Family & Community Health
Iowa Department of Public Health
Lucas State Office Building
Des Moines, Iowa 50319-0075
515-281-4911

ARC 4719A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 159.5(11), 189.2(2), 206A.2, 206A.4, 206A.5, 206A.6, and 206A.7, the Iowa Department of Agriculture and Land Stewardship gives Notice of Intended Action to amend Chapter 45, "Pesticides," Iowa Administrative Code.

1992 Iowa Acts, chapter 1112, enacted a new Iowa Code chapter 206A, "Chemigation," regulating the use of pesticides and fertilizers in irrigation distribution systems.

The proposed amendments are intended to implement this legislation by describing requirements for issuing chemigation permits, the operation of irrigation distribution systems, posting land subject to chemigation and certifying chemigation applicators.

Any interested person may make written suggestions or comments on these proposed amendments on or before May 3, 1994. Such written material should be directed to Dale M. Cochran, Secretary of Agriculture, Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319-0051.

A public hearing will be held on May 3, 1994, at 1:30 p.m. in the second floor conference room of the Henry A. Wallace Building, East Ninth and Grand Avenue, Des Moines, Iowa. Persons may present their views at this hearing either orally or in writing.

These proposed amendments may have an impact on small business under Iowa Code section 17A.31 to the extent that they will impact certified commercial chemigators.

These proposed amendments are intended to implement Iowa Code sections 206A.2, 206A.4, 206A.5, 206A.6, and 206A.7.

The following amendments are proposed.

ITEM 1. Create a **new Division I** composed of existing rules **21—45.1(206)** to **45.52(206)** as follows:

DIVISION I
CERTIFICATION, LICENSING AND REGISTRATION

PREAMBLE

This division sets forth the minimum requirements for pesticide applicator certification and licensing, pesticide dealer licensing and pesticide product registration. This division also sets forth the requirements for posting urban application of pesticides, restrictions on pesticide use, record keeping, and reporting requirements for pesticide applicators and dealers.

ITEM 2. Amend 21—Chapter 45 by reserving rules **21—45.53** to **45.79**.

ITEM 3. Amend 21—Chapter 45 by creating a **new Division II** and adding the following **new** rules:

DIVISION II
CHEMIGATION

PREAMBLE

This division sets forth the minimum requirements for persons applying pesticides or fertilizers through irrigation distribution systems.

This division addresses the permit required for chemigation, the certification requirements for chemigation applicators and the equipment and operational requirements for irrigation distribution systems used for chemigation.

21—45.80(206A) Definitions. In addition to the terms defined in Iowa Code section 206A.1, the following definitions apply:

"Chemical" means a fertilizer as defined in Iowa Code section 200.3 or a pesticide or plant growth regulator as defined in section 206.2.

"Chemigation" means the application of a chemical to land or plants, if the chemical is injected into water used in an irrigation distribution system as provided in rules adopted by the department.

"Chemigation system" means an irrigation distribution system used for chemigation.

"Contamination" means a discharge, spillage, leakage, pumping, pouring, emptying, or dumping of a pesticide as defined in Iowa Code section 206.2, or a fertilizer as defined in section 200.3, with the exception of an application performed in compliance with a chemigation permit or label.

"Sensitive areas" means nontarget areas including surface water, wetlands, sinkholes, extremely sandy or shallow soils and public roads within 100 feet of the site to be treated and residential areas, labor camps, day care centers, hospitals, medical clinics, nursing homes, schoolyards, playgrounds, parks, and other similar public areas of facilities within 300 feet of the site to be treated.

"Written confirmation of chemical compatibility" means a statement, printed document, operational manual or other documentation provided by a chemical manufacturer or equipment manufacturer confirming that a chemical intended for use in a chemigation system is not reasonably expected to have an adverse effect on the intended operation of the components of a chemigation system.

21—45.81(206A) Chemigation permit required. Land shall not be subject to chemigation unless a chemigation permit is issued by the department. The permit shall be issued to the titleholder of the land or the person responsible for the day-to-day management of the land. Prior to engaging in chemigation a person shall file with the department on forms provided by the department an application for a chemigation permit for each injection location. The requirements of this rule do not apply to turfgrass, greenhouse, nursery or forestry applications, direct injection of chemicals into plants or direct application of chemicals to roots of ornamental trees and shrubs.

45.81(1) Application for chemigation permit. The department shall publish and distribute forms for applications for chemigation permits. A separate application shall be filed for each injection location subject to chemigation.

a. Each application to engage in chemigation shall contain:

(1) Full, legal name of applicant.

(2) Mailing address of applicant.

(3) Full name and address of titleholder if the applicant is not the landowner.

(4) Specific location by designation of county, township, section and quarter section of land where the chemigation is to be used.

(5) Type of water supply from which the chemigation system will draw.

(6) Minimum and maximum water withdrawal rates, expressed in gallons per minute, required for the accurate operation of the chemigation equipment.

(7) A map, drawn to scale, plainly identifying the locations of the proposed injection site(s) and the proposed water source(s).

(8) Complete description of the irrigation distribution system, including a schematic drawing which identifies the equipment components required under rule 45.82(206).

(9) Trade name and Environmental Protection Agency registration number for each pesticide to be injected in the chemigation process.

(10) The guaranteed analysis for each type of fertilizer to be injected in the chemigation process.

(11) Full name, certification number, and expiration date of the certificate issued pursuant to Iowa Code section 206A.5 of any individual who may be authorized to inject chemicals into the subject irrigation distribution system.

(12) Type of backflow protection to be used in the system.

(13) Complete description of a plan for handling tailwater or accumulations of water, if applicable.

(14) Appropriate fee for the review of a new chemigation permit. The operator shall notify the department in a timely manner of any changes in the above information.

b. Submission and review of application. The completed application as described in this subrule shall be submitted for review to the pesticide bureau of the department. The department shall approve or disapprove a completed application in a timely manner but not later than 90 days after the application is filed. An incomplete application may be returned to the applicant. The 90-day approval period will begin from the date of receipt of the corrected, completed application. The department may approve an application for a new permit if the following requirements have been met:

(1) A complete application form, including appropriate fee, has been filed for the location.

(2) An inspection has been completed by the department and the irrigation distribution system complies with the requirements of this chapter.

c. Chemigation permit denial, suspension or revocation. The department shall deny an application for a chemigation permit or suspend or revoke a previously issued chemigation permit for good cause as defined in Iowa Code section 206A.2(3). The department shall deny, suspend or revoke a chemigation permit only after notice and opportunity for hearing pursuant to its rules on contested case hearings under 21—Chapter 2.

d. Alternative chemigation system. The department may, for good cause shown, permit an alternative chemigation system design which does not comply with the standards under this chapter, provided that the alternative design complies with other applicable state and federal laws and affords equal or greater protection to the waters of the state. No person may install an alternative chemigation system which is not in compliance with this chapter unless the alternative chemigation system has been approved in writing by the department prior to installation. The alternative chemigation system shall be inspected by the department prior to use. Application for department approval shall be submitted to the department in writing. Applications shall be accompanied by all information and design specifications which may be required by the department. The department shall grant or deny an application within 90 days after a complete application is received by the department.

e. The department may apply special conditions on a permit for chemigation where an irrigation distribution system draws water from groundwater systems that are protected water sources as listed in 567—53.7(455B) of the Iowa Administrative Code. Irrigation distribution systems requiring withdrawal rates in excess of 200 gallons per minute shall not be approved for those chemigation injection locations wherein wells drawing from the Jordan Aquifer constitute the water supply to be utilized.

45.81(2) Permit fees.

a. The fee for an initial application for a chemigation permit shall be $90, payable to the department at the time the application is filed.

b. Chemigation permits issued shall be annual permits and shall expire one year from the date of issuance. A permit may be renewed each year upon payment of the annual renewal fee of $75 and completion of a form provided by the department which lists the trade names of all pesticides and guaranteed analysis for all fertilizers used in chemigation at the location the previous year.

This rule is intended to implement Iowa Code section 206A.2.

21—45.82(206) Requirements for chemigation system. A chemigation system shall be designed, constructed, operated and maintained in a manner to prevent chemical contamination of the waters of the state, and to prevent hazards to persons, property and the environment. A chemigation system, and components of the system, shall be installed, operated and maintained in compliance with this division. No chemical may be injected into a chemigation system unless the chemical is suited for application by chemigation. No chemical may be injected into a chemigation system contrary to or inconsistent with label directions. A chemigation system shall be properly calibrated to apply the chemical at the application rate specified on the chemical label.

45.82(1) Construction materials. Components of a chemigation system shall be resistant to corrosion, puncture and cracking. Components of a chemigation system which may come into contact with chemicals, or with water containing chemicals, shall be compatible with chemicals used in the system. A written confirmation of chemical compatibility shall be obtained from the manufacturer of the system or component, or from the chemical manufacturer prior to injection. The written confirmation shall be kept on file by the permit holder of the chemigation system and shall be made available for inspection upon request by the department.

45.82(2) Chemigation system components. Each mechanical device required shall be installed in the irrigation system at the point specified in paragraphs "a" to "f" of this subrule and shall be installed in accordance with the manufacturer's specifications. Equipment requirements

may vary where diminished application pressures or rates may be required for soil conservation plans prepared in compliance with 567—subrule 50.6(2) of the Iowa Administrative Code.

a. Irrigation pipeline check valve. The check valve shall be located in the pipeline between the irrigation pump and the point of chemical injection into the irrigation pipeline. Its purpose is to prevent a mixture of water and chemical from draining or siphoning back into the irrigation water source.

(1) Existing irrigation distribution systems which, as of the date of the adoption of these rules, are equipped with a properly located check valve shall be considered in compliance if the valve provides a watertight seal against reverse flow.

(2) Irrigation distribution systems which are not equipped with a check valve or contain a check valve which after repair cannot meet the requirement in 45.82(2)"a"(1) shall be equipped with a check valve as specified in subrule 45.83(2).

(3) The area around a wellhead shall be sloped to drain away from the well.

b. Vacuum relief valve. The vacuum relief valve shall be located on the pipeline between the irrigation pump and the irrigation pipeline check valve. Its purpose is to prevent creation of a vacuum when the water flow stops. The vacuum relief valve shall be designed to fail open. If the valve connection will also serve as the inspection port, the permit holder will ensure removal of the valve at the time of inspection.

c. Inspection port. The inspection port or other viewing device shall be located on the pipeline between the irrigation pump and the irrigation pipeline check valve. In appropriate cases the vacuum relief valve connection or an easily removable section of drain pipe can serve as the inspection port.

(1) The inspection port or viewing device shall be situated in such a manner that the inlet to the low-pressure drain can be observed.

(2) A minimum four-inch diameter orifice or viewing area is required for systems without an existing port or device.

d. Low-pressure drain. The low-pressure drain shall be located on the bottom of the horizontal pipe between the irrigation pump and the irrigation pipeline check valve. Its purpose is to drain any mixture of water and chemical away from the irrigation water source.

(1) The drain shall be constructed of corrosion-resistant material or otherwise coated or protected to prevent corrosion;

(2) The drain shall have an orifice of at least three-quarter inch diameter and shall not extend into the horizontal pipe beyond the inside surface of the bottom of the pipe; and

(3) When the pipeline water flow stops, the drain shall automatically open. A tube, pipe or similar conduit shall be used to discharge the solution at least 150 feet from the irrigation water source.

e. Chemical injection line check valve. The chemical injection line check valve shall be located between the point of chemical injection into the irrigation pipeline and the chemical injection pump. Its purpose is to prevent flow of water from the irrigation system into the chemical supply tank and to prevent gravity flow from the chemical supply tank into the irrigation pipeline.

(1) The valve shall be constructed of chemically resistant material;

(2) The valve shall be designed to prevent irrigation water under operating pressure from entering the chemical injection line; and

(3) The valve shall be designed to have a minimum opening (cracking) pressure of ten psi. When the chemical injection pump is shut down, the valve shall prevent any leakage from the chemical supply tank.

(4) If a positive displacement pump is used to inject chemicals, a diaphragm antisyphon device should be used in addition to the check valve. Both devices shall be located so they can be checked and serviced easily.

(5) As an alternative to the minimum opening pressure requirement in 45.82(2)"e"(3), a vacuum relief valve may be placed in the injection line between the chemical injection line check valve and chemical injection pump. The vacuum relief valve shall be constructed of chemically resistant materials, shall open at atmospheric pressure, shall be at an elevation greater than the highest part of the chemical supply tank and shall also be the highest point in the injection line.

f. Simultaneous interlock device. The irrigation pumping plant and the chemical injection pump shall be interlocked so that if the pumping plant stops, the injection pump will also stop. Its purpose is to prevent pumping chemicals into the irrigation pipeline after the irrigation pump stops.

This rule is intended to implement Iowa Code section 206A.4.

21—45.83(206A) Replacement or alteration of chemigation equipment. A permit holder who replaces or alters or authorizes the replacement or alteration of chemigation equipment which was previously approved by the department shall notify the department, in writing, in a timely manner.

The department may conduct an inspection of the replaced or altered equipment and shall order the discontinuation of chemigation if, upon inspection, the replaced or altered equipment fails to remain in compliance with the requirements of this chapter. Upon meeting the requirements of Iowa Code section 206A.4 and this chapter, the department shall lift the discontinuation order for chemigation for the location. No additional permit fee shall be collected by the department for inspection of a previously approved injection location.

45.83(1) Replacement irrigation pipeline check valves shall meet the following minimum requirements:

a. The valve body and all components shall be constructed of corrosion-resistant materials or otherwise coated or protected to prevent corrosion;

b. The valve shall contain a sealing mechanism designed to close prior to or at the moment water ceases to flow in the downstream direction. This mechanism shall be either diaphragm-actuated by hydraulic line pressure, spring-loaded or weight-loaded to provide a watertight seal against reverse flow;

c. The valve shall be designed to meet the leakage tests specified in Underwriters Laboratory, Inc., Standard UL 312, section 18, Leakage Test, page 16, dated June 2, 1993;

d. All moving components of the valve shall be designed to prevent binding, distortion or misalignment during water flow; and

e. The valve shall be designed to allow for easy repair and maintenance, including removal from the pipeline if required to perform such work.

45.83(2) The equipment required in these rules shall be maintained in working condition during all times of chemigation. When required, the equipment shall be repaired to its originally designed condition.

This rule is intended to implement Iowa Code section 206A.4.

21—45.84(206) Operator inspection of chemigation system. An irrigation distribution system and chemical injection location shall be inspected by the applicator or permit holder prior to each injection of chemicals. The inspection shall include the following procedures:

45.84(1) Equipment maintenance and inspection. All supply tanks, hoses, clamps and fittings shall be inspected before each chemigation operation. The applicator or permit holder shall monitor the irrigation system and chemical injection equipment to ensure proper operation. Before chemigating, the applicator or permit holder shall inspect equipment to be certain the following items are functioning properly prior to operation:

a. Irrigation system main pipeline check valve and vacuum relief valve.

b. Chemical injection line check valve.

c. Irrigation system and pumping plant main control panel and the chemical injection pump safety interlock.

d. Low pressure drain.

e. Injection system including the in-line strainer.

f. Irrigation pump and power source.

45.84(2) Equipment shall be recalibrated when changing chemicals.

45.84(3) End gun operations shall be monitored to be certain that they do not operate over roadways or across fence lines.

45.84(4) To prevent the accumulation of precipitates in the injection equipment, the chemigation applicator or permit holder shall flush the injection system and the chemical injection line check valve after each use. Flush systems directly connected to a water source shall be protected against backflow. Where pesticides are flushed from the injection system, the resulting rinsates shall be disposed of in a manner consistent with label directions.

This rule is intended to implement Iowa Code section 206A.4.

21—45.85(206A) Certification standards for chemigation applicators. No person shall inject chemicals into an irrigation distribution system, nor authorize the injection of chemicals into an irrigation distribution system, without first verifying that a chemigation permit for the land to be chemigated is in effect and complying with the certification standards for a chemigation applicator as specified in this chapter.

45.85(1) Before a chemigation applicator certification is issued, a chemigation applicator shall demonstrate competence by successfully completing the appropriate written examinations administered by the department. The chemigation applicator shall be examined prior to initial certification. In addition, the chemigation applicator shall be reexamined every three years following initial certification before the applicator is eligible for renewal of a chemigation certification.

45.85(2) Examination scores for individuals not completing certification requirements or paying the required fees shall be maintained on file as valid test scores for a maximum of one year following the date each examination was successfully completed.

45.85(3) Certification fees.

a. A chemigation applicator shall choose between a one-year certification for which the applicator shall pay a $75 fee or a three-year certification for which the applicator shall pay a $225 fee. Fees collected pursuant to this subrule shall be deposited into the chemigation fund. The chemigation certification fee required in this subrule is in addition to any fee required in Iowa Code section 206.5.

b. A 30-day grace period from the date of expiration may be allowed for the renewal of a chemigation applicator certification.

c. A chemigation applicator may request certification by oral examination in lieu of a written examination. A written request shall be submitted to the department or an authorized representative describing in detail the reasons an oral examination is requested in lieu of the written examination. Oral examinations will be administered by appointment only. The oral examination shall be identical to the written examination. A minimum passing grade shall be 70 percent of the questions answered correctly. As a prerequisite for an oral examination, the department may require the applicant to attend a training program sponsored by Iowa State University or other training program approved by the department.

45.85(4) A chemigation applicator shall also comply with certification requirements specified in Iowa Code section 206.5 when applicable.

45.85(5) A certificate shall be issued to each certified chemigation applicator upon satisfactory completion of the requirements for certification. The certificate shall show the applicator's name, type of certificate issued, the expiration date of the certificate and other pertinent information. The certified chemigation applicator shall produce such certificate when requested by any authorized representative of the department or permit holder.

45.85(6) Any certified chemigation applicator shall notify the department of any change in the applicator's mailing address in a timely manner.

This rule is intended to implement Iowa Code section 206A.5.

21—45.86(206) Posting of chemigated areas.

45.86(1) A chemigation applicator shall cause to have notification placards posted prior to the start of the chemigation and for at least 24 hours following the chemigation or longer if required by the reentry restrictions on the chemical labels. Any other statements and warnings pertinent to the posting of field entrances required by product labeling shall also be included in this notice. The notification placard shall include the name of any restricted use pesticide used in chemigation. Where pesticide labeling may require more stringent posting requirements, the requirements specified by the labeling shall be followed. Placards shall not be removed until chemigation is completed and the reentry restriction has expired.

45.86(2) Notification placards shall be posted in a conspicuous manner near each approach or entrance to the area subject to chemigation. The placard shall be constructed of a weather-resistant material and be a minimum size of 16 inches by 20 inches.

a. Placards shall be white and bear the words, "KEEP OUT", below which is an octagonal stop sign symbol at least 8 inches in width containing the word "STOP". Below the symbol shall be the words, "CHEMICALS BEING APPLIED IN IRRIGATION WATER". All words shall consist of letters at least 2½ inches in height. The words and symbol shall be conspicuous and legible.

b. Notification placards required in this rule may remain posted indefinitely as long as they are composed of materials that are not subject to deterioration and remain legible for the duration of the posting interval.

c. Posting required under this rule applies to sites treated by means of chemigation. Placards shall be posted at regular intervals along the border between the treated area and the public road or other sensitive area, and at normal points of access, with at least one placard being posted for each ¼ mile of border. Treated areas bordering a public road or other sensitive area for less than ¼ mile shall be posted with at least one placard.

This rule is intended to implement Iowa Code section 206A.6.

21—45.87(206A) Report of contamination. A permit holder or a chemigation applicator certified pursuant to Iowa Code section 206A.5 shall report an actual or suspected case of contamination related to the use of chemigation on land serviced by an irrigation distribution system as soon as possible but not later than six hours after discovery of the contamination. The report shall be made to the pesticide bureau of the department or to the Iowa department of natural resources 24-hour emergency spill response number at (515)281-8694. The report also may be filed with the local police department or the office of the sheriff of the affected county of the occurrence of the contamination. A sheriff or police chief or peace officer who has been notified of a contamination shall immediately notify the department or the Iowa department of natural resources. Reports made pursuant to this rule shall be confirmed in writing as provided in this rule. A report to a county sheriff shall be considered a report to the department for purposes of this rule. Reports of contamination filed pursuant to this rule may also be subject to reporting requirements as specified in Iowa Code section 455B.386.

45.87(1) Verbal report. A verbal report of contamination shall provide information on as many items listed in subrule 45.87(2) as available data will allow. Upon receipt of a verbal report of contamination, the agency receiving the report shall provide instructions to the landowner or permit holder on what immediate steps shall be taken to prevent or minimize release to the groundwater.

45.87(2) Written report. A written report of contamination shall be submitted to the pesticide bureau of the department within 30 days and contain the following information:

a. The exact location of the contamination.

b. The time and date of onset or discovery of the contamination.

c. The name of the material, the manufacturer's name and the volume of each material involved in the contamination in addition to contaminants within the material if they by themselves could cause a contamination.

d. The medium (land or water) in which the contamination occurred or exists.

e. The name, address and telephone number of the party responsible for the contamination.

f. The time and date of the verbal report of the contamination to the department.

g. The weather conditions at the time of the contamination onset or discovery.

h. The name, mailing address and telephone number of the person reporting the contamination.

i. The name and telephone number of the person closest to the scene of the contamination who can be contacted for further information and action.

j. Any other information, such as the circumstances leading to the contamination, visible effects and containment measures taken that may assist in proper evaluation by the department.

45.87(3) Investigation of reported contamination. The department shall initiate an investigation within 48 hours of receipt of the verbal report of contamination. The department shall determine the extent to which the contamination poses a threat to the public. The investigation may consist of soil and water samples taken for laboratory analysis and any other steps deemed necessary by the department to determine the extent of contamination. The applicator or permit holder shall cooperate fully with the department, including providing any information pertaining to the contamination which the department requests.

45.87(4) Cleanup and recovery plan.

a. Upon completion of the investigation, where a contamination is not subject to the provisions of Iowa Code chapter 455B, division IV, part 4, as determined by the Iowa department of natural resources, the department shall draft and serve upon the permit holder a plan of cleanup and recovery. Service may be completed by ordinary mail or personally upon the permit holder.

b. The cleanup and recovery plan shall identify the steps required for the landowner or permit holder to abate or prevent further contamination. These may include the active removal of contaminated soil or groundwater, or monitoring the groundwater and implementing reasonable management or other preventative measures to minimize further contamination. The cleanup and recovery plan may incorporate steps already taken to address contamination.

c. The department may consult with any federal, state, or local agency in drafting the plan. The department may also consult with, or enter a contract to assist in preparation of the plan with, any private agency as defined in Iowa Code section 28E.2. All costs incurred in preparation and implementation of the plan shall be borne by the permit holder. The plan shall provide means through which the department will supervise its implementation.

45.87(5) Contamination as a hazardous condition. An incident of contamination may constitute a hazardous condition, as defined in Iowa Code section 455B.381(4), subject to the provisions of Iowa Code chapter 455B, division IV, part 4, under the direction of the Iowa department of natural resources. If contamination is of sufficient quantity to constitute a hazardous condition, the department shall notify the Iowa department of natural resources. Nothing in these rules shall be construed as relieving any person from initially reporting a hazardous condition.

This rule is intended to implement Iowa Code section 206A.7.

ARC 4720A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 159.5(11), 206.19(5) and Iowa Code Supplement section 206.23A, the Iowa Department of Agriculture and Land Stewardship gives Notice of Intended Action to amend Chapter 45, "Pesticides," Iowa Administrative Code.

Iowa Code Supplement section 206.19(5) authorizes the Department to establish, assess, and collect civil penalties for violations by commercial applicators. Iowa Code Supplement section 206.23A authorizes the Department to establish a commercial pesticide applicator peer review panel. The proposed amendments implement these provisions by providing the procedure and criteria for the establishment, assessment, and collection of civil penalties by the Department and by establishing a commercial pesticide applicator peer review panel.

Any interested person may submit written suggestions or comments on these proposed rules and the issues raised in this Notice of Intended Action. Such written material should be addressed to the Pesticide Bureau, Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319-0051, and must be mailed no later than May 3, 1994.

A public hearing will be held on May 3, 1994, at 10 a.m. in the Second Floor Conference Room of the Henry A. Wallace Building at which time persons may present their views either orally or in writing.

These proposed rules may have an impact on small business within the meaning of Iowa Code section 17A.31(3).

These proposed rules are intended to implement Iowa Code Supplement sections 206.19(5) and 206.23A.

The following rules are proposed.

Amend **21—Chapter 45** by adopting the following new rules:

DIVISION III
CIVIL PENALTIES

PREAMBLE

This division establishes a peer review panel solely to make recommendations to the department regarding the assessment of civil penalties and sets forth the policies and procedures for establishing, accessing, and collecting civil penalties against commercial pesticide applicators for violations of Iowa Code chapter 206 or rules promulgated pursuant to Iowa Code chapter 206. Iowa Code Supplement section 206.19(5) authorizes the assessment of civil penalties against commercial applicators for violations of Iowa Code chapter 206 or rules promulgated pursuant to Iowa Code chapter 206. Iowa Code Supplement section 206.23A mandates the department to establish a commercial pesticide applicator peer review panel and a period for the review and response by the panel.

21—45.100(206) Definitions. Where used in these rules:

"Contested case hearing" means an evidentiary hearing pursuant to Iowa Code chapter 17A.

"Department" means the pesticide bureau of the Iowa department of agriculture and land stewardship.

"Informal settlement" means an agreement between representatives of the department and a commercial applicator providing for sanctions for a violation of Iowa Code chapter 206 or the department's rules but does not include a contested case hearing.

"Panel" means the peer review panel.

"Peer review panel" means the peer review panel appointed by the secretary to assist in the review of proposed civil penalties for commercial applicators.

"Review period" means the period of time during which the department or commercial applicator subject to a civil penalty may seek review by the panel.

21—45.101(206) Commercial pesticide applicator peer review panel. The peer review panel was created by Iowa Code Supplement section 206.23A and is charged with the responsibility of assisting the department in assessing or collecting a civil penalty pursuant to Iowa Code Supplement section 206.19(5). This section does not apply to a license revocation proceeding, a referral for criminal prosecution or a referral to the United States Environmental Protection Agency.

45.101(1) Organization and operation location. The panel is located within the Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319. The department's office hours are from 8 a.m. to 4:30 p.m., Monday through Friday.

45.101(2) Membership. The panel consists of five members as set forth in Iowa Code Supplement section 206.23A.

45.101(3) Staff. Staff assistance is provided through the Iowa department of agriculture and land stewardship.

45.101(4) Meetings. The panel meets annually to elect a chairperson but may meet at other times at the call of the chairperson or upon written request to the chairperson of two or more members.

All panel meetings shall comply with Iowa Code chapter 21. A quorum of three-fifths of the panel members shall be present to transact business.

Action by the panel requires a vote of a majority of those on the panel. Meetings follow Robert's Rules of Order. Minutes of each meeting are available from the Secretary of Agriculture, Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319.

21—45.102(206) Civil penalties—establishment, assessment, and collection. Commercial applicators who violate provisions of Iowa Code chapter 206 or rules promulgated pursuant to Iowa Code chapter 206 may be subject to civil penalties. This rule outlines the criteria and procedures for establishing, assessing, and collecting civil penalties.

45.102(1) Criteria. In evaluating a violation to determine which cases may be appropriate for administrative assessment of penalties, and in determining the amount of penalty, or for purposes of assessing civil penalties, the department shall consider all of the following factors:

a. Willfulness or recklessness of the violation.

b. Actual or potential danger of injury to the public health, safety, or damage to the environment caused by the violation.

c. Actual or potential cost of the injury or damage caused by the violation to the public health or safety or to the environment.

d. Actual and potential cost incurred by the department in enforcing the provisions of Iowa Code chapter 206 and rules adopted pursuant to this chapter against the violator.

e. Remedial action taken by the commercial applicator.

f. Previous history of noncompliance by the commercial applicator being assessed the civil penalty.

45.102(2) Notice and hearing. Civil penalties may be assessed against a commercial applicator only after notice and an opportunity for a contested case hearing unless the parties agree to an informal settlement which assesses a civil penalty or other disciplinary action. The department may seek assessment of a civil penalty by serving a complaint upon the commercial applicator. The complaint shall include a statement of the time, place and nature of the hearing, a statement of the legal authority and jurisdiction under which the hearing will be held, a reference to the statute or rules involved, a statement of the matters asserted, and shall inform the applicator of the availability of review by the panel. The complaint may be served on the commercial applicator by personal service or by certified mail, return receipt requested. The contested case shall be governed by the department's rules on contested case hearings. The department's procedures for informal settlement also apply.

45.102(3) Administrative order. Upon finding that a commercial applicator has violated Iowa Code chapter 206 or rules adopted pursuant to this chapter, an administrative order shall be issued assessing the civil penalty. The order shall recite the facts, the legal requirements which have been violated, the rationale for the assessment of the civil penalty and the date of issuance.

45.102(4) Amount of penalty. The civil penalty imposed on a commercial applicator shall not exceed $500 per violation of Iowa Code chapter 206 or to the rules promulgated pursuant to Iowa Code chapter 206. Each day a commercial applicator is in violation following receipt of written notification of such violation from the department may be considered a separate violation.

45.102(5) Payment. The penalty shall be paid within 30 days of the date the order assessing the civil penalty becomes final. Failure to pay the civil penalty within three months of the date the order becomes final shall be grounds for suspension or revocation of the commercial applicator's license. The department may request that the attorney general institute judicial proceedings to recover an unpaid civil penalty.

45.102(6) Informal settlement. These rules do not apply to any settlement reached between the commercial applicator and the department prior to the initiation of a contested case proceeding. The department shall notify the applicator that it has found a probable violation with a proposed penalty and provide the applicator an opportunity to attend an informal settlement conference. The department and the applicator may attend an informal settlement conference and reach an agreement about the assessment of a civil penalty or other disciplinary action against the applicator. This agreement is not reviewable by the panel.

21—45.103(206) Review period. Either the department or commercial applicator may request peer review within 14 days following the department's notification of a probable violation and proposed penalty, if no agreement has been reached.

45.103(1) If the department seeks review, it shall prepare a brief summary of the case against the commercial applicator for the panel. The summary shall include the name of the applicator, a short and concise description of the facts, and the rationale for the penalty sought with reference to the factors to be considered in assessment of civil penalties as provided in these rules.

45.103(2) If the commercial applicator seeks review, the commercial applicator shall submit a short and concise statement of the facts of the case and a statement as to why the amount of civil penalty sought to be assessed is inappropriate under the circumstances of the case.

21—45.104(206) Review by peer review panel. The request for review shall be served in writing by regular mail upon the chairperson of the panel, with copies furnished to the other party. Upon receipt of the request for review, the chairperson shall schedule a meeting of the panel in Des Moines at the Henry A. Wallace Building. The panel may agree to meet telephonically, with the chairperson providing copies of the request for review to the members of the panel.

45.104(1) The panel shall confine its review to the department's summary or the information furnished by the commercial applicator. The department's investigative files, or parts thereof, may be made available to the panel upon request. The panel's review shall not be a contested case evidentiary hearing. The panel shall not have power to examine or cross-examine witnesses, nor shall it have power to subpoena witnesses or documents.

