

IOWA ADMINISTRATIVE BULLETIN

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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, 1994, to June 30, 1995	\$221.00 plus \$11.05 sales tax
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Third quarter	January 1, 1995, to June 30, 1995	\$110.50 plus \$5.53 sales tax
Fourth quarter	April 1, 1995, to June 30, 1995	\$ 55.25 plus \$2.76 sales tax

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Iowa Administrative Code

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

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(Subscription expires June 30, 1995)

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**Iowa State Printing Division
Grimes State Office Building
Des Moines, IA 50319
Phone: (515)281-5231**

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CITATION of Administrative Rules

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

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

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

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

Schedule for Rule Making 1995

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 2 '94	Dec. 21 '94	Jan. 10	Jan. 25	Jan. 27	Feb. 15	Mar. 22	June 19
Dec. 16 '94	Jan. 4	Jan. 24	Feb. 8	Feb. 10	Mar. 1	Apr. 5	July 3
Dec. 30 '94	Jan. 18	Feb. 7	Feb. 22	Feb. 24	Mar. 15	Apr. 19	July 17
Jan. 13	Feb. 1	Feb. 21	Mar. 8	Mar. 10	Mar. 29	May 3	July 31
Jan. 27	Feb. 15	Mar. 7	Mar. 22	Mar. 24	Apr. 12	May 17	Aug. 14
Feb. 10	Mar. 1	Mar. 21	Apr. 5	Apr. 7	Apr. 26	May 31	Aug. 28
Feb. 24	Mar. 15	Apr. 4	Apr. 19	Apr. 21	May 10	June 14	Sept. 11
Mar. 10	Mar. 29	Apr. 18	May 3	May 5	May 24	June 28	Sept. 25
Mar. 24	Apr. 12	May 2	May 17	May 19	June 7	July 12	Oct. 9
Apr. 7	Apr. 26	May 16	May 31	June 2	June 21	July 26	Oct. 23
Apr. 21	May 10	May 30	June 14	June 16	July 5	Aug. 9	Nov. 6
May 5	May 24	June 13	June 28	June 30	July 19	Aug. 23	Nov. 20
May 19	June 7	June 27	July 12	July 14	Aug. 2	Sept. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sept. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '96
June 30	July 19	Aug. 8	Aug. 23	Aug. 25	Sept. 13	Oct. 18	Jan. 15 '96
July 14	Aug. 2	Aug. 22	Sept. 6	Sept. 8	Sept. 27	Nov. 1	Jan. 29 '96
July 28	Aug. 16	Sept. 5	Sept. 20	Sept. 22	Oct. 11	Nov. 15	Feb. 12 '96
Aug. 11	Aug. 30	Sept. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '96
Aug. 25	Sept. 13	Oct. 3	Oct. 18	Oct. 20	Nov. 8	Dec. 13	Mar. 11 '96
Sept. 8	Sept. 27	Oct. 17	Nov. 1	Nov. 3	Nov. 22	Dec. 27	Mar. 25 '96
Sept. 22	Oct. 11	Oct. 31	Nov. 15	Nov. 17	Dec. 6	Jan. 10 '96	Apr. 8 '96
Oct. 6	Oct. 25	Nov. 14	Nov. 29	Dec. 1	Dec. 20	Jan. 24 '96	Apr. 22 '96
Oct. 20	Nov. 8	Nov. 28	Dec. 13	Dec. 15	Jan. 3 '96	Feb. 7 '96	May 6 '96
Nov. 3	Nov. 22	Dec. 12	Dec. 27	Dec. 29	Jan. 17 '96	Feb. 21 '96	May 20 '96
Nov. 17	Dec. 6	Dec. 26	Jan. 10 '96	Jan. 12 '96	Jan. 31 '96	Mar. 6 '96	June 3 '96
Dec. 1	Dec. 20	Jan. 9 '96	Jan. 24 '96	Jan. 26 '96	Feb. 14 '96	Mar. 20 '96	June 17 '96
Dec. 15	Jan. 3 '96	Jan. 23 '96	Feb. 7 '96	Feb. 9 '96	Feb. 28 '96	Apr. 3 '96	July 1 '96
Dec. 29	Jan. 17 '96	Feb. 6 '96	Feb. 21 '96	Feb. 23 '96	Mar. 13 '96	Apr. 17 '96	July 15 '96

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
15	Friday, December 30, 1994	January 18, 1995
16	Friday, January 13, 1995	February 1, 1995
17	Friday, January 27, 1995	February 15, 1995

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.

PUBLICATION PROCEDURES

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 3.1 as our word processing system and can import directly from any of the following:

Ami Pro	Microsoft Word	SmartWare
Ami Pro Macro	Microsoft Word for Windows	SuperCalc
dBase	1.x, 2.0, 6.0	Symphony Document
DCA/FFT	MultiMate	Wang (IWP)
DCA/RFT	Navy DIF	Windows Write
DIF	Office Writer	Word for Windows 1.x, 2.0, 6.0
Display Write 4	Paradox	WordPerfect 4.2, 5.x, 6.0
Enable 1.x, 2.x, 4.x	Peach Text	WordStar
Excel 3.0, 4.0, 5.0	Professional Write	WordStar 2000 ver 1.0, 3.0
Exec MemoMaker	Rich Text Format	XyWrite III, Plus
Manuscript	Samna Word	XyWrite IV

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
DENTAL EXAMINERS BOARD[650] Professional ethics, 27.7(7), 27.7(8) IAB 12/7/94 ARC 5281A	Conference Room — 2nd Floor East Side Executive Hills West 1209 E. Court Ave. Des Moines, Iowa	December 28, 1994 1 p.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261] Industrial new jobs training program, amendments to ch 5 IAB 12/7/94 ARC 5303A	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	January 11, 1995 10 to 11 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567] Pollution — air construction permit, 22.1, 22.3(6), 22.8 IAB 12/21/94 ARC 5322A	Conference Room Fourth Floor West Wallace State Office Bldg. Des Moines, Iowa	January 23, 1995 10 a.m.
Household batteries, ch 145 IAB 12/21/94 ARC 5321A	Conference Room Fifth Floor West Wallace State Office Bldg. Des Moines, Iowa	January 11, 1995 10 a.m.
HISTORICAL DIVISION[223] Historical resources development program, 49.2 to 49.8 IAB 12/21/94 ARC 5324A	Jay Tone Board Room State Historical Bldg. 600 E. Locust Des Moines, Iowa	January 18, 1995 10 a.m.
INDUSTRIAL SERVICES DIVISION[343] Final claim activity reports, contested case proceedings, medical records, 2.6, 4.44 IAB 12/7/94 ARC 5297A	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	December 27, 1994 10 a.m.
INSURANCE DIVISION[191] Health care access, ch 74 IAB 12/21/94 ARC 5320A	Conference Room — 6th Floor Lucas State Office Bldg. Des Moines, Iowa	January 10, 1995 1 p.m.
NATURAL RESOURCE COMMISSION[571] Nonresident deer hunting, 94.1, 94.2, 94.6(1), 94.8 IAB 12/7/94 ARC 5298A	Conference Room — 4th Floor Wallace State Office Bldg. Des Moines, Iowa	January 10, 1995 10 a.m.
PETROLEUM UST FUND BOARD, IOWA COMPREHENSIVE[591] Remedial or insurance claims, 11.7(1)"d"(2)"1" and "3" IAB 12/21/94 ARC 5327A	Conference Room — 6th Floor Lucas State Office Bldg. Des Moines, Iowa	January 10, 1995 10 a.m.
Appeals — contested cases, 17.33 IAB 12/21/94 ARC 5325A (See also ARC 5323A herein)	Conference Room — 6th Floor Lucas State Office Bldg. Des Moines, Iowa	January 10, 1995 10 a.m.

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Bargaining unit, impasse procedures,
public records and fair information practices,
4.8, 7.6, 12.3(1)
IAB 12/7/94 ARC 5293A
(See also ARC 5294A)

Hearing Room — 2nd Floor
514 E. Locust St.
Des Moines, Iowa

December 27, 1994
11 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Ignition interlock device,
7.8(14)
IAB 12/7/94 ARC 5307A

Conference Room — 3rd Floor
East Half
Wallace State Office Bldg.
Des Moines, Iowa

January 12, 1995
9:30 a.m.

Fingerprinting of juveniles,
11.19
IAB 12/21/94 ARC 5312A

Conference Room, East Half
Third Floor
Wallace State Office Bldg.
Des Moines, Iowa

January 12, 1995
10 a.m.