45.104(2) The panel's recommendation may include increasing the amount of civil penalty, reducing the amount of civil penalty or not imposing a penalty or that conditions be placed upon the license of the commercial applicator.

21—45.105(206) Response by peer review panel. The panel shall notify in writing the department and the commercial applicator of its recommendations within 30 days of receipt of a request for review. Upon receipt of the panel's recommendations, the department and the commercial applicator may reach an agreement on the amount of the civil penalty. If the parties do not agree, the department may initiate or continue the contested case proceeding. The department is not required to follow the recommendation of the panel as to assessment of the civil penalty. If the department does not receive a recommendation from the panel within 30 days of the panel's receipt of a request for review, it may proceed with the hearing.

These rules are intended to implement Iowa Code Supplement section 206.23A.

ARC 4722A

BANKING DIVISION[187]

Notice of Termination

and

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 524.213, the Banking Division of the Commerce Department hereby gives Notice of Intended Action to amend Chapter 9, "Investment and Lending Powers," Iowa Administrative Code.

In addition, the Division hereby terminates a proposed rule making on which a Notice of Intended Action was published in the January 5, 1994, Iowa Administrative Bulletin as **ARC 4538A** [187—9.3(17A,524)]. The subject matter of the terminated rule making is very similar to the rule proposed in this rule making. However, revisions were made to reflect comments made.

Specifically, the new language will provide state-chartered banks guidance in engaging in direct or purchased leasing. Under the new language, state banks shall develop a written lease policy, shall perform an independent credit analysis of the lessee, shall conduct at inception and annually thereafter collateral inspections, and shall maintain original documentation. In addition, the new language grants state banks the authority to exempt from certain requirements the aggregate rentals payable of leases up to 25 percent of their total equity capital. Prior approval of the Superintendent is necessary to exceed this 25 percent exemption.

Interested persons may make written comments on the noticed rule on or before May 10, 1994. Such written material should be directed to the Superintendent of Banking, Banking Division, Department of Commerce, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Superintendent of Banking, Department of Commerce, at (515)281-4014 or at 200 East Grand Avenue, Suite 300.

Also, a public hearing will be held on Wednesday, May 11, 1994, at 1:30 p.m. in the Banking Division Conference Room at 200 East Grand Avenue. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Superintendent of Banking by May 10, 1994.

This rule is intended to implement Iowa Code section 524.908.

The following rule is proposed.

Amend 187—Chapter 9 by adding the following new rule:

187—9.3(17A,524) Leasing.

9.3(1) Definitions. For purposes of this rule, the term:

"Aggregate rentals payable" shall include the total of minimum lease payments (net of unearned income) that the lessee is obligated to make or can be required to make plus any guarantee of the residual value or of rental payments beyond the lease term by a third party unrelated to either the lessee or the lessor, provided the third-party guarantor is financially capable of discharging the obligation.

"Bank officer" means an administrative official of the bank elected by the state bank's board of directors to carry out the bank's operating rules, including the bank's loan and lease policies.

"Full payout lease" shall be one in which the lessor's service is limited to the financing of the asset, with the lessee paying all other costs, including maintenance and taxes, and has the option of purchasing the asset at the end of the lease for a nominal price. The lease shall be fully amortized over the term of the lease or lifetime of the asset, whichever is less.

"Inception of the lease" means the date of the lease agreement or commitment, if earlier, or the date the lease is purchased by the state bank. For purposes of this definition, a commitment shall be in writing, signed by the parties in interest to the transaction, and shall specifically set forth the principal terms of the transaction. However, if the property covered by the lease is a fixture yet to be constructed or has not been acquired by the lessor at the date of the lease agreement or commitment, the inception of the lease shall be the date that construction of the property is completed or the property is acquired by the lessor. The inception date of a lease assumed in a business combination accounted for as a purchase is the date the combination is recorded for accounting purposes.

"Independent third-party appraiser" means an individual not involved with the lease transaction, except as the appraiser, with no direct or indirect interest, financial or otherwise, in the property appraised or the parties involved with the transaction. The bank shall take appropriate steps to ensure the appraiser exercises independent judgment and that the appraisal is adequate.

"Lease servicer" means an entity that collects monthly principal and interest payments from the lessee and then forwards the payments to the purchasing institution or maintains lease records for a fee.

"Leasing company" means an enterprise that makes leases or assembles leases for resale to a bank. Leases acquired by a state bank from an affiliated leasing company will be treated for purposes of this rule the same as if the lease was originated by the bank itself. In determining if an affiliate relationship exists, the provisions of Iowa Code section 524.1101 shall apply.

"Lessee" means the party using the leased property.

"Lessor" means the party owning the leased property.

"Residual value" means the estimated fair value of the leased property at the end of the lease term.

9.3(2) General direct and purchased lease guidelines.

a. The board of directors of the state bank shall formulate and maintain a written lease policy that is appropriate for the size, nature and scope of the bank's operation. Each policy must be comprehensive and consistent with safe and sound banking practices. The standards and limits established in the policy must be reviewed and approved at least annually by the board. The bank's lease policy, at a minimum, should:

(1) Identify acceptable lease servicers and lessors (purchased leases only).

(2) Establish aggregate volume of paper to be purchased from approved servicers and lessors (purchased leases only).

(3) Identify geographic area where the bank will consider purchasing or originating leases.
(4) Establish lease portfolio diversification standards.
(5) Set appropriate terms and conditions by type of leases.
(6) Establish lease origination and approval procedures.
(7) Establish prudent underwriting standards.
(8) Establish lease administration procedures.
(9) Establish appraisal and evaluation programs.
(10) Monitor the portfolio and provide timely reports to the board of directors.
(11) Set forth permitted exceptions to the policy.

When formulating the lease policy, the board should consider both internal and external factors, such as size and condition of the state bank, expertise of the lending staff, avoidance of undue concentrations of risk, and general market conditions.

b. Whether the bank is serving as lessor or acquiring a lease through purchase, a bank officer shall perform an independent credit analysis of the lessee.

c. The bank or an affiliated leasing company shall obtain collateral values, lien status, lease agreements, participation agreements, and title documentation within 45 calendar days from the date of inception with original documentation being maintained in the bank's or affiliated leasing company's credit files.

d. A bank officer, an officer of an affiliated lease originator, or an independent third-party appraiser shall conduct at inception, and then at least annually thereafter, an inspection of the leased personal property. However, an inspection for a municipal lease will only be required at time of inception. Proof of inspections conducted shall be maintained in the file.

e. Ongoing documentation requirements to support the lease shall be the same as if the bank had made a direct loan to the lessee for purchase of the asset being leased.

f. The lease shall be a full-payout, noncancelable obligation of the lessee with the obligation serving the same purpose as other forms of bank financing. For purposes of this rule, a lease to a governmental unit which contains a fiscal funding clause would be considered a noncancelable lease if the likelihood of exercise of the fiscal funding clause is assessed as being remote.

g. Property covered by the lease shall be limited to personal property, excluding livestock.

h. The lease shall require rental payments to be made on a periodic basis, but no less frequently than annually.

i. The term of a lease shall not exceed seven years if made to a nongovernmental unit or ten years if made to a governmental unit without the prior approval of the superintendent of banking.

j. Aggregate rentals payable by the customer under leases of personal property shall conform to the limits imposed by Iowa Code section 524.904.

k. All lease receivables shall be booked in accordance with call report instructions.

l. Unguaranteed residual value established by the lessor for any lease, whether originated by the state bank or acquired through purchase, shall not exceed 25 percent of the original cost of the leased property. The amount of any estimated residual value guaranteed by a third party which is not an affiliate of the bank may exceed 25 percent of the original cost of property where the bank has determined and can provide full supporting documentation that the guarantor has the resources to meet the guarantee.

While this guideline prohibits unguaranteed residual values to exceed 25 percent of the original cost, the estimated residual value shall be reasonable in relation to the type of property leased so the primary risk taken by the bank is the creditworthiness of the lessee and not the market value of the leased property. All estimated residual values shall be reviewed at least annually.

If the state bank carries the estimated residual value on its books and a review of the estimated residual value results in a lower estimate than had been previously established, the accounting for the transactions shall be revised using the new estimate. The resulting reduction in the net investment shall be recognized as a loss in the period in which the estimate is changed. An upward adjustment of the residual value shall not be made.

m. Consumer leases, whether originated or purchased by a state bank, shall conform to Iowa Code section 537.3202 and Chapter 5 of the Truth-in-Lending Act (15 U.S.C. 1601 et seq.).

n. If an affiliate of a state bank is regarded as the originator of a lease, the affiliate shall be subject to provisions of Iowa Code section 524.1105.

9.3(3) Specific purchased lease guidelines.

a. If the obligations acquired carry full recourse endorsements, guaranty, or an agreement to repurchase of the lessor or servicer negotiating the sale of the leases, then the endorser, guarantor, or repurchaser shall also be deemed to be a customer of the bank. This customer's obligation would be limited to 60 percent of capital and surplus of the state bank if the amounts exceeding 20 percent of capital and surplus consist of obligations as endorser of negotiable chattel paper negotiated by endorsement with recourse, or as unconditional guarantor of nonnegotiable chattel paper, or as transferor of chattel paper endorsed without recourse subject to a repurchase agreement.

b. The bank shall provide the necessary letters of assurance for each lease servicer as required under Iowa Code section 524.218.

c. Financial information shall be obtained no less frequently than annually on any lease servicer, with an evaluation of the creditworthiness of the lease servicer being made. This documentation is to be maintained on file by the bank.

9.3(4) Specific direct leasing guidelines. Acceptable methods of accounting for investment tax credits shall be used.

9.3(5) Exempted transactions. In some instances, it may be appropriate, in light of all relevant credit considerations, to originate or purchase leases that do not conform with the requirements of 9.3(2)"c," "d," and "e." The outstanding aggregate rentals payable of all originated and purchased leases that fall into this category shall not exceed 25 percent of the total equity capital as reflected on the state bank's most recent consolidated report of condition, unless prior approval to exceed this limitation has been obtained from the superintendent of banking. These exempted leases shall be identified by the board of directors at inception by name and outstanding balance and shall be reviewed by the board at least quarterly. Examiners, during the course of their examinations, will determine whether these exempted leases are adequately documented and appropriate in light of overall safety and soundness considerations. No leases to directors, officers, or principal shareholders or their related interests shall be allowed in the exempted category of this subrule.

ARC 4717A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to establish a new Chapter 62, "New Jobs and Income Program," Iowa Administrative Code.

The proposed chapter implements a new program authorized by 1994 Iowa Acts, House File 2180. The legislation authorizing this program will become effective on May 1, 1994. The proposed chapter outlines the benefits available under the program, provides eligibility requirements, and describes the application and approval process.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on May 4, 1994. Interested persons may submit written or oral comments concerning the proposed chapter by contacting: Bob Henningsen, Division of Business Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4725.

A public hearing to receive comments about the proposed new chapter will be held on May 4, 1994, at 1:30 p.m. at the above address in the IDED main conference room. Individuals interested in providing comments at the hearing should contact Bob Henningsen by 4 p.m. on May 3, 1994, to be placed on the hearing agenda.

These rules are intended to implement 1994 Iowa Acts, House File 2180.

The following new chapter is proposed.

Insert new 261—Chapter 62 as follows:

CHAPTER 62
NEW JOBS AND INCOME PROGRAM

261—62.1(75GA,HF2180) Purpose. The purpose of the new jobs and income program is to encourage relationships between state government and business by supporting mutual development objectives. The program is designed to encourage sustained profitability for eligible businesses that invest and operate in the state in return for the desired state outcomes of new jobs and higher income.

261—62.2(75GA,HF2180) Definitions.

"Board" means the Iowa department of economic development board.

"Community" means a city, county, or an entity established pursuant to Iowa Code chapter 28E that is a certified participant under Iowa Code section 15.308 (community builder program) or has established a comprehensive plan approved by the department.

"Director" means the director of the Iowa department of economic development.

"DRF" means the Iowa department of revenue and finance.

"Eligible project" means the business's proposed start-up, expansion or location activity for purposes of receiving program benefits. A project is not eligible if the business has completed or taken material action to initiate the project prior to the date of application for program benefits. Material action includes the initiation of production or service operations.

"Full-time" or "full-time equivalent job" means the equivalent of employment of one person for 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year.

"Group of businesses" means two or more businesses that each provide a necessary component in the completion of an overall project.

"Program" means the new jobs and income program.

261—62.3(75GA,HF2180) Agreement prerequisites. Before the department and a business enter into an agreement for program benefits, the following steps must be completed:

62.3(1) The business submits an application in compliance with the provisions of these rules.

62.3(2) The department determines that the business or group of businesses has met the threshold requirements for program participation.

62.3(3) The board approves the application and authorizes the department to execute an agreement with the business or group of businesses.

261—62.4(75GA,HF2180) Program benefits. The following benefits are available to an eligible business:

62.4(1) New jobs supplemental credit. A supplemental new jobs credit from withholding in an amount equal to one and one-half percent of the gross wages paid by the business. The supplemental new jobs credit available under this program is in addition to and not in lieu of the program and withholding credit of one and one-half percent authorized under Iowa Code chapter 260E. Approval and administration of the supplemental new jobs credit shall follow existing procedures established under Iowa Code chapter 260E.

62.4(2) Value-added property tax exemption. A value-added property tax exemption of all or a portion of the actual value added by improvements to real property directly related to new jobs created by the location or expansion of the business and used in the operation of the business. The exemption may be allowed by a community for a period of up to 20 years beginning the year the improvements are first assessed for taxation. The community shall provide to the department a copy of the resolution adopted by its governing body which indicates the estimated value and duration of the exemption authorized.

62.4(3) Investment tax credit. A corporate tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

62.4(4) Exemption from taxation for machinery, equipment and computers. An exemption from taxation for machinery, equipment, and computers for a period of up to 20 years. A business may claim as exempt from

taxation all or a portion of the value of the property, directly related to new jobs created by the location or expansion of a business under the program and used by the business. Property eligible for this exemption shall be acquired or initially leased by the business or relocated by the business to the facility from a facility outside the state of Iowa.

62.4(5) Research activities credit. A corporate tax credit for increasing research activities in this state during the period the business is participating in the program. This credit equals six and one-half percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed.

261—62.5(75GA,HF2180) Limitation on incentives. An eligible business may receive other applicable federal, state, and local incentives and credits in addition to those provided under this program. However, a business which participates in this program shall not receive funds from the community economic development account under the community economic betterment program described in 261 IAC 22.

261—62.6(75GA,HF2180) Application. To request participation in the program, a business shall submit application to the department. A business may submit an application individually or as a part of a group of businesses. Requests for an application should be directed to the: Iowa Department of Economic Development, Division of Business Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

261—62.7(75GA,HF2180) Eligibility requirements. Retail business shall not be eligible to receive benefits under this program. To be eligible for program participation a business shall meet all of the threshold requirements of subrule 62.7(1) and at least three of the elements listed in subrule 62.7(2). If an application is submitted by a group of businesses, each business shall meet the eligibility criteria.

62.7(1) Mandatory six elements. A business shall meet all of the following requirements in order to be eligible for program benefits:

a. The community has approved by ordinance or resolution the start-up, location, or expansion of the business for the purpose of receiving program benefits.

b. The business has not closed or substantially reduced its operation in one area of the state and relocated substantially the same operation in the community. This requirement does not prohibit a business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

c. The business must provide and pay at least 80 percent of the cost of a standard medical and dental insurance plan for all full-time employees working at the facility in which the new investment occurred.

d. The business shall agree to pay a median wage for new full-time hourly nonmanagement production jobs of at least $11 per hour indexed to 1993 dollars based on the gross national product implicit price deflator published by the bureau of economic analysis of the United States Department of Commerce or 130 percent of the average wage in the county in which the community is located, whichever is higher.

e. The business will make a capital investment of at least $10,000,000 indexed to 1993 dollars based on the gross national product implicit price deflator published by the bureau of economic analysis of the United States Department of Commerce. If the business is occupying a vacant building suitable for industrial use, the fair market value of the building shall be counted toward the capital investment threshold.

f. The business shall agree to create at least 50, or the group of businesses at least 75, full-time positions at a facility located in Iowa or expanded under the program for a specified period which will be negotiated with the department and the community, but which shall be a minimum of five years.

62.7(2) Additional required elements. To be eligible for incentives under the program, a business or group of businesses shall do at least three of the following:

a. Offer a pension or profit-sharing plan to full-time employees.

b. Produce or manufacture high value-added goods or services or be in one of the following industries:

(1) Value-added agricultural products.
(2) Insurance and financial services.
(3) Plastics.
(4) Metals.
(5) Printing paper or packaging products.
(6) Drugs and pharmaceuticals.
(7) Software development.
(8) Instruments and measuring devices and medical instruments.
(9) Recycling and waste management.
(10) Telecommunications.

c. Make day care services available to its employees.

d. Invest annually no less than 1 percent of pretax profits from the facility located to Iowa or expanded under the program in research and development in Iowa.

e. Invest annually no less than 1 percent of pretax profits from the facility located to Iowa or expanded under the program in worker training and skills enhancement.

f. Have an active productivity and safety improvement program involving the management and worker participation and cooperation with benchmarks for gauging compliance.

g. Occupy an existing facility at least one of the buildings of which shall be vacant and shall contain at least 20,000 square feet.

62.7(3) Further evaluation factors. After a business has certified compliance with the threshold requirements of subrules 62.7(1) and 62.7(2), the board will consider a variety of additional factors in determining the eligibility of a business to participate in the program, including but not limited to the following:

a. The quality of jobs to be created. The department shall place greater emphasis on those jobs that have a higher wage scale, have a lower turnover rate, are full-time or career-type positions, provide comprehensive health benefits, or have related factors which could be considered to be higher in quality than to other jobs. Businesses that have wage scales substantially below that of existing Iowa businesses in that area will be considered as providing the lowest quality of jobs and will be given the lowest consideration in determining program eligibility.

b. The impact of the proposed project on other businesses in competition with the business being considered for program participation. The department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for program incentives. The department shall also make a good faith effort to determine the probability that the proposed financial assistance will displace employees of existing businesses. In determining the impact on businesses in competition with the business seeking program benefits, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

c. The impact to the state of the proposed project. In measuring the economic impact the department shall place greater emphasis on projects which have greater consistency with the state strategic plan than other projects. Greater consistency may include any or all of the following:

(1) A business with a greater percentage of sales out-of-state or of import substitution.

(2) A business with a higher proportion of in-state suppliers.

(3) A project which would provide greater diversification of the state economy.

(4) A business with fewer in-state competitors.

(5) A potential for future job growth.

(6) A project which is not a retail operation.

d. If the business has, within three years of application for program participation, acquired or merged with an Iowa corporation or company, whether the business has made a good faith effort to hire the workers of the acquired or merged company.

e. Whether a business provides a preference for hiring residents of the state or of the economic development area, except for out-of-state employees offered a transfer to Iowa or to the economic development area.

f. Whether all known required environmental permits have been issued and regulations met.

261—62.8(75GA,HF2180) Ineligibility. If the department finds that a business has a record of violations of the law over a three-year period that tends to show a consistent pattern, the business shall not qualify for benefits under this program. Violations of law include, but are not limited to, environmental and worker safety statutes, rules, and regulations. A business shall not be ineligible for program participation if the department finds that the violations did not seriously affect the public health or safety, or the environment, or if they did, that there were mitigating circumstances.

261—62.9(75GA,HF2180) Application contents. The application to request program benefits shall include, but not be limited to, the following:

62.9(1) A description of the proposed project.

62.9(2) Documentation that the business meets each of the threshold requirements of subrule 62.7(1) including a copy of the ordinance or resolution of the community approving the start-up, location, or expansion of the business.

62.9(3) A description of how the business will meet the requirements of subrule 62.7(2).

62.9(4) A description of the quality of jobs to be created which includes information on wage scale, turnover rate, type of job (e.g., full-time, part-time, career-type), health benefits, and other factors impacting the quality of the jobs.

62.9(5) An identification of the business's competitors.

62.9(6) A description of the impact to the state of the proposed project in terms of consistency with the state strategic plan, diversification of the economy, and job growth potential.

62.9(7) An indication of whether within the three years prior to application the business has acquired or merged with an Iowa corporation or company. If yes, a description of the good faith efforts made to hire the workers of the acquired or merged company.

62.9(8) An indication of whether the business provides a preference for hiring residents of the state or of the economic development area.

62.9(9) A statement that all known environmental permits have been issued and regulations met or a time frame within which the permits will be issued and the regulations will be satisfied.

62.9(10) A description of any violations of law in the preceding three years including, but not limited to, environmental and worker safety statutes, rules and regulations. If the violations seriously affected the public health or safety, or the environment, the business shall provide an explanation of any mitigating circumstances. If requested by the department, the business shall provide copies of materials documenting the type of violation(s), any fees or penalties assessed, court filings, final disposition of any findings and any other information which would assist the department in assessing the nature of any violation(s).

62.9(11) A certification by the business that the information provided in the application is true and accurate to the best of its knowledge.

62.9(12) A release of information to permit the department to reasonably evaluate the business's application.

261—62.10(75GA,HF2180) Department and board action. The division of business development will review all completed applications to determine compliance with the threshold requirements of subrules 62.7(1) and 62.7(2). The division will prepare a report for the board which includes a summary of the application. The board will review applications from eligible businesses meeting the threshold requirements and consider the additional factors listed in subrule 62.7(3) in making its final decision. The board may approve, deny or defer a request for program participation. If an application is approved, the board shall authorize the department to enter into an agreement with the eligible business, or group of businesses, for program benefits.

261—62.11(75GA,HF2180) Agreement. The department shall prepare an agreement which includes, but is not limited to, a description of the project to be completed by the business, the number of jobs to be created, length of the project period, the program benefits available, and the repayment requirements of the business in the event the business does not fulfill its obligations. The department shall consult with the community during negotiations relating to the agreement.

261—62.12(75GA,HF2180) Valuation of incentives. For purposes of calculating the value of a program benefit received, authority for determining such value is assigned as follows:

62.12(1) Supplemental new jobs credit. The value of the supplemental new jobs credit will be determined following procedures established under Iowa Code chapter 260E.

62.12(2) Value-added property tax. Prior to the execution of an agreement between the business and the department, the taxing authority of the community will certify by local resolution the value of the value-added property tax benefit.

62.12(3) Machinery, equipment and computers taxation exemption. Prior to the execution of an agreement between the business and the department, the taxing authority of the community will certify the value of the taxation exemption for machinery, equipment and computers.

62.12(4) Investment tax credit. DRF will determine the value of the investment tax credit.

62.12(5) Research activities credit. The value of the credit allowed for research activities will be determined by DRF.

261—62.13(75GA,HF2180) Noncompliance.

62.13(1) Notice of noncompliance. The department will notify the community and DRF of a business's or group of businesses' unremedied noncompliance under the agreement.

62.13(2) Authority to recover. Following notice of noncompliance from the department, the taxing authority of the community shall have the authority to take action to recover the value of incentives provided by the community to the business or group of businesses. DRF shall have the authority to recover the value of state incentives provided under the program.

261—62.14(75GA,HF2180) Repayment.

62.14(1) Failure to meet requirements. If a business or group of businesses fails to meet any of its requirements under the agreement, the business or group of businesses shall repay to the local taxing authority and DRF the total value of the incentives received. The community or DRF may exercise forbearance in connection with collection of the amounts owed to the community or DRF and elect to grant the business or group of businesses a one-year period to meet its requirements under the agreement.

62.14(2) Failure to meet job creation requirements.

a. Repayment of exemption from taxation for machinery, equipment and computers. If a business or group of businesses has not met more than 90 percent of the job creation requirements of subrule 62.7(1), paragraph "f," it shall pay a percentage of the value of the incentive received for exemption from taxation for machinery, equipment and computers.

b. Repayment of investment tax credit. If a business or group of businesses has not met more than 90 percent of the job creation requirements of subrule 62.7(1), paragraph "f," and did not receive the exemption from taxation for machinery, equipment and computers incentive, then repayment shall be as follows:

(1) Fifty percent or less of job creation. If the business or group of businesses has met 50 percent or less of the requirement, the business or group of businesses shall pay the same percentage in benefits as the business or group of businesses failed to create in jobs.

(2) More than 50 percent, less than 75 percent. If the business or group of businesses has met more than 50 percent but not more than 75 percent of the requirement, the business or group of businesses shall pay one-half of the percentage in benefits as the business or group of businesses failed to create in jobs.

(3) More than 75 percent, less than 90 percent. If the business or group of businesses has met more than 75 percent but not more than 90 percent of the requirement, the business or group of businesses shall pay one-quarter of the percentage in benefits as the business or group of businesses failed to create in jobs.

62.14(3) Failure to meet other requirements. If the business or group of businesses fails to meet the wage requirement of subrule 62.7(1), paragraph "d," or any of the three criteria selected under subrule 62.7(2), in any one year, it must meet that requirement in the following year or forfeit the incentives for that year in which the business was not in compliance.

ARC 4740A

EMERGENCY MANAGEMENT DIVISION[605]

Notice of Termination

Pursuant to the authority of Iowa Code sections 29C.9 and 17A.4(1)"b," the Emergency Management Division terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on May 26, 1993, as **ARC 3977A**, creating a new Chapter 8, "Criteria for Awards or Grants," Iowa Administrative Code.

This chapter was also Adopted and Filed Emergency as **ARC 3976A**. The Notice was published to solicit comments. Comments were received in a letter cosigned by the Assistant Buchanan County Attorney, Chairman of the Buchanan County Board of Supervisors and the Buchanan County Emergency Management Coordinator. Their comments referred to previously adopted rules and not to those rules being established by creation of the new chapter. Since no changes are required to the emergency adopted chapter, there is no further need to proceed with rule making for **ARC 3977A**.

ARC 4751A

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Termination

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Environmental Protection Commission terminates further rule-making proceedings under the provisions of Iowa Code section 17A.4(1)"b" for proposed rule making [amendment to 22.1(2)] relating to Chapter 22, "Controlling Pollution," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 21, 1993, as **ARC 4119A**.

An industry committee will be meeting to review air construction permitting in its entirety. Any changes that might arise from those meetings should be incorporated into one rule-making action.

The Commission is terminating the rule making commenced in **ARC 4119A** and will renotice the rule to incorporate further changes and clarification under this chapter.

ARC 4750A

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 section 455B.133, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 22, "Controlling Pollution," Iowa Administrative Code.

These rules establish a voluntary operating permit program. This action is taken to provide an alternative to the Title V operating permit program for small sources able to qualify under these rules. Sources will be eligible for voluntary operating permits after demonstrating that the potential to emit of each regulated pollutant shall be limited to less than 100 tons per 12-month rolling period; that the actual emissions of each regulated pollutant, including fugitive emissions, have been and are predicted to be less than 100 tons per 12-month rolling period; and that the potential to emit of each regulated hazardous air pollutant shall be less than 10 tons per 12-month rolling period and the potential to emit of all regulated hazardous air pollutants shall be less than 25 tons per 12-month rolling period. The proposed rules include provisions for eligibility requirements, permit application contents, action on applications, permit contents, and relation to construction permits.

Any interested person may make written suggestions or comments on the proposed rules on or before May 26, 1994. Written comments should be directed to Christine Spackman, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319.

Public hearings will be held on:

Tuesday, May 24, 1994, at 9:30 a.m. in the Fifth Floor East Conference Room, Wallace State Office Building, 900 E. Grand Avenue, Des Moines;

Wednesday, May 25, 1994, at 10:30 a.m. in the Gold Room, Oakdale Hall, University of Iowa, Oakdale Campus, Oakdale, Iowa; and

Thursday, May 26, 1994, at 11 a.m. in the Supervisor's Room, Second Floor, Webster County Courthouse, 703 Central Avenue, Fort Dodge, Iowa,

at which time comments may be submitted orally or in writing.

These rules may impact small businesses.

These rules are intended to implement Iowa Code section 455B.133.

The following rules are proposed.

Amend 567—Chapter 22 by adding the following **new** rules:

567—22.200(455B) Definitions for voluntary operating permits. For the purposes of rules 22.200(455B) to 22.207(455B), the definitions shall be the same as the definitions found at rule 22.100(455B).

567—22.201(455B) Eligibility for voluntary operating permits. Any person who owns or operates a major source otherwise required to obtain a Title V operating permit may instead obtain a voluntary operating permit following successful demonstration of the following:

22.201(1) That the potential to emit of each regulated pollutant shall be limited to less than 100 tons per 12-month rolling period;

22.201(2) That the actual emissions of each regulated pollutant, including fugitive emissions, have been and are predicted to be less than 100 tons per 12-month rolling period; and

22.201(3) That the potential to emit of each regulated hazardous air pollutant shall be less than 10 tons per 12-month rolling period and the potential to emit of all regulated hazardous air pollutants shall be less than 25 tons per 12-month rolling period; and

22.201(4) That the actual emissions of each regulated hazardous air pollutant, including fugitives, have been and are predicted to be less than 10 tons per 12-month rolling period and the actual emissions of all regulated hazardous air pollutants have been and are predicted to be less than 25 tons per 12-month rolling period.

567—22.202(455B) Requirement to have a Title V permit. No source may operate after the time that it is required to submit a timely and complete application for an operating permit, except in compliance with a properly issued Title V operating permit or a properly issued voluntary operating permit. However, if a source submits a timely and complete application for a voluntary operating permit (or for renewal of a voluntary operating permit), then the source's failure to have a permit is not a violation of this chapter until the director takes final action on the permit application, except as noted in this rule.

This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the director, any additional information identified as needed to process the application.

567—22.203(455B) Voluntary operating permit applications.

22.203(1) Duty to apply. Any source which would qualify for a voluntary operating permit must apply for either a voluntary operating permit or a Title V operating permit. Any source determined not to be eligible for a voluntary operating permit shall be subject to enforcement action for operation without a Title V operating permit. For each source applying for a voluntary operating permit, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034, at least two copies of a timely and complete permit application in accordance with this rule.

a. Timely application. Each source applying for a voluntary operating permit shall submit an application:

(1) By November 15, 1994, if the source is applying for an operating permit for the first time;

(2) At least 6 months but not more than 12 months prior to the date of expiration if the application is for renewal;

(3) Within 12 months of becoming subject to this rule for a new source or a source which would otherwise

become subject to the Title V permit requirement after the effective date of this rule.

b. Complete application. To be deemed complete, an application must provide all information required pursuant to subrule 22.203(2).

c. Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to the issuance of a permit. Applicants who have filed a complete application shall have 30 days following notification by the department to file any amendments to the application.

d. Certification of truth, accuracy, and completeness. Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

22.203(2) Standard application form and required information. To apply for a voluntary operating permit, applicants shall complete the Voluntary Operating Permit Application Form and supply all information required by the Filing Instructions. The information submitted must be sufficient to evaluate the source, its application, predicted actual emissions from the source, and the potential to emit of the source; and to determine all applicable requirements. The applicant shall submit the information called for by the application form for all emissions units, including those having insignificant activities according to the provisions of rule 22.103(455B). The standard application form and any attachments shall require that the following information be provided:

a. Identifying information, including company name and address (or plant or source name if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact;

b. A description of source processes and products (by two-digit Standard Industrial Classification Code);

c. The following emissions-related information shall be submitted to the department on the emissions inventory portion of the application:

(1) All emissions of any regulated air pollutants from all emissions units and information sufficient to determine which requirements are applicable to the source;

(2) Emissions in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, if any;

(3) The following information to the extent it is needed to determine or regulate emissions, including toxic emissions: fuels, fuel use, raw materials, production rates and operating schedules;

(4) Identification and description of air pollution control equipment;

(5) Identification and description of compliance monitoring devices or activities;

(6) Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants;

(7) Other information required by any applicable requirement; and

(8) Calculations on which the information in (1) to (7) above is based.

d. The following air pollution control requirements:

(1) Citation and description of all applicable requirements; and

(2) A description of or reference to any applicable test methods used for determining compliance with each applicable requirement.

e. Requested permit conditions sufficient to limit the operation of the source according to the requirements of rule 22.201(455B).

f. A compliance status summary containing:

(1) A statement that all emissions units at the facility are presently in compliance with all applicable requirements; and

(2) A statement that the source will maintain its present compliance status.

g. Requirements for compliance certification including the following:

(1) Certification of compliance for the prior year with all applicable requirements certified by a responsible official consistent with 22.203(1)"d"; and

(2) A statement of methods for determining compliance.