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

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

Senator Berl E. Priebe, Co-chair
2106 100th Avenue
Algona, Iowa 50511

Representative Janet Metcalf, Co-chair
1808 79th Street
Des Moines, Iowa 50322

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

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400 N. Bureau
Creston, Iowa 50801

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609 S. Main
Monona, Iowa 52159

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Capitol, Room 15
Des Moines, Iowa 50319
Telephone (515)281-6331

The Administrative Rules Review Committee will hold a special meeting Tuesday, January 3, 1995, 10 a.m. and Wednesday, January 4, 1995, 9 a.m. in Senate Committee Room 22. This meeting will be in lieu of the regular, statutory date. The following rules will be reviewed:

Bulletin

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Pseudorabies disease, 64.151(2), 64.153(1), 64.153(2), 64.154(2), 64.154(3)"a" and "b," 64.156(2)"e,"
64.156(4), 64.156(5), 64.158(2) to 64.158(6), 64.161, Filed **ARC 5318A** 12/21/94

ARCHITECTURAL EXAMINING BOARD[193B]

Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Registration, continuing education, disciplinary action, 2.2(1), 3.1(6), 5.22, Notice **ARC 5304A** 12/7/94

ATTORNEY GENERAL[61]

Sales of former salvage and damaged motor vehicles, ch 27, Notice **ARC 5315A** 12/21/94

COLLEGE STUDENT AID COMMISSION[283]

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Student loans discharged in bankruptcy, 11.1(3)"c," 12.1(8), 13.1(8), 14.1(7), 18.15, 19.1(1)"f," 20.1(1)"f,"
21.1(1)"f," 22.1(5), 25.1(3), 27.1(11), 28.1(11), 29.1(8), 30.1(9), 33.10, Notice **ARC 5295A** 12/7/94

COMMUNITY ACTION AGENCIES DIVISION[427]

HUMAN RIGHTS DEPARTMENT[421]"umbrella"
Antipoverty services — community action plan, 22.1(1)"b," 22.5, 22.6, 22.9(1), 22.14(1)"d," Filed **ARC 5285A** 12/7/94
Emergency community services homeless grant program — political activities, rescind 23.6(3), Notice **ARC 5284A** ... 12/7/94

DENTAL EXAMINERS BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Professional ethics — unnecessary services, 27.7(7), 27.7(8), Notice **ARC 5281A** 12/7/94

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Iowa industrial new jobs training program, 5.1 to 5.12, Notice **ARC 5303A** 12/7/94

EDUCATION DEPARTMENT[281]

Accreditation standards, ch 12 preamble, 12.2(1), 12.2(3), 12.5(5), 12.5(5)"b," 12.5(10), Filed **ARC 5289A** 12/7/94
Open enrollment, 17.3(2), 17.4, 17.8(1) to 17.8(4), 17.8(10)"b," 17.10(1), 17.10(5), Filed **ARC 5288A** 12/7/94
Extracurricular interscholastic competition — open enrollment transfer, 36.15(4), Filed **ARC 5290A** 12/7/94

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Exemptions from air construction permit requirement, 22.1(1), 22.1(2), 22.3(6), 22.8, Notice **ARC 5322A** 12/21/94
Controlling pollution — voluntary operating permit, 22.201(1)"a," 22.206(1)"h," Filed Without Notice **ARC 5299A** .. 12/7/94
Household batteries, ch 145, Notice **ARC 5321A** 12/21/94

HISTORICAL DIVISION[223]

CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"
Historical resources development program, 49.2, 49.3(1)"a" to "c," 49.3(2)"a" to "d," 49.4 to 49.6,
49.7(1)"a"(2) to (4), 49.7(1)"b," 49.7(1)"c"(1) to (3), 49.7(1)"d"(1), 49.7(1)"e," 49.7(2)"a" to "c" and "f,"
49.8(1), Notice **ARC 5324A** 12/21/94

HUMAN SERVICES DEPARTMENT[441]

Eligibility for residential care, 50.3(2), Filed **ARC 5276A** 12/7/94
Excess medical expense, 65.8, 65.8(7), 65.22(1)"c," 65.108, 65.108(7), 65.122(1)"c,"
Filed Emergency **ARC 5277A** 12/7/94
Health insurance premium payment program, 75.21(7), 75.21(8)"d," 75.21(11), 75.21(13)"c," 75.21(14),
75.21(15), Notice **ARC 5310A** 12/21/94
EPSDT, elderly waiver service program, 77.33(1), 77.33(1)"a," 77.33(3), 77.33(4), 77.33(6)"a" and "e,"
78.1(1)"b"(3), (4), (7), and (8), 78.37(11), 79.1(2), 83.22(1)"b," 83.27, Filed **ARC 5278A** 12/7/94

HUMAN SERVICES DEPARTMENT[441](cont'd)

Vaccines for children program, 78.1(2)"e," 78.1(3), 78.1(3)"f," 78.3(5), 78.18(1), 78.21 to 78.23, 78.25, 78.29(9), 78.30, 78.31(2)"h," 78.39, 78.40, 79.1(8)"d," 84.3(3), <u>Notice</u> ARC 4958A <u>Terminated</u> ARC 5292A	12/7/94
Highly structured juvenile program, 114.2, 185.10(8)"c"(5), 185.83, 185.83(4), <u>Notice</u> ARC 5291A	12/7/94
Contracting — copyrights and patents, 152.5, <u>Notice</u> ARC 5309A	12/21/94
Foster home insurance fund, 158.1(1), 158.1(1)"c," 158.1(2), 158.2, 158.3, <u>Filed</u> ARC 5279A	12/7/94

INDUSTRIAL SERVICES DIVISION[343]

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

General provisions, contested cases, substantive and interpretive rules, 2.6, 4.44, 4.44(1)"k" to "m," 4.44(4) to 4.44(7), 4.44(12), 4.44(13)"a," 8.9, <u>Notice</u> ARC 5297A	12/7/94
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INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Small group health benefit plans, 71.3(4), <u>Filed</u> <u>Emergency</u> ARC 5314A	12/21/94
Health care access, ch 74, <u>Notice</u> ARC 5161A <u>Terminated</u> , <u>Notice</u> ARC 5320A	12/21/94
Community health management information system, ch 100, <u>Filed</u> ARC 5319A	12/21/94

JOB SERVICE DIVISION[345]

EMPLOYMENT SERVICES DEPARTMENT[341]"umbrella"

Employer records and reports, claims and benefits, benefit payment control, 2.1(1), 2.17, 3.40, 4.2(2)"a," 4.6, 4.13(2)"e," 4.23(23), 4.39, 4.40, 5.10, <u>Filed</u> ARC 5283A	12/7/94
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HUMAN RIGHTS DEPARTMENT[421]"umbrella"

Organization and name change, new chs 1, 2; amend ch 6, <u>Filed</u> ARC 5280A	12/7/94
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LOTTERY DIVISION[705]

REVENUE AND FINANCE DEPARTMENT[701]"umbrella"

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NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]Organization and operation, rule making, declaratory rulings, due process, public records and fair information practices, chs 1 to 3, 5 and 6, Filed ARC 5282A

12/7/94

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Nonresident deer hunting, 94.1(2), 94.1(3), 94.2, 94.6(1), 94.8, <u>Notice</u> ARC 5298A	12/7/94
Wild turkey spring hunting, 98.1(1), 98.2(5), 98.3(1), 98.3(3), 98.10(2), 98.12, 98.14, <u>Filed</u> ARC 5296A	12/7/94

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Advanced registered nurse practitioners, 7.1, 7.2(1), 7.2(5)"b," <u>Filed</u> ARC 5286A	12/7/94
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PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]Remedial or insurance claims — benefits to counties, 11.7(1)"d"(2)"1" and "3," Notice ARC 5327A

12/21/94

Contested cases — use of legal assistants or paralegals, 17.33, Notice ARC 5325A, also

<u>Filed</u> <u>Emergency</u> ARC 5323A	12/21/94
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PHARMACY EXAMINERS BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Pharmaceutical care — patient counseling, 8.20, <u>Filed</u> ARC 5316A	12/21/94
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Nonresident pharmacy licenses — penalty for late renewal, 19.2(1), 19.3, <u>Filed</u> ARC 5317A	12/21/94
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PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Behavioral science — marital and family therapists and mental health counselors, 30.3(1)"c," 30.4(1)"b"(12),

30.4(1)"c," 30.6 to 30.9, 30.10(3) to 30.10(5), 31.1 to 31.6, <u>Filed</u> ARC 5287A	12/7/94
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PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Bargaining, impasse procedures, public records and fair information practices, 4.8, 7.6, 12.3(1),
Notice ARC 5293A 12/7/94
 Impasse procedures, public records and fair information practices, 7.6, 12.3(1), Filed Emergency ARC 5294A 12/7/94

PUBLIC HEALTH DEPARTMENT[641]

Burial-transit permits, 101.4(1) to 101.4(4), 101.6, Filed ARC 5275A 12/7/94
 Declaration of paternity registry, ch 105, Filed ARC 5274A 12/7/94

PUBLIC SAFETY DEPARTMENT[661]

Ignition interlock device providers — general liability insurance, 7.8(14), Notice ARC 5307A 12/7/94
 Juvenile fingerprints, 11.19, Notice ARC 5312A 12/21/94

REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Division[193]
 COMMERCE DEPARTMENT[181]"umbrella"
 Business conduct, 1.27(1), 1.30(4), 1.36, 1.38, Notice ARC 5305A 12/7/94

REVENUE AND FINANCE DEPARTMENT[701]

Procedures, forms, interest, penalty, exceptions to penalty, jeopardy assessments, assessments, refunds,
 appeals, inheritance tax, fiduciary income tax, 7.8, 7.8(2), 7.11(1), 7.12, 7.17(5), 7.17(7), 7.17(8),
 7.30 to 7.35, 8.4(1)"bb," 10.2, 10.2(1), 10.115, 38.7, 38.11, 43.5, 51.8, 55.4, 55.5, 57.7, 60.4, 60.5,
 86.4, 89.11, Filed ARC 5306A 12/7/94
 Interest on unpaid taxes for calendar year 1995, 10.2(14), Filed ARC 5326A 12/21/94
 Assessments, refunds, estimated income tax for individuals, 38.10(13) to 38.10(15), 43.3(6), 49.7,
Filed ARC 5301A 12/7/94
 Composite returns, corporate income tax, railroad operations, telecommunications companies, publishing,
 40.18(3), 48.2, 48.3"1," 48.9(2), 48.9(3), 52.1(5)"a" and "c," 52.10 to 52.12, 53.2(3)"b," 53.2(5), 54.7(1) ,
 54.7(4), 54.7(6), 59.2(3), 59.2(5), Notice ARC 5300A 12/7/94
 Assessment practices and equalization, property tax credit and rent reimbursement, mobile home tax,
 property tax credits and exemptions, 71.1(4), 71.1(5), 73.11 to 73.13, 73.16, 73.17, 73.19, 73.23, 74.1, 74.4(1),
 74.5, 74.6, 74.8(2), 74.8(3), 80.1(1)"a," 80.1(4)"g," Filed ARC 5302A 12/7/94

TRANSPORTATION DEPARTMENT[761]

Recreational trails program — exception to funding requirement, 165.5(2)"a,"
Notice ARC 4950A Terminated ARC 5313A 12/21/94
 Recreational trails program — funding exception eliminated, 165.5(2)"a," Filed Emergency ARC 5311A 12/21/94

AGENCY IDENTIFICATION NUMBERS

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

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

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

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

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

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

Public Broadcasting Division[225]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

High Technology Council[267]

Product Development Corporation[271]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPLOYMENT SERVICES DEPARTMENT[341]

Industrial Services Division[343]

Job Service Division[345]

Labor Services Division[347]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 GENERAL SERVICES DEPARTMENT[401]
 HEALTH DATA COMMISSION[411]
 HUMAN RIGHTS DEPARTMENT[421]
 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services, Division of [429]
 Persons With Disabilities Division[431]
 Spanish-Speaking People Division[433]
 Status of Blacks Division[434]
 Status of Women Division[435]
 HUMAN SERVICES DEPARTMENT[441]
 INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
 INTERNATIONAL NETWORK ON TRADE(INTERNET)[497]
 LAW ENFORCEMENT ACADEMY[501]
 LIVESTOCK HEALTH ADVISORY COUNCIL[521]
 MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
 NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
 NATIONAL AND COMMUNITY SERVICE, IOWA
 COMMISSION ON[555]
 NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board[575]
 PERSONNEL DEPARTMENT[581]
 PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
 PREVENTION OF DISABILITIES POLICY COUNCIL[597]
 PUBLIC DEFENSE DEPARTMENT[601]
 Emergency Management Division[605]
 Disaster Services Division[607]
 Military Division[611]
 PUBLIC EMPLOYMENT RELATIONS BOARD[621]
 PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
 PUBLIC SAFETY DEPARTMENT[661]
 RECORDS COMMISSION[671]
 REGENTS BOARD[681]
 Archaeologist[685]
 REVENUE AND FINANCE DEPARTMENT[701]
 Lottery Division[705]
 SECRETARY OF STATE[721]
 SESQUICENTENNIAL COMMISSION, IOWA STATEHOOD[731]
 SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
 TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority, Iowa[765]
 TREASURER OF STATE[781]
 UNIFORM STATE LAWS COMMISSION[791]
 VETERANS AFFAIRS COMMISSION[801]
 VETERINARY MEDICINE BOARD[811]
 VOTER REGISTRATION COMMISSION[821]
 WALLACE TECHNOLOGY TRANSFER FOUNDATION[851]

REORGANIZATION—NOT IMPLEMENTED

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

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.

ARC 5315A

ATTORNEY GENERAL[61]

DEPARTMENT OF JUSTICE

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 714.16(4)"a," the Attorney General hereby gives Notice of Intended Action to adopt Chapter 27, "Sales of Former Salvage and Damaged Motor Vehicles," Iowa Administrative Code.

Iowa Code section 714.16(4)"a" provides that the Attorney General may promulgate rules in order to accomplish the objectives of and to carry out the duties prescribed by the Consumer Fraud Act.

Iowa Code section 714.16(2)"a" provides, in part, that it is an unlawful practice for a person to engage in deception or misrepresentation when selling merchandise or to omit to disclose material facts about the merchandise with intent that others rely on the omission. According to motor vehicle industry representatives, known prior salvage history, or other prior damage, diminishes a vehicle's market value by up to 50 percent. Thus, knowledge of prior damage and salvage history is probably the most important factor in determining a vehicle's market value and, thus, is clearly a material fact that must be accurately disclosed by sellers who are aware of the prior damage or salvage history. Based on citizen complaints to the Attorney General's office in the past several years, failure to disclose known salvage or flood history and other damage has replaced odometer fraud as the most common and lucrative form of consumer fraud in used car sales.

Courts interpreting laws similar to Iowa Code section 714.16 have ruled that misrepresentation of prior damage, or omission to disclose prior salvage or flood history or prior damage, violates such laws and that these undisclosed histories diminish market values.

Under these rules, it is an unlawful practice under Iowa Code section 714.16 for a seller to engage in misrepresentation or deception in connection with the sale of a vehicle the seller knows or reasonably should know had been previously titled as a salvage or flood vehicle or which had been previously rebuilt or reconstructed. The rules further provide that such prior vehicle history is a material fact the intentional concealment, suppression, or omission of which at the time of sale is an unlawful practice under section 714.16.

These rules are proposed pursuant to the Attorney General's rule-making authority under the Consumer Fraud Act. Thus, a violation of these rules is a violation of the Consumer Fraud Act. Remedies for violations include consumer reimbursement, injunctive relief, recovery of the state's costs, and a civil penalty of up to \$40,000 per violation. Pursuant to Iowa Code section 714.16A, an additional penalty of up to \$5,000 per day may be imposed if the victim is 65 years of age or older.

The rules are not intended to expand on the disclosure requirements imposed by Iowa Code section 321.69 requiring damage disclosure statements in title transfers. Section 321.69 requires vehicle sellers to provide disclosure statements to buyers, at or before the time of sale, stating whether the vehicle had incurred damage of \$3,000 or more in individual incidents during the seller's period of ownership. Given that Iowa titles contain designations indicating current or prior salvage information, the section exempts such vehicles from the damage disclosure requirement. However, the titles for these vehicles may not be available for the buyer's examination at or before the time of sale. Thus, the buyer may get no presale disclosure that the vehicle is or was titled on a salvage certificate. Therefore, Iowa Code section 321.69 provides no assistance to some car buyers who do not learn of prior salvage history until they see the vehicle's title, which may not occur until they pay off their car loans several months or years following the date of purchase.

In addition, Iowa Code section 714.16(2)"a" provides that repairs of damage of \$300 or less to otherwise new merchandise is deemed not to be a "material fact" under the section. Thus, repairs of over \$300 to new merchandise and repairs of any amount to used merchandise may be a material fact under section 714.16.

These rules are proposed pursuant to the Attorney General's independent authority to interpret and apply Iowa Code section 714.16 governing deceptive and unfair practices. These rules are intended to provide notice to vehicle sellers concerning the Attorney General's position that misrepresentation of or failure to disclose such vehicle histories violates section 714.16.

These rules may have an impact on small businesses. A request for issuance of a regulatory flexibility analysis may be made by writing the Consumer Protection Division of the Attorney General's Office, Hoover State Office Building, Des Moines, Iowa 50319, in accordance with Iowa Code section 17A.31.