567—22.204(455B) Voluntary operating permit fees. Each source in compliance with a current voluntary operating permit shall be exempt from Title V operating permit fees.

567—22.205(455B) Voluntary operating permit processing procedures.

22.205(1) Action on application.

a. Completeness of applications. The department shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. If, while processing an application that has been determined to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, the permitting authority may request in writing such information and set a reasonable deadline for a response.

b. Public notice and public participation.

(1) The department shall provide public notice and an opportunity for public comment, including an opportunity for a hearing, before issuing or renewing a permit.

(2) Notice of the intended issuance or renewal of a permit shall be given by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice. The department may use other means if necessary to ensure adequate notice to the affected public.

(3) The public notice shall include: identification of the source; name and address of the permittee; the activity or activities involved in the permit action; the air pollutants or contaminants to be emitted; a statement that a public hearing may be requested, or the time and place of any public hearing which has been set; the name, address, and telephone number of a department representative who may be contacted for further information; and the location of copies of the permit application and the proposed permit which are available for public inspection.

(4) At least 30 days shall be provided for public comment.

22.205(2) Denial of voluntary operating permit applications.

a. A voluntary operating permit application may be denied if:

(1) The director finds that a source is not in compliance with any applicable requirement; or

(2) An applicant knowingly submits false information in a permit application.

b. Once agency action has occurred denying a voluntary operating permit, the source shall apply for a Title V operating permit. Any source determined not to be eligible for a voluntary operating permit shall be subject to enforcement action for operating without a Title V operating permit.

567—22.206(455B) Permit content. Each voluntary operating permit shall include all of the following provisions:

22.206(1) The terms and conditions required for all sources authorized to operate under the permit;

22.206(2) Emission limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of the permit issuance;

22.206(3) A certification of compliance for each emissions unit;

22.206(4) Monitoring, record keeping, and reporting requirements to ensure compliance with the terms and conditions of the permit. These requirements shall ensure the use of consistent terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable emissions limitations, standards, and other requirements contained in the permit;

22.206(5) The requirement to submit the results of any required monitoring at intervals to be specified in the permit;

22.206(6) References to the authority for the term or condition;

22.206(7) A provision specifying permit duration as a fixed term not to exceed five years;

22.206(8) A statement that the voluntary operating permit is to be kept at the site of the source as well as at the corporate offices of the source;

22.206(9) A statement that the permittee must comply with all conditions of the voluntary operating permit and that any permit noncompliance is grounds for enforcement action, for a permit termination or revocation, and for an immediate requirement to obtain a Title V operating permit;

22.206(10) A statement that it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;

22.206(11) A statement that the permit may be revoked or terminated for cause;

22.206(12) A statement that the permit does not convey any property rights of any sort, or any exclusive privilege;

22.206(13) A statement that the permittee shall furnish to the director, within a reasonable time, any information that the director may request in writing to determine whether cause exists for revoking or terminating the permit or to determine compliance with the permit; and that, upon request, the permittee also shall furnish to the director copies of records required by the permit to be kept.

567—22.207(455B) Relation to construction permits.

22.207(1) Previously issued construction permits. The conditions of a voluntary operation permit shall supersede the conditions of any previously issued construction permits where those conditions conflict.

22.207(2) Construction permits issued after the voluntary operating permit is issued. The conditions of construction permits issued during the term of a voluntary operating permit shall supersede the conditions of the voluntary operating permit. However, if the issuance of a construction permit acts to make the source no longer eligible for a voluntary operating permit, then the source shall be required to immediately apply for a Title V operating permit and shall be subject to enforcement action for operating without a Title V operating permit.

22.207(3) Relation of construction permits to voluntary operating permit renewal. At the time of renewal of a voluntary operating permit, the conditions of construction permits issued during the term of the voluntary operating permit shall be incorporated into the voluntary operating permit. Each application for renewal of a voluntary operating permit shall include a list of construction permits issued during the term of the voluntary operating permit and shall state the effect of each of these construction permits on the conditions of the voluntary operating permit. Applications for renewal shall be accompanied by copies of all construction permits issued during the term of the voluntary operating permit.

ARC 4749A

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 455A.6, 455B.105 and 455B.278, the Environmental Protection Commission proposes to amend Chapter 72, "Criteria for Approval," Iowa Administrative Code.

The proposed amendments would expand the variance criteria for protected streams found at 567—subrule 72.31(3). Under the present subrule, the Department of Natural Resources can grant a variance to the prohibition of channel changes on protected streams only: (1) for public projects where a channel change is the only reasonable and practicable alternative, or (2) where natural channel erosion has a significant probability of eroding the structural stability of a building or other structure and bank erosion control measures are not feasible or practical under the circumstances. The amendments would add a third variance criterion which would allow the granting of a variance where the applicant can clearly show that there would be no adverse effects on the public interest.

The amendments also would clarify that the denial of a permit for a channel change on a protected stream can be appealed to the Commission as provided for in 567—70.6 (17A,455B,481A), that streams hydrologically connected to protected waters are not protected streams unless specifically listed as such, and that the protected stream status does not prevent bank stabilization; maintenance or installation of tile outlets; machinery crossings; boat or canoe ramps; or other structures permitted by the department; nor restrict riparian access to protected streams for such uses as livestock watering. In addition, the amendments clarify that protected stream status does not affect current cropping practices or require the establishment or maintenance of filter or buffer strips along protected streams.

Any interested person may file written comments or suggestions on the proposed amendments through May 6, 1994. Written comments should be directed to Jack D. Riessen, Iowa Department of Natural Resources, Wallace State Office Building, 900 E. Grand Avenue, Des Moines, Iowa 50319.

Persons are also invited to present oral or written comments at a public hearing to be held May 3, 1994, at 10 a.m., in the Fifth Floor Conference Room of the Wallace State Office Building.

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 455B.261 to 455B.281.

The following amendments are proposed.

ITEM 1. Amend paragraph **72.2(1)"d"** as follows:

d. Protected streams. For protected streams no channel changes will be allowed, because of actual or potential significant adverse effects on fisheries, water quality, flood control, flood plain management, wildlife habitat, soil erosion, public recreation, the public health, welfare and safety, compatibility with the state water plan, rights of other landowners, and other factors relevant to the control, development, protection, allocation, and utilization of the stream. *Protected stream status does not prohibit bank stabilization measures; maintenance or installation of tile outlets; machinery crossings, including concrete drive-through and bridges; boat or canoe ramps; or other structures permitted by the department; nor restrict riparian access to the protected stream for such uses as livestock water or grazing. Protected stream status does not affect current cropping practices or require the establishment or maintenance of buffer or filter strips along protected streams.*

ITEM 2. Amend subrule 72.31(3) as follows:

72.31(3) Protected stream channel change variance. The department may grant variances to the prohibition of channel changes on protected streams for those cases listed in 72.31(2)"b," ~~and~~ "c," *and "d,"* but such variances will be with provisions for mitigation of environmental damage.

ITEM 3. Add new rule 567—72.32(455B) as follows:

567—72.32(455B) Protected stream information. The following describes the variance procedure and the relation of hydrologically connected streams to protected streams:

72.32(1) Protected stream variance procedure. The variance shall be requested as part of the permit application and review process provided for in rules 567—70.3(17A,455B,481A) to 70.5(17A,455B,481A) and decisions on the variance request may be appealed in accordance with rule 70.6(17A,455B,481A). If the applicant is denied a permit to channelize a protected stream, the applicant may appeal to the environmental protection commission. The appeal will normally be heard by an administrative law judge but the applicant may request that the commission hear the appeal directly. If a proposed decision of an administrative law judge would affirm the denial of the permit, the applicant may appeal the administrative law judge's decision to the commission. If, on appeal, the commission affirms the denial of the permit, the applicant may appeal to the district court.

72.32(2) Hydrologically connected stream. Streams or waters that are hydrologically connected to protected streams are not protected streams unless specifically listed as protected streams in 72.50(2). The environmental protection commission considers the streams and waters that are hydrologically connected to streams proposed to become protected streams as one of the factors in the decision-making process to add streams to the list of protected streams in a rule-making procedure. Subrule 72.51(7) lists the other factors that affect the decision.

72.32(3) Protected stream activities. Protected stream status does not prohibit bank stabilization measures; maintenance or installation of tile outlets; machinery crossings, including concrete drive-through and bridges; boat or canoe ramps; or other structures permitted by the department; nor restrict riparian access to the protected stream for such uses as livestock water or grazing. Protected stream status does not affect current cropping practices or require the establishment or maintenance of buffer or filter strips along protected streams except as may be required to mitigate environmental damage associated with a channel change on a protected stream.

ITEM 4. Amend subrule 72.50(1) as follows:

72.50(1) Protected streams defined. Protected streams shall include: all streams listed in 72.50(1); and other streams designated as protected streams pursuant to the procedures of 72.51(455B), which upon designation will be listed in 72.50(2). *Streams hydrologically connected to protected streams are not protected streams unless specifically listed as protected streams in 72.50(2).*

ARC 4742A

GENERAL SERVICES DEPARTMENT[401]

Notice of Termination

and

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 17A.3 and Iowa Code Supplement section 18.8A, the Terrace

Hill Commission terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on March 2, 1994, as **ARC 4622A**, transferring and amending Historical Division 223—Chapters 55 to 57 to Department of General Services 401—Chapters 14 to 16, Iowa Administrative Code.

The Department of General Services and the Terrace Hill Commission emergency adopt and implement the rules transferring the Terrace Hill Commission from the Historical Division to the Department of General Services published herein as **ARC 4741A**.

The Terrace Hill Commission renotices the amendments previously proposed in **ARC 4622A**.

Item 1 allows weddings and wedding receptions to be held at Terrace Hill. It also authorizes the Commission to assess a fee for rental of Terrace Hill for special events and weddings and wedding receptions.

Item 2 provides that the treasurer for the Terrace Hill endowment for musical arts shall be a member of the Commission.

Any interested person may make written comments on these proposed amendments on or before May 3, 1994. Written comments should be directed to Barb Filer, Terrace Hill Commission, 2300 Grand Avenue, Des Moines, Iowa 50312.

Also, any interested person may make oral comments at a public hearing scheduled to be held on May 4, 1994, 10 a.m., at the Carriage House, Terrace Hill, Des Moines, Iowa.

These amendments are intended to implement Iowa Code Supplement section 18.8A.

The following amendments are proposed.

ITEM 1. Amend **401—Chapter 14** as follows:

Amend rule **401—14.1(18)**, definition of "Commission," as follows:

"Commission" means the Terrace Hill commission as established by Iowa Code *Supplement* section ~~303.17~~ *18.8A*.

Amend rule 401—14.2(18) as follows:

401—14.2(18) Mission statement. The Terrace Hill commission exists in accordance with Iowa Code *Supplement* section ~~303.17~~ *18.8A* to preserve, maintain, renovate, landscape, and administer the Terrace Hill facility. The commission has authority to approve the ongoing expenditures for preservation, renovation, and landscaping of Terrace Hill and seeks necessary funds for these activities. Terrace Hill is maintained as the official residence for the governor of Iowa and serves as a facility for public and private functions.

Amend subrule 14.3(2) as follows:

14.3(2) Composition. The commission consists of nine members appointed by the governor in accordance with Iowa Code *Supplement* section ~~303.17~~ *18.8A*.

Amend subrule 14.7(3) as follows:

14.7(3) Fees. Fees may be charged and collected by the commission and shall be administered according to Iowa Code *Supplement* section ~~303.9~~ *18.8A*. Fees may be charged for, but are not limited to, admission, special events, use of images, and technical services. All fees charged shall be approved by the commission and shall become effective upon 30 days' notice. This notice shall be a public posting in the facility. All fees shall be permanently posted.

Amend subrule 14.7(8) as follows:

14.7(8) Public functions may be held at the facility when the governor has an immediate interest or the function meets the special events criteria established by the commission. The criteria require that the event be in accordance with the mission of the facility. *Rental of Terrace Hill is permitted for special events on a limited basis. Approved groups shall pay rental fees in accordance with the fee schedule adopted by the Terrace Hill commission.* Weddings and wedding receptions are ~~strictly prohibited, except in the case of the immediate family of the current governor~~ *permitted as approved by the Terrace Hill commission. Requests for weddings and wedding receptions shall be made to the chair of the commission and decided upon by the entire commission. Only one wedding and wedding reception will be allowed per month.* Inquiries shall be directed to the ~~Administrator,~~ Terrace Hill *Commission,* 2300 Grand Avenue, Des Moines, Iowa 50312.

Amend the implementation sentence at the end of **401—Chapter 14** as follows:

These rules are intended to implement Iowa Code ~~sections 303.1A and 303.17(4) and 1991 Iowa Acts, House File 479, section 214, subsection 3~~ *Supplement section 18.8A*.

ITEM 2. Amend **401—Chapter 16** as follows:

Amend rule 401—16.4(18) as follows:

401—16.4(18) Funding. All funds to support and maintain the scholarship have been raised by public and private donations and shall not be used for any other purpose. They are held in trust under the Terrace Hill foundation, a nonprofit, charitable foundation. All proceeds generated from investment interest by the scholarship moneys are themselves deposited into the scholarship trust. The treasurer for the scholarship ~~is~~ *shall be* ~~the treasurer for~~ *a member of* the *Terrace Hill* commission ~~and the foundation~~.

Amend the implementation sentence at the end of **401—Chapter 16** as follows:

These rules are intended to implement Iowa Code *Supplement* section ~~303.17~~ *18.8A*.

ARC 4721A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 217.6 and 234.6, the Department of Human Services proposes to amend Chapter 50, "Application for Assistance," and Chapter 177, "In-Home Health Related Care," appearing in the Iowa Administrative Code.

These amendments require all applicants for in-home health related care or a protective living arrangement to complete an application and require an application for the In-Home Health Related Care program to be processed within 30 days from the date of application except in specific situations. An application for in-home health related care shall not be held in a pending status for longer than 60 days due to failure to locate a provider. In addition, terminology and an implementation clause are corrected.

Current rules do not provide guidance on when to deny an In-Home Health Related Care application when a provider cannot be located. Currently, some county offices may leave an application pending indefinitely when a provider cannot be located. This rule provides consistency and a legal basis to deny an application when approval is not possible due to lack of a provider.

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 May 4, 1994.

These amendments are intended to implement Iowa Code sections 249.3(2)"a"(2) and 249.4.

The following amendments are proposed.

ITEM 1. Amend subrules 50.2(2) and 50.2(3), introductory paragraph, as follows:

50.2(2) Any person applying for payment for a protective living arrangement or payment for a dependent relative shall make application for supplemental security income at the social security administration district office. The ~~local~~ *county* office of the department of human services shall certify to the social security administration as to the nature of the living arrangement or the status of the dependent.

50.2(3) Any person applying for payment for residential care shall make application at a local or area office of the department of human services or at the residential care facility where the person resides. Any person applying for a dependent person allowance shall make application at a local or area office of the department. Any person applying for payment for a protective living arrangement or in-home health related care~~, whose income exceeds supplemental security income payment standards,~~ shall make application at a local or area office of the department. An application may also be filed directly with an income maintenance worker at any departmental satellite office. The application shall be made on the Application for Medical Assistance or State Supplementary Assistance, PA-1107-0, provided by the department.

ITEM 2. Amend subrule 50.3(2) as follows:

50.3(2) Payment for residential care shall be effective as of the date of application or the date of eligibility, whichever is later. If the application is completed in the residential care facility, the administrator of the facility must forward it to the local *or area* office of the department of human services to be received not later than five working days subsequent to the date the application was signed if the effective date is to be the date of signature. If not timely submitted, the effective date will not be earlier than five working days prior to receipt of the application in the local *or area* office.

ITEM 3. Amend rule 441—177.4(249) as follows:

Amend subrule 177.4(5) as follows:

177.4(5) Certification procedure. The approval by the ~~district~~ *regional* office of the department of human services of the case plan shall constitute certification and approval for payment.

Add the following new subrule 177.4(10):

177.4(10) Application. Application for in-home health related care shall be made on Form PA-1107-0, Application for Medical Assistance or State Supplementary Assistance. An eligibility determination shall be completed within 30 days from the date of the application, unless one or more of the following conditions exists:

a. An application has been filed and is pending for federal supplemental security income benefits.

b. The application is pending because the department has not received information, which is beyond the control of the client or the department.

c. The application is pending due to the disability determination process performed through the department.

d. The application is pending because the SS-1511-0, Provider Agreement, has not been completed and completion is beyond control of the client. When a Provider Agreement cannot be completed due to client's failure to locate a provider, applications shall not be held pending beyond 60 days from the date of application.

ITEM 4. Amend rule **441—177.5(249)**, implementation clause, as follows:

This rule is intended to implement ~~1984 Iowa Acts, chapter 1310, section 3.~~ *Iowa Code section 249.3(2)"a."*

ITEM 5. Amend subrule **177.6(2)**, paragraph **"b,"** as follows:

b. Medical records shall be located in the nurse's case file, with a copy of the interdisciplinary plan of care and physician's plan of service in the service ~~workers~~ *worker's* file, and all other records available to the service worker. Upon termination of the in-home care plan, the records shall be maintained in the ~~local~~ *county* office of the department of human services, or in the office of the public health nurse and available to the service worker, for five years or until completion of an audit.

ITEM 6. Amend rule 441—177.10(249), introductory paragraph, as follows:

441—177.10(249) Emergency services. Written instructions for dealing with emergency situations shall be completed by the nurse and maintained in the client's home and in the ~~local~~ *county* department of human services office. The instructions shall include:

ARC 4746A

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 514F.3, the Iowa Division of Insurance hereby gives Notice of In-

tended Action to amend Chapter 27, "Preferred Provider Arrangements," Iowa Administrative Code.

This amendment excludes contracts into which the Department of Human Services may enter to provide mental health services for Medicaid recipients from the requirements set forth in this chapter. This amendment was requested by the Department of Human Services.

Interested persons may submit written comments regarding the proposed amendment on or before May 3, 1994. Comments should be directed to Roger Strauss, Iowa Insurance Division, Lucas State Office Building, Des Moines, Iowa 50319.

The following amendment is proposed.

Amend rule 191—27.3(514F) by adding a new subrule as follows:

27.3(4) Contracts with the department of human services or counties. A contract between the department of human services and an entity agreeing to provide mental health services for individuals eligible for coverage under Title XIX of the Social Security Act, or any other similar contract with a county for mental health services for county residents, is exempt from the requirements of this chapter.

ARC 4738A

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 147.76 and 147.80, the Iowa Board of Nursing hereby gives Notice of Intended Action to amend Chapter 3, "Licensure to Practice—Registered Nurse/Licensed Practical Nurse," Iowa Administrative Code.

These amendments eliminate the requirement for a self-study course addressing the role of the licensed practical nurse for individuals applying for LPN licensure based on current or previous enrollment in a nursing program preparing registered nurses and correct a typographical error in subrule 3.4(8), paragraph "c."

Any interested person may make written comments or suggestions on or before May 3, 1994. Such 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.

These amendments are intended to implement Iowa Code sections 147.80 and 152.7.

The following amendments are proposed.

ITEM 1. Amend subrule **3.4(5)**, paragraph "**a**," subparagraph **(5)**, to read as follows:

(5) The board shall confirm or deny the eligibility of each applicant upon receipt of the following materials:

Completed *board* application form (submitted by the applicant).

Original license fee (submitted by the applicant).

Notification of completion of the NCLEX ~~application~~ *registration* process (confirmed by NCLEX).

Official nursing transcript denoting the date of entry and length of enrollment.

~~Evidence of successful completion of a board-approved self-study course addressing the role of the licensed practical nurse in Iowa.~~

ITEM 2. Amend subrule **3.4(5)**, paragraph "**b**," by striking subparagraph **(5)** and renumbering subparagraphs **(6)** and **(7)** as **(5)** and **(6)** as follows:

~~(5) Submission to the board of evidence of successful completion of a board-approved self-study course addressing the role of the licensed practical nurse in Iowa.~~

~~(6)~~ *(5)* Informing the board of the applicant's current mailing address.

~~(7)~~ *(6)* Self-scheduling the NCLEX examination at an approved testing center within 60 days of NCLEX authorization to test.

ITEM 3. Amend subrule **3.4(8)**, paragraph "**c**," to read as follows:

c. An applicant who has graduated from an approved practical nurse program and has failed the State Board Test Pool Examination less than four times is eligible to take the NCLEX- ~~RN~~ *PN* an indefinite number of times.

ARC 4731A

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 124.301, 147.76, and 155A.13, 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 amendments were approved at the March 15, 1994, regular meeting of the Iowa Board of Pharmacy Examiners.

The amendments clarify the documentation requirements for prescription refills, remove outdated rules regarding records on automated patient record-keeping systems, and provide rules for the preparation of sterile products by any pharmacy for home care patients.

Any interested person may submit data, views, and arguments, orally or in writing, on or before May 3, 1994, 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 sections 124.306, 155A.13, 155A.15, 155A.27, and 155A.29.

The following amendments are proposed.

ITEM 1. Amend subrule 8.2(1) as follows:

8.2(1) All prescriptions shall be dated and numbered at the time of initial filling ~~and dated and initialed at the time of each refilling~~. *Refill documentation shall include date of refill and initials of the pharmacist.*

ITEM 2. Rescind 657—8.11(155A,124) and adopt the following new rule in lieu thereof:

657—8.11(155A,124) Pharmacy and prescription records. All records shall comply with all applicable state and federal laws and regulations.

ITEM 3. Renumber rule **657—8.12(155A,126)** as new rule **657—8.29(155A,126)** and renumber subrules **8.12(1)** and **8.12(2)** as subrules **8.29(1)** and **8.29(2)**, respectively. Reserve **8.12**.

ITEM 4. Adopt new rule 657—8.30(155A) as follows:

657—8.30(155A) Sterile products for home care patients.

8.30(1) Definitions. For the purpose of this rule, the following definitions shall apply:

"Aseptic preparation" is the technique involving procedures designed to preclude contamination by microorganisms during processing.

"Batch preparation" is the compounding or repackaging of multiple units, in a single process, by the same operator.

"Class 100 condition" means an environment whose air particle count does not exceed a total of 100 particles of 0.5 microns and larger per cubic foot.

"Compounding" is the constitution, reconstitution, combination, dilution, or another process causing a change in the form, composition, or strength of any ingredient or any other attribute of a product.

"Critical area" is an area where sterilized products or containers are exposed to the environment during aseptic preparation.

"Hazardous drug" is a pharmaceutical that is antineoplastic, carcinogenic, mutagenic, or teratogenic.

"Home care patient" is a patient in the home environment or an institutionalized patient receiving products from a pharmacy located outside the institution.

"Repackaging" is the subdivision or transfer from a container or device into a different container or device.

"Sterile product" is a drug or nutritional substance free from living microorganisms that is compounded or repackaged by pharmacy personnel, using aseptic technique and other quality assurance procedures.

8.30(2) Policies and procedures. A pharmacy providing sterile products shall prepare policies and procedures, evaluate them at least annually and revise them based on the evaluation, and maintain them in a manner that allows inspection by the board of pharmacy. Policies and procedures shall address the following:

a. Compounding, dispensing, and delivery of sterile products;

b. Quality assurance programs for the purpose of monitoring personnel qualifications, training, and performance;

c. Product integrity;

d. Equipment and facilities; and

e. Guidelines regarding patient education.

8.30(3) Area to be set apart. A pharmacy shall restrict entry into the area for preparing sterile products to designated personnel. The area shall be as follows:

a. Enclosed and structurally isolated from general work and storage areas;

b. Used only for the preparation of sterile products, hazardous drugs, or drugs requiring aseptic preparation; and

c. Of sufficient size to allow pharmacists and other employees to work safely and accurately and to accommodate laminar airflow hoods as required.

8.30(4) Additional equipment required. The following additional equipment is required in a pharmacy preparing sterile products:

a. Laminar airflow hood or other devices capable of maintaining a critical area meeting Class 100 conditions during normal activity;

b. Disposal containers for hazardous drugs and wastes, including materials from patients' homes, if applicable;

c. Infusion devices, if needed;

d. Supplies and attire adequate to maintain an environment suitable for the aseptic preparation of sterile products;

e. Sufficient current reference materials related to sterile products to meet the needs of staff; and

f. A sink with hot and cold running water for the purpose of hand scrubs, convenient to the area for preparing sterile products.

8.30(5) Additional records required. The pharmacy shall maintain records of lot numbers of the components used in compounding sterile products.

8.30(6) Environmental controls for sterile products. The pharmacy shall ensure the environmental control of all sterile products in a manner that maintains sanitation, required storage temperatures, and exposure to light at the following times:

a. While products are held in the pharmacy;

b. When products are delivered to a patient; and

c. During storage of products in the patient's home.

8.30(7) Additional requirements for preparation of hazardous drugs. The following additional requirements shall be met by pharmacies that prepare hazardous drugs:

a. All hazardous drugs shall be compounded in a vertical flow biological safety cabinet. Other product preparation may not be done concurrently in this cabinet;

b. Protective apparel shall be worn by personnel compounding hazardous drugs, including disposable gloves and gowns with tight cuffs;

c. Safety containment techniques for compounding hazardous drugs shall be used in conjunction with the aseptic techniques required for preparing sterile products;

d. Disposal of hazardous waste shall comply with applicable federal and state laws and regulations;

e. Written procedures for handling both major and minor spills of hazardous drugs shall be developed and maintained with the policies and procedures required in 8.30(2); and

f. Prepared doses of hazardous drugs shall be dispensed and labeled with precautions inside and outside and shall be shipped in a manner to minimize the risk of accidental rupture of the primary container.

8.30(8) Responsibilities for patient care. If sterile products are provided to the patient in the home, the pharmacy and pharmacist have the following responsibilities:

a. The pharmacist shall be knowledgeable of the roles of the physician, patient, pharmacy, and home health care provider related to delivery of care and the monitoring of the patients; and

b. The pharmacy shall have a pharmacist accessible at all times to respond to a patient's and other health professional's questions and needs; and

c. The pharmacist shall use the clinical and laboratory data of each patient to monitor initial and ongoing drug therapy. If the pharmacist does not have access to the data, the name of the health care provider assuming responsibility for monitoring drug therapy shall be documented in the patient's profile; and

d. The pharmacist shall report to the prescribing physician any knowledge of unexpected or untoward response to drug therapy.

8.30(9) Patient training. If sterile products are provided to the patient in the home, the pharmacist shall verify the patient's or caregiver's training and competence in managing therapy. A pharmacist must be involved, directly or indirectly, in training patients about drug compounding, labeling, storage, stability, or incompatibility. The pharmacist shall verify that the patient's or caregiver's competence is reassessed at intervals appropriate to the condition of the patient and type of drug therapy provided.

8.30(10) Quality assurance. A pharmacy shall have a documented, ongoing quality assurance control program to monitor personnel performance, equipment, and facilities which includes the following as a minimum:

a. Certification of all clean rooms and laminar flow hoods by an independent contractor for operational efficiency at least annually with records of certification to be maintained for two years;

b. Written procedures requiring sampling if microbial contamination is suspected;

c. End-product testing, including tests for particulate matter and testing for pyrogens, which is documented prior to the release of the product from quarantine if batch preparation of sterile products is performed using nonsterile chemicals;

d. Written justification of the chosen expiration dates for compounded products;

e. Documentation of quality assurance audits at planned intervals based upon the needs of individual patients, including infection control and sterile technique audits; and

f. Documentation that infusion devices being provided by the pharmacy for the administration of sterile products have received biomedical maintenance to provide for proper care, cleaning, and operation of the equipment.

ARC 4732A

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.22, 147.76, and 272C.6, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 9, "Discipline," Iowa Administrative Code.

The amendments were approved at the March 15, 1994, regular meeting of the Iowa Board of Pharmacy Examiners.

The amendments correct an Iowa Code reference resulting from the reorganization of Iowa Code chapters and modify the procedures for allocation of funds received for reimbursement of hearing costs pursuant to a directive from the Attorney General's office.

Any interested person may submit data, views, and arguments, orally or in writing, on or before May 3, 1994, 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 272C.6.

The following amendments are proposed.

ITEM 1. Amend rule 657—9.3(258A), parenthetical implementation, as follows:

657—9.3(~~258A~~ *272C*) Peer review committees.

ITEM 2. Amend subrule 9.27(4) as follows:

9.27(4) Fees and costs collected by the board pursuant to subrule 9.27(2) shall be allocated ~~to the expenditure category of the board in which the hearing costs were incurred~~ *pursuant to rule 641—173.20(272C)*. The fees and costs shall be considered repayment receipts as defined in Iowa Code section 8.2.

ARC 4733A

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 124.201, 124.207, 124.301, 124.306, 147.76, and

155A.13, 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 15, 1994, regular meeting of the Iowa Board of Pharmacy Examiners.

The amendments clarify the requirement for a controlled substances inventory to be completed anytime there is a change of pharmacist in charge in a pharmacy. The amendments also expand the list of anabolic steroids exempt from classification as Schedule III controlled substances in agreement with the federal Drug Enforcement Administration action so exempting these substances.

Any interested person may submit data, views, and arguments, orally or in writing, on or before May 3, 1994, 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 sections 124.201, 124.202, 124.208, 124.301, 124.306, 124.501, 155A.13, and 155A.19.

The following amendments are proposed.

ITEM 1. Amend rule 657—10.18(124) as follows:

657—10.18(124) Controlled substance inventory. It shall be the responsibility of the pharmacy owner to take an inventory of all controlled substances whenever there is a change in ownership or a change in the pharmacist in charge of any establishment licensed by the board as defined in Iowa Code section ~~155A.13(1)~~ *155A.13*.

ITEM 2. Amend rule 657—10.23(124) as follows:

657—10.23(124) Exempt anabolic steroid products. The Iowa board of pharmacy examiners hereby adopts the table of "Exempt Anabolic Steroid Products" contained in title 21 CFR, part 1308, section 34, as published in the Federal Register dated November 24, 1992, vol. 57, no. 227, page 55091, *and as amended by the addition of two new entries to the table as published in the Federal Register dated June 29, 1993, vol. 58, no. 123, page 34707.* Copies of the table may be obtained by written request to the board office at 1209 East Court Avenue, Executive Hills West, Des Moines, Iowa 50319.