Any interested person may make written suggestions or comments on these rules on or before January 13, 1995. Written materials should be directed to William L. Brauch, Assistant Attorney General, Department of Justice, Hoover State Office Building, Des Moines, Iowa 50319.

Interested persons may request an oral presentation pursuant to Iowa Code section 17A.4(1)"b" by contacting William L. Brauch at (515)281-5926 by 4 p.m., January 13, 1995.

These rules are intended to implement Iowa Code section 714.16(4)"a."

The following chapter is proposed.

Adopt a **new 61—Chapter 27** as follows:

CHAPTER 27

SALES OF FORMER SALVAGE AND
DAMAGED MOTOR VEHICLES

61—27.1(714) Omission of material fact in connection with sales of former salvage vehicles and vehicles which have otherwise been damaged. Notwithstanding the obligations imposed on the transferor of a motor vehicle under Iowa Code section 321.69, information that a motor vehicle ever has been titled on a salvage certificate or title indicating prior flood or other water damage in this or any other state, or ever has been rebuilt or recon-

ATTORNEY GENERAL[61](cont'd)

structed due to prior damage regardless of the cause, is a material fact the concealment, suppression or omission of which at the time of sale, with intent that others rely on the concealment, suppression, or omission, is an unlawful practice under Iowa Code section 714.16(2)"a."

61—27.2(714) Deception or misrepresentation in connection with sales of former salvage vehicles and vehicles which have otherwise been damaged. Notwithstanding the obligations imposed on the transferor of a motor vehicle under Iowa Code section 321.69, deception or misrepresentation in connection with the sale of a motor vehicle that the seller knows, or reasonably should know, has ever been titled in this or any other state on a salvage certificate or on a title indicating prior flood or other water damage, or ever has been rebuilt or reconstructed due to prior damage regardless of the cause, is an unlawful practice under Iowa Code section 714.16(2)"a."

These rules are intended to implement Iowa Code section 714.16(4)"a."

NOTICE — AGRICULTURAL CREDIT CORPORATION MAXIMUM LOAN RATE

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

October 1, 1993 — October 31, 1993	4.70%
November 1, 1993 — November 30, 1993	4.65%
December 1, 1993 — December 31, 1993	4.85%
January 1, 1994 — January 31, 1994	4.85%
February 1, 1994 — February 28, 1994	4.80%
March 1, 1994 — March 31, 1994	4.65%
April 1, 1994 — April 30, 1994	5.00%
May 1, 1994 — May 31, 1994	5.15%
June 1, 1994 — June 30, 1994	6.21%
July 1, 1994 — July 31, 1994	5.95%
August 1, 1994 — August 31, 1994	5.95%
September 1, 1994 — September 30, 1994	6.30%
October 1, 1994 — October 31, 1994	6.30%
November 1, 1994 — November 30, 1994	6.50%
December 1, 1994 — December 31, 1994	6.85%

ARC 5322A

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.

The list of exemptions from the requirement to obtain an air construction permit is amended.

The Department is given the authority to limit a source's hazardous air pollutant potential to emit in the source's air construction permit so the source does not have to obtain an air operating permit.

A permit by rule for certain spray booths is added. If a facility meets the criteria set forth in the rule, the facility's spray booths will be deemed to be in compliance with the requirements to obtain air construction permits and air operating permits.

These amendments may impact small business.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 23, 1995. Written comments should be directed to Christine Spackman, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034, fax (515)281-8895.

A public hearing will be held on January 23, 1995, at 10 a.m. in the Fourth Floor West Conference Room, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa, at which time comments may be submitted orally or in writing.

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 section 455B.133.

The following amendments are proposed.

ITEM 1. Amend subrule 22.1(1), introductory paragraph, as follows:

22.1(1) Permit required. Unless exempted in subrule 22.1(2), no person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon without first obtaining a construction permit, or conditional permit, or permit pursuant to 22.8(455B), or a permit required pursuant to 22.4(455B) and 22.5(455B) as required in this subrule. A permit shall be obtained prior to the initiation of construction, installation or alteration of any portion of the stationary source.

ITEM 2. Rescind subrule 22.1(2) and insert the following **new** subrule in lieu thereof:

22.1(2) Exemptions. The provisions of this rule shall not apply to the following listed equipment or control equipment unless review of the equipment or control equipment is necessary to comply with rule 22.4(455B), prevention of significant deterioration requirements; rule 22.5(455B), special requirements for nonattainment areas; 567—subrule 23.1(2), new source performance standards; or 567—subrule 23.1(3), emission standards for hazardous air pollutants, in which case a permit must be obtained. If equipment is permitted under the provisions of rule 22.8(455B), then no other exemptions shall apply to that equipment.

a. Fuel-burning equipment for indirect heating and re-heating furnaces or cooling units using natural gas or liquefied petroleum gas with a capacity of less than ten million BTU per hour input.

b. Fuel-burning equipment for indirect heating or cooling with a capacity of less than one million BTU per hour input when burning coal, untreated wood or fuel oil.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Used oils meeting the specification from 40 CFR 279.11 as amended through March 4, 1994, are acceptable fuels for this exemption.

c. Mobile internal combustion and jet engines, marine vessels and locomotives.

d. Equipment used for cultivating land, harvesting crops, or raising livestock other than anaerobic lagoons. This exemption is not applicable if the equipment is used to remove substances from grain which were applied to the grain by another person. This exemption is also not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, which is normally not fed to livestock, owned by the person or another person, in a feedlot, as defined in Iowa Code section 172D.1, subsection 6, or a confinement building owned or operated by that person and located in this state.

e. Incinerators with a rated refuse burning capacity of less than 25 pounds per hour.

f. Fugitive dust controls unless a control efficiency can be assigned to the equipment or control equipment.

g. Equipment or control equipment which reduces or eliminates all emission to the atmosphere. If a source does not have a construction permit and should have had one, this paragraph does not exempt the source from the requirement to obtain a construction permit. If a source wishes to obtain credit for reductions under the prevention of significant deterioration requirements, it must apply for a permit for the reduction prior to the time the reduction is made. If a construction permit has been previously issued for the equipment or control equipment, the conditions of the construction permit remain in effect. In order to use this exemption, the facility must comply with paragraph "s" below.

h. Equipment (other than anaerobic lagoons) or control equipment which emits odors unless such equipment or control equipment also emits particulate matter, or any other air contaminant.

i. Construction, modification or alteration to equipment which will not significantly modify overall facility emissions:

"Significantly modify" in this context means an increase in emissions of more than:

1.0 lb/hr of any regulated air pollutant, except for those pollutants covered under the provisions of section 112 (g) of the CAAA of 1990. Further, the emission rate INCREASE must not exceed the values listed in Table 1.

Table 1

Pollutant	Ton/year
Lead	0.6
Asbestos	0.007
Beryllium	0.004
Vinyl Chloride	1
Fluorides	3

This exemption is ONLY applicable to vertical discharges with the exhaust stack height 10 or more feet above the highest building within 50 feet. If a construction permit has been previously issued for the equipment or control equipment, the conditions of the construction permit remain in effect. In order to use this exemption, the facility must comply with paragraph "s" below.

The department reserves the right to require proof that the National Ambient Air Quality Standards have not been

violated by any change made when claiming this exemption to the air quality construction permit requirement. If the department finds, at any time after a change has been made pursuant to this exemption, evidence of violations of any of the department's rules, the department may require the source to submit to the department sufficient information to determine whether enforcement action should be taken. This information may include, but is not limited to, any information that would have been submitted in an application for a construction permit for any changes made by the source under this exemption, and air quality dispersion modeling.

j. Residential wood heaters, cook stoves, or fireplaces.

k. Asbestos demolition and renovation projects subject to 40 CFR 61.145 as amended through November 20, 1990.

l. The equipment in laboratories used exclusively for nonproduction chemical and physical analyses.

m. Gasoline, diesel fuel or fuel oil storage tanks with a capacity of 1,000 gallons or less and an annual throughput less than 40,000 gallons.

n. Stack or vents to prevent escape of sewer gases through plumbing traps. Systems which include any industrial waste are not exempt.

o. A nonproduction surface coating process that uses only hand-held aerosol spray cans.

p. Brazing, soldering or welding equipment or portable cutting torches, except for those industries in the major industrial groups of 10, 33, 34 and 50 (as described in the Standard Industrial Classification Manual, 1987), used for nonproduction activities.

q. Cooling and ventilating equipment: Comfort air conditioning not designed or used to remove air contaminants generated by, or released from, specific units of equipment.

r. An internal combustion engine with a brake horsepower rating of less than 400 measured at the shaft. For the purposes of this exemption, the manufacturer's nameplate rating at full load shall be defined as the brake horsepower output at the shaft.

s. A facility claiming to be exempt under the provisions of paragraph "g" or "i" above shall provide to the department at least 30 days in advance of the beginning of construction on the project, a written statement which shall include the following:

(1) A detailed emissions estimate accompanied by documentation of the basis for the emission estimate;

(2) A detailed description of each change being made;

(3) The name and location of the facility;

(4) The height of the emission point or stack and the height of the highest building within 50 feet;

(5) The date for beginning actual construction and the date that operation will begin after the changes are made;

(6) A list of the actual and potential emissions for the project for all regulated pollutants;

(7) A statement that the provisions of rules 22.4(455B) and 22.5(455B) do not apply;

(8) A statement that the accumulated emissions increases associated with each change under paragraph 22.1(2)"i," when totaled with other net emissions increases contemporaneous with the proposed change (occurring within five years before construction on the particular change commences) have not exceeded significant levels as defined in 40 CFR 52.21(b)(23), as amended through July 21, 1993, and have not exceeded

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

the ambient air increments or ceiling pursuant to 40 CFR 52.21(c) and (d), respectively, as amended through July 21, 1993. This statement shall be accompanied by documentation for the basis of these statements.

(9) The written statement shall be notarized and shall contain certification by a responsible official as defined in 567—22.100(455B) of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

ITEM 3. Add a new subrule 22.3(6) as follows:

22.3(6) Limits on hazardous air pollutants. The department may limit a source's hazardous air pollutant potential to emit, as defined at 567—22.100(455B), in the source's construction permit for the purpose of establishing federally enforceable limits on the source's hazardous air pollutant potential to emit so the source does not have to obtain an operating permit.

ITEM 4. Add a new rule 567—22.8(455B) as follows:

567—22.8(455B) Permit by rule for spray booths. Spray booths which comply with the requirements contained in this rule will be deemed to be in compliance with the requirements to obtain an air construction permit and an air operating permit. Spray booths which comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source limits for regulated air pollutants and hazardous air pollutants as defined in 567—22.100(455B).

22.8(1) Definition. "Sprayed material" is material sprayed from spray equipment when used in the surface coating process in the spray booth, including but not limited to paint, solvents, and mixtures of paint and solvents.

22.8(2) Facilities which facilitywide spray one gallon per day or less of sprayed material are exempt from all requirements, except that they must submit the certification in 22.8(5) to the department and keep records of daily sprayed material use. The facility must keep the records of daily sprayed material use for 18 months from the date to which the records apply.

22.8(3) Facilities which facilitywide spray more than one gallon per day but never more than three gallons per day are exempt from all requirements, except that they must submit the certification in 22.8(5) to the department, keep records of daily sprayed material use, and vent emissions from spray booths through a stack which is at least 22 feet tall, measured from ground level. The facility must keep the records of daily sprayed material use for 18 months from the date to which the records apply.

22.8(4) Facilities which facilitywide spray more than three gallons per day must comply with all applicable statutes and rules.

22.8(5) Facilities which claim to be permitted by provisions of this rule must submit to the department a written statement as follows:

"I certify that the paint booth deemed permitted under the terms of rule 567 IAC 22.8(455B) is in compliance with all applicable requirements of rule 567 IAC 22.8(455B). This certification is based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

The certification must be signed by one of the following individuals.

a. For corporations, a principal executive officer of at least the level of vice-president, or a responsible official as defined at 567—22.100(455B).

b. For partnerships, a general partner.

c. For sole proprietorships, the proprietor.

d. For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

ARC 5321A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.304, 455D.7 and 455D.10A, the Environmental Protection Commission hereby gives Notice of Intended Action to create new Chapter 145, "Household Batteries," Iowa Administrative Code.

This new chapter regulates the use and disposal of toxic heavy metals in household batteries and rechargeable consumer products.

Any interested person may make written suggestions or comments on these proposed rules prior to January 11, 1995. Such written comments should be directed to Jeff Fiagle, Waste Management Assistance Division, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons who wish to convey their views by telephone should contact Jeff Fiagle, Waste Management Assistance Division at (515)281-5859 or at offices on the fifth floor of the Wallace State Office Building, Des Moines, Iowa.

A public hearing will be held January 11, 1995, at 10 a.m. in the Fifth Floor West Conference Room of the Wallace State Office Building, East 9th and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either verbally or in writing. At the hearing persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

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 rules are intended to implement Iowa Code sections 455B.301 to 455B.316, 455D.10A and 455D.10B.

The following chapter is proposed.

Adopt the following new chapter:

CHAPTER 145 HOUSEHOLD BATTERIES

567—145.1(455B,455D) Scope. This chapter is intended to assist the implementation of the provisions of Iowa

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Code sections 455D.10A and 455D.10B. The Act limits the amount of mercury added to an alkaline manganese battery and prohibits the disposal of batteries specified in 455D.10A(3)"a"(1) as part of the mixed municipal solid waste stream. All consumers shall be informed of this prohibition on disposal. The Act further requires the establishment of a system or systems that would require any or all of the following: elimination or reduction of heavy metals or other toxic components, establishment of a comprehensive recycling program, or collection, transport, and proper disposal of the specified batteries.

Household batteries in rechargeable consumer products shall be easily removable or contained in a battery pack. The rechargeable consumer product, the battery, and the product package shall be labeled to notify the consumer of the need to recycle and of the type of electrode used in the battery.

These provisions will further ensure the protection of the state's groundwater resources while protecting the health and safety of the citizens of Iowa and the environment as a whole.

567—145.2(455B,455D) Definitions. As used in this chapter, in addition to the definitions set forth in Iowa Code section 455D.10A, the following definitions apply:

"Act" means Iowa Code sections 455D.10A and 455D.10B.

"Alkaline manganese battery" means a battery consisting of a manganese dioxide positive electrode, a zinc negative electrode and an alkaline electrolyte.

"Battery pack" means one or more batteries enclosed in a housing.

"Collection entity" is defined in 455D.10A(3)"b"(1).

"Collection system" means a system or systems in which household batteries, as specified in 455D.10A(3)"a"(1), are collected by several methods to be recycled or properly disposed. The methods include but are not limited to: point of purchase return, mail-in return, a combination of both or a collection entity.

"Dealer" means any person who sells or otherwise offers household batteries to a consumer.

"Department" means the Iowa department of natural resources.

"Distributor" means any person who sells or otherwise offers household batteries to dealers.

"Institutional generator" is defined in 455D.10A(1)"e."

"Manufacturer" means any person who manufactures or offers household batteries for sale to distributors or dealers. The manufacturer's name that appears on the battery or rechargeable consumer product shall be presumed to be the manufacturer.

"Mercuric oxide battery" means a battery consisting of a mercuric oxide positive electrode and a zinc negative electrode.

"Nickel-cadmium battery" means a battery consisting of a nickel positive electrode and a cadmium negative electrode.

"Participants in the stream of commerce" means any dealer, distributor or manufacturer who is involved in the manufacturing, distribution, or sale of household batteries specified in 455D.10A(3)"a"(1).

"Sealed lead-acid battery" means a battery consisting of positive and negative electrode materials which are leads or compounds thereof, used in nonvehicular applications and weighing less than 25 pounds.

"Unreasonable hazard to public health, safety, or the environment" means a situation caused by the improper disposal of an item that is flammable, corrosive, toxic, or reactive, as defined by EPA regulations, that may result in harm to the public health, safety, or the environment. The harm created from improper disposal may be evident immediately or after a period of time. This definition relates to 455D.10B(2)"c."

567—145.3(455B,455D) Household batteries. As indicated in 455D.10A(1)"b" and "d," the term "household battery" describes a type of battery, not the origin of its use. Any and all batteries specified in Iowa Code sections 455D.10A and 455D.10B that are used for any and all purposes are covered by this Act.

567—145.4(455B,455D) Recycling/disposal requirements for household batteries.

145.4(1) It is the ultimate responsibility of the manufacturers working with the other participants in the stream of commerce, to establish and maintain a system or systems for the proper collection, transportation and recycling or disposal of waste batteries, specified in 455D.10A(3)"a," for consumers and institutional generators in Iowa, beginning July 1, 1996.

145.4(2) The manufacturers shall provide a plan to the department, by May 1, 1996, that specifically identifies a system or systems for the proper collection, transportation and recycling or disposal of the specified waste household batteries. This information shall identify transporters and recycling or disposal destinations.

145.4(3) A manufacturer shall ensure that the cost of proper collection, transportation and recycling or disposal of the specified waste batteries is included in the sales transaction or agreement between the manufacturer and any consumer.