ARC 4734A

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 124.201, 124.301, and 147.76, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 11, "Drugs in Emergency Medical Service Programs," Iowa Administrative Code.

The amendments were approved at the March 15, 1994, regular meeting of the Iowa Board of Pharmacy Examiners.

The amendments modify definitions and authorities regarding provision of emergency medical services pursuant to recent changes in the Iowa Code.

Any interested person may submit data, views, and arguments, orally or in writing, on or before May 3, 1994, 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 sections 124.306, 124.308 and chapter 147A.

The following amendments are proposed.

ITEM 1. Amend rule **657—11.1(124,147A,155A)** as follows:

Amend the definition of "Drug" as follows:

"Drug" means a substance as defined in Iowa Code section 155A.3(13) *or a device as defined in Iowa Code section 155A.3(10).*

Rescind the definitions of "EMT-Intermediate" and "EMT-Paramedic."

Add the following **new** definition:

"Emergency medical technician" means any emergency medical technician or EMT as defined in 641—132.1(147A).

Amend the definition of "Medical director" as follows:

"Medical director" means any physician licensed under Iowa Code chapter 148, 150, or 150A who shall be responsible for overall medical direction of the service program and who ~~is currently certified~~ *holds a current course completion card* in advanced cardiac life support (ACLS).

Add the following **new** definition:

"Physician assistant" means any individual licensed under Iowa Code chapter 148C.

Amend the definition of "Physician designee" as follows:

"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 Iowa board of physician assistant examiners,~~ who holds a current course completion card in advanced cardiac life support (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.

ITEM 2. Amend subrule 11.3(1) as follows:

11.3(1) Exchange program. Any pharmacy may replace drugs, including controlled substances, which have been administered to patients upon receipt of an order issued by a physician, *physician assistant,* or physician designee so authorized.

ITEM 3. Amend subrule 11.3(4) as follows:

11.3(4) Administration of drugs and intravenous infusion products. An ~~EMT-I or EMT-P~~ *emergency medical technician* shall not administer a drug or intravenous infusion product without the verbal or written order of a physician, *physician assistant,* physician designee, or by written protocol. The service program's responsible individual shall be responsible for ensuring proper documentation of orders given and drugs administered.

ARC 4735A

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.31, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 15, "Correctional Facility Pharmacy Licenses," Iowa Administrative Code.

The amendments were approved at the March 15, 1994, regular meeting of the Iowa Board of Pharmacy Examiners.

The amendments provide for a third publication option to fulfill a reference library requirement and change references to Iowa Code chapters "203B" and "204" to chapters "126" and "124", respectively, pursuant to reorganization of Iowa Code chapters.

Any interested person may submit data, views, and arguments, orally or in writing, on or before May 3, 1994, 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 155A.31.

The following amendments are proposed:

ITEM 1. Amend **657—Chapter 15** by striking all references to "203B" and inserting "126", and by striking all references to "204" and inserting "124", to reflect renumbering of the 1993 Iowa Code.

ITEM 2. Amend rule **657—15.3(155A,126,124)**, numbered paragraph **"5,"** as follows:

5. The latest edition and supplements to Approved Drug Products With Therapeutic Equivalence Evaluations; *ABC-Approved Bioequivalency Codes;* or USP DI, Volume III.

ARC 4736A

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 section 68B.4, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to adopt a new Chapter 29, "Sales of Goods and Services," Iowa Administrative Code.

The rules were approved at the March 15, 1994, regular meeting of the Iowa Board of Pharmacy Examiners.

The rules establish procedures for application to provide goods or services in instances where such sale would normally be prohibited. The rules also identify sales by board members which are customary and usual services provided in the normal course of a pharmacist's employment and are not prohibited activities.

Any interested person may submit data, views, and arguments, orally or in writing, on or before May 3, 1994, 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 68B.4.

The following rules are proposed.

Adopt the following new chapter:

CHAPTER 29
SALES OF GOODS AND SERVICES

657—29.1(68B) Selling of goods or services by members of the board. The board members 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 board of pharmacy examiners except as authorized by these rules.

657—29.2(68B) Conditions of consent for board members. Consent shall be given by a majority of the members of the board. Consent shall not be given to a board member to sell goods or services to an individual, association, or corporation regulated by the board unless all of the following conditions are met:

29.2(1) The board member requesting consent does not have authority to determine whether consent should be given.

29.2(2) The board member's duties or functions are not related to the board's regulatory authority over the individual, association, or corporation to whom the goods and services are being sold, or the selling of the good or service does not affect the board member's duties or functions.

29.2(3) The selling of the good or service does not include acting as an advocate on behalf of the individual, association, or corporation to the board.

29.2(4) The selling of the good or service does not result in the board member selling a good or service to the board on behalf of the individual, association, or corporation.

657—29.3(68B) Authorized sales.

29.3(1) A member of the board may sell goods or services to any individual, association, or corporation regulated by any division within the department of public health, other than the board of pharmacy examiners. This consent is granted because the sale of such goods or services does not affect the board member's duties or functions on the board.

29.3(2) A member of the board may sell goods or services to any individual, association, or corporation regulated by the board of pharmacy examiners if those goods or services are routinely provided to the public as part of that person's regular professional practice. This consent is granted because the sale of such goods or services does not affect the board member's duties or functions on the board. In the event an individual, association, or corpora-

tion to whom a board member sells goods or services is directly involved in any matter pending before the board, including a disciplinary matter, that board member shall not participate in any deliberation or decision concerning that matter. In the event a complaint is filed with the board concerning the services provided by the board member to a member of the public, that board member is otherwise prohibited by law from participating in any discussion or decision by the board in that case.

29.3(3) Individual application and approval are not required for the sales authorized by this rule unless there are unique facts surrounding a particular sale which would cause the sale to affect the board member's duties or functions, would give the buyer an advantage in dealing with the board, or would otherwise present a conflict of interest.

657—29.4(68B) Application for consent. Prior to selling a good or service to an individual, association, or corporation subject to the regulatory authority of the board of pharmacy examiners, a board member must obtain prior written consent unless the sale is specifically allowed in rule 29.3(68B). The request for consent must be in writing, signed by the board member requesting consent. The application must provide a clear statement of all relevant facts concerning the sale. The application should identify the parties to the sale and the amount of compensation. The application should also explain why the sale should be allowed.

657—29.5(68B) Limitation of consent. Consent shall be in writing and shall be valid only for the activities and the time period specifically described in the consent. Consent can be revoked at any time by a majority vote of the members of the board upon written notice to the board member. A consent provided under these rules does not constitute authorization for any activity which is a conflict of interest under common law or which would violate any other statute or rule.

It is the responsibility of the board member requesting consent to ensure compliance with all other applicable laws and rules.

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

ARC 4743A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF PHYSICAL AND OCCUPATIONAL THERAPY EXAMINERS

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby gives Notice of Intended Action to amend Chapter 200, "Physical Therapy Examiners," Chapter 201, "Occupational Therapy Examiners," and Chapter 202, "Physical Therapist Assistants," Iowa Administrative Code.

The proposed amendments clarify renewal procedures, clarify reinstatement procedures, clarify fees due for reinstating license, rescind the education exemption rule as the time frame for applying by education exemption has ended, and make necessary clerical changes.

Any interested person may make written comments on the proposed amendments not later than May 3, 1994, addressed to Marilynn Ubaldo, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The proposed amendments are intended to implement Iowa Code section 147.76 and chapters 148A, 148B and 272C.

The following amendments are proposed.

ITEM 1. Amend subrule 200.5(2) as follows:

200.5(2) Individuals who have met continuing education requirements for the biennium and wish to have their licenses renewed shall complete the board-approved renewal form and the board-approved continuing education report *(Form G)* and return them to professional licensure, department of public health, by January 31 of the odd-numbered years. *Individuals who were issued their initial license from January 1 through June 30 of the odd-numbered year will not be required to renew their license or file a continuing education report (Form G) until the following January 31 of the next odd-numbered year.*

ITEM 2. Amend rule 645—200.8(147) as follows:

645—200.8(147) Reinstatement of lapsed license. Individuals allowing a license to lapse will be required to reapply for licensure by examination or interstate endorsement and shall not engage in the practice of physical therapy. *The individual will be required to pay the current application fee and the reinstatement fee.*

ITEM 3. Amend subrule 200.9(1) as follows:

200.9(1) The application fee for a license to practice physical therapy issued upon the basis of examination or endorsement is $55. The examination fee is an additional ~~$110~~ *185*.

ITEM 4. Amend subrule 200.10(7) as follows:

200.10(7) Reinstated licensees and licensees through interstate endorsement shall obtain 40 hours of continuing education credit for renewal of license if license is obtained in the first year of the continuing education biennium and 20 hours if license is obtained in the second year of the continuing education biennium. *Reinstated licensees and licensees through interstate endorsement may use continuing education earned prior to licensure in Iowa, but within the same continuing education biennium in which they obtained Iowa licensure, to fulfill this requirement.*

ITEM 5. Amend subrule **200.20(8)**, paragraph **"d,"** introductory paragraph, as follows:

d. Other assistive personnel. *Care* ~~care~~ rendered by assistive personnel other than physical therapist assistants shall not be referred to as physical therapy unless:

ITEM 6. Amend subrule 201.7(2) as follows:

201.7(2) Individuals who have met continuing education requirements for the biennium and wish to have their

licenses renewed shall complete the board-approved renewal form and the board-approved continuing education report *(Form G)* and return them with the renewal fee to *professional licensure, department of public health,* ~~Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075,~~ by January 31 of the odd-numbered ~~year~~ *years. Individuals who were issued their initial license from January 1 through June 30 of the odd-numbered year will not be required to renew their license or file a continuing education report (Form G) until the following January 31 of the next odd-numbered year.*

ITEM 7. Amend rule 645—201.8(147) as follows:

645—201.8(147) Reinstatement of lapsed license. Individuals allowing a license to lapse will be required to reapply for permanent license and may be required to take the certification examination. Occupational therapists and occupational therapy assistants who do not request to be reinstated by means of submitting *the current application fee, reinstatement fee,* ~~penalty fees~~ and an application for reinstatement by August 1 of the new licensure biennium may be required to take an examination as determined by the board. Consideration will be given to the length of lapsed license, practicing with lapsed license, and previous violations of board rules. Should an individual continue to practice with a lapsed license, disciplinary action will be taken which may include suspension, revocation or probation.

ITEM 8. Amend subrule 201.11(1) as follows:

201.11(1) Completed written application for reinstatement on board-approved form with reinstatement fee *and current renewal fee*; and

ITEM 9. Amend subrule **201.11(2)** by adding a new paragraph "c" as follows:

c. Proof of 2080 hours of occupational therapy practice in a legal jurisdiction other than Iowa in the past five years.

ITEM 10. Rescind rule **645—202.5(147)**.

ITEM 11. Amend subrule 202.6(2) as follows:

202.6(2) Individuals who have met continuing education requirements for the biennium and wish to have their licenses renewed shall complete the board-approved renewal form and the board-approved continuing education report *(Form G)* and return them to professional licensure, department of public health, by January 31 of the odd-numbered years. *Individuals who were issued their initial license from January 1 through June 30 of the odd-numbered year will not be required to renew their license or file a continuing education report (Form G) until the following January 31 of the next odd-numbered year.*

ITEM 12. Amend rule 645—202.9(147) as follows:

645—202.9(147) Reinstatement of lapsed license. Individuals allowing a license to lapse will be required to reapply for licensure by examination or interstate endorsement and shall not practice as a physical therapist assistant. *The individual will be required to pay the reinstatement fee and the current application fee.*

ITEM 13. Amend subrule 202.10(1) as follows:

202.10(1) The application fee for a license to practice as a physical therapist assistant issued upon basis of examination or endorsement is $45. The examination fee is an additional ~~$110~~ *185.*

ITEM 14. Amend subrule 202.11(7) as follows:

202.11(7) Reinstated licensees and licensees through interstate endorsement shall obtain 20 hours of continuing education credit for renewal of license if license is obtained in the first year of the continuing education biennium and 10 hours if license is obtained in the second year of the continuing education biennium. *Reinstated licensees and licensees through interstate endorsement may use continuing education earned prior to licensure in Iowa, but within the same continuing education biennium in which they obtained Iowa licensure, to fulfill this requirement.*

ARC 4748A

REVENUE AND FINANCE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 38, "Administration," Chapter 40, "Determination of Net Income," Chapter 41, "Determination of Taxable Income," Chapter 42, "Adjustments to Computed Tax," and Chapter 46, "Withholding," Iowa Administrative Code.

The amendments specify the cumulative inflation factors which are applicable to indexation of the tax rate brackets and the standard deduction amounts for inflation for tax years beginning in the 1989, 1990, 1991, 1992 and 1993 calendar years. In addition, the amendments specify those years when indexation of the tax rate brackets for inflation was not applicable because the state general fund balance was less than $60 million.

The amendments clarify that the partial exemption of pensions, annuities and retirement allowances for certain retired state, local and federal employees was also applicable for benefits received in the 1990 calendar year as well as in 1989. The amendments delete all references to the federal WIN credit, since that federal credit expired at the end of 1981. The amendments provide that the $100 exclusion of dividend income applied only to tax years beginning in the 1981 calendar year.

The amendments provide that the targeted jobs tax credit is authorized in section 51 of the Internal Revenue Code instead of section 44. The amendments clarify that the contribution to the state judge's retirement system described in 701—40.26(422) was not effective after December 31, 1988. The amendments specify that the proration of itemized deductions for nonresidents mentioned in subrule 41.8(1) was applicable to tax years beginning prior to December 31, 1981, instead of tax years prior to December 31, 1984.

The amendments provide that a person who died in the tax year and resided in a school district with the income surtax for the tax year is subject to the surtax. However, the amendments specify that a person serving in the Armed Forces is not subject to the school district surtax unless the person is physically residing on a permanent basis in the school district imposing the surtax.

The amendments will be applicable 35 days after publication as adopted rules although some rules pertain to prior tax periods or apply retroactively due to application of federal laws.

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

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than May 3, 1994, to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on these proposed amendments on or before May 13, 1994. Such written comments should be directed to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

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

Requests for a public hearing must be received by May 6, 1994.

These amendments are intended to implement Iowa Code sections 257.21, 422.4, 422.7, 422.9 and 422.16.

The following amendments are proposed.

ITEM 1. Amend rule 701—38.10(422) by adding the following new subrules:

38.10(10) The cumulative inflation factor for tax years beginning in the 1989 calendar year is 101.6 percent. Therefore, the income tax brackets in the income tax rate schedule were increased by 1.6 percent for 1989. The civil service annuity exclusion described in rule 701—40.4(422) was repealed as of January 1, 1989, for tax years beginning on or after that date.

38.10(11) The cumulative inflation factor for tax years beginning in the 1990 calendar year is 103.8 percent. Therefore, the income tax brackets in the income tax rate schedule were increased by 2.2 percent from the bracket amounts in effect for 1989. The standard deduction amounts were also indexed for inflation by 2.2 percent, so the amounts in effect for 1990 were $1,260 for taxpayers filing as single individuals and for married taxpayers filing separate returns and filing separately on the combined return form and $3,100 for taxpayers filing jointly, filing as heads of household, and filing as qualifying widow(er).

38.10(12) The cumulative inflation factor for tax years beginning in the 1991 calendar year is 105.9 percent. Therefore, the income tax brackets in the tax rate schedule and the standard deduction amounts were increased by 2.1 percent from tax bracket amounts and standard deduction amounts in effect for 1990. Thus, the standard deduction amounts for 1991 were $1,280 for taxpayers using filing status 1, 3 or 4 and $3,160 for taxpayers using filing status 2, 5 or 6.

38.10(13) The cumulative inflation factor for tax years beginning in the 1992 calendar year is 105.9 percent, which is the same factor as was in effect for tax years beginning in 1991. There was no indexation of the brackets in the tax rate schedule for 1992 because the unobligated state general fund balance on June 30, 1992, was less than $60 million. However, the standard deduction amounts for 1992 were increased by 2.1 percent from the amounts in effect for 1991. Thus, the standard deduction amounts for 1992 were $1,310 for taxpayers using filing status 1, 3 or 4 and $3,220 for taxpayers using filing status 2, 5 or 6.

38.10(14) The cumulative inflation factor for tax years beginning in the 1993 calendar year was 105.9 percent, which is the same factor as was in effect for 1992. There was no indexation of the brackets in the tax rate schedule for 1993 because the unobligated state general fund balance on June 30, 1993, was less than $60 million. However, the standard deduction amounts for 1993 are increased by 1.6 percent from the amounts in effect for 1992. Thus, the standard deduction amounts for 1993 were $1,330 for taxpayers using filing status 1, 3 or 4 and $3,270 for taxpayers using filing status 2, 5 or 6.

ITEM 2. Amend rule **701—40.4(422)**, final unnumbered paragraph and the implementation clause, as follows:

The total exemption from the state individual income tax of pensions, annuities, or retirement allowances paid under the peace officers' retirement system, the Iowa public employees' retirement system, the police officers and firefighters retirement system, and the Iowa judicial retirement system and the partial exclusion from the state individual income tax of pensions and annuities from the United States civil service retirement and disability trust fund for certain qualifying individuals are not applicable for pensions and annuities received after December 31, 1988. Rule 40.33(422) describes a partial exemption of pensions, annuities, and retirement allowances received by certain retired state, local, and federal employees. This partial exemption of pension and annuity benefits is applicable only for benefits received in tax years beginning in the 1989 *and 1990* calendar ~~year~~ *years*.

This rule is intended to implement Iowa Code sections 422.5, 422.7, 97A.12, 97B.39, 411.13 and 602.9109 as amended by ~~1989~~ *1990* Iowa Acts, ~~Senate File 539~~ *chapter 1271*.

ITEM 3. Amend rule 701—40.9(422) to read as follows:

701—40.9(422) ~~WIN Credit, targeted~~ *Targeted* jobs tax credit, alcohol fuel credit. Where an individual claims ~~the federal work incentive programs (WIN) credit under section 40 of the Internal Revenue Code of 1954,~~

the targeted jobs tax credit under section 51 of the Internal Revenue Code ~~of 1954~~, or the alcohol fuel credit under section 40 of the Internal Revenue Code ~~of 1954~~, the amount of credit allowable must be used to increase federal taxable income. The amount of credit allowable used to increase federal adjusted gross income is deductible in determining Iowa net income. The adjustment for the targeted jobs tax credit is applicable for the tax years beginning on or after January 1, 1977. ~~The adjustment for the WIN credit is applicable for the tax years beginning on or after January 1, 1979 through December 31, 1981.~~ The adjustment for the alcohol fuel credit is applicable for tax years beginning on or after January 1, 1980.

This rule is intended to implement Iowa Code section 422.7 ~~as amended by 1986 Iowa Acts, House File 2471~~.

ITEM 4. Amend subrule 40.10(2) to read as follows:

40.10(2) For tax years beginning on or after January 1, 1981, *but before January 1, 1982,* each individual may exclude from Iowa net income not more than $100 of income received as dividends from qualifying domestic corporations.

ITEM 5. Amend subrule 40.21(4), introductory paragraph, to read as follows:

40.21(4) If a newly hired employee has been certified as either a vocational rehabilitation referral or an economically disadvantaged ex-convict for purposes of qualification for the targeted jobs tax credit under section ~~44~~ *51* of the Internal Revenue Code, that employee shall be considered to have met the qualifications for the additional wage deduction.

ITEM 6. Amend rule 701—40.26(422) and the implementation clause for this rule to read as follows:

701—40.26(422) Contributions to the judicial retirement system. Contributions made to the judicial retirement system on or after July 1, 1986, *but prior to January 1, 1989,* are included in the net income of the judge to the extent that the contributions are not included in the individual's federal adjusted gross income. The contributions are ~~four~~ *4* percent ~~(4%)~~ of the basic salary of the judge. The contributions are paid by the state for deposit with the state treasurer for credit to the judicial retirement system.

This rule is intended to implement Iowa Code section 422.7 as amended by ~~1986~~ *1989* Iowa Acts, chapter *228* ~~1243~~.

ITEM 7. Amend subrule 41.8(1), introductory paragraph, to read as follows:

41.8(1) For tax years beginning on or before December 31, *1981* ~~1984~~, itemized deductions attributable to Iowa by nonresidents shall be determined by multiplying the total itemized deductions, excluding Iowa income tax expensed, by a fraction, the numerator of which is the Iowa net income and the denominator of which is the federal adjusted gross income.

ITEM 8. Amend rule **701—42.1(257,442)** by adding the following **new** paragraphs immediately preceding the implementation clause:

In a situation where an individual is residing in a school district with a surtax and the individual dies during the tax year, the individual will be considered to be subject to the surtax, since the individual was residing in the school district on the last day of the individual's tax year.

An individual serving in the Armed Forces of the United States who maintains permanent residence in an Iowa school district with a surtax is subject to the surtax only if the individual is physically residing in the school district on the last day of the tax year.

A person who is present in the school district on the last day of the tax year on a temporary basis due to annual leave or in transit between duty stations is not subject to the surtax.

ITEM 9. Amend **46.3(2)**, paragraph **"b,"** subparagraph **(4)**, to read as follows:

(4) Allowances for the child/dependent care credit. Effective for Iowa income taxes withheld on or after January 1, 1991, employees who expect to be eligible for the child/dependent care credit for the tax year can claim withholding allowances for the credit. The allowances are determined from a chart included on the IA W-4 form on the basis of *net* ~~adjusted gross~~ income shown on the *Iowa* ~~federal~~ return for the employee. If the employee is married and has filed a joint federal return with a spouse who earns Iowa wages subject to withholding, the withholding allowances claimed by both spouses for the child/dependent care credit should not exceed the aggregate number of allowances to which both taxpayers are entitled. *Note that effective for state income tax withheld on or after January 1, 1994, taxpayers that expect to have a net income of $40,000 or more for the tax year should not claim withholding allowances for the child and dependent care credit, since they are not eligible for the credit.*

ITEM 10. Amend rule **701—46.3(422)**, implementation clause, to read as follows:

This rule is intended to implement Iowa Code section 422.16 as amended by ~~1990~~ *1993* Iowa Acts, chapter ~~1248~~ *172*.

ITEM 11. Amend subrule **46.4(2)**, paragraph **"8,"** and add a **new** paragraph **"12"** as follows:

8. *For compensation or wages paid prior to July 6, 1990, to nonresident* ~~Nonresident~~ employees rendering regular services for interstate common carriers such as railroads, trucking firms, airlines, bus companies, towing firms, etc., in more than one state, *the wages* shall be subject to Iowa withholding on that portion of the wages for services in Iowa provided more than 50 percent of the compensation paid by the carrier to such employee is earned in Iowa during the preceding calendar year. If the nonresident employee of the interstate carrier does not earn more than 50 percent of the compensation from the carrier in Iowa during the preceding calendar year, then withholding for Iowa income tax is not required. Similar provisions are likewise applicable to the wages received by nonresident employees of private property motor vehicle carriers. If the employee of the interstate common carrier or the private property carrier is a resident of Iowa, withholding on the total wages of the resident employee is required if the resident employee does not earn more than 50 percent of the compensation from the carrier in any one state. (Additional information may be obtained by referring to P.L. 91-569 as passed by the U.S. Congress and signed by the President, effective January 1, 1971.) *For withholding on compensation or wages paid on or after July 6, 1990, to nonresidents or part-year residents who earn compensation in Iowa and one or more states as an employee for an interstate motor carrier or an interstate rail company, see paragraph 12 in this subrule.*

12. Wages paid on or after July 6, 1990, to nonresidents of Iowa who earn the compensation from regularly assigned duties in Iowa and one or more other states for a

railway company or for a motor carrier are not taxable to Iowa. Pursuant to P.L. 101-322, the nonresidents in this situation are subject only to the income tax laws of their states of residence. Thus, when an Iowa resident performs regularly assigned duties in two or more states for a railroad or a motor carrier, the only state income tax that should be withheld from the wages paid for these duties is Iowa income tax. P.L. 101-322 was effective on July 6, 1990, and is the Amtrak Reauthorization and Improvement Act of 1990.

ITEM 12. Amend subrule **46.4(6)**, paragraph **"b,"** subparagraph **(5)**, fourth unnumbered paragraph, to read as follows:

The listing or magnetic tape should be sent to the following address: Iowa Department of Revenue and Finance, Audit and Compliance Division, ~~Business Section~~ *Individual Section*, Hoover State Office Building, P.O. Box 10456, Des Moines, Iowa 50306.

ARC 4745A

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 10, "Administrative Rules and Declaratory Rulings," Iowa Administrative Code.

These amendments correct an office title and emphasize the proper address to be used by the public when submitting petitions for rule making or declaratory rulings.

Any person or agency may submit written comments concerning these proposed amendments 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 Administrative Rules Coordinator, Director's Staff, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639.
5. Be received by the Bureau no later than May 3, 1994.

A meeting to hear requested oral presentations is scheduled for Thursday, May 5, 1994, at 10 a.m. 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.

These amendments are intended to implement Iowa Code chapters 17A and 25B.

Proposed rule-making actions:

ITEM 1. Amend subrule 10.1(3) as follows:

10.1(3) Address. The address of the department's administrative rules coordinator is: Administrative Rules Coordinator, ~~Bureau of Policy and Information~~ *Director's Staff*, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 2. Amend subrule 10.3(1), introductory paragraph, as follows:

10.3(1) The department shall accept and consider, from any person or agency, petitions for rule making when ~~prepared and~~ submitted *to the department's administrative rules coordinator at the address in subrule 10.1(3) and prepared* in conformance with the following:

ITEM 3. Amend paragraph **10.3(1)"c"** as follows:

c. Petitions should ~~by~~ *be* typewritten, although petitions legibly hand-printed in ink shall be accepted.

ITEM 4. Rescind paragraph **10.3(1)"d."**

ITEM 5. Amend subrule 10.4(1), introductory paragraph, as follows:

10.4(1) The department shall accept and consider, from any person or agency, petitions for the issuance of declaratory rulings when ~~prepared and~~ submitted *to the department's administrative rules coordinator at the address in subrule 10.1(3) and prepared* in conformance with the following:

ITEM 6. Amend paragraph **10.4(1)"b"** as follows:

b. Petitions ~~shall~~ *should* be typewritten *although petitions legibly hand-printed in ink shall be accepted.*

ITEM 7. Rescind paragraph **10.4(1)"c."**

NOTICE — USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

May 1, 1992 — May 31, 1992	9.50%
June 1, 1992 — June 30, 1992	9.50%
July 1, 1992 — July 31, 1992	9.50%
August 1, 1992 — August 31, 1992	9.25%
September 1, 1992 — September 30, 1992	8.75%
October 1, 1992 — October 31, 1992	8.50%
November 1, 1992 — November 30, 1992	8.50%
December 1, 1992 — December 31, 1992	8.50%
January 1, 1993 — January 31, 1993	8.75%
February 1, 1993 — February 28, 1993	8.75%
March 1, 1993 — March 31, 1993	8.50%
April 1, 1993 — April 30, 1993	8.25%
May 1, 1993 — May 31, 1993	8.00%
June 1, 1993 — June 30, 1993	8.00%
July 1, 1993 — July 31, 1993	8.00%
August 1, 1993 — August 31, 1993	8.00%
September 1, 1993 — September 30, 1993	7.75%
October 1, 1993 — October 31, 1993	7.75%
November 1, 1993 — November 30, 1993	7.25%
December 1, 1993 — December 31, 1993	7.25%
January 1, 1994 — January 31, 1994	7.75%
February 1, 1994 — February 28, 1994	7.75%
March 1, 1994 — March 31, 1994	7.75%
April 1, 1994 — April 30, 1994	8.00%

ARC 4737A

UTILITIES DIVISION[199]

Notice of Termination

and

Notice of Intended Action

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

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

Pursuant to Iowa Code section 17A.4(1)"b," the Utilities Board (Board) terminates the rule-making proceeding initiated by its Notice of Intended Action to amend Chapter 20, "Service Supplied by Electric Utilities," published in the IAB Vol. XVI, No. 13, (12/22/93) p.1329, **ARC 4502A**.

The subject of the Notice was an amendment to 199 IAC 20.9(2) and the adoption of new subrule 20.9(4) relating to information to be filed with the Board to support costs being collected by rate-regulated utilities through the energy adjustment clause. That rule-making proceeding is terminated and a new rule-making proceeding is commenced. The Board has made changes to the proposed amendments in response to the comments and has added a proposed amendment to 199 IAC 20.9(3) so that the proposed changes will apply to the optional energy clause for rate-regulated utilities which do not own generation.

The Board hereby gives notice that on March 17, 1994, the Board issued an order in Docket No. RMU-93-12, In Re: Energy Adjustment Clause, "Order Renoticing Rule Making," pursuant to Iowa Code sections 17A.4, 476.1, 476.2, and 476.6, to consider the adoption of amendments to 199 IAC 20.9(2) and 20.9(3) and the adoption of new subrule 199 IAC 20.9(4).

On February 13, 1992, the Board issued an order in Docket No. Iowa Admin. Code 199—20.9(2) (1992) which required each electric utility filing periodic EAC changes to provide the journal entries and all worksheets and detailed data supporting the proposed changes at the time the change was proposed. The information was to be provided for a 12-month survey period. At the conclusion of the survey period, a comprehensive filing, accounting for the previous 12-month period, was required.

The Board has reviewed the filings made during the survey period and believes the information should continue to be filed. While the EAC rules state what is eligible for inclusion and collection through the EAC, the rules do not require documentation to support the collection. The additional documentation required by the proposed amendments would provide verification for amounts collected pursuant to the EAC and would reduce the need for field audits by the Board's staff.

The proposed amendments to subrule 20.9(2) and 20.9(3) provide that information to support the EAC be filed prior to each billing cycle. In response to the comments in the prior rule making, invoices for fuel, freight, and transportation are specifically exempted. These would be included in the annual filing. The proposed amendment to subrule 20.9(3) was not included in the prior rule making. This proposed amendment requires the same information be filed for the optional energy adjustment clause for utilities which do not own generation.

Proposed new subrule 20.9(4) requires an annual filing of two months of invoices, journal entries, and detailed data to support actual energy sales and the EAC balances used in the monthly filings. This is a change in the rule originally proposed, which would have required information for the entire year be filed. In most audit situations, only selected information is reviewed. The Board would choose the two months for which the information is required. The Board has general authority under Iowa Code chapter 476 to request additional information by order if information for two months is not sufficient in a specific case.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," all interested persons may file written comments on the proposed amendments no later than May 3, 1994, by filing an original and ten copies of the comments substantially complying with the form prescribed in 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

An oral presentation is scheduled for 10 a.m., June 7, 1994, in the Utilities Board's First Floor Hearing Room, Lucas State Office Building, Des Moines, Iowa, for the purpose of receiving comments. Pursuant to 199 IAC 3.7(17A,474), all interested persons may participate in this proceeding. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

The proposed amendments are intended to implement Iowa Code sections 476.1, 476.2, and 476.6.

The following amendments are proposed.