145.4(4) As part of the requirement of informing each consumer of the safe and convenient return process available for recycling or proper disposal of waste batteries, pursuant to Iowa Code section 455D.10A(3)"b"(2), a manufacturer shall provide a telephone number to each consumer of the specified batteries that provides information on returning these batteries for recycling or proper disposal. This telephone number shall also be provided to the department.

567—145.5(455B,455D) Exemptions for batteries used in rechargeable consumer products. A rechargeable consumer product manufacturer may apply to the department for exemption from the requirements of 455D.10B(1). An application for exemption from these requirements shall be submitted on 8½- x 11-inch paper and contain:

1. The name, address, and telephone number of the applicant and the applicant's contact;

2. A statement setting forth the specific basis upon which the exemption is sought.

The information required pursuant to this rule shall be furnished to the department for each specified rechargeable consumer product for which an exemption is sought. The department shall approve or deny an exemption upon receipt of an application therefor. Allowable exemptions are specified in 455D.10B(2)"a" through "d."

These rules are intended to implement Iowa Code sections 455B.301 to 455B.316, 455D.10A and 455D.10B.

ARC 5324A

HISTORICAL DIVISION[223]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 303.1A, the Historical Division of the Department of Cultural Affairs hereby gives Notice of Intended Action to amend Chapter 49, "Historical Resources Development Program," Iowa Administrative Code.

These amendments will clarify for program users several definitions used throughout the instruction manual; will clarify the annual application review and selection process; and will add as an eligible project category the funding of professional development and training of staff and public education projects. These changes are nonsubstantive in nature and do not affect the operation or any provisions of the program.

Any interested person may make written suggestions or comments on the proposed amendment on or before January 18, 1995. Such written material should be directed to the Administrator, State Historical Society of Iowa, 600 East Locust, Des Moines, Iowa 50319, or fax (515)242-6498. Persons who wish to convey their views orally should contact the Administrator at (515)281-8837 or at the administrative offices on the third floor of the State Historical Building located at 600 East Locust, Des Moines, Iowa.

There will be a public hearing on January 18, 1995, at 10 a.m. in the Jay E. Tone, Jr. Board Room of the State Historical Building, 600 East Locust, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record, and to confine their remarks to the subject of the rule.

These amendments are intended to implement Iowa Code sections 303.1A, 303.16, and 455A.15 to 455A.20.

The following amendments are proposed.

ITEM 1. Amend rule 223—49.2(303) as follows:

Strike the following definitions:

~~"Fiscal agent" means the individual who acts on behalf of the eligible applicant(s) to assume financial responsibility for the project.~~

~~"Letter of intent" means a written notice, postmarked by March 15 and submitted to the HRDP coordinator, that a draft application will be submitted by the April 1 deadline.~~

~~"Long term lease" means a lease of at least 30 years for real property as specified by United States Treasury Regulation, Section 1031(1) (c).~~

Amend the following definitions:

"AIIM" means ~~association for information and image management~~ *Association for Information and Image Management*.

"~~Historic Historical property resource~~" means any site that is listed or declared eligible by the state historic preservation officer for listing on the National Register of Historic Places or personal property ~~deemed by the~~

~~appropriate review panel to have intrinsic which has inherent~~ historical value due to its association with the history of Iowa or the heritage of its people.

"Museum review panel" means a committee of seven Iowa museum professionals appointed by the administrator for a ~~one-~~ *three*-year term to review and recommend approval for funding of museum projects submitted under this program. *Terms shall expire in a rotation of two per year.*

Insert the following new definitions:

"Coapplicant" means cooperating eligible parties who are mutually responsible to complete a proposed project as identified in the grant application.

"Emergency" means a threat to a historical resource that is not the result of delinquency by the current owner and that requires timely action to prevent immediate loss of the resource.

"HRDP steering committee" means an SHSI staff committee appointed by the administrator consisting of the HRDP coordinator, the bureau chief of the community programs bureau, and professional staff members from historic preservation, museum and documentary collections interest areas.

"Legally authorized representative" means the individual who acts on behalf of the eligible applicant(s) to assume financial responsibility for the project.

"Postmark" consists of a legible U.S. Postal Service dated postmark, a legible receipt stamped by the U.S. Postal Service or a legible dated shipping label, invoice or receipt from a commercial carrier. Private metered postmarks or private mail receipts shall not be accepted without a date stamped by the U.S. Postal Service.

ITEM 2. Amend subrule 49.3(1), paragraphs "a," "b" and "c," as follows:

a. Historic preservation. Project applications in this category may include, but are not limited to, acquisition and development of properties eligible for, *or listed on*, the National Register of Historic Places; survey of prehistoric and historic sites; nomination of *sites properties* to the National Register of Historic Places; *interpretation, public education, staff* training or consultation related to historic preservation; and the equipment and facilities necessary for any of the foregoing tasks.

b. Museum. Project applications in the category may include, but are not limited to, acquisition, preservation, conservation, and interpretation of artifact collections; *cataloging; exhibitions; research using collections;* treatment of collections necessary to accomplish any of the foregoing tasks; *public education, staff* training or consultation related to museum activities; and equipment and facilities necessary for any of the foregoing tasks.

c. Documentary collections. Project applications in this category may include, but are not limited to, acquisition, preservation, conservation, and interpretation of documentary collections; ~~research documenting collections;~~ treatment of collections necessary to accomplish any of the foregoing tasks; *cataloging; public education, staff* training and or consultation related to documentary collections; and equipment and facilities necessary for any of the foregoing tasks.

ITEM 3. Amend subrule 49.3(2), paragraphs "a" to "d," as follows:

a. Historic preservation. *All project applications under this heading shall demonstrate to the panel knowledge of, intention to, and ability to adhere to, All projects*

HISTORICAL DIVISION[223](cont'd)

approved under this heading shall meet the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation. Notice published by the Department of the Interior, National Park Service, Federal Register, Volume 48, No. 190, Thursday, September 29, 1983, and the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Revised 1983 1990), National Park Service.

b. Museum. All projects ~~project applications approved~~ under this heading shall demonstrate the commitment and ability of the applicant to provide care for their collections on a long-term basis. This may be demonstrated by the completion of a MAP I or MAP II survey sponsored by the American Association of Museums, accreditation by the American Association of Museums, ~~and or committee museum review panel's~~ judgment that the applicant ~~meets has knowledge of and a commitment to meet~~ acceptable standards for collections management and care.

c. Documentary collections.

(1) All project applications under this heading shall demonstrate the commitment and ability of the applicant to provide care for their collections on a long-term basis. ~~Projects must adhere~~ All project applications under this heading shall demonstrate to the panel knowledge of and intention to adhere to national standards, where they apply, or otherwise follow technical guidelines generally accepted by the library, archives, and ~~curatorial~~ conservation communities.

(2) All microfilming ~~projects approved~~ project applications under this heading shall produce first and second generation masters on silver halide film meeting ANSI PH 1.41 (preferred) or ANSI PH 1.28. Production procedures are to be guided by ANSI/AIIM MS 23 or other relevant standards, such as ANSI/AIIM MS 5 for microfiche. Storage for first generation camera masters must be in accordance with ANSI PH 1.43. Film enclosures must adhere to ANSI PH 1.53.

d. Microfilm and printed materials. ~~All grantees shall supply to the society two copies of any microfilm and three copies of printed materials produced. Grantees may supply microfilm masters to the society. The cost of the masters and copies shall be an eligible project expense.~~

ITEM 4. Amend rule 223—49.4(303) as follows:

223—49.4(303) Eligibility.

49.4(1) Participation in the grant program is open to any ~~county or city~~ government, state agencies, nonprofit corporations, private corporations and businesses, and individuals, *governments and traditional tribal societies of recognized resident American Indian tribes in Iowa.*

49.4(2) Applications by ~~several cooperating eligible individual and applicants~~ *coapplicants* shall be acceptable.

49.4(3) All projects shall involve historical resources ~~located in Iowa.~~ Acquisition of a *an Iowa* historical resource for the purpose of returning it to Iowa ~~may by~~ is an eligible activity. *An applicant may be nonresident if the resource is located within the state.*

49.4(4) All *government, nonprofit corporation, or Indian tribe* applicants shall demonstrate that the historic resource is accessible to the public no less than an average of 16 hours per week or provide a statement concerning actions to be taken in the forthcoming 36 months to provide this minimal accessibility of the funded project to the public, unless restricted by specific federal or state Code.

49.4(5) *All private corporations, businesses, and individual applicants shall demonstrate that the historic resource is accessible to the public no less than an average of 96 hours per year or provide a statement concerning actions to be taken in the forthcoming 36 months to provide this minimal accessibility of the funded project to the public, unless restricted by specific federal or state Code.*

49.4(5 6) All applications in the historic preservation category shall ~~obtain~~ include review and comments from the local preservation commission if the property is located within the jurisdiction of a certified local government.