ITEM 1. Amend the introductory paragraph of subrule 20.9(2) as follows:

20.9(2) Energy clause for rate-regulated utility. Prior to each billing cycle, a rate-regulated utility shall determine *and file for board approval* the adjustment amount to be charged for each energy unit consumed under rates set by the board. *The filing shall include all journal entries, invoices (except invoices for fuel, freight, and transportation), worksheets, and detailed supporting data used to determine the amount of the adjustment. The estimated amount of fossil fuel should be detailed to reflect the amount of fuel, transportation, and other costs.*

The journal entries should reflect the following breakdown for each type of fuel: actual cost of fuel, transportation, and other costs. Items identified as other costs should be described and their inclusion as fuel costs should be justified. The utility shall also file detailed supporting data:

1. To show the actual amount of sales of energy by month for which an adjustment was utilized, and

2. To support the energy cost adjustment balance utilized in the monthly energy adjustment clause filings.

ITEM 2. Amend the introductory paragraph of subrule 20.9(3) as follows:

20.9(3) Optional energy clause for a rate-regulated utility which does not own generation. A rate-regulated utility which does not own generation may adopt the energy adjustment clause of this subrule in lieu of that set

forth in subrule 20.9(2). Prior to each billing cycle it shall determine *and file for board approval* the adjustment amount to be charged for each energy unit consumed under rates set by the board. *The filing shall include all journal entries, invoices (except invoices for fuel, freight, and transportation), worksheets, and detailed supporting data used to determine the amount of the adjustment. The estimated amount of fossil fuel should be detailed to reflect the amount of fuel, transportation, and other costs.*

The journal entries should reflect the following breakdown for each type of fuel: actual cost of fuel, transportation, and other costs. Items identified as other costs should be described and their inclusion as fuel costs should be justified. The utility shall also file detailed supporting data:

1. To show the actual amount of sales of energy by month for which an adjustment was utilized, and

2. To support the energy cost adjustment balance utilized in the monthly energy adjustment clause filings.

ITEM 3. Add new subrule 20.9(4) as follows:

20.9(4) Annual review of energy clause. On or before each May 1 the board will notify each utility as to the two months of the previous calendar year for which fuel, freight, and transportation invoices will be required. Two copies of these invoices shall be filed with the board no later than the subsequent November 1.

ARC 4718A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development emergency adopts and implements an amendment to Chapter 23, "Community Development Block Grant Nonentitlement Program," Iowa Administrative Code.

The amendment revises the amount of funds dedicated to the Economic Development/Public Facilities Set-Aside to 20 percent of the funds available to the state of Iowa from the U.S. Department of Housing and Urban Development.

In accordance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary, impracticable, and contrary to public interest. The amendment makes the 20 percent level of funding available immediately upon receipt of federal funds. These funds are expected to be made available on or shortly after March 18, 1994. The public was afforded the opportunity to comment on this proposal in public meetings held in August 1993. The public comment period was part of the annual process to review elements of the Community Development Block Grant Nonentitlement Program. There were no negative comments received on this proposal. Due to an error in the preparation of documents submitted to the Administrative Rules Coordinator in October 1993, the provision was inadvertently omitted.

On March 17, 1994, the IDED Board adopted this amendment.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment, 35 days after publication, should be waived and the amendment made effective on March 18, 1994. The Department finds that the amendment confers a benefit by making funds available immediately upon receipt of federal authorization.

This amendment became effective March 18, 1994.

This amendment is intended to implement Iowa Code section 15.108.

The following amendment is adopted.

Amend subrule 23.6(4) as follows:

23.6(4) Economic development/public facilities set-aside. Beginning with the award of FY ~~93~~ *94* CDBG funds, up to ~~15~~ *20* percent of the total program funds will be reserved for projects funded under the economic development set-aside program and the public facilities set-aside program. If this allocation for the current fiscal year is not fully allocated, the excess will be reallocated to the general competitive program for the following year.

[Filed Emergency 3/17/94, effective 3/18/94]
[Published 4/13/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/13/94.

ARC 4741A

GENERAL SERVICES DEPARTMENT[401]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 17A.3 and Iowa Code Supplement section 18.8A, the Terrace Hill Commission and the Department of General Services emergency adopt and implement the transfer of the Terrace Hill Commission rules from the Historical Division [223] Chapters 55 to 57 to the Department of General Services [401] Chapters 14 to 16, Iowa Administrative Code.

The Historical Division adopted rules in **ARC 4612A** published in the Iowa Administrative Bulletin dated February 16, 1994, to transfer the Terrace Hill Commission to the Department of General Services. The Terrace Hill Commission and the Department of General Services emergency adopt and implement these rules to become effective on March 23, 1994, the same date **ARC 4612A** becomes effective.

Pursuant to Iowa Code section 17A.4(2), the Terrace Hill Commission and the Department of General Services find that notice and public participation are unnecessary and impracticable because this amendment merely transfers rules of the Terrace Hill Commission from the Historical Division [223] to the Department of General Services [401], pursuant to 1993 Iowa Acts, chapter 48, section 4.

Also, pursuant to Iowa Code section 17A.5(2)"b"(2), the Terrace Hill Commission and the Department of General Services find that the normal effective date should be waived and the amendment made effective on March 23, 1994. This amendment confers a benefit on the public by preventing a lapse in the rules of the Terrace Hill Commission if the rules in the Department of General Services [401] do not become effective on the same date that they are transferred from the Historical Division [223].

These rules are intended to implement Iowa Code Supplement section 18.8A.

Transfer **223—Chapters 55** to **57** to **401—Chapters 14** to **16** and strike all parenthetical references to "303" and insert "18" and correct Iowa Code references accordingly.

[Filed Emergency 3/23/94, effective 3/23/94]
[Published 4/13/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/13/94.

ARC 4730A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 124.201 and 124.301, the Iowa Board of Pharmacy Examiners hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendments were approved during the March 15, 1994, meeting of the Board of Pharmacy Examiners.

The amendments provide for the temporary designation of levo-alphacetylmethadol, commonly known as LAAM, as a Schedule II controlled substance in Iowa Code section 124.206 to bring Iowa law into conformance with federal law. The amendments further exempt LAAM from the Schedule I substance, alphacetylmethadol, currently included in Iowa Code section 124.204.

In compliance with Iowa Code subsection 17A.4(2), the Board finds that notice and public participation are unnecessary in that the Board concurs with the findings of the Drug Enforcement Administration that the substance levo-alphacetylmethadol has a potential for abuse less than substances in Schedule I, it does have currently accepted medical use in treatment in the United States, and abuse of the substance may lead to severe psychic or physical dependence. These findings are consistent with placing the substance in Schedule II of the Iowa Uniform Controlled Substances Act.

The Board also finds, pursuant to Iowa Code subparagraph 17A.5(2)"b"(2), that the normal effective date of these amendments, 35 days after publication, should be waived. These changes confer a benefit on the public by permitting the use of levo-alphacetylmethadol in medical treatment and should become effective upon filing with the Administrative Rules Coordinator on March 23, 1994.

These amendments are intended to implement Iowa Code section 124.201.

The following amendments are adopted.

ITEM 1. Adopt **new** subrule 10.20(3) as follows:

10.20(3) Amend Iowa Code subsection 124.206(3), by adding the following new paragraph:

z. Levo-alphacetylmethadol. Some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM.

ITEM 2. Adopt **new** subrule 10.20(4) as follows:

10.20(4) Amend Iowa Code subsection 124.204(2), paragraph"c," as follows:

c. Alphacetylmethadol *(except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM)*.

[Filed Emergency 3/21/94, effective 3/23/94]
[Published 4/13/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/13/94.

ARC 4739A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to Iowa Code section 455B.304, the Environmental Protection Commission adopts amendments to Chapter 100, "Scope of Title—Definitions—Forms—Rules of Practice," and Chapter 103, "Sanitary Landfills," Iowa Administrative Code.

In 1987, the Iowa Legislature amended Iowa Code chapter 455B and required that operators of sanitary disposal projects may have to install shafts to relieve the accumulation of gas from a sanitary disposal project. Also, the Department desires to obtain EPA approval of the Iowa Solid Waste Management Program. In order to obtain approval, it is necessary to amend the existing rules to include location restrictions related to airports, fault areas, seismic zones, unstable areas, and gas monitoring. As a result of Iowa Code section 455B.306 and the desire to obtain EPA approval, 567—Chapter 100 must be amended to include a definition of a sanitary landfill and a lower explosive limit, and definitions related to airport safety, fault areas, seismic impact zones, unstable areas, and gas monitoring. Chapter 103 must be amended to require owners and operators of sanitary landfills to monitor sanitary landfills for explosive gases, to implement remediation if the gas concentrations exceed stated levels, and to demonstrate that proposed new landfills or lateral expansion to existing landfills comply with location restrictions.

Notice of Intended Action was published on November 10, 1993, in the Iowa Administrative Bulletin as **ARC 4430A**. A public hearing was held on December 3, 1993. No verbal comments were received at the hearing but two comment letters were received by mail. As a result of the comments, the proposed subrules will be part of the plan requirements under 103.2(1) instead of the report requirements under 103.2(1)"m" and the language will be revised to require that a notice be submitted with the plan and that a demonstration showing that engineering measures have been incorporated into the design will be placed in the facility's official files when established. This revises the language which required that the demonstration be prepared and submitted to the Department with the report.

In addition, the words "small quantity generator waste" were deleted from the definition of "Municipal solid waste landfill (MSWLF)" as a type of waste that may be received by a municipal solid waste landfill.

These rules will become effective May 18, 1994.

These rules implement Iowa Code §455B.304.

The following amendments are adopted.

ITEM 1. Amend rule **567—100.2(455B,455D)** by adding the following <u>new</u> definitions in alphabetical order:

"Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

"Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the MSWLF site, because of natural or man-induced events, results in the down slope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil function, block sliding, and rockfall.

"Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

"Holocene" means the most recent epoch of the Quaternary Period, extending from the end of the Pleistocene Epoch to the present.

"Karst terranes" means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

"Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25° Celsius and atmospheric pressure.

"Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

"Municipal solid waste landfill (MSWLF)" means a discrete area of land or an excavation that receives household waste, and that is not a land application site, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations part 257.2. An MSWLF also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous dry sludge, and industrial solid waste. An MSWLF may be publicly or privately owned. An MSWLF may be a new MSWLF site, an existing MSWLF site, or a lateral expansion.

"Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of an MSWLF site.

"Seismic impact zone" means an area with a 10 percent or greater probability that the maximum horizontal acceleration in the lithified earth material, expressed as a percentage of the earth's gravitational pull will exceed 0.10g in 250 years.

"Structural components" means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment.

"Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of

impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terranes.

ITEM 2. Amend subrule **103.2(1)** by adding the following **new** paragraphs "**r**" to "**u**":

r. When a new landfill or lateral expansion is located within 10,000 feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft, the plan must contain a notice that the facility's official files will include the following demonstration: that the site is designed and will be operated so that it does not pose a bird hazard to aircraft. For any new site or a lateral expansion within a five-mile radius of any airport runway end used for turbojet or piston-type aircraft, the plan must show that the Federal Aviation Administration has been notified. For existing landfills located within 10,000 feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any runway end used by only piston-type aircraft, the owner or operator must prepare the demonstration required above in this paragraph and notify the director that it has been placed in the facility's official files.

s. When a new landfill or lateral expansion is located within 200 feet of a fault that has had displacement in holocene time, the plan must contain a notice that the facility's official files will include the following demonstration: that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the site and will be protective of human health and the environment.

t. When a new landfill or a lateral expansion is located in seismic impact zones, the plan must contain a notice that the facility's official files will include the following demonstration: that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in the lithified earth material for the site.

u. When a new facility or lateral expansion is located in an unstable area, the plan must contain a notice that the facility's official files will include the following demonstration: that engineering measures have been incorporated into the site design to ensure that the integrity of the structural components of the site will not be disrupted. The demonstration must consider the on-site or local soil conditions that may result in significant differential settling, on-site or local geologic or geomorphologic features, and on-site or local human-made features or events (both surface and subsurface). For existing facilities located in an unstable area, the owner or operator must prepare the above demonstration required in this paragraph and notify the director that it has been placed in the facility's official files.

ITEM 3. Amend 567—103.2(455B) by adding a **new** subrule as follows:

103.2(15) Explosive gases control.

a. Owners or operators of all sanitary landfills must ensure that:

(1) The concentration of methane gas generated by the facility does not exceed 25 percent of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components); and

(2) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary.

b. Owners or operators of all sanitary landfills must monitor quarterly for compliance with paragraph "a" of this subrule. An annual report shall be submitted by November 30 summarizing the methane gas monitoring results and any action taken resulting from gas levels exceeding the limits during the previous year.

c. If methane gas levels exceeding the limits specified in paragraph "a" of this subrule are detected, the owner or operator must:

(1) Immediately take all necessary steps to ensure protection of human health and notify the director;

(2) Within seven days after detection submit to the director a report stating the methane gas levels detected and a description of the steps taken to protect human health;

(3) Within 60 days of detection, implement a plan for remediation of the methane gas releases and send a copy of the remediation plan to the director. The plan shall describe the nature and extent of the problem and the proposed remedy.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/13/94.

ARC 4753A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1) and 455B.304(1), the Environmental Protection Commission adopts amendments to Chapter 108, "Reuse of Solid Waste," Iowa Administrative Code.

The amendments will authorize and establish criteria for the beneficial reuse of foundry sand, without the need for a permit under the Department's solid waste authority.

Notice of Intended Action was published on December 8, 1993, in the Iowa Administrative Bulletin as **ARC 4488A**. A public hearing was held January 4, 1994. Four persons attended the hearing but no verbal comments were received. Six comment letters were received. The amendments have not been revised as a result of the comments received.

These amendments will become effective May 18, 1994.

These amendments are intended to implement Iowa Code sections 455B.301 to 455B.308.

The following amendments are adopted.

ITEM 1. Amend rule 567—108.1(455B) as follows:

567—108.1(455B) Scope. This chapter establishes the conditions under which certain solid wastes may be reused, *without a solid waste permit. It does not relieve any duty to obtain other permits or comply with other rules which may apply.* Solid waste which is not reused in accordance with this chapter must be disposed, processed, composted, recycled or land applied in conformance with Chapters 101 to 121 of these rules. *This chapter applies*

only to the materials listed, and not to such materials mixed with other wastes.

ITEM 2. Amend rule **567—108.2(455B)** by adding the following new definition in alphabetical order:

"Used foundry sand" means residuals from the foundry industry which are derived from molding, core-making, and casting cleaning processes that primarily contain either individually or in combination sand, olivine or clay and which by specified leach test are acceptable for reuse.

ITEM 3. Adopt a new rule 567—108.4(455B) as follows:

567—108.4(455B) Used foundry sand.

108.4(1) General conditions of reuse—foundry sand.

a. A representative sample of used foundry sand shall be used for reuse classification by point of generation. A sample is to be collected from each contributing type of manufacturing process in accordance with U.S. EPA Method SW-846 and the sampling frequency schedule described in the Foundry Sand Management Plan (see IAC subrule 108.4(3)).

b. A representative sample of leachate extracted by RCRA TCLP (Toxic Characteristic Leaching Procedure—referenced 40 CFR Part 261, Appendix II) analysis shall be used for classification of used foundry sand for reuse. Any used foundry sand possessing leachate characteristics less than or equal to 90 percent of federal RCRA TCLP leachate classification limits (reference 40 CFR 261.24) shall be considered acceptable for reuse.

c. A representative sample is to be evaluated for pH using U.S. EPA Method 9045. Any used foundry sand possessing a pH greater than or equal to 5.0 and less than or equal to 10.0 shall be considered acceptable for reuse.

108.4(2) Short-term storage requirements. Used foundry sand may be accumulated in an on-site or off-site storage facility, including shared facilities, without a permit in anticipation of reuse provided that the storage activity is managed in accordance with a site-specific foundry sand management plan that has been certified (approved) by an officer of the facility assuming overall site management responsibility or the designated representative of the officer.

a. Short-term accumulation of used foundry sand shall be restricted only to the extent that the storage site meets or exceeds the site management restrictions listed in paragraph "b" of this subrule, and:

(1) Used foundry sand cannot be stored unless the total accumulation is less than the volume needed for support of the specific reuse application(s) identified by the plan (see subrule 108.4(3)) or, in the alternative,

(2) The accumulation period does not exceed three years.

b. Any storage site used for temporary accumulation of used foundry sand:

(1) Shall be defined by boundaries that do not extend into a wetland or within one-quarter mile of known sinkhole.

(2) Shall not extend below or within five feet of normal groundwater elevations, or into any waters of the state.

(3) Shall not be required to meet liner, leachate collection system or daily cover criteria.

(4) Shall not be used for storage of used foundry sand if it does not meet subrule 108.4(1).

108.4(3) Used foundry sand management plan requirements. Any foundry sand management plan developed in anticipation of short-term storage and reuse of used foundry sand must include the following:

a. Identification of an individual responsible for management of the storage site in accordance with the requirements of the plan. Identification is to include:

(1) Name and title.
(2) Mailing address.
(3) Telephone number.

b. For any storage site involving multiple users, identification of the user(s) (i.e., participating facilities) and identification of the facility assuming overall site management responsibility. For each storage site user, identification is to include:

(1) Facility name.
(2) Street address.
(3) Mailing address.
(4) Designated contact person.
(5) Telephone number of designated contact person.

c. Identification of the storage site location with a scaled map or aerial photograph showing as a minimum:

(1) Relevant topographical features of the site.
(2) Site drainage areas, if applicable.
(3) Expected grading plan for the storage pile.
(4) Prohibited storage areas at the storage site.

d. Documentation demonstrating legal entitlement to the use of the site specified for storage of used foundry sand in anticipation of beneficial reuse in accordance with these provisions and as described by the plan.

e. Documentation of department of natural resources approval of a storm water discharge permit for the storage site, if applicable.

f. Identification of reuse application(s) for which used foundry sands are being accumulated.

g. Specification of a compliance assurance and sampling procedure to ensure that only used foundry sands acceptable for reuse are accumulated. Compliance assurance is to be ensured through a defined sampling program requiring, as a minimum, quarterly sampling for the first year, as a baseline, followed by annual foundry sand stream sampling thereafter.

h. Current accumulations of used foundry sand residuals may be made available for reuse and incorporated into the plan provided that representative samples are taken to ensure conformance with the standards outlined in subrule 108.4(1).

i. Identification of site management controls for control of:

(1) Fugitive dust.
(2) Storm water run-on, run-off, or containment.
(3) Access to site.

j. An annual year-end summary of used foundry sand transfers into or out of the storage site, including the following:

(1) The amount, tonnage or volume, of used foundry sand deposited into or withdrawn from the storage site, the date(s) of transfer activity, and a running total of used foundry sand accumulations held at the storage site.

(2) Analytical data for any used foundry sands sampled for reuse classification acceptability.

(3) Detailed information for each reuse activity, including:

1. Identification of party to whom sand was supplied.
2. Identification of transporter if different from 108.4(3)"a."
3. The approximate tonnage or volume of used foundry sand withdrawn.
4. Date transported.

5. Description of beneficial reuse and its location.

The annual report for any given year must be completed by March 1 of the following year. Submittal to the department of natural resources is not required although each annual report must be kept for a minimum period of five years following the year-end date, or for the period of site use plus five years. Any initial sampling data is to be kept as baseline data for the period of time the storage site is in use.

k. Annual management certification (approval) by an officer of the facility assuming overall site management responsibility or the designated representative of the officer that any used foundry sand accumulated on-site and transported off-site for reuse is being managed in accordance with the procedures and requirements of the approved plan.

108.4(4) Beneficial uses for which no permit is required. Used foundry sand may be used for the following beneficial purposes without a solid waste management permit in accordance with a used foundry sand management plan consistent with subrule 108.4(3) provided it is for the following beneficial purposes:

a. Daily cover for litter and vermin control at a sanitary landfill in accordance with the sanitary landfill permit.

b. Road ballast.

c. Construction/architectural fill.

d. Dike or levee construction, repair or maintenance. Prior written notification must be made by the foundry to the department. If the department does not respond within 30 days, use shall be deemed appropriate.

e. Fill base for roads, road shoulders, parking lots, and any other similar use.

f. Any other beneficial use upon written notification by a foundry person of the intended reuse activity. If the department does not provide written objection within 30 days, the intended use is deemed appropriate.

108.4(5) Uses for which no authorization is required. The following used foundry sand applications may be used without authorization since this form of beneficial use qualifies it as a commercial material.

a. Raw material constituent. For flowable fill (low strength concrete material), or concrete, asphalt and any other similar use where the used foundry sand is encapsulated while providing all or a portion of the aggregate and critical constituents necessary for production of the final product.

b. Production feedstock. For reclaim or reuse as a production material.

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ARC 4752A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.304 and 455E.9, the Environmental Protection Commission hereby rescinds Chapter 209, "Grants for Solid Waste Demonstration Projects," and adopts in lieu thereof a new Chapter 209, "Landfill Alternatives Financial Assistance Program," Iowa Administrative Code.

This new Chapter 209 provides guidelines for financial assistance to applicants for solid waste management projects representing alternatives to landfilling.

Notice of Intended Action was published as **ARC 4567A** on January 19, 1994, in the Iowa Administrative Bulletin. A public hearing was held February 9, 1994. One change was made to the Notice of Intended Action. The word "secured" in 209.10"2" was changed to "ensured". The term "ensured" will allow greater flexibility by an applicant in guaranteeing that cost share moneys will be applied to the project.

These rules are intended to implement Iowa Code sections 455B.301A and 455E.11.

These rules will become effective May 18, 1994.

The following new chapter is adopted.

Rescind **567—Chapter 209**, "Grants for Solid Waste Demonstration Projects," and insert in lieu thereof the following <u>new</u> chapter:

CHAPTER 209

LANDFILL ALTERNATIVES FINANCIAL ASSISTANCE PROGRAM

567—209.1(455B,455E) Goal. The goal of this program is to reduce the amount of solid waste being generated and the amount of solid waste being landfilled through implementation of solid waste management projects. This goal will be achieved utilizing the following hierarchy of waste management priorities in descending order of preference:

1. Waste reduction;
2. Recycling and reuse;
3. Combustion with energy recovery; and
4. Combustion for volume reduction.

567—209.2(455B,455E) Purpose. The purpose of this program is to provide financial assistance to eligible applicants for the purpose of implementing education programs and solid waste management projects, to achieve a reduction in solid waste generation and a reduction in solid waste landfilling. Projects receiving financial assistance must address the program's goal as described in 209.1(455B,455E).

567—209.3(455B,455E) Definitions.

"Applicant" means any unit of local government, public or private group, business or individual with an interest in or having responsibility for solid waste management in Iowa and is currently in compliance with all applicable department statutes and regulations.

"Cost share" means applicant's share of proposed eligible project costs.

"Demonstration project" means any project that is innovative or new to the state of Iowa.

"Department" means the Iowa department of natural resources.

"Eligible costs" means costs directly related to the project and for which financial assistance moneys may be used.

"Eligible projects" means any project which, when implemented, will address a reduction in the amount of solid waste being generated or the amount of solid waste being landfilled.

"Energy recovery" means the direct conversion of solid wastes into useful process heat or electricity.

"Financial assistance" means monetary assistance awarded under these rules to an applicant in the form of grants or loans.

"Grants" means financial assistance in the form of cash payments to recipients.

"Groundwater protection Act" means 1987 Iowa Acts, chapter 225, which sets forth laws pertaining to the protection of Iowa's groundwater resources through reduced disposal of solid wastes at landfills and provides financial assistance for this protection.

"Indirect costs" means costs that are not identifiable with a specific product, function, or activity.

"Loans" means an award of financial assistance with the requirement that the award be repaid.

"Overhead costs" means expenses not chargeable to a particular part of the work or product including, but not limited to, utilities, insurance, and rent.

"Recipient" means any applicant selected to receive financial assistance under these rules.

"Regionalization" means a project that involves two or more units of local government or public or private groups with an interest in or having responsibility for solid waste management in Iowa and through the cooperative provision of alternative solid waste management services, the project's impact will have a positive influence on such factors as, including, but not limited to, operational efficiency, materials diversion, and population served.

"Sanitary landfill" means a permitted disposal site where solid waste is buried between layers of earth.

"Waste management assistance" means the waste management assistance division of the department of natural resources established by Iowa Code section 455B.483.

"Waste reduction" means practices which reduce, avoid, or eliminate the generation of solid waste at the source and not merely the shifting of a waste stream from one medium to another medium.

567—209.4(455B,455E) Role of the department of natural resources. The department is responsible for the administration of funds for projects receiving financial assistance under these rules. The department will ensure that funds disbursed meet guidelines established by the groundwater protection Act and the waste management authority Act.

567—209.5(455B,455E) Funding sources. The department will use funds appropriated by the legislature and other sources that may be obtained for the purpose of achieving the goals outlined in these rules. The department will ensure that moneys appropriated meet both federal and state guidelines pertaining to their use.

567—209.6(455B,455E) Eligible projects. The department may provide financial assistance to applicants for the following types of projects that are consistent with the goal and purpose of this program:

1. Public education;
2. Waste reduction;
3. Recycling and reuse;
4. Research and development;
5. Demonstration;
6. Market development for recyclable materials;
7. Projects that manufacture products with recycled content;
8. Environmental testing related to various landfill alternatives for solid waste. Such projects shall include, but are not limited to, testing air emissions generated by the combustion of municipal solid waste, analysis of the ash generated as a result of the combustion of municipal solid waste, analysis of alternative materials to be used in leachate control;
9. Production of energy through combustion, including production of tire-derived fuels and refuse-derived fuels; and
10. Combustion for volume reduction.

567—209.7(455B,455E) Type of financial assistance. The type of financial assistance offered to an applicant is dependent on the type of project and application submitted:

209.7(1) Grants will be offered to applicants for waste reduction projects; public education projects; research and development projects; and demonstration projects that are innovative or new to the state of Iowa.

209.7(2) Loans will be offered to applicants for all other eligible projects and may be offered to applicants requesting grant assistance.

567—209.8(455B,455E) Loans. The term of all loans, executed under these rules, shall vary on a case-by-case basis and shall be based on the specific capital costs financed, as well as the terms of other financing provided for the project. The written agreement will establish other conditions or terms needed to manage or implement the project.

567—209.9(455B,455E) Reduced award. The department reserves the right to offer financial assistance in an amount less than that requested by the applicant. In the event that financial assistance is offered that is less than the amount requested by an applicant, the applicant may be asked to document the impact on the proposed project. Reduced awards shall be offered where it has been determined by the department that:

209.9(1) Program resources are insufficient to provide the level of financial assistance requested to all applicants to which the department intends to offer financial assistance.

209.9(2) The applicant could implement the project at a reduced level of financial assistance and achieve project objectives and this program's goals.

567—209.10(455B,455E) Fund disbursement limitations. No funds shall be disbursed until the department has:

1. Determined the total estimated cost of the project;
2. Determined that financing for the cost share amount is ensured by the recipient;
3. Received final design plans from the recipient, if applicable;
4. Received commitments from the recipient to implement the project;
5. Executed a written agreement with the recipient; and
6. Determined that the recipient is currently in compliance with all applicable federal, state, and local statutes and regulations.

567—209.11(455B,455E) Minimum applicant cost share. An applicant for financial assistance shall agree to provide a minimum cost share of funds committed to the project. Financial assistance moneys received by the applicant under these rules or through the landfill alternatives grant program are ineligible to be utilized for any portion of the required applicant cost share. Minimum

cost share of funds shall be in accordance with the following schedule:

209.11(1) Grants.

a. Waste reduction—35 percent.
b. Public education—35 percent.
c. Research and development—35 percent.
d. Demonstration—35 percent.

209.11(2) Loans.

a. Recycling and reuse—35 percent.
b. Combustion with energy recovery—50 percent.
c. Combustion for volume reduction—60 percent.

567—209.12(455B,455E) Eligible costs. Applicants may request financial assistance in the implementation and operation of a project which includes, but is not limited to, funds for the purpose of:

1. Waste reduction equipment purchase and installation;
2. Collection, processing, or hauling equipment including labor for installation;
3. Development and distribution of educational materials;
4. Planning and implementation of educational forums including, but not limited to, workshops;
5. Materials and labor for construction or renovation of buildings;
6. Salaries directly related to implementation and operation of the project;
7. Laboratory analysis costs; and
8. Engineering or consulting fees.

567—209.13(455B,455E) Ineligible costs. Financial assistance shall not be provided or used for costs including, but not limited to, the following:

1. Taxes;
2. Vehicle registration;
3. Overhead expenses;
4. Indirect costs;
5. Legal costs;
6. Contingency funds;
7. Application preparation;
8. Contractual project administration;
9. Land acquisition;
10. Costs for which payment has or will be received under another federal, state or private financial assistance program; and
11. Costs incurred before a written agreement has been executed between the applicant and the department.

567—209.14(455B,455E) Selection criteria. To receive consideration under these rules, applications submitted to the department for financial assistance must be provided to the agency responsible for submitting an approved solid waste comprehensive plan or subsequent plan for agency review and comment. Responsible agency review and comments are required from the area in which the proposed project is located or the area or areas in which the proposed project will be implemented.

Separate selection criteria and separate application forms will be used to evaluate projects. The separate selection criteria are identified below for the four applications: education projects; waste volume reduction projects; research and development and demonstration projects; and projects eligible for loans as provided in 209.7(2). For each application type, points assigned to the selection criteria total 100 points. The department shall evaluate applications and applicants will be awarded financial assistance based on the following selection criteria:

209.14(1) Education project selection criteria.

a. Project planning, experience, and commitment. Previous planning efforts, experience of involved parties, other public education programs implemented or proposed, and commitment toward continuing the project after the grant (5 points);

b. Project compatibility and support. Documented consistency with local and regional solid waste comprehensive plans, responsible agency review and comment forms correctly completed and received, compatibility with existing and proposed solid waste management programs, the degree to which the proposed project reflects the state solid waste management hierarchy, and documented project support (20 points);

c. Project effectiveness. Project content, target audience representation, implementation methodology, project cost-effectiveness, and project uniqueness within the proposed project area (35 points);

d. Project impact. Long- and short-term goals, impact on solid waste generation and materials recovery, regionalization impact of the project, detailed discussion of project transferability, the method or methods proposed to disseminate information resulting from the project, and impact on existing solid waste management programs (30 points);

e. Project evaluation. Methodology to determine project success in achieving goals and objectives (10 points).

209.14(2) Waste reduction project selection criteria.

a. Project planning, experience, and commitment. Experience of involved parties in the planning and implementation of the proposed project, other waste reduction measures implemented or proposed by the applicant, and the extent to which the proposed project will continue after the grant (5 points);

b. Project compatibility and support. Documented consistency with local and regional solid waste comprehensive plans, responsible agency review and comment forms correctly completed and received, compatibility with existing and proposed solid waste management programs, the degree to which the proposed project reflects the state solid waste management hierarchy, and documented project support (20 points);

c. Project impact. Impact on solid waste generation and solid waste landfilling, regionalization impact of the project, impact on existing solid waste management programs, impact on applicant and comprehensive planning area solid waste stream, and how soon the solid waste stream will be impacted (30 points);

d. Project effectiveness. Implementation methodology, project cost-effectiveness, and project uniqueness within the state (20 points);

e. Project evaluation. Methodology of determining project success in achieving identified goals and objectives (10 points);

f. Technical and economic feasibility and transferability. Describe the technological and economic feasibility of the proposed project, detailed discussion of project transferability, and the method or methods proposed to disseminate information resulting from the project (15 points).

209.14(3) Research and development and demonstration project selection criteria.

a. Project planning, experience, and commitment. Experience of involved parties in the planning and implementation of the proposed project and the extent to which the proposed project will continue after the grant (15 points);

b. Project compatibility and support. Documented consistency with local and regional solid waste comprehensive plans, responsible agency review and comment forms correctly completed and received, compatibility with existing and proposed solid waste management programs, the degree to which the proposed project reflects the state solid waste management hierarchy, and documented project support (15 points);

c. Project impact. Describe the impact on applicant and comprehensive planning area solid waste recovery and landfill diversion, regionalization impact of the project, the solid waste stream components affected, the potential for new market development, the impact on existing solid waste management programs and facilities, and how soon the solid waste stream will be impacted (30 points);

d. Project evaluation. Methodology of determining project success in achieving identified goals and objectives (10 points);

e. Technical and economic feasibility and project transferability. Describe the technological and economic feasibility of the proposed project, detailed discussion of project transferability, and the method or methods proposed to disseminate information resulting from the project (30 points).

209.14(4) Loan project selection criteria.

a. Project planning, experience, and commitment. Experience of involved parties in the planning and implementation of the proposed project and the extent to which the proposed project will continue after the grant (5 points);

b. Project compatibility and support. Documented consistency with local and regional solid waste comprehensive plans, responsible agency review and comment forms correctly completed and received, compatibility with existing and proposed solid waste management programs, the degree to which the proposed project reflects the state solid waste management hierarchy, and documented project support (20 points);

c. Project impact. Describe the impact on applicant and comprehensive planning area solid waste recovery and landfill diversion, regionalization impact of the project, the solid waste stream components affected, the potential for new market development and the impact on existing solid waste management programs and facilities, and how soon the solid waste stream will be impacted (30 points);

d. Project evaluation. Methodology of determining project success in achieving identified goals and objectives (10 points);

e. Technical and economic feasibility and transferability. Describe the technological and economic feasibility of the proposed project, detailed discussion of project transferability, and the method or methods proposed to disseminate information resulting from the project (20 points);

f. Applicant's ability to repay. Documented ability to repay the loan (15 points).

567—209.15(455B,455E) Written agreement. Recipients shall enter into a contract with the department for the purposes of implementing the project for which financial assistance has been awarded. The contract shall be signed by the department director, the administrator of the waste management assistance division, and the authorized officer of the recipient. In cases where the department has awarded a loan, the recipient will be required to make regularly scheduled installment payments to retire the loan as identified in the executed contract. The recipient will be required to submit periodic progress reports as identified in the executed contract. Progress reports are considered part of the public record. The department may terminate any contract and seek the return of any funds released under the contract for failure by the recipient to perform under the terms and conditions of the contract. Amendments to contracts may be adopted by written consent of the department director, the administrator of the waste management assistance division, and the authorized officer of the recipient.

567—209.16(455B,455E) Applications. Applicants shall submit applications on forms provided by the department. Applications will be due the first Monday in June and the first Monday in December each year at 4:30 p.m., unless otherwise designated by the waste management assistance division. Applications received by the waste management assistance division after the stated deadline will not be considered for funding during the current funding period, will not be retained for future consideration, and will not be returned to the applicant. It is the applicant's responsibility to resubmit a completed application for funding consideration during a subsequent funding period. Applications must be submitted on forms supplied by the department and applications submitted are considered part of the public record.

567—209.17(455B,455E) Financial assistance denial. An applicant may be denied financial assistance for any of the following reasons:

209.17(1) Funds are insufficient to award financial assistance to all qualified applicants;

209.17(2) The area in which the proposed project is located or the area or areas in which the proposed project will be implemented does not have an approved solid waste comprehensive plan, or if the area in which the proposed project is located or if the area or areas in which the proposed project will be implemented have not submitted a subsequent solid waste comprehensive plan by the assigned deadline, or if the area in which the proposed project is located or the area or areas in which the proposed project will be implemented has a landfill which is not legally permitted;

209.17(3) An applicant does not meet the definition of "Applicant" as defined in 209.3(455B,455E);

209.17(4) An applicant does not meet eligibility requirements pursuant to provisions of rules 209.8 (455B,455E) to 209.14(455B,455E);

209.17(5) An applicant does not provide sufficient information requested in the application forms pursuant to rules 209.8(455B,455E) to 209.14(455B,455E);

209.17(6) An applicant that has previously received a loan under these rules and is determined by the department to be delinquent in repaying the loan; and

209.17(7) The project goals or scope is not consistent with rule 209.1(455B,455E), 209.2(455B,455E), 209.8 (455B,455E), 209.9(455B,455E), or 209.13(455B,455E).

These rules are intended to implement Iowa Code sections 455B.301A and 455E.11.

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ARC 4723A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76, 155A.11, 155A.13, 155A.14, and 155A.17, the Iowa Board of Pharmacy Examiners hereby adopts amendments to Chapter 3, "License Fees, Renewal Dates, Fees for Duplicate Licenses and Certification of Grades," Iowa Administrative Code.

The amendments remove grace periods for pharmacist, pharmacy, and wholesale drug license renewals to eliminate confusion as to license expiration dates and to encourage timely renewal of these licenses. The amendments also clarify the definition of a limited use pharmacy license versus a pharmacy license with exemptions.

Notice of Intended Action was published in the October 13, 1993, Iowa Administrative Bulletin as **ARC 4326A**. The adopted amendments are identical to those published under Notice.

The amendments were approved during the March 15, 1994, meeting of the Board of Pharmacy Examiners and will become effective on May 18, 1994.

These amendments are intended to implement Iowa Code sections 147.10, 147.80, 147.94, 155A.11, 155A.13, 155A.13A, 155A.14, and 155A.17.

The following amendments are adopted.

ITEM 1. Amend rule 657—3.1(147) as follows:

657—3.1(147,*155A*) Renewal date and fee—late application. A license to practice pharmacy shall expire on the second thirtieth day of June following the date of issuance of the license. The license renewal form shall be issued upon payment of a $100 fee.

Failure to renew the license before ~~August~~ *July* 1 following expiration shall require a renewal fee of $200. Failure to renew the license before ~~September~~ *August* 1 following expiration shall require a renewal fee of $300. Failure to renew the license before ~~October~~ *September* 1 following expiration shall require a renewal fee of $400. Failure to renew the license before ~~November~~ *October* 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. The provisions of Iowa Code section 147.11 shall apply to a license which is not renewed within ~~six~~ *five* months of the expiration date.

This rule is intended to implement Iowa Code sections *147.10,* 147.80, ~~and~~ 147.94, *and 155A.11.*

ITEM 2. Amend rule 657—3.4(155A) as follows:

657—3.4(155A) Pharmacy license—general provisions. General pharmacy licenses, hospital pharmacy licenses, special or limited use pharmacy licenses, and ~~nonresidents~~ *nonresident* pharmacy licenses shall be renewed on January 1 of each year. All areas where prescription drugs are dispensed will require a general pharmacy license, a hospital pharmacy license, or a nonresident pharmacy license. Nonresident pharmacy license applicants shall comply with board rules regarding nonresident pharmacy license. Applicants for general or hospital pharmacy license shall comply with board rules regarding general or hospital pharmacy license except where specific ~~waivers~~ *exemptions* have been granted. Applicants who are granted ~~waivers~~ *exemptions* shall be issued a ~~limited use~~ *"general* pharmacy license *with exemption," a "hospital pharmacy license with exemption," or a "limited use pharmacy license with exemption"* and shall comply with the provisions set forth by that ~~waiver~~ *exemption.* A written request for ~~waiver of~~ *exemption from* certain licensure requirements will be determined on a case-by-case basis. *Limited use pharmacy license may be issued for nuclear pharmacy practice, correctional facility pharmacy practice, and veterinary pharmacy practice. Applications for limited use pharmacy license for these and other limited use practice settings shall be determined on a case-by-case basis.*

ITEM 3. Amend subrule 3.4(2) as follows:

3.4(2) Fee. The fee for a new or renewal license shall be $100. Failure to renew the license before ~~February~~ *January* 1 following expiration shall require a renewal fee of $200. Failure to renew the license before ~~March~~ *February* 1 following expiration shall require a renewal fee of $300. Failure to renew the license before ~~April~~ *March* 1 following expiration shall require a renewal fee of $400. Failure to renew the license before ~~May~~ *April* 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 a pharmacy license exceed $500.

ITEM 4. Amend rule 657—3.5(155A) as follows:

657—3.5(155A) Wholesale drug license—renewal and fees. A wholesale drug license shall be renewed no later than January 1 of each year. The fee for a new or renewal license shall be $100.

Failure to renew the license before ~~February~~ *January* 1 following expiration shall require a renewal fee of $200. Failure to renew the license before ~~March~~ *February* 1 following expiration shall require a renewal fee of $300. Failure to renew the license before ~~April~~ *March* 1 following expiration shall require a renewal fee of $400. Failure to renew the license before ~~May~~ *April* 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 a wholesale drug license exceed $500.

~~These rules are~~ *This rule is* intended to implement Iowa Code ~~chapter 147 and Iowa Code~~ sections 155A.13, 155A.14, and 155A.17. ~~and Iowa Code Supplement sections 155A.13A and 155A.17.~~

[Filed 3/21/94, effective 5/18/94]
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ARC 4724A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 155A.13, the Iowa Board of Pharmacy Examiners hereby amends Chapter 6, "General Pharmacy Licenses," Iowa Administrative Code.

The amendment deletes the Class A balance from the minimum equipment requirements in general pharmacies.

Notice of Intended Action was published in the October 13, 1993, Iowa Administrative Bulletin as **ARC 4327A**. The adopted amendment is identical to that published under Notice.

The amendment was approved during the March 15, 1994, meeting of the Board of Pharmacy Examiners and will become effective on May 18, 1994.

This amendment is intended to implement Iowa Code section 155A.13.

The following amendment is adopted:

Rescind **657—6.4(155A)**, numbered paragraph **"1."**

[Filed 3/21/94, effective 5/18/94]
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ARC 4725A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 155A.13, the Iowa Board of Pharmacy Examiners hereby amends Chapter 7, "Hospital Pharmacy Licenses," Iowa Administrative Code.

The amendment deletes the requirement for a Class A balance as minimum equipment for a hospital pharmacy.

Notice of Intended Action was published in the October 13, 1993, Iowa Administrative Bulletin as **ARC 4328A**. The adopted amendment is identical to that published under Notice.

The amendment was approved during the March 15, 1994, meeting of the Board of Pharmacy Examiners and will become effective on May 18, 1994.

This amendment is intended to implement Iowa Code section 155A.13.

The following amendment is adopted:

Rescind **657—7.4(155A)**, numbered paragraph **"1."**

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ARC 4726A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 126.10, 147.76, and 155A.13, the Iowa Board of Pharmacy Examiners hereby amends Chapter 8, "Minimum Standards for the Practice of Pharmacy," Iowa Administrative Code.

The amendment permits the use of both generic and brand name prescription drugs on the prescription label when the brand name is used to clarify the contents of the prescription vial.

Notice of Intended Action was published in the October 13, 1993, Iowa Administrative Bulletin as **ARC 4318A**. This adopted amendment differs from Item 1 of the published Notice in that the term "substitution" is replaced by the term "selection". An amended Notice of Intended Action was published in the Iowa Administrative Bulletin on December 8, 1993, as **ARC 4475A**, to schedule a public hearing. Action on Item 2 of the Notice is deferred to a later date to permit evaluation of comments received regarding that proposed amendment.

This amendment was approved during the March 15, 1994, meeting of the Board of Pharmacy Examiners and will become effective on May 18, 1994.

This amendment is intended to implement Iowa Code sections 126.10 and 155A.32.

The following amendment is adopted.

Amend subrule **8.14(1)**, paragraph **"g,"** as follows:

g. Unless otherwise directed by the prescriber, the label shall bear the brand name, or if there is no brand name, the generic name of the drug dispensed, the strength of the drug, and the quantity dispensed. ~~Under no circumstances shall the label bear the name of any product other than the one dispensed.~~ *If a pharmacist selects a generically equivalent drug product for a brand name drug product prescribed by a practitioner, the prescription container label must identify the generic drug and may identify the brand name drug for which the selection is made. The dual identification allowed under this paragraph must take the form of the following statement on the drug container label: "(generic name) Generic for (brand name product)".*

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ARC 4727A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 124.301, the Iowa Board of Pharmacy Examiners hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendment adds physician assistants to the list of practitioners required to register under the Iowa Uniform Controlled Substances Act.

Notice of Intended Action was published in the October 13, 1993, Iowa Administrative Bulletin as **ARC 4319A**. The adopted amendment is changed from that published under Notice in that physician assistants are identified in the rule by their abbreviated designation (P.A.) rather than the full title.

The amendment was approved during the March 15, 1994, meeting of the Board of Pharmacy Examiners and will become effective on May 18, 1994.

This amendment is intended to implement Iowa Code sections 124.302 and 124.303.

The following amendment is adopted.

Amend rule 657—10.2(124) as follows:

657—10.2(124) Who must register. Manufacturers, distributors, individual practitioners (M.D., D.O., D.D.S., D.V.M., D.P.M., O.D., *P.A.*, pharmacy, resident physician, institutional practitioners (hospital), health care institutions (nursing, custodial and county homes), research and analytical laboratories, and teaching institutions shall register on forms provided by the office of the drug control program administrator. To be eligible to register, individual practitioners must hold a current, active license to practice their profession.

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ARC 4728A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 155A.13, the Iowa Board of Pharmacy Examiners hereby amends Chapter 16, "Nuclear Pharmacy," Iowa Administrative Code.

The amendments modify minimum equipment requirements in nuclear pharmacies to reflect current practice standards and equipment availability.

Notice of Intended Action was published in the October 13, 1993, Iowa Administrative Bulletin as **ARC 4320A**. The adopted amendments are identical to those published under Notice.

The amendments were approved during the March 15, 1994, meeting of the Board of Pharmacy Examiners and will become effective on May 18, 1994.

These amendments are intended to implement Iowa Code section 155A.13.

The following amendments are adopted.

Amend rule 657—16.6(155A) as follows:

657—16.6(155A) Minimum equipment requirements.

1. Laminar flow hood;
2. Dose calibrator;
3. Refrigerator;
~~4. Class A prescription balance or balance of greater sensitivity;~~
~~5~~ *4.* Single channel scintillation counter;
~~6~~ *5.* Microscope;
~~7~~ *6.* Autoclave, or access to one;
~~8~~ *7. Incubator* ~~Oven capable of 250° C. for 45 minutes, or access to one~~;
~~9~~ *8.* ~~Portable radiation~~ *Radiation* survey meter ~~capable of detecting 0.005 microcuries of the radionuclides in question~~;
~~10~~ *9.* Other equipment necessary for radiopharmaceutical services provided as required by the board of pharmacy examiners.

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ARC 4729A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 155A.17, the Iowa Board of Pharmacy Examiners hereby amends Chapter 17, "Wholesale Drug Licenses," Iowa Administrative Code.

The amendment removes the grace period for renewal of a wholesale drug license to encourage timely renewal of licenses and removes the possibility of confusion regarding the expiration date of the license.

Notice of Intended Action was published in the October 13, 1993, Iowa Administrative Bulletin as **ARC 4321A**. The adopted amendment is identical to that published under Notice.

The amendment was approved during the March 15, 1994, meeting of the Board of Pharmacy Examiners and will become effective on May 18, 1994.

This amendment is intended to implement Iowa Code section 155A.17.

The following amendment is adopted.

Amend subrule 17.2(3) as follows:

17.2(3) An Iowa wholesale drug license shall expire on December 31 of each year. The fee for a new or renewal license shall be $100. A wholesale drug license form shall be issued upon receipt of the license application information required in subrule 17.3(1) and payment of the license fee.

Failure to renew the license before ~~February~~ *January* 1 following expiration shall require a renewal fee of $200. Failure to renew the license before ~~March~~ *February* 1 following expiration shall require a renewal fee of $300. Failure to renew the license before ~~April~~ *March* 1 following expiration shall require a renewal fee of $400. Failure to renew the license before ~~May~~ *April* 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.

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ARC 4747A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 135.24, the Iowa Department of Public Health hereby adopts a new Chapter 88, "Volunteer Physician Program," Iowa Administrative Code.

The new chapter complies with 1993 Iowa Acts, chapter 65, which established the volunteer physician program. Physicians registered with the Department and who provided free medical care at eligible facilities and programs will be defended and indemnified against claims of negligence or wrongful acts or omissions resulting from the provision of free medical care.

Notice of Intended Action was published February 2, 1994, as **ARC 4587A**. A public hearing was held February 22, 1994. A representative of the Iowa Medical Society was in attendance. Written comments were received from the Iowa Medical Society, including Dale D. Morgan, M.D.; James R. Bell, M.D.; and Richard L. Vermeer, D.O. The commenters requested amendments for minor clarifications of the rules.

During that afternoon of February 22, a scheduled meeting was held with the advisory rules work group. A representative of the Iowa Medical Society and a representative of the Iowa Osteopathic Medical Association were in attendance along with staff from the Departments of Public Health, Human Services and the Iowa Board of Medical Examiners. The group reviewed the comments and discussed what changes should be made to **ARC 4587A**. The following changes were reviewed and approved by staff from the Office of the Iowa Attorney General.

1.	88.2	"and registration" deleted from catchwords since it is addressed in rule 88.3(135);
2.	88.2(2)"b"	"the physician's" added to clarify whose expenses are referenced;
3.	88.2(2)"c"	"direct monetary" for compensation of "any kind" added to clarify;
4.	88.2(2)"d"	rewritten to provide clarity;
5.	88.2(2) "e" to "m"	moved to new 88.2(4) and modified for clarity;
6.	88.2(3)"a"	"medical" added;
7.	88.2(3)"b"	rewritten to include Canada and period covered per licensure;
8.	88.2(3)"c"	rewritten to reflect a ten-year history of good standing rather than current affiliation and privileges;
9.	88.2(4)	added items transferred from 88.2(2) and rewritten for clarity and eliminate duplication;
10.	88.4(1)	"negligent" added to rendering and failure along with addition of "allegedly" to first sentence for clarity;
11.	88.4(2)	deleted "at the physician's expense";
12.	88.4(3)	address added for the Iowa Department of Justice;
13.	88.10"3"	added "by or under the direct supervision" for the physician;
14.	88.10"4"	added "administration of local anesthesia" for minor surgical procedures as a covered medical service. "Prenatal" care added to the excluded services;
15.	88.11(1)	language added for consistency with 88.10"3";
16.	88.11(4)	language added to clarify that the physician receive no direct monetary compensation of any kind;
17.	88.11(5)	language added to clarify that the patients to be served are identified in the approved agreement;
18.	88.12(3)"c"	language added to clarify that general liability and professional liability insurance for program staff other than the volunteer physician(s) is maintained;
19.	88.14	language added to have reporting within 60 days following each calendar quarter and that such reports will be considered confidential.

A copy of the changes was distributed to the advisory rules work group for review and comment prior to adoption. The State Board of Health adopted the new chapter during a scheduled electronic meeting on March 24, 1994.

These rules implement Iowa Code Supplement section 135.24.

These rules will become effective on May 18, 1994.

The following new rules are adopted:

CHAPTER 88
VOLUNTEER PHYSICIAN PROGRAM

641—88.1(135) Purpose. The volunteer physician program is established to defend and indemnify eligible physicians providing free medical service through qualified programs as provided in Iowa Code Supplement section 135.24 and these rules.

641—88.2(135) Physician eligibility. To be eligible for protection as an employee of the state under Iowa Code chapter 669 for a claim arising from covered medical services, a physician must meet all of the following conditions at the time of the act or omission allegedly resulting in injury:

88.2(1) Be licensed to practice under Iowa Code chapter 148,150, or 150A.

88.2(2) Have submitted a certified statement on forms provided by the department attesting that the physician agrees to:

a. Cooperate fully with the state in the defense of any claim or suit relating to participation in the volunteer physician program, including attending hearings, depositions and trials and assisting in securing and giving evidence, responding to discovery and obtaining the attendance of witnesses.

b. Accept financial responsibility for personal expenses and costs incurred in the defense of any claim or suit related to participation in the volunteer physician program, including travel, meals, compensation for time and lost practice, and copying costs and agree that the state will not compensate the physician for the physician's expenses or time needed for the defense of the claim or suit.

c. Receive no direct monetary compensation of any kind for services provided in the program.

d. Comply with the agreement with the department concerning approved medical services and programs.

88.2(3) Have a current certificate of qualification from the state board of medical examiners based on review of the following records submitted by the physician:

a. Verification that the physician holds an active unrestricted medical license to practice in Iowa under Iowa Code chapter 148,150, or 150A.

b. Verification that the physician has continuously held an active medical license in good standing since first licensed to practice the profession in the United States or Canada.

c. Verification of good standing of any hospital and clinic affiliation or staff privileges held by the physician in the last ten years.

d. Certified statements from the National Practitioner Data Bank and the Federation of State Medical Boards Disciplinary Data Bank setting forth any malpractice judgments or awards, or disciplinary action involving the physician. The physician shall request that the statements be sent directly to the board by the data banks and shall pay the cost.

e. A sworn statement from the physician attesting that the license to practice is free of restrictions. The statement shall describe any disciplinary action which has ever been initiated against the physician by a professional licensing authority or health care facility, including any voluntary surrender of license or other agreement involving the physician's license to practice or any restrictions on practice, suspension of privileges, or other sanctions. The statement shall also describe any malpractice suits which have been filed against the physician and state whether any complaints involving professional competence have been filed against the physician with any licensing authority or health care facility.

f. Any additional materials requested by the board.

88.2(4) Have a signed, current agreement with the department which identifies the covered services and conditions of defense and indemnification as provided in rules 88.9(135) and 88.10(135). The agreement shall:

a. Provide that the physician shall perform only those medical services identified and approved by the department;

b. Identify the eligible program through which the medical services will be provided;

c. Identify by category the patient groups to be served and the need for provision of free medical services;

d. Identify the sites at which the free medical services will be provided;

e. Provide that the physician shall maintain proper medical records; and

f. Provide that the physician shall make no representations concerning eligibility for the volunteer physician program nor eligibility of services for indemnification by the state except as authorized by the department.

641—88.3(135) Registration. The certification of eligibility and agreement with the department shall expire two years from the date of certification by the board of medical examiners. Physicians may apply for renewal by filing an application at least 60 days prior to expiration of the agreement.

641—88.4(135) Reporting requirements and duties.

88.4(1) Upon obtaining knowledge or becoming aware of any injury allegedly arising out of the negligent rendering of, or the negligent failure to render, covered medical services under this program, a participating physician, program or facility shall provide written notice to the department, as soon as practicable, containing, to the extent obtainable, the circumstance of the alleged injury, the names and addresses of the injured, and any other relevant information.

88.4(2) Further, upon obtaining knowledge or becoming aware of such an injury, the participating physician shall promptly take all reasonable steps to prevent further or other injury from arising out of the same or similar incidents, situations or conditions.

88.4(3) A participating physician shall immediately notify the Iowa Department of Justice, Hoover State Office Building, Des Moines, Iowa 50319, of service or receipt of an original notice, petition, suit or claim seeking damages from the physician related to participation in this program.

641—88.5(135) Revocation of eligibility and registration. The department may suspend, revoke, or condition the eligibility of a physician for cause, including but not limited to:

88.5(1) Failure to comply with the agreement with the department.

88.5(2) Violation of state law governing the practice of medicine under Iowa Code chapter 148, 150, or 150A or other law governing the services provided under the program.

88.5(3) Making false, misleading, or fraudulent statements in connection with the volunteer physician program, including determination of eligibility of the physician or handling of a claim against the physician or the state.

88.5(4) Evidence of substance abuse or intoxication affecting the provision of medical services under the program.

88.5(5) Reasonable grounds to believe the physician may have provided incompetent or inadequate care to a patient under the program or is likely to do so.

88.5(6) Reasonable grounds to believe the physician's participation in the program may expose the state to undue risk.

641—88.6(135) Procedure for revocation of registration. A proceeding for revocation of a physician's registration or a program's eligibility for participation shall be conducted as a contested case proceeding pursuant to Iowa

Code chapter 17A and 641 IAC 173. This does not preclude emergency summary suspension where appropriate under Iowa Code section 17A.18.

641—88.7(135) Registration denied—appeal procedure. An applicant who has been denied registration by the department may appeal the denial and request a hearing on the issues related to the denial by serving a notice of the appeal and request for hearing to the director in writing not more than 30 days following the date of the mailing of the notification of registration denial to the applicant, or, not more than 30 days following the date upon which the applicant was served notice if notification was made in the manner of service or an original notice. The request for hearing shall specifically delineate the facts to be contested and determined at the hearing.

641—88.8(135) Registration denied—hearing. If an applicant who has been denied registration by the department appeals the registration and denial and requests a hearing pursuant to rule 88.9(135), the hearing and subsequent procedures shall be pursuant to Iowa Code chapter 17A and 641 IAC 173.

641—88.9(135) Board notice of disciplinary action. The board of medical examiners shall immediately notify the department of the initiation of a contested case against a registered physician or the imposition of disciplinary action, including copies of any contested case decision or settlement agreement with the physician.

641—88.10(135) Covered medical services. An eligible physician shall be afforded the protection of an employee of the state under Iowa Code chapter 669 only for claims for medical injury proximately caused by the physician's provision of covered medical services. Covered medical services are only those which are:

1. Identified in the agreement with the department;
2. In compliance with these rules;
3. Provided by or under the direct supervision of the physician.
4. Medical services of health prevention, health maintenance, health education, diagnosis, or treatment other than the administration of anesthesia, prenatal care, obstetrical care, and surgical procedures except minor surgical procedures and administration of local anesthesia for the stitching of wounds or the removal of lesions or foreign particles may be provided. Experimental procedures or procedures and treatments which lack sufficient evidence of clinical effectiveness are excluded from the program.

641—88.11(135) Defense and indemnification. The state shall defend and indemnify a physician for a claim arising from the volunteer physician program only to the extent provided by Iowa Code chapter 669 and Iowa Code Supplement section 135.24. Persons or entities other than the participating physician are not considered state employees or state agencies under chapter 669. Defense and indemnification of the physician under chapter 669 and section 135.24 shall occur only if all of the following requirements are met:

88.11(1) The claim involves medical injury proximately caused by covered medical services which were identified and approved in the agreement with the department and then only to the extent the services were provided by or under the direct supervision of the physician, including claims based on negligent delegation of medical care.

88.11(2) The claim arises from covered medical services which were performed at a site identified and approved in the agreement with the department.

88.11(3) The claim arises from covered medical services provided through a qualified program identified and approved in the physician's agreement with the department and which meets the requirements of rule 88.12(135).

88.11(4) The physician who provided the service receives no direct monetary compensation of any kind or promise to pay compensation for the medical services which resulted in injury.

88.11(5) Provided to a patient identified in the agreement with the department approving the program.

88.11(6) The physician is eligible and registered as provided in rule 88.2(135).

641—88.12(135) Eligible programs. To qualify as an eligible program, a hospital, clinic, health care facility, or a health care referral program must:

88.12(1) Be licensed to the extent required by law for the facility in question.

88.12(2) Register with the department on forms provided by the department.

88.12(3) Be approved as an eligible program. In order to be approved, the program shall indicate:

a. The patients to be served and the services to be provided.

b. A public health purpose that shall be served by the provision of free medical services to the patients in question.

c. The program maintains adequate general liability and professional liability insurance for program staff other than the volunteer physician(s) or is properly and adequately self-insured.

d. The program maintains medical records in accordance with accepted medical standards for a period of ten years.

e. The program agrees it shall cooperate with the state in defense of the eligible physician providing services through it and shall not charge the state for its expenses, costs, and efforts in the defense of a claim or suit.

f. The program agrees that only the physician is afforded protection under Iowa Code Supplement section 135.24, and the state assumes no obligation to the program, its employees, officers, or agents.

641—88.13(135) Effect of eligibility certification. The certification of a physician as eligible for participation in the volunteer physician program by the board of medical examiners and the department of public health is solely a determination that the state will defend and indemnify the physician to the extent provided by Iowa Code Supplement section and these rules. It is not an approval or indication of ability or competence and may not be represented as such. The program and facility through which the physician provides free medical services shall retain responsibility for determining that physicians and other health care personnel are competent and capable of adequately performing the services to be provided.

641—88.14(135) Reporting by physician and program. Within 60 days following each calendar quarter, the program shall provide a listing of patients and services provided by the volunteer physician program. A reporting form will be provided by the department to the local participating program at the time the agreement is approved

by the department. At a minimum, the report shall include a listing of patients by name, the site, volunteer physician name and the services provided by the volunteer physician. Such reports shall be considered confidential pursuant to Iowa Code section 22.7(2).

These rules are intended to implement Iowa Code Supplement section 135.24.

[Filed 3/25/94, effective 5/18/94]
[Published 4/13/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/13/94.

ARC 4754A

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 52.28, the Secretary of State hereby adopts amendments to Chapter 22, "Alternative Voting Systems," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 16, 1994, as **ARC 4610A**. A public hearing was scheduled for March 22, 1994; however, no one appeared. The Secretary of State adopted these amendments on March 25, 1994.

The amendments to Chapter 22 provide uniform instructions to county auditors for the printing of optical scan ballots. Specific statutory authority for this action is granted in Iowa Code section 52.28. The amendment to 22.53(2), paragraph "a," changes the instructions to the voter from "VOTE BOTH SIDES" to "TURN THE BALLOT OVER." At the last general election considerable confusion was reported over the meaning of "VOTE BOTH SIDES." "TURN THE BALLOT OVER" is offered as a less ambiguous instruction.

The description of the size of the type face for this instruction has been changed to 24 points from 3/16 of an inch. Both describe the same size type, but point size is a more meaningful term when instructing printers.

New paragraphs "c" and "d" have been added to describe the sequence of offices and questions on the ballots. Partisan offices are placed first, followed by nonpartisan offices, then questions and judges. Where two ballots are used, all partisan offices are to be placed on one ballot and all nonpartisan questions and offices are to be placed on the other.

Relettered paragraph "i" is amended to eliminate the requirement that ballots for each political party at a primary election be uniform in color. Different colored ballots help precinct officials deliver the correct ballot to each voter. However, for some voting systems it is prohibitively expensive to print colored ballots. Removing the requirement that the ballots be uniform in color allows counties to vary ballot color where it is possible without imposing an enormous financial burden on other counties.

Relettered paragraph "i" is also amended to change the type specifications from a description of the size in inches to point size, a more meaningful term for printers.

New paragraph "l" specifies that public measures do not need to be printed on colored paper for the same reasons given for the amendment to relettered paragraph "i."

New paragraph "e" has been added to 22.53(6) to eliminate the requirement that the precinct officials sort primary election ballots by political party and return each party's ballots in a separate envelope after the polls close. This requirement is imposed in Iowa Code section 43.45(4) and is a reasonable and necessary part of manually counting paper ballots. The precinct officials using an electronic system have no reason to sort the ballots by party; this is an unnecessary burden.