49.4(6 7) ~~Applications in the museum and documentary categories may be submitted by a local unit of government without meeting the National Register requirements in the historic preservation category. If the museum or documentary application involves a historic property, the National Register requirements shall be met. If a museum or documentary collection application proposes work on real property over 50 years of age, that property shall be reviewed for eligibility for the National Register of Historic Places by state historical society of Iowa staff, prior to the Historical Resource Development Program application deadline. In the event the property has been determined eligible for the National Register, the application shall be reviewed by the historic preservation panel. In the event the property has been determined ineligible for the National Register, the application shall be reviewed by the museum or documentary collections panel, as appropriate.~~

49.4(7 8) An applicant or *coapplicant* may not submit more than one application in any single category in any grant cycle.

49.4(8 9) An applicant or *coapplicant* shall not apply or use any program funds for the purpose of regranteeing.

49.4(10) *In the event the applicant is not the owner of the historical resource identified in the application, the application shall include the owner as a coapplicant.*

ITEM 5. Amend rule 223—49.5(303) as follows:

223—49.5(303) **Application Annual application procedure.**

49.5(1) Procedure. All applications shall be submitted on *current HRDP* forms obtained from the ~~society.~~ ~~Interested applicants shall obtain application forms and procedures from the HRDP Coordinator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, telephone (515)242-6194.~~

49.5(2) ~~Information required.~~ *Required information.* All applications shall provide the required information. As a minimum, all applications shall contain the following information:

a. Name, address, and telephone number of the applicant(s);

b. Proof of nonprofit status for nonprofit organizations;

c. ~~Funding Category~~ *category* of project;

d. Proof or certification of clear title or continuing legal relationship with the owner of the property which is subject of the project;

e. ~~Description of organization for nonprofit organizations, including personnel, organizational history, programs, and resources;~~

e. *If the project proposes work on real property over 50 years of age, a letter indicating listing on the National Register of Historic Places; a certification of eligibility, or a letter documenting ineligibility for the National Register*

HISTORICAL DIVISION[223](cont'd)

of Historic Places from the National Register Coordinator is required;

f. Letter from National Park Service approving Certified Local Government status, if appropriate;

g. Description/narrative of the project;

h. Plan of work for the project, including the time schedule;

i. Detailed budget for the project;

j. List and qualifications of personnel to be involved in the project;

k. Relationship of the proposed project to the long-term objectives of the applicant;

l. Public use statistics for public organizations for each of the last five years;

m. Total income and expense figures for public organizations for each of the last five years; and

n. Statement of impact on associated historical resources;

o. Applications shall be signed on the assurances page by the legally authorized representative;

p. If a project in the historic preservation category proposes work on a historical resource under the jurisdiction of a certified local government, the comments of the local preservation commission are required; and

q. Applications shall be declared ineligible if required information is not submitted.

49.5(3) Application procedure—annual review. Annual deadlines.

a. If an applicant wishes to have an application critiqued for technical requirements and general eligibility, then a letter of intent must be postmarked by March 15. The draft application must be postmarked by April 1 March 15.

b. Applicants shall submit the original application and 15 copies to the HRDP coordinator.

c. Applications shall be reviewed postmarked by, or delivered to the HRDP office during regular business hours, no later than annually on a deadline announced by the program coordinator at least 120 days prior to the application deadline June 1.

d. Applications not received in accordance with 49.5(3) shall be declared ineligible.

49.5(4) Ineligible applications.

a. The HRDP steering committee shall determine ineligible applications.

b. Applications shall be declared ineligible for the following reasons:

(1) If the applicant has failed to use the current year's forms;

(2) If the applicant has failed to file the application in accordance with 49.5(3);

(3) If the applicant has failed to complete all questions on the application form;

(4) If the applicant has failed to attach all required attachments to the application;

(5) If the applicant has failed to budget the required match (cash and in-kind) to support the requested grant amount;

(6) If the applicant's legally authorized representative has failed to sign the application's assurance page;

(7) If the applicant has failed to file the required number of copies; or

(8) If the applicant is ineligible per 223—49.4(303).

ITEM 6. Amend rule 223—49.6(303) as follows:

223—49.6(303) Application Annual application review and selection.

49.6(1) Procedure.

a. Each application shall be reviewed by the HRDP coordinator for completeness, eligibility and accuracy. The HRDP coordinator shall assign the funding category. The HRDP steering committee shall determine ineligible applications.

b. All eligible applications shall be reviewed by an appropriate review panel. Three review panels—historic preservation, museum, and documentary collections—shall exist for this purpose. Applications shall be referred to the review panel by the HRDP coordinator and action taken within 45 days of the closing of the grant cycle. Members of review panels shall individually critique and collectively review the applications and make funding recommendations to the state historical society board of trustees.

c. The review panels state historical society board of trustees shall review and make recommend action to the society board of trustees. The board of trustees shall meet and recommend funding funding recommendations approvals to the administrator of the society within 45 days from the date of the panel meeting no later than October 1 of each year.

d. Final decisions and certification of grant awards shall be made by the administrator. The administrator shall award funding and provide notification to recipients, no later than October 15 of each year. All applicants shall be notified of the status of their application within 15 days following the receipt of the board recommendations.

49.6(2) Selection criteria. Projects shall be evaluated on the basis of the following equally weighted criteria.

a. Ability of organization or individual to complete the proposed project;

b. Project conformity to Knowledge and understanding of accepted professional standards as they relate to the proposed project;

c. Significance or contribution of the project to enhance the preservation, conservation or interpretation of Iowa Iowa's history historical resources;

d. Degree of cooperation between organizations or individuals within a local area, region, or the state as evidenced by, but not limited to, the number of volunteers and cash match and in-kind match;

e. Economic or tourism impact on the local area, region, or the state;

f. Impact of the project on the cultural or educational life of local area, region, or the state Degree to which the project supports the economic, educational and cultural health of the local area, region, or state;

g. Degree of local support of the project as evidenced by the number of volunteers and in-kind support;

h. Financial match Degree to which budget is reasonable, appropriate to scope of project, complete and mathematically correct;

i. Conformity Degree to which the goals and objectives of the project to the goals and objectives of enhance the applicant's long-range plan;

j. Intrinsic value Significance of the historic historical resource as it relates to proposed project; and

k. Degree of threat to the resource.

49.5 6(4-3) Emergency applications.

a. Emergency applications purpose. Purpose. If a historical resource is threatened with destruction or if an exigency requires immediate action, an emergency application to evaluate conditions, stabilize, rehabilitate, restore or recover the resource may be filed with the HRDP Coordinator, State Historical Society of

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Iowa, Capitol Complex, Des Moines, Iowa 50319, telephone (515)242-6194.

b. *Eligibility.* Participation in the HRDP emergency grant program is open to all parties eligible for regular HRDP grants as identified in 49.4(1).

c. *Procedure.* HRDP emergency grant applications may be obtained from the HRDP Coordinator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515)242-6194.

(1) The annual application procedure as defined in 49.5(303) shall apply to HRDP emergency grant applications.

(2) An original and five copies of the application shall be submitted to the HRDP coordinator.

b- (3) Emergency grant applications may be submitted at any time, using the current year's regular application form.

(4) Emergency grant applicants shall identify the emergency which threatens the historical resource, shall address the immediacy of the emergency, and shall identify steps and funding required to stabilize the resource until a rehabilitation, restoration or recovery plan for the resource can be implemented. The identification of these issues shall be presented in a cover letter which becomes an integral part of the emergency grant application.

(5) The applicant shall, in the application, include workplans and budgets appropriate to preserve, rehabilitate or fully restore the resource.

e. ~~Review.~~ The HRDP coordinator shall forward all eligible emergency applications to the administrator within 5 working days after receipt of the application. The administrator shall respond to the applicant within 30 days of receipt of the application.

d. *Review.*

(1) ~~Determinations~~ Determination of the existence of an emergency nature of an application shall be made by the administrator upon the recommendation of the program coordinator HRDP steering committee. It is the responsibility of the applicant to convince the HRDP steering committee that an emergency, as defined, exists.

(2) If an emergency is determined to exist, the HRDP steering committee shall review the emergency grant application. The review criteria for emergency applications shall remain the same as those used in the regular grant round as defined in 49.6(2) with special emphasis on the degree and immediacy of threat to the resource.

(3) Following a check for eligibility by the HRDP coordinator and within 15 days after receipt of the application, the application shall be sent with a recommendation from the HRDP steering committee to the administrator. Within 30 days, the administrator shall respond to the applicant.

d e. *Limitations.* Emergency funding shall be limited to no more than \$30,000 per applicant in any given fiscal year for funds appropriated by the Iowa General Assembly. This limitation shall not affect funds acquired by other than state appropriations.