Two changes were made as a result of written comments. Descriptions of type sizes in fractions of inches have been restored for clarity. The order of the section of the ballot has been revised for economic reasons. Questions and judges are to be placed last on the ballot. The front side of the ballot can then include the partisan offices which may vary throughout the county, reserving the back of the ballot for questions and judges which would be identical throughout the county. This will reduce printing costs.

These amendments are intended to implement Iowa Code sections 52.28 and 52.31.

These amendments will become effective May 18, 1994.

The following amendments are adopted.

ITEM 1. Amend subrule **22.53(2)** as follows:

Amend paragraph "**a**" 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"~~ *"TURN THE BALLOT OVER"* shall be clearly printed in *at least 24-point type (3/16" high)* ~~letters at least 3/16 inch in height~~ on the front and back of the special paper ballot, at the bottom.

Insert **new** paragraphs "**c**" and "**d**" and reletter all existing paragraphs as follows:

c. If it is possible for all public measures and offices to be printed on a single special paper ballot, the following sequence shall be used:

NOTICE OF LOCATION OF
QUESTIONS AND JUDGES

Constitutional amendments and judges are printed after the nonpartisan candidates (describe location of constitutional amendments and judges on the ballot).

PARTISAN OFFICES

1. Straight party voting
2. Partisan federal offices
3. Partisan state offices
4. Partisan county offices
5. Partisan township offices

NONPARTISAN OFFICES

6. Nonpartisan offices to be filled at the scheduled election
7. Any other nonpartisan offices included on the ballot in special elections held in conjunction with the scheduled election

QUESTIONS AND JUDGES

8. Constitutional amendments, if any
9. Constitutional convention question (in years ending in zero)
10. Statewide public measures, if any
11. Local public measures, if any
12. Judicial election

d. If two special paper ballots are to be used, the commissioner shall place the straight party voting section and

all partisan offices on one ballot. Questions, judges and nonpartisan offices shall be printed on the other ballot.

Amend relettered paragraph "**i**" to read as follows:

~~g~~ *i.* For partisan primary elections, the names of candidates representing each political party shall be printed on separate special paper ballots. 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 in height~~ *24-point type (1/4" high)* at the top of the ballot.

Add new paragraph "**l**" as follows:

l. It is not necessary for public measures to be printed on colored paper.

ITEM 2. Amend subrule **22.53(6)** by adding the following new paragraph "**e**":

e. It is not necessary for the precinct officials to separate primary election ballots by political party.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/13/94.

ARC 4744A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on March 23, 1994, adopted an amendment to Chapter 920, "State Transit Assistance," Iowa Administrative Code.

A Notice of Intended Action for this amendment was published in the February 16, 1994, Iowa Administrative Bulletin as **ARC 4609A**.

This amendment will allow funds not needed for high priority projects to be distributed equitably among the public transit systems according to the formula published in the appendix to this rule.

This amendment is identical to the one published under Notice.

This amendment is intended to implement Iowa Code chapter 324A.

This amendment will become effective May 18, 1994.

The following amendment is adopted.

Amend subrule 920.5(5) as follows:

920.5(5) Determination of amount reserved for special projects. Each fiscal year, *up to* three hundred thousand dollars ~~shall~~ *may* be reserved from state transit assistance appropriations for special projects if the appropriations for the year are expected to equal or exceed five hundred thousand dollars. Any special project funds not obligated in the previous fiscal year and any funds made available through closeout of previously approved projects ~~shall~~ *may* also be reserved for special projects. Special project funds are distributed by the department on a discretionary basis in accordance with subrule 920.4(2) of this chapter.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/13/94.

* SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA

FILED MARCH 23, 1994

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. 93-310. STATE v. LLOYD.

Appeal from the Iowa District Court for Woodbury County, Mary Jane Sokolovske, District Associate Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Opinion by McGiverin, C.J. (11 pages $4.40)

Officer Sandage of the North Sioux City, South Dakota, police department attempted to stop Lloyd in South Dakota but did not succeed until they were in Iowa, where officer Sandage cited Lloyd for driving without lighted taillights and having an expired license plate. Both offenses were low-class misdemeanors under South Dakota law. An Iowa police officer was called to the scene and after conducting field sobriety tests arrested Lloyd for operating while intoxicated (OWI). Lloyd filed a motion to suppress, contending under Iowa Code section 806.1 of the Uniform Fresh Pursuit Act an out-of-state police officer is only authorized to pursue a fleeing felon, not a misdemeanant, into Iowa. The district court held that Sandage, as a private citizen, lawfully detained Lloyd under section 804.9 and overruled the motion. Lloyd was convicted and sentenced for OWI, as charged. He appeals. **OPINION HOLDS:** I. Lloyd first argues that because private citizens have no authority to issue citations, the stop was invalid. A citation in lieu of arrest is merely a procedure used by police to avoid taking a suspect of minor violations into custody. Sandage could have made an arrest, but if as we believe his conduct amounted to something less than a technical arrest, it was not thereby less lawful. II. An arrest by out-of-state officers is valid as a citizen's arrest under section 804.9(1) if made for a public offense committed in the officers' presence. III. We reject Lloyd's argument that in allowing police officers to give chase to petty misdemeanants, ordinary citizens will be encouraged to do the same. An officer may use the indicia of his office while making a citizen's arrest. We affirm.

*Reproduced as submitted by the Court

No. 92-1147. STATE ex rel. REAVES v. KAPPMEYER.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Black Hawk County, L.D. Lybbert, Judge. DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED. Considered by Carter, P.J., and Neuman, Snell, Andreasen, and Ternus, JJ. Opinion by Ternus, J. (10 pages $4.00)

We granted the State's application for further review of a court of appeals decision modifying the district court's order setting child support. We vacate the court of appeals decision and affirm the judgment of the district court. **OPINION HOLDS:** I. In modifying the district court's support order, the court of appeals interpreted a 1993 amendment to Iowa Code section 598.21(4) to require the district court to consider the noncustodial parent's obligation to support other children the same as court-ordered support obligations. In a case decided after the court of appeals decision here, we held that the recent amendment to section 598.21(4) does not require the district court to alter the manner in which it computes net monthly income. State ex rel. Hartema v. Cottrell, ___ N.W.2d ___ (Iowa 1994). We concluded that the legislature intended to direct our court to consider in our next review of the guidelines the fact that a parent may also be supporting other children. II. The district court found that substantial injustice would result to Chris if the guidelines were applied here because of the lapse of time between Nathan's birth and the paternity claim. We agree with the court of appeals that this lapse of time is an insufficient reason to deviate from the guidelines. The district court's articulated reason for deviation from the guidelines is therefore not acceptable. III. We apply the table for one child based on Cindy's net monthly income of $1605 and Chris' net monthly income of $1243. The guidelines require that Chris pay 22.5% of his net monthly income, or $280, in support of Nathan. IV. Other familial obligations do not automatically justify a departure from the guidelines. However, the consideration of expenses related to support of the three children from Chris' marriage is germane. Chris submitted an affidavit of financial affairs and testified in detail to his monthly expenses. Chris barely meets his family's monthly expenses. We find that Chris' financial obligation to his other children significantly hinders his ability to pay the scheduled amount of child support and would result in an injustice to him and his other children. Consequently, a downward adjustment is necessary under the circumstances of this case. We conclude that a reduction of the guideline support figure to $50 per month is justified and therefore, we affirm the district court judgment on this basis.

No. 93-786. IN RE B.B.M.

Appeal from the Iowa District Court for Shelby County, Charles L. Smith III, Judge. REVERSED AND REMANDED. Considered en banc. Opinion by Ternus, J.

(16 pages $6.40)

The grandparents intervened in a chapter 600A termination of parental rights proceeding for purposes of seeking adoption of their grandchild. The juvenile court ruled the grandparents could not intervene and dismissed their petition. The grandparents appeal. **OPINION HOLDS:** I. The child's guardian and custodian argues the grandparents' petition to intervene was untimely because it was filed after the court's termination ruling. The grandparents do not seek to intervene on the issue of termination of parental rights. They only desire to be heard on the issue of guardianship and custody, a matter over which the court still has jurisdiction. Thus the petition to intervene was timely. II. The grandparents argue they qualify as interested persons to intervene. We hold that grandparents do not have a right to intervene in a termination of rights proceeding or adoption proceeding where the natural parents have agreed to relinquish their parental rights. However, the grandparents allege unique circumstances. Because B.B.M. may have Duchenne muscular dystrophy, the grandparents may be particularly suited to care for him and provide the opportunities only they can provide for treatment of his disease. We hold the interests of B.B.M. may require that his grandparents be considered as possible guardians and custodians. III. If testing shows B.B.M. has DMD, then the court should decide whether the child's interests and those of his parents are best served by his grandparents' adoption of him. However, if B.B.M. does not have DMD, the court must dismiss the grandparents' petition. This case is reversed and remanded to the juvenile court for further proceedings consistent with this opinion.

No. 93-191. STATE ex rel. HARTEMA v. COTTRELL.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Cerro Gordo County, Paul W. Riffel, Judge. DECISION OF COURT OF APPEALS VACATED; DECISION OF DISTRICT COURT AFFIRMED AS MODIFIED. Considered by Carter, P.J., and Neuman, Snell, Andreasen, and Ternus, JJ. Opinion by Ternus, J. (10 pages $4.00)

This appeal involves the application of our child support guidelines in light of a recent amendment to Iowa Code section 598.21(4) (1991), the statute governing orders for support. Based in part on this amendment, the court of appeals modified the amount of past and future child support ordered by the district court. We granted the

No. 93-191. STATE ex rel. HARTEMA v. COTTRELL (continued). State's application for further review and now vacate the decision of the court of appeals and affirm the district court's decision with modification. **OPINION HOLDS:** I. We do not agree with the court of appeals' conclusion that the amendment is a mandate to district courts to employ a new procedure for applying the current support guidelines. The amendment to section 598.21(4) is clearly directed to the supreme court and our review of the guidelines. Any changes in the guidelines and their application must await the completion of that review. II. Jon's net monthly income is $1684. Applying the parents' incomes to the one child table, Jon should pay support of $396 per month. We find no special circumstances that would justify a deviation from the guidelines. We have no factual basis on this meager record to conclude that Jon is unable to pay the amount of support required by the guidelines or that payment of the guidelines amount will prevent him from meeting his personal expenses and those of his other children. III. We vacate the decision of the court of appeals and affirm the district court's decision with modification. We order Jon to pay child support of $396 per month. The reimbursement amount for back child support is $6732. Any overpayment made by Jon in light of our modification of his monthly support obligation shall be applied to reduce the reimbursement amount. The district court's order is affirmed in all other respects.

No. 93-1097. SMITH v. SMITH.

Appeal from the Iowa District Court for Wayne County, Thomas S. Bown, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Opinion by Lavorato, J. (8 pages $3.20)

Pamela Smith filed a pro se petition under our domestic abuse statute for temporary and permanent protective orders against Michael Smith, her former husband. After a non-evidentiary hearing, the district court granted Michael's motion to dismiss. Pamela appeals. **OPINION HOLDS:** Pamela's petition certainly gives Michael "fair notice" of her claim for domestic abuse and informs him of the incidents giving rise to her claim--the threats, the abuse, the hitting, the shoving, and the shaking. Taken together and accepted as true, these allegations establish an assault under either Iowa Code section 708.1(1) or 708.1(2). This case again underscores our disapproval of rushing to judgment by way of a pre-answer motion to dismiss. There is even more reason to disapprove of such a practice when the target of such a motion is a pro se petition for domestic abuse.

No. 93-424. NORTHEAST COUNCIL ON SUBSTANCE ABUSE v. IOWA DEPARTMENT OF PUBLIC HEALTH.

Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Opinion by Lavorato, J. (12 pages $4.80)

Northeast Council on Substance Abuse, Inc. (NECSA) and Covenant Medical Center (Covenant) competed for Iowa department of public health grant money to provide substance abuse treatment in northeast Iowa. NECSA has been the sole recipient of this grant money for the last twenty years. NECSA learned that Covenant had asked the department for copies of NECSA's past grant applications. NECSA immediately filed a petition for a temporary restraining order and a writ of temporary and permanent injunction. After a hearing, the district court denied NECSA's petition in its entirety. NECSA appeals. **OPINION HOLDS:** Iowa Code chapter 22, Iowa's freedom of information statute, has an exception for "[r]eports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose." Iowa Code § 22.7(6) (1991). We are convinced that the release of the past grant applications would serve a public purpose. The public has a right to know how public funds have been spent. Therefore the exception of section 22.7(6) does not apply. We also reject NECSA's reliance on Iowa Code section 22.8 for injunctive relief.

No. 93-157. STATE v. LEWIS.

Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Opinion by Lavorato, J. (17 pages $6.80)

Jerry Lee Lewis appeals from judgment of conviction and sentence for criminal gang participation and terrorism. He contends (1) there was insufficient evidence that he was engaged in criminal gang participation and terrorism, (2) the district court erred in its instruction regarding criminal gang participation, (3) the district court imposed an illegal sentence when it imposed consecutive sentences instead of merging the offenses, and (4) he was denied effective assistance of counsel. **OPINION HOLDS:** I. A. The facts collectively support Lewis' guilt on the terrorism charge. Three weapons--two matching ballistics evidence at the Mason home--were found in the car. This, when coupled with (1) Lewis' admitted membership in the Vice Lords, (2) his presence in the car when it was stopped, (3) the presence of other Vice Lords members in the car, and (4) his attempt to elude the officers after the car was stopped, is substantial evidence to support the jury's conclusion that Lewis accompanied his co-defendants

No. 93-157. STATE v. LEWIS (continued).
to the Mason home with the intent to participate in a drive-by shooting. B. Lewis contends the State failed to prove that one of the primary purposes of the Vice Lords was to commit criminal acts and failed to show a pattern of criminal gang activity by the local Vice Lords gang. (1) Officer Hawkins testified that one of the features of a criminal street gang is that commission of one or more criminal acts is one of its primary purposes. He identified the Davenport Vice Lords as being a criminal street gang under this criterion. This testimony was substantial evidence to support a finding that one of the primary activities of the Vice Lords was the commission of one or more criminal acts. (2) The jury could reasonably find that at least two criminal acts, possession of a controlled substance with intent to deliver and willful injury, were committed on separate dates by members of the same criminal gang, the Vice Lords. Such a finding meets the definition for "pattern of criminal gang activity" in section 723A.1(3) and establishes the element, "pattern of criminal gang activity" in the definition of criminal street gang under section 723A.1(2). We conclude there was substantial evidence from which the jury could find that Lewis was guilty of criminal gang participation. II. The district court in a definitional instruction set forth the elements of both possession of a controlled substance with intent to deliver and willful injury and left no doubt the jury had to find beyond a reasonable doubt that Vice Lords members committed these offenses on separate dates. The instructions were sufficient. III. The district court imposed consecutive indeterminate five year terms on the offenses. Lewis argues that his sentences should be merged. Terrorism is a lesser included offense of criminal gang participation. However, we conclude the legislature clearly indicated multiple punishments and, therefore, no double jeopardy violation occurred. IV. We preserve Lewis' claims of ineffective assistance of counsel for postconviction relief consideration.

No. 92-1799. STATE v. PEARSON.
Appeal from the Iowa District Court for Woodbury County, Phillip S. Dandos, Judge. AFFIRMED. Considered en banc. Opinion by Ternus, J. Concurrence in part and dissent in part by Carter, J. Dissent by Snell, J.
(21 pages $8.40)

Kris Kanon Pearson was convicted of four counts of second-degree sexual abuse in violation of Iowa Code section 709.3(2) (1991). He appeals his conviction of count four only, contending there was no sexual contact because both Pearson and his victim remained clothed throughout the incident. OPINION HOLDS: I. We hold that skin-to-skin contact is not required in order to establish

No. 92-1799. STATE v. PEARSON (continued).
a "sex act" under section 702.17. Whether there is prohibited contact must be determined on a case-by-case basis and occurs when (1) the specified body parts or substitutes touch and (2) any intervening material would not prevent the participants, viewed objectively, from perceiving that they have touched. The contact must be sexual in nature. This can be determined from the type of contact and the circumstances surrounding it. II. We believe the trial court could reasonably find that contact occurred between Pearson's penis and B.S.'s anus. There was also abundant evidence of the sexual nature of the contact. Therefore, there was substantial evidence that the contact between Pearson and B.S. was a "sex act." We affirm Pearson's conviction on count four. **CONCURRENCE AND DISSENT IN PART ASSERTS:** I believe the trier of fact could reasonably have concluded that defendant performed a "sex act" on an eight-year-old child. However, by not recognizing sexual gratification as an element of sexual contact, the majority prohibits a defendant from attempting to negate the charge by urging lack of such intent. I believe that this is unrealistic and unfair. **DISSENT ASSERTS:** I believe that, applying the usually understood meaning of "contact" and as defined by Webster's Dictionary, the statutory contact required involves the touching of the victim's skin by the defendant in the commission of the offense. Since this type of contact did not occur in the instant case, the offense was not committed as a matter of law. Other statutes have application to the act committed by the defendant. I would reverse this conviction.

No. 92-1764. CENTRAL NATIONAL INSURANCE CO. V. INSURANCE CO. OF N. AMERICA.

Appeal from the Iowa District Court for Polk County, Ray Hanrahan and Glenn E. Pille, Judges. **AFFIRMED AS TO EMPLOYERS REINSURANCE CORPORATION; REVERSED AND REMANDED AS TO INSURANCE COMPANY OF NORTH AMERICA.** Considered by Larson, P.J., and Carter, Lavorato, Neuman, and Ternus, JJ. Opinion by Lavorato, J. (16 pages $6.40)

Central National Insurance Company of Omaha (CNI) obtained a default judgment against parties insured by Insurance Company of North America (INA) and Employers Reinsurance Corporation (Employers). When the judgment was not satisfied, CNI sued INA and Employers to recover on their policies under Iowa Code chapter 516. Employers answered within the time allowed by the rules; INA did not. In due time, CNI obtained a default judgment against INA. Shortly thereafter, INA moved to set aside the default. The district court granted INA's motion, finding that CNI had obtained the default in violation of local custom and practice. CNI appeals. **OPINION HOLDS:** I. CNI's counsel conceded at oral arguments that CNI's appeal

No. 92-1764. CENTRAL NATIONAL INSURANCE CO. V. INSURANCE CO. OF N. AMERICA (continued).

as to Employers is without merit. We affirm as to Employers. II. Iowa Rule of Civil Procedure 236 allows a default to be set aside for "unavoidable casualty." The key in the definition of "unavoidable casualty" is reliance. The local lawyer representing INA failed to answer CNI's petition because he did not know CNI had sued his client, not because of his reliance on the local custom and practice. INA failed to forward the notice and petition to the local lawyer because the employee who received them in Philadelphia apparently erroneously believed they pertained to CNI's action against the four judgment debtor corporations and not to INA. As a matter of law the undisputed facts do not meet the definition of "unavoidable casualty" in rule 236. III. INA also argued to set aside the default because of "excusable neglect." The district court rejected this claim, finding that INA did not advance any set of facts which would suggest excusable neglect. Given the present state of the law on "excusable neglect" the district court was correct. We believe the definition of "excusable neglect" must change. In determining "excusable neglect" constituting good cause, the district court should now focus on four factors. First, did the defaulting party actually intend to defend? Whether the party moved promptly to set aside the default is significant on this point. Second, does the defaulting party assert a claim or defense in good faith? Third, did the defaulting party willfully ignore or defy the rules of procedure or was the default simply the result of a mistake? Last, whether relief is warranted should not depend on who made the mistake. We reverse the district court's ruling on the default. We retain jurisdiction but remand for the limited purpose of allowing the district court to determine whether there was excusable neglect constituting good cause. The parties shall file a copy of the transcript of additional evidence and the district court's order with the clerk of our court no later than thirty days after this opinion is filed. The parties shall not file additional briefs unless this court requests them. IV. Perhaps it is time to make our default rule more fair and consistent by requiring notice before a default is taken. This can be done by amendment to rule 236.

No. 92-2048. STATE v. HULBERT.

Appeal from the Iowa District Court for Madison County, James P. Rielly, Judge. **AFFIRMED.** Considered by Carter, P.J., and Neuman, Snell, Andreasen, and Ternus, JJ. Opinion by Carter, J. (10 pages $4.00)

Defendant, Brian Hulbert, appeals from a judgment convicting him of first-degree murder with respect to the

No. 92-2048. STATE v. HULBERT (continued).
beating death of his wife, Amie Hulbert. Defendant had filed separate pretrial notices of diminished-capacity and intoxication defenses. The district court sustained the State's request that defendant be examined by the State's expert. Defendant then withdrew the notice of diminished-capacity defense but not the notice of intoxication defense. The defendant refused to submit to the examination. Relying on Iowa Rule of Criminal Procedure 10(11)(d) the district court concluded that defendant's refusal justified precluding defendant's expert witness from testifying with respect to his intoxication defense. Hulbert now asserts the trial court erred in: (1) refusing to allow him to present expert testimony in support of his intoxication defense; (2) denying a mistrial motion asserting that the prosecutor, in closing argument, directed the jury's attention to defendant having declined to testify; and (3) denying a mistrial motion based on an improper question by the prosecutor. **OPINION HOLDS:** I. We are persuaded that the applicability of rules 10(11)(b)(2) and 10(11)(d) to an intoxication defense should turn on whether the proposed defense will incorporate a mental condition specifically attributable to the defendant on trial. If so, then the State may properly seek an examination of expert witnesses under rule 10(11)(b)(2). Upon defendant's refusal to obey the court's direction that this be done, a sanction is warranted excluding the defendant's expert testimony under rule 10(11)(d). If, however, the defense is based entirely on the effects of alcohol or related substances on the human body generally and is not tailored to a mental condition peculiar to the defendant, we do not believe rule 10(11)(b)(2) applies. The defendant failed to expressly disavow on the record any intent to base his intoxication defense on a mental condition peculiar to him. The district court was thus left with sufficient reason to infer that the proposed intoxication defense would incorporate a mental condition peculiar to defendant. The district court did not abuse its discretion in prohibiting defendant's expert from testifying. II. In closing arguments, the prosecutor stated: "There were only two witnesses present at the time--Amie cannot stand here and testify." We do not find the comment would cause the jury to improperly dwell on defendant's failure to testify. III. The district court refused to grant a mistrial when a criminologist was asked by the prosecutor, "Did you locate any hatchet?" The criminologist responded, "No, sir." Defendant's objection to the challenged question was sustained, and the jury was properly admonished. Although the question was certainly of marginal relevancy, we are unable to perceive how the defendant was prejudiced. The trial court's decision to deny a mistrial was not an abuse of discretion.

No. 93-3074. HILLRICHS v. AVCO CORPORATION.

Appeal from the Iowa District Court for Plymouth County, Dewie J. Gaul, Judge. **AFFIRMED ON BOTH APPEALS.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Opinion by McGiverin, C.J.

(17 pages $6.80)

This is a products liability action concerning a "New Idea Unisystem" cornpicker manufactured by defendant Avco Corporation and owned by the plaintiff, Kenneth Hillrichs. While attempting to unplug the machine, Hillrichs caught his right hand between two rollers which continued to spin at about two to four revolutions per second for about 1800 seconds. The accident resulted in the eventual amputation of the four fingers on Hillrichs' right hand. Hillrichs, his wife, and his children brought suit on theories of negligence, strict liability, and breach of implied warranties against Avco and the dealer that sold Hillrichs the base power unit for the cornpicker. A jury found Hillrichs to be 100% at fault for his injuries and judgment was entered against Hillrichs. In Hillrichs I, we affirmed in part but reversed and remanded the case for a new trial on the negligence claim with respect to Avco's liability for plaintiff's "enhanced injuries." Hillrichs claimed that Avco negligently failed to include an emergency stop device on the rear of the husking bed near the point where he caught his hand and that this failure resulted in an unnecessary enhancement of his injuries. On remand, the jury found Avco eighty percent at fault and Hillrichs twenty percent at fault. The jury awarded Hillrichs compensatory and punitive damages. The district court set aside the punitive damage award and the award for future medical expenses. It entered judgment against Avco after deducting the twenty percent fault attributed to Hillrichs. Avco appealed and Hillrichs cross-appealed. Avco contends that: (1) there was insufficient evidence to support a design defect claim; (2) there was insufficient evidence to support submission of the enhanced injury claim; (3) the court abused its discretion in refusing to allow the defendant to use a model of the type of husker rollers in which Hillrichs caught his hand; and (4) it was denied a fair trial because the jury foreman was a friend of Hillrichs. Hillrichs argues that: (1) the district court erred in setting aside the punitive damage award; and (2) in light of our decision in Reed v. Chrysler Corp., 494 N.W.2d 224, 230 (Iowa 1992), his judgment should not be reduced by the fault attributed to him. **OPINION HOLDS:** I. We disagree with Avco's contention that the plaintiff failed to establish that defendant was negligent in designing the New Idea Unisystem cornpicker without a rear emergency stop device. II. We believe sufficient evidence on the issue of enhanced injury existed for the jury's consideration. III. We agree with the district court that, because defendant failed to produce the roller model

No. 93-3074. HILLRICHS v. AVCO CORPORATION (continued). prior to the stipulation and settlement conference as required by local rule, use of the exhibit would have unfairly surprised and prejudiced the plaintiffs. IV. We agree with the district court that Avco produced no evidence of misconduct or any improper jury influence. V. We believe the court properly set aside the punitive damage award. VI. Because we decided Reed after we filed Hillrichs I and after the second Hillrichs trial was held, we conclude that Hillrichs I established the law of this case. Therefore, even though we abandoned the rule in Reed, the court properly reduced Hillrichs' award by his apportionment of fault. VII. We affirm the district court's judgment in all respects.

No. 92-565. STATE v. BABERS.

On review from the Iowa Court of Appeals. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by Carter, P.J., and Neuman, Snell, Andreasen, and Ternus, JJ. Opinion by Andreasen, J. (10 pages $4.00)

Dewitt N. Babers was convicted of delivery of a schedule II simulated controlled substance, cocaine. On appeal he challenged the court's refusal to permit him to offer impeachment testimony from a previously nondisclosed witness and the court's failure to instruct the jury upon the defense of entrapment. The court of appeals reversed and remanded for a new trial. The court found the trial court abused its discretion in excluding the testimony of the defendant's witness under Iowa Rule of Criminal Procedure 12(4). The court found rule 12(4) required the trial court to make a specific finding "that no less severe remedy is adequate to protect the State from undue prejudice" prior to excluding the testimony of the nondisclosed witness. We granted further review. **OPINION HOLDS:** I. Although it would be a good practice for the trial court to make on the record findings, rule 12(4) does not require the court to make a specific finding. From our review of the witness's proposed impeachment testimony, we fail to find Babers' substantial rights were prejudiced. It was not an abuse of discretion to exclude the witness's testimony. II. We conclude no reasonable person could infer from the evidence that the State used the kind of extraordinary inducement that is necessary for entrapment. The court did not err in refusing to instruct on the defense of entrapment.

No. 92-508. STATE V. MONK.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Black Hawk County, Joseph Moothart, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT REVERSED AND REMANDED.** Considered en banc. Opinion by Andreasen, J. Special concurrence by Ternus, J. Dissents by Carter, J. and Snell, J.

(12 pages $4.80)

Terry Lee Monk, Jr., was convicted of sexual abuse in the second degree in violation of Iowa Code section 709.3(3) (1991). At trial the State offered evidence that, while at a party, Monk and Jim Barber wrestled Ruben Howard to the floor and Monk then stuck the end of a broomstick in Howard's anus. In support of his motion for a judgment of acquittal, Monk argued that "the touching of a broomstick on an anus did not qualify as sexual contact under the context of this case." The State argued that a charge of sexual abuse is a general intent crime and that it was not necessary that the touching be for sexual gratification. Later the trial court denied Monk's request to instruct the jury that the term "sex act" means any sexual contact between two or more persons by use of artificial sexual organs or substitutes therefor in contact with the anus. The court also denied Monk's request to modify Iowa Uniform Criminal Instruction No. 900.8, which the court proposed to use, to add the word "sexual" before the word "contact." Monk appealed from his conviction. The court of appeals affirmed. We granted Monk's application for further review. **OPINION HOLDS:** I. We find the definition of a "sex act" in Iowa Code section 702.17 clearly requires sexual contact. We conclude it was error not to instruct the jury that a sexual act requires sexual contact. Because the jury could have concluded that the incident was not sexual in nature, we find the omission was prejudicial. II. We conclude there was sufficient evidence to submit the criminal charge to the jury. The court did not err in denying Monk's motion for judgment of acquittal. We reverse and remand because the court failed to properly instruct the jury. **SPECIAL CONCURRENCE ASSERTS:** Sexual motivation is not required in order to establish an offense of sexual abuse. A jury could find that Monk chose to touch Howard where he did to simulate intercourse. The fact that Monk was not sexually aroused by his actions is not dispositive of whether the contact itself was sexual. **DISSENT BY CARTER, J., ASSERTS:** I would apply the criteria that I suggest in my dissent in State v. Pearson, ___ N.W.2d ___ (1994) (filed this date). However, in applying either that test or the majority's criteria in the Pearson case, I believe that the defendant

No. 92-508. STATE V. MONK. (continued)
was entitled to a directed verdict of acquittal. **DISSENT BY SNELL, J., ASSERTS:** Defendant's motion for judgment of acquittal should have been granted as a matter of law. A "sex act" or "sexual activity" as defined by section 702.17 was not committed by defendant because there was no sexual contact between him and the victim. By interpreting defendant's act within the meaning of "sex act," the majority has transformed sex abuse statutes into general assault statutes that have some effect on the reproductive or excretory organs of the victim or defendant.

No. 93-913. IN THE INTEREST OF M.A.H.
Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer and Joel Novak, Judges. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Per curiam. (5 pages $2.00)

Michael was adjudicated a child in need of assistance due to his mother's failure to exercise proper supervision. Under the juvenile court's order, Michael was to remain in his mother's custody under the supervision of the Department of Human Services on condition that he be placed in an appropriate institution for inpatient evaluation as soon as space was available. The mother challenges the court's findings and dispositional order. **OPINION HOLDS:** I. The mother has waived any objection to the "staleness" of the evidence used because the reason for its age is Michael's absence from school and the mother's failure to cooperate. In addition, there was adequate evidence from the live testimony of witnesses at the CINA hearing to establish a basis for the adjudication, without regard to the school records. The mother has failed to show how her claim that the school district violated 20 U.S.C. § 1232g(b) in obtaining Michael's school records without her consent or a subpoena was preserved. In any event, these materials were again only cumulative. There is no evidence that the juvenile court relied on the findings of an administrative law judge contained in a Department of Education ruling admitted into evidence. We find no error. II. The mother contends that in order to be adjudicated a CINA under Iowa Code section 232.2(6)(c)(2) there must be a failure on her part to supervise Michael, and truancy alone is not a sufficient ground. We believe that the evidence in the record goes far beyond establishing mere truancy; it demands the juvenile court's intervention in order to secure an adequate opportunity for the proper educational and social development of this child.