ITEM 7. Amend rule 223—49.7(303) as follows:

Amend subrule 49.7(1), paragraph "a," subparagraphs (2) to (4), as follows:

(2) Grant awards shall may be made on the basis of full or partial funding as recommended by the review panel and the board of trustees and determined by the administrator.

(3) No change.

(4) Final decisions concerning ~~this these~~ award ~~limitation~~ limitations shall be made by the board of trustees upon the recommendation of the ~~program coordinator~~ HRDP steering committee.

Amend subrule 49.7(1), paragraph "b," as follows:

(1) Upon certification of the grant award by the administrator, the society shall, within 60 days, provide a draft contract to the grantee. This contract shall state the terms and conditions of the grant as well as the amount of the award. The grantee shall enter into a contract within 90 days following certification of the grant award. Failure of the grantee to meet this deadline shall result in termination of the grant offer.

(2) All contracts shall be approved by the administrator and the legally responsible officer ~~authorized representative~~ of the ~~contracting unit~~ grantee. The ~~fiscal agent~~ legally authorized representative of the grantee shall be clearly identified and the only contact with the society on financial matters concerning the grant.

(3) All ~~contracts~~ subcontracts for services and products shall give preference to Iowa vendors. If Iowa vendors are unavailable or deemed by the grantee and society to be unable to meet the requirements of the project or acceptable professional standards, vendors from other states may be used.

(4) All grantees shall award subcontracts on the basis of a competitive bid. If only a single vendor exists, the society shall be so notified.

(5) No change.

(6) All contracts for acquisition and development of real property by individuals and private corporations and businesses shall require that ownership be retained by the grantee for 60 months after certification of project completion approval of final disbursement request. In the event of a change of ownership within 24 months, the entire amount of the grant shall be returned to the society. In the event of a change of ownership within 25 to 60 months, 50 percent of the grant shall be returned to the society. In the event the grantee is a governmental unit or nonprofit organization, the sale of property is exempt from payback provisions when the sale places the property on tax roles. In the event of the death of an individual owner this provision shall not apply.

(7) Salaries of the applicant or applicant's employees directly related to contract performance are allowable up to 50 percent of cash match required. Prior approval by the HRDP program coordinator is required of salaries as cash match. Documentation shall be provided to indicate the salary rate and amount of time devoted to the project. Verification of the salary match must be proved during the life of the contract.

(8) Indirect expenses (overhead), may not be used as cash match, or in-kind match, or grant expense.

(9) No change.

(10) Proof of ownership or a long-term lease by applicant or coapplicant is required for all projects involving real property.

(11) All grant contracts involving real property shall be signed by the grant recipient and the property owner or long-term lessee, if other than the grant recipient.

(12) All projects involving personal property must demonstrate a legal relationship to the property appropriate to the project as determined by the review panel.

(13) Cash and in-kind match and grant expenditures shall only be spent during contract period.

HISTORICAL DIVISION[223](cont'd)

(14) *Costs of producing any required reports and products are an eligible grant expense.*

(15) *The costs of writing and copying of grant applications for this program and lobbying expenses shall not be eligible grant expenses.*

(16) *FICA and unemployment taxes are eligible grant expenses under this contract.*

Amend subrule 49.7(1), paragraph "c," subparagraphs (1) to (3), as follows:

(1) ~~Payment of the Disbursement of grant funds shall be made on a schedule as determined in the contract. Documentation of all grant expenditures, including cash and in-kind match, shall be submitted and approved before disbursement of grant funds can be made.~~

(2) Twenty percent of every grant shall be withheld until the HRDP coordinator ~~certifies~~ *verifies* that the project is complete and all conditions of the contract have been met. Final payment shall be made within 90 days of ~~certification of completion of all conditions of the contract.~~

(3) ~~The professional writing of grant applications for this program and lobbying expenses shall not be eligible grant expenses.~~

Amend subrule 49.7(1), paragraph "d," subparagraph (1), as follows:

(1) Financial records (*original invoices and canceled checks*), supporting documents, statistical records, and all other records pertinent to the program shall be retained by the grantee. All records shall be retained for three years beyond the grant or longer if any litigation is begun or if a claim is initiated involving the grant covered by the record. In these instances, the records shall be retained until the litigation or claim has been resolved.

Amend subrule 49.7(1), paragraph "e," as follows:

e. Audits. The recipient of any grant of \$25,000 or more in any single grant cycle or \$100,000 or more over any two-year period shall have conducted an on-site financial compliance audit. This audit shall not be an eligible grant expense. *A copy of the audit report shall be forwarded to the HRDP office within 90 days of audit report.*

Amend subrule 49.7(2), paragraphs "a" to "c" and "f," as follows:

a. The grantee shall provide reports, *as outlined in the contract*, concerning the progress of the ~~projects~~ *project* on forms provided by the society ~~as provided in the contract.~~

b. The grantee shall provide a final project report ~~within 30 days of the scheduled~~ *upon completion of the project, as outlined in the contract*, on forms provided by the society.

c. The society may perform any reviews or field inspections it deems necessary to ensure program compliance, including reviews of grantee performance reports. When problems of compliance are noted, the society may require ~~remedial~~ *corrective* actions to be taken.

f. All grantees shall ~~agree when submit documentation of the issuing~~ *issuance of statements, press releases, and other documents* *signage* describing projects or programs funded with HRDP funds, specifically to the following credit line: "This project was partially supported by a *Resource Enhancement and Protection (REAP)*/Historical Resource Development Program (HRDP) Grant from the State Historical Society of Iowa."

ITEM 8. Amend subrule 49.8(1), introductory paragraph, as follows:

~~49.8(1) Eligible applicants~~ *Applicants* or grantees may appeal a decision of the society on any of the following bases:

ARC 5310A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

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

These amendments clarify policies regarding the effective date of discontinuation of premium payments, penalties for failure to cooperate in the review process, and reinstatement of eligibility under the Health Insurance Premium Payment (HIPP) program.

Persons participating in the HIPP program must cooperate in the review process when the Department is attempting to establish continued eligibility. Additionally, persons who lose eligibility for the HIPP program due to loss of Medicaid will be reinstated when Medicaid eligibility is regained either through reinstatement or reapplication. Eligibility for persons who lose eligibility to participate in the HIPP program due to noncooperation will not be reinstated until the first day of the first month in which cooperation with HIPP occurs.

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 January 11, 1995.

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

The following amendments are proposed.

ITEM 1. Amend subrule 75.21(7) as follows:

75.21(7) Discontinuation of premium payments.

a. When the household loses Medicaid eligibility, premium payments shall be discontinued as of the month of Medicaid ineligibility.

b. When only part of the household loses Medicaid eligibility, a review shall be completed in order to ascertain whether payment of the health insurance premium continues to be cost-effective. *If it is determined the policy is no longer cost-effective, premium payment shall be discontinued pending timely and adequate notice.*

c. *If the household fails to cooperate in providing information necessary to establish ongoing eligibility, premium payment shall be discontinued pending timely and adequate notice.*

d. *If the policyholder leaves the household, premium payments shall be discontinued pending timely and adequate notice.*

HUMAN SERVICES DEPARTMENT[441](cont'd)

e. If the insurance coverage is no longer available or the policy has lapsed, premium payments shall be discontinued as of the effective date of the termination of the coverage.

ITEM 2. Amend subrule 75.21(8), paragraph "d," as follows:

d. In no case shall payments be made for premiums which were used as a deduction to income when determining client participation, *the amount of the spenddown obligation*, or for premiums due for periods of time covered prior to July 1, 1991.

The Employer Verification of Insurance Coverage, Form 470-3036, shall be used to verify the effective date of coverage and premiums for persons enrolled in group health insurance plans.

ITEM 3. Amend subrule 75.21(11) as follows:

75.21(11) Reviews of cost-effectiveness. Reviews of cost-effectiveness shall be completed at least every six months for employer-related group health plans. The Health Insurance Premium Payment (HIPP) Program Review, Form 470-3016, shall be used for this purpose.

Reviews of cost-effectiveness shall be completed annually for nonemployer-related group health plans. The recipient shall sign the Insurance Carrier Authorization to Release Information, Form 470-3015, as part of the review so that the department may obtain pertinent information necessary to establish continued eligibility.

Failure of the policyholder to cooperate in the review process shall result in cancellation of premium payment and may result in Medicaid ineligibility as provided in subrule 75.21(1).

~~Additionally, redeterminations,~~ Redeterminations shall also be completed whenever a predetermined premium rate, deductible, or coinsurance increases, some of the persons covered under the policy lose full Medicaid eligibility, employment terminates or hours are reduced which affects the availability of health insurance, the insurance carrier changes, *the policyholder leaves