No. 92-1886. **SMITH v. BROWN.**

Appeal from the Iowa District Court for Scott County, C.H. Pelton, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED ON THE APPEAL; AFFIRMED ON THE CROSS-APPEAL.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Opinion by Harris, J. Dissent by McGiverin, C.J. (9 pages $3.60)

Two questions are presented in this appeal involving a lien set up in a dissolution-of-marriage decree. The lien of $13,000 on a family residence ran in favor of the husband-father. It was a factor in the property division; the wife was given the right to reside in the home during the minority of the parties' children, and thereafter, on sale, to receive the proceeds subject to the husband's lien. The husband promptly sold his interest to plaintiffs and thereafter defaulted in his court-ordered support obligations. The dispute is between the plaintiffs, as the husband's vendees, and the wife, who contends the lien should be subject to her former husband's support obligations. The questions are (1) whether the lien was assignable, and (2) whether it was subject to the husband's support obligations. **OPINION HOLDS:** The trial court was correct in holding the plaintiffs are assignees of all interests that the husband-father had in the real estate. The trial court was correct in holding that their claim is subject to all setoffs and counterclaims to which the husband was subject when the assignment was recorded. The lien was however not subject to setoffs and counterclaims arising thereafter. The trial court did not err in leaving the plaintiffs to ordinary enforcement proceedings. Alternatively, the wife may satisfy the lien by paying an amount equivalent to the $13,000 plus interest consistent with the 1980 divorce decree. We note that future litigation can be avoided by wording divorce decrees so that the lien is made subject to future unpaid child supports so that any arrearages will be deducted from the amount of the lien. Tax costs fifty percent to the defendant and fifty percent to the plaintiffs. **DISSENT ASSERTS:** The dissolution decree encompassed the entirety of the property and child support settlement of the financial affairs of the husband and wife. The $13,000 lien given to the husband on the realty and his child support obligation were necessarily interrelated. The husband should not be allowed to sell off his lien and divorce that lien from his child support obligation. I would imply an assignment of the husband's future child support obligations to the plaintiffs to the extent of the $13,000 lien.

No. 93-271. **CARSON v. ROEDIGER.**

Appeal from the Iowa District Court for Linn County, Van D. Zimmer, Kristin L. Hibbs, and William L. Thomas, Judges. **AFFIRMED ON APPEAL; CROSS-APPEAL RENDERED MOOT.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Opinion by Harris, J.

(11 pages $4.40)

Wesley and Karen Roediger contracted with Larry Pinckney for the construction of a home for a set sum. Judy Carson became a subcontractor by delivering construction materials to the site. By reason of faulty construction by Pinckney, the Roedigers stopped payment under the contract. Pinckney also defaulted in payments to Carson. Carson brought an action against the Roedigers to foreclose a mechanic's lien. The Roedigers then cross-claimed against Pinckney for breach of contract. Pinckney failed to appear, resulting in a default judgment for the Roedigers. The district court found the Roedigers had established that the cost for repairing defects in the construction and completing the home exceeded any remaining amount due under the contract with Pinckney. Because it found no amount due, the court held all mechanic's liens were canceled pursuant to Iowa Code section 572.14(2). Carson appeals, primarily contending the district court incorrectly interepreted the "balance due" language of section 572.14(2). The Roedigers cross-appeal. **OPINION HOLDS:** I. The district court correctly held that, whether or not a mechanic's lien is timely filed, the balance due to subcontractors requires, (1) deducting payments made by the owner from the contract price, (2) adding extras provided by the contractor, (3) then deducting the owner's damages from omissions and deficiencies in the contractor's work. II. It is contended that the impact of the 1981 mechanic's lien's legislation should be carefully limited because subcontractors should not be at the mercy of petty dissatisfactions owners may have concerning work of the principal contractor. It is also contended that the challenged interpretation could result in high-handed practices by homeowners who could deceive subcontractors into intolerable losses. These contentions do not fit this record. III. Carson claims that certain "extras" should have been added to the contract price and assails the district court's determination of the interest rate on the unpaid balance. These "extras" were erroneously ordered by Pinckney and did not comply with the building contract. Thus the district court correctly denied the increase in contract price. Pinckney's default netted out the money due on the contract from the Roedigers. Pinckney was therefore barred from recovering the principal of the debt, and thus equally barred from recovering interest on it. We affirm on appeal. The cross-appeal is rendered moot.

No. 93-210. **WHITE v. NORTHWESTERN BELL.**
Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge. **AFFIRMED IN PART AND REVERSED IN PART ON THE APPEAL; AFFIRMED ON THE CROSS-APPEAL AND REMANDED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Opinion by Neuman, J.
(19 pages $7.60)

U S West disputed Richard White's claim for workers' compensation benefits for an allegedly work-related back injury. The parties negotiated a compromise settlement which was approved by the industrial commissioner. U S West agreed to furnish future medical care as if claimant's injuries been held by the industrial commissioner to have been compensable. Pursuant to the settlement, U S West paid White's prescriptions for a painkilling drug. The company later refused to authorize such treatment and offered unsuitable alternatives. After consenting for nearly nine years to White's choice of physicians, U S West informed him that it would no longer pay for consultations without pre-authorization. U S West also refused to honor White's prescription for a therapeutic contour chair. U S West agreed to pay White's health club membership so he could use a jacuzzi, but later refused to provide this treatment and suggested physical therapy as an alternative. White brought an action before the industrial commissioner concerning his various disputes with U S West under the settlement agreement. The industrial commissioner ruled that it lacked jurisdiction. White then filed suit in district court. The court found that U S West breached the settlement and awarded White actual and punitive damages. The court denied White's claim of severe emotional distress and bad-faith failure to pay workers' compensation benefits. U S West appeals and White cross-appeals. **OPINION HOLDS:** I. The industrial commissioner's approval of the parties' settlement agreement under Iowa Code section 85.35 terminated the industrial commissioner's jurisdiction. II. Substantial evidence supported the district court's finding that U S West breached the settlement agreement with respect to White's claims for prescription drugs, physician consultations, and the contour chair. U S West's rejections of White's claims were motivated primarily by economics and not by any legitimate questions over the medical necessity of the treatments. III. The district court properly did not let U S West benefit from payments made under a separate health care plan. We affirm the district court's award of actual damages for prescription drugs, physicians' bills, and the contour chair. We reverse the award of damages for failure to pay for White's health club membership, as this was not shown to be medically necessary. IV. White's right to medical care arises solely out of the parties' settlement agreement. We

No. 93-210. **WHITE v. NORTHWESTERN BELL** (continued). hold that while U S West's failure to pay White's claims constituted a breach of its contractual obligations, its conduct furnished no basis for an intentional tort claim premised on insurer bad faith. Thus we reverse the award of punitive damages.

No. 93-645. **STATE v. MATTLY.**

Appeal from the Iowa District Court for Warren County, Thomas S. Bown, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Opinion by Harris, J. (6 pages $2.40)

Mattly pleaded guilty to delivery of a controlled substance and being an habitual offender. Before the sentencing hearing, Mattly told her attorney for the first time about circumstances thought to indicate a defense of compulsion to commit the crime. At sentencing the trial court denied Mattly's motion to withdraw her guilty plea. Mattly appeals. **OPINION HOLDS:** I. The trial court correctly observed that, with few exceptions, a valid guilty plea waives all defenses and objections. II. We reject Mattly's claim that the district court failed to exercise its discretion because it refused to consider her evidence on the question of compulsion. A valid plea was entered pursuant to a plea bargain and the late awareness of a possible defense coincided with the realization that incarceration, not probation, was imminent. III. We decline to adopt the four-factor test for analyzing motions to withdraw guilty pleas enunciated by the 8th circuit court of appeals in United States v. Abdullah, 947 F.2d 306 (8th Cir. 1991). However, an Iowa trial court might wish to be guided by the Abdullah test. IV. We reject Mattly's ineffective assistance of counsel claim. We affirm.

No. 93-409. **STATE v. GREY.**

Appeal from the Iowa District Court for Black Hawk County, L.D. Lybbert, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Per curiam. (4 pages $1.60)

Paul Joseph Grey appeals from the fine imposed as part of his sentence following his conviction for manufacturing marijuana. Grey contends the district court abused its discretion by failing to consider suspending the fine. **OPINION HOLDS:** We hold Iowa Code section 204.401(1)(d) (1991) does not eliminate the district court's authority to select a sentencing option available under chapter 907. However, we conclude the district court exercised discretion in sentencing Grey.

No. 93-841. **STATE v. HARDY.**
Appeal from the Iowa District Court for Polk County, Vincent M. Hanrahan, Judge. **REVERSED AND REMANDED.** Considered by Carter, P.J., and Neuman, Snell, Andreasen, and Ternus, JJ. Per curiam. (8 pages $3.20)

Hardy filed a motion to suppress evidence of her refusal to sign an implied consent form to withdraw a breath specimen. She claimed that although she had been arrested for interference with official acts and resisting arrest, she had not been arrested for OWI in compliance with Iowa Code section 321J.6 (1993). Hardy's motion to suppress was overruled and we granted discretionary review. **OPINION HOLDS:** The State admits that the criteria set forth in sections 321J.6(1)(b)-(f) were not present in this case. The State, however, contends that the arrest requirement of section 321J.6(1)(a) was met because the police need not rearrest a defendant for OWI when the defendant is already under arrest for other charges. We hold that, if the criteria in section 321J.6(1)(b)-(f) are not present, a person must be placed under arrest for OWI pursuant to subsection (a) before the implied consent request may be carried out. The district court order denying Hardy's motion to dismiss is reversed and the case remanded for further proceedings.

No. 93-670. **STATE v. JOHNSON.**
Appeal from the Iowa District Court for Cerro Gordo County, Paul W. Riffel, Judge. **AFFIRMED.** Considered by Carter, P.J., and Neuman, Snell, Andreasen, and Ternus, JJ. Per curiam. (6 pages $2.40)

Vicki Johnson appeals from her conviction of possession with intent to deliver a schedule II controlled substance. Johnson argues the district court (1) focused exclusively on her prior record regarding probation in sentencing her to a ten-year prison term; and (2) erred in not publicly announcing that she may be eligible for parole before the sentence is discharged, as required by Iowa Code section 901.5(9)(b) (1993). **OPINION HOLDS:** I. We find no merit to Johnson's claim the district court abused its discretion in sentencing her to prison rather than granting probation. II. The district court publicly informed Johnson at sentencing that she would not be eligible for parole until she had served a one-third minimum of her ten-year sentence. We believe the district court's actions amounted to literal compliance with section 901.5(9)(b). We also conclude the manifest intent of the announcement requirement under section 901.5(9) is to inform the public of the true dimension of the sentence imposed. It was not intended to impart any information to the defendant that is necessary for a valid plea and sentencing. We affirm.

No. 93-106. **STATE v. KITE.**
Appeal from the Iowa District Court for Lee County, John C. Miller, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Per curiam. (4 pages $1.60)

Morris Ricketts, a convenience store clerk, saw Kite steal a twelve-pack of beer from the store's cooler. The State charged Kite with robbery in the second degree in violation of Iowa Code section 711.3 (1991), claiming Kite assaulted Ricketts while attempting to escape. When Ricketts told the county attorney that he intended to move to Wichita, Kansas, the State filed a motion to permit preservation of testimony. The court found returning for the trial would cause Ricketts economic hardship and sustained the motion. At trial, the court allowed Ricketts' deposition to be read to the jury over Kite's objection. The jury found Kite guilty as charged. Kite appeals. **OPINION HOLDS:** We do not find evidence of a good-faith effort to obtain Ricketts' presence for the trial. The State could have paid for Ricketts' mileage, room, and board in advance to alleviate any financial hardship. When a defendant is denied his right of confrontation, the State must establish that the error was harmless beyond a reasonable doubt. Because Ricketts was the main witness to the alleged assault, the State failed to establish beyond a reasonable doubt that Kite would have been convicted of robbery without his testimony.

No. 92-1850. **STATE v. SHOEMAKE.**
Appeal from the Iowa District Court for Pottawattamie County, Glen M. McGee, Judge. **AFFIRMED.** Considered by Carter, P.J., and Neuman, Snell, Andreasen, and Ternus, JJ. Per curiam. (4 pages $1.60)

Raymond Shoemake was convicted of second-degree sexual abuse and indecent contact with a child. On appeal, Shoemake argues the trial court should have instructed the jury that third-degree sexual abuse was a lesser included offense of second-degree sexual abuse and that assault was a lesser included offense of indecent contact with a child. Shoemake also claims ineffective assistance of counsel. **OPINION HOLDS:** I. Shoemake's lesser included offense claims are foreclosed by our decisions in State v. Constable, 505 N.W.2d 473 (Iowa 1993), and State v. Mateer, 383 N.W.2d 533 (Iowa 1986). II. Shoemake may pursue his ineffective assistance claim by filing an application for postconviction relief. We affirm.

No. 92-1621. **STEVENS v. STATE.**

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Per curiam. (4 pages $1.60)

Jeffery D. Stevens appeals from the district court order denying his application for postconviction relief. Stevens claimed he would not have pleaded guilty if he had known the mandatory minimum portion of the sentence could be reduced. His trial counsel testified that he explained how good time and work credits operate to reduce sentences in general, but did not specify that they can reduce mandatory minimum sentences. **OPINION HOLDS:** Stevens may have reached the erroneous conclusion that if a five-year mandatory minimum sentence was imposed it would be at least five years until he was eligible for release, but this was not the result of misinformation by his counsel. Counsel explained how good time credits work to reduce sentences. He did not have a duty to explain specifically that a mandatory minimum sentence, like any other sentence, was subject to reduction for good time.

No. 93-987. **STATE v. VAN SANT.**

Appeal from the Iowa District Court for Poweshiek County, James D. Jenkins, Judge. **AFFIRMED.** Considered by Carter, P.J., and Neuman, Snell, Andreasen, and Ternus, JJ. Per curiam. (5 pages $2.00)

Carroll Van Sant appeals from a judgment and sentence on one count of lascivious acts with a child. Van Sant argues that (1) the sentencing procedure was defective because the district court wrongly considered the State might have charged him with the more serious crime of second-degree sexual abuse, and (2) the district court failed to publicly announce the matters set forth in Iowa Code section 901.5(9). **OPINION HOLDS:** I. We agree that Van Sant's conduct could have subjected him to conviction and sentence of up to twenty-five years for second-degree sexual abuse. The district court did not err in considering the plea bargain benefit Van Sant had already received in sentencing him on the indecent contact charge. We find no abuse of discretion by the district court in refusing to grant probation. II. Van Sant claims the district court erred in not publicly announcing the matters set out in Iowa Code section 901.5(9) (1993). We rejected a similar argument in State v. Johnson, ___ N.W.2d ___ (Iowa 1994) (filed this date). We affirm.

No. 93-889. **STATE v. HARRIMAN.**

Appeal from the Iowa District Court for Fayette County, Robert E. Mahan, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Per curiam. (4 pages $1.60)

Johnathan Harriman was arrested on December 28, 1992. The case was referred to juvenile court services. On January 23, 1993, Harriman turned eighteen. The juvenile court officer later requested that the matter be prosecuted in adult court. No waiver of juvenile court jurisdiction was sought. Fifty days after Harriman's arrest, the State filed a trial information charging Harriman in district court. Harriman filed a motion to dismiss, claiming the State violated his right to speedy indictment under Iowa Rule of Criminal Procedure 27(2)(a). The district court ruled the delay was not excused for good cause and dismissed the case. The State appeals. Harriman argues the State's decision not to seek a waiver of jurisdiction from the juvenile court, but rather to wait until he turned eighteen, subjected the State to rule 27(2)(a)'s requirements as applied to adults. **OPINION HOLDS:** Rule 27(2)(a) is not applicable in this case. Harriman was never arrested as an adult and the juvenile court never entered an order waiving jurisdiction. The rule's speedy indictment period never started running. The district court erred in holding an indictment had to be found within forty-five days of Harriman's arrest as a juvenile. We note that Harriman still retains the speedy trial rights guaranteed by the state and federal Constitutions. But we conclude we cannot reach the issue of whether Harriman's indictment violated his constitutional rights. We reverse and remand the case to the district court.

No. 93-658. **BROWN v. LIBERTY MUT. INS. CO.**

Certified questions of law from the United States District Court for the Northern District of Iowa, Edward J. McManus, Judge. **CERTIFIED QUESTIONS ANSWERED.** Considered by Larson, P.J., and Carter, Lavorato, Neuman, and Ternus, JJ. Opinion by Neuman, J. (8 pages $3.20)

The certified questions ask: (1) when does a cause of action for bad faith failure to pay workers' compensation benefits accrue, and (2) what limitation period applies to the bringing of such a cause of action? **OPINION HOLDS:** I. We hold that a claimant's cause of action for bad-faith failure to pay workers' compensation benefits accrues upon receipt of notification that the carrier has denied the claim. II. We hold that the five-year limitation period of Iowa Code section 614.1(4) applies to actions based on the bad-faith nonpayment of workers' compensation benefits.

No. 93-72. **STATE v. TILLMAN.**

Appeal from the Iowa District Court for Story County, Timothy J. Finn, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Opinion by Larson, J. (10 pages $4.00)

Tillman appeals his convictions for first-degree kidnapping, first-degree robbery, and first-degree burglary. He claims error in the court's overruling of his challenge for cause to two prospective jurors, its admission of statements made by the defendant regarding another crime, and its instruction to the jury on the requirements for first-degree burglary. **OPINION HOLDS:** The rule of presumed prejudice changed with State v. Neuendorf, 509 N.W.2d 743 (Iowa 1993). Even though Neuendorf was not decided when this case was tried, the rule is for use only in appellate review, and we apply it here. Tillman has failed to establish the requisite prejudice because the challenged jurors did not sit on the jury, and there was no showing that the jury that actually decided the case was biased. II. Tillman requested that the court prohibit the State from introducing evidence of his statement to the victim about having killed a woman who did not cooperate. While Tillman's statement was no doubt prejudicial, it was also very probative on the issue of consent. We conclude that the court did not abuse its discretion in admitting it. III. Iowa Code section 713.3 (1992 Supp.) provides, "A person commits burglary in the first degree if, while perpetrating a burglary in or upon an occupied structure in which persons are present . . . ." The "persons are present" language was added to section 713.3 by the 1992 legislature. Tillman argues that in order to commit first-degree burglary a person must be present at the time of the entry in order to constitute the crime. A crime commences with the first act directed toward the commission of the crime and ends with the perpetrator's capture or elusion of pursuers. Even if a person entered the premises only after the burglary had commenced, section 713.3 makes it first-degree burglary.

No. 92-1546. **PAULSEN v. CEDAR COUNTY.**

Appeal from the Iowa District Court for Jackson County, David H. Sivright, Jr. and Max R. Werling, Judges. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Neuman, Andreasen, and Ternus, JJ. Per curiam. (11 pages $4.40)

Bonnie and Cynthia Paulsen were injured after their car slid on a patch of ice and struck a tree. In their suit against the County, the plaintiffs claimed the County's practice of placing a continuous row of snow and gravel along the sides of the road prevented the melting snow from draining properly and caused the accident. The district court granted summary judgment to the County and plaintiffs

No. 92-1546. **PAULSEN v. CEDAR COUNTY** (continued).
appeal. **OPINION HOLDS:** Pursuant to Iowa Code section 668.10(2), a municipality is immune from suit for its failure to remove snow and ice as long as it complied with its policy for removal. I. The County met the burden of proving it complied with its policy for snow and ice removal. II. The County established windrowing gravel was part of this policy. III. Section 668.10(2) applies when a county follows its policy, even if this fails to remove all snow and ice from the roadway. IV. A county is also immune for icy conditions created by its snow and ice removal policy. We conclude the district court correctly determined the County was entitled to immunity.

No. 93-430. HUGHES v. STATE.
Appeal from the Iowa District Court for Lee County, Harlan W. Bainter, Judge. **AFFIRMED.** Considered by Carter, P.J., and Neuman, Snell, Andreasen, and Ternus, JJ. Opinion by Carter, J. (5 pages $2.00)

Postconviction applicant Dexter Hughes appeals from the denial of relief with respect to sanctions imposed in a prison disciplinary proceeding. A prison disciplinary commission found that Hughes had violated two institutional rules proscribing disobeying a lawful order and verbal abuse. The essence of the first alleged violation was that Hughes disobeyed an order to sign a receipt for a law book he had requested from the prison library. The essence of the second violation was that, at the time of the first alleged violation, Hughes directed offensive, obscene, and abusive language toward the prison librarian. Hughes contends that the violation charging refusal of a lawful order is invalid because "there was no rule, regulation, or procedure to substantiate the order given." His challenge to the verbal abuse violation is predicated on his claim that he was denied due process when the committee refused to consider a witness statement on relevancy grounds. **OPINION HOLDS:** I. We reject Hughes' claim that, in order for a disobeying-a-lawful-order violation to exist, the order violated must be tied to a formal rule, regulation, or procedure. Because Hughes' theory of why the order was not reasonable is not substantiated in the record, the district court correctly rejected his challenge. II. The substance of the witness statement in question was that another inmate had heard the prison librarian shouting an obscenity at Hughes at or about the same time that Hughes was charged with shouting an obscenity at the librarian. There is nothing in the record to indicate that the committee, in its determination of a sanction, did not consider that statement for whatever merit it might have. As a result, the record is inadequate to support Hughes' claim of a due process violation.

No. 93-583. VACHON v. STATE.

Appeal from the Iowa District Court for Johnson County, Paul J. Kilburg, Judge. **AFFIRMED.** Considered by Carter, P.J., and Neuman, Snell, Andreasen, and Ternus, JJ. Opinion by Snell, J. (15 pages $6.00)

Maurice and Kathie Vachon appeal from the entry of summary judgment against them with regard to their medical malpractice suit against the State of Iowa. The district court entered summary judgment against the Vachons on the ground that their claims against the State are time barred. The Vachons appeal, claiming a genuine issue of material fact exists regarding the application of the discovery rule to their claims against the State. The State cross-appeals, claiming the district erred in holding the discovery rule applied to claims governed by Iowa State Tort Claims Act. **OPINION HOLDS:** I. We hold the State Tort Claims Act statute of limitations, Iowa Code section 669.13, applies in this case. II. We believe the discovery rule applies to claims brought under chapter 669. We hold the Vachons' claims accrued when they discovered their injuries or through their exercise of reasonable diligence should have discovered them. III. Even when the discovery rule is applied, we find that the two-year statute of limitations has run on plaintiffs' instant suit. Vachons and their counsel knew that the injury was a compartment syndrome injury. The case was brought to counsels' attention on May 25, 1988. Medical records were mailed to Vachons' attorneys on March 27, 1989 and presumably received. By that time plaintiffs knew all of the facts needed to investigate and determine the existence of a cause of action against these defendants. IV. Plaintiffs further claim that the present lawsuit could not have been filed without the information last obtained because to have filed it without having secured a medical expert on the negligence issue would have subjected counsel to sanctions under Iowa Rule of Civil Procedure 80(a). Plaintiffs are not aided by that rule because reasonable inquiry has not been established. We affirm.

No. 93-258. HICKS v. FRANKLIN COUNTY AUDITOR.

Appeal from the Iowa District Court for Franklin County, Jon Stuart Scoles, Judge. **AFFIRMED.** Considered by Carter, P.J., and Neuman, Snell, Andreasen, and Ternus, JJ. Opinion by Andreasen, J. (26 pages $10.40)

Plaintiff landowners in a drainage district filed suit against the county auditor, the county board of supervisors, and the drainage district board of trustees to compel a reclassification of property subject to assessments for the costs of a 1990 construction project. They alleged that notice of the proposed project was deficient, that the project was improperly classified as a

No. 93-258. HICKS v. FRANKLIN COUNTY AUDITOR (continued). repair, and that they were entitled to compensation for all of the property taken for the drainage easement. The district court ruled that the notice requirements were met, the project was properly considered a repair, and that plaintiffs failed to establish their equitable claims. The court directed the defendants to institute condemnation proceedings for the property taken which exceeded the original right-of-way boundary. Plaintiffs appealed. **OPINION HOLDS:** I. Plaintiffs first contend the board's proceedings on the 1990 project were void for lack of jurisdiction because the county auditor failed to comply with the statutory notice provisions by notifying all landowners in the affected area. In the instant case all of the other landowners were listed on the notice envelope and included in the published notice. We conclude the county substantially complied with the statutory notice provisions. II. The facts and circumstances surrounding this project support a finding that the 1990 project was repair work. We hold that the 1990 project constituted a repair and reclassification of benefits was not required. III. We agree with the district court that the plaintiffs should be compensated for any damages resulting from the expansion of the easement and the affected lands should be appraised. IV. We conclude the board's decision not to undertake reclassification of the district following the repair work was not arbitrary or capricious.

No. 92-886. CITY OF WAUKEE v. CITY DEVELOPMENT BOARD.
Appeal from the Iowa District Court for Dallas County, William H. Joy, Judge. **AFFIRMED IN PART, REVERSED IN PART, REMANDED TO CITY DEVELOPMENT BOARD WITH DIRECTIONS.** Considered by McGiverin, C.J., and Larson, Carter, Snell, and Ternus, JJ. Opinion by Snell, J. (16 pages $6.40)

This dispute stems from the competing annexation applications of two cities, the City of Clive, and the City of Waukee, for territory located in Dallas County. Waukee petitioned for judicial review of City Development Board's (CDB) failure to approve its voluntary annexation application within the time period required pursuant to Iowa Code section 368.7 (Supp. 1991). The district court remanded Waukee's application to the CDB with orders to approve it. The CDB and Clive appeal raising two issues. First, whether the doctrine of exhaustion of administrative remedies barred the district court's exercise of appellate jurisdiction. Second, whether the district court exceeded its jurisdiction in ordering the CDB to approve Waukee's voluntary application. **OPINION HOLDS:** I. We hold that section 368.7 commanded that a decision be made by CDB within the ninety-day period. We also do not believe the legislature intended to temporarily withdraw CDB's authority to act when it enacted that section. We hold

No. 92-886. CITY OF WAUKEE v. CITY DEVELOPMENT BOARD. (continued).

Waukee exhausted its administrative remedies. II. We believe the legislature stopped short of creating a self-executing voluntary annexation application approval process. The decision to approve or deny an application must still come from the board. We also believe the doctrine of primary jurisdiction compels us to leave the resolution of the merits of this controversy to the CDB. We accordingly remand this case to the CDB. On remand, the CDB must either approve or deny Waukee's application. We direct the CDB to make its decision within sixty days of the date of this order.

No. 93-584. MUNSON v. IOWA DEPARTMENT OF TRANSPORTATION.

Appeal from the Iowa District Court for Floyd County, John S. Mackey, Judge. **REVERSED.** Considered by Carter, P.J., and Neuman, Snell, Andreasen, and Ternus, JJ. Opinion by Andreasen, J. (8 pages $3.20)

The Iowa Department of Transportation (DOT) revoked the license of Arthur Lowell Munson, Jr., after he failed to pass a chemical test under Iowa's implied consent statute. Munson (1) was found asleep in his vehicle with the ignition in the "on" position and the radio on; (2) turned the ignition off; (3) stated he had driven the vehicle to where the vehicle was parked; (4) stated he had not drunk anything after parking his vehicle; (5) had a strong odor of alcohol; and (6) was unsteady and his eyes were bloodshot and watery. The agency and the district court found officer Schutjer possessed reasonable grounds to believe Munson was or had been operating a motor vehicle while intoxicated. Munson appeals. **OPINION HOLDS:** The issue before us is whether Schutjer possessed reasonable grounds to believe Munson was "operating" a vehicle while intoxicated. The current uniform instruction provides "the term 'operate' means the immediate, actual physical control over a motor vehicle that is in motion and/or has its engine running." We approve this definition requiring that either the vehicle be in motion or its engine be running. Our review of the record demonstrates as a matter of law there was not substantial evidence to satisfy the objective test. We conclude that at the time the officer invoked implied consent he did not have reasonable grounds to believe that Munson had been operating while intoxicated. The agency may not revoke Munson's license under the provisions of Iowa Code section 321J.12.

No. 92-2079. BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES v. CHICAGO AND NORTH WESTERN TRANSP. CO.

Appeal from the Iowa District Court for Cerro Gordo County, John S. Mackey, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Carter, Snell, and Andreasen, JJ. Opinion by Carter, J. (11 pages $4.40)

Railway employees and their union brought a claim alleging that they are entitled to protections contained in Iowa Code section 730.5 (1991) regarding the drug testing of employees or applicants for employment. The district court granted the employer's motion for summary judgment, concluding that it lacked subject matter jurisdiction because the employee's claims are inextricably linked with an area of compulsory arbitration under the Railway Labor Act. **OPINION HOLDS:** We do not find it necessary to hold directly on the validity of the district court's R.L.A. preemption of remedy theory in order to decide this appeal. We conclude Congress has occupied the field of regulation of employee drug testing by federally regulated employers. Other than finding that the dismissal is technically on the merits rather than jurisdictional, we affirm the judgment of the district court.

No. 93-365. CLARK v. DEPARTMENT OF HUMAN SERVICES.

Appeal from the Iowa District Court for Fayette County, James Beeghly, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Neuman, JJ. Opinion by Larson, J. (5 pages $2.00)

Robert Clark moved into a nursing home while his wife, Evelyn, remained at home. Evelyn filed a petition for separate maintenance and an application for temporary support. The district court ordered Robert to pay Evelyn $1135 per month. DHS subsequently denied Robert's application for Medicaid benefits on the ground that his income was too high. An administrative law judge and the director of the DHS affirmed. On judicial review, the district court reversed, ruling that Evelyn's separate maintenance order reduced Robert's income sufficiently to qualify him for benefits. DHS appeals. **OPINION HOLDS:** Iowa is not a community property state. Thus, income for Medicaid purposes is attributed to the person in whose name it is initially received, not after it is reduced by payments under a spousal support order. We therefore reverse and remand for reinstatement of the final order of the DHS.

No. 93-353. **CITY OF DES MOINES v. CIVIL SERV. COMM'N.**
Appeal from the Iowa District Court for Polk County, Dale B. Hagen, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Carter, Neuman, and Andreasen, JJ. Opinion by Neuman, J. Dissent by Harris, J.
(13 pages $5.20)

Ron White, a seventeen-year veteran of the Des Moines Police Department, was fired after evidence seized in a drug raid turned up missing. Based on the record subsequently made in White's appeal, the Civil Service Commission found insufficient evidence to sustain the police chief's termination order. The City appealed to the district court which affirmed the commission's findings and ordered White's reinstatement. On appeal, the City claims the record contains substantial evidence supporting termination and that the district court erred by (1) substituting its findings for Chief Moulder's, (2) relying on evidence not before the chief when he made his decision, and (3) giving weight to expert testimony regarding disparate departmental discipline. **OPINION HOLDS:** I. We are not obliged to presume the correctness of the chief's decision, but must determine anew whether the evidence as a whole justifies an officer's discharge. II. While it cannot be denied that the circumstances warranted an investigation, the City attempts to discount the significance of mitigating evidence that has surfaced since the chief ordered White's termination. These mitigating circumstances tend to reinforce White's unswerving claim of innocence. We find no merit in the City's claim that they should not have been considered by the commission in its evaluation of the chief's decision. We agree the police chief's decision is lacking in support in light of the broader record. III. We believe the expert's testimony bore some relevance to the accusations against White. The negligent loss or misplacement of evidence, however regrettable from a public relations standpoint, would not justify termination without consideration of the officer's record of service. We affirm. **DISSENT ASSERTS:** The record convinces me that White did appropriate the lottery ticket. Dismissal of the officer was warranted.

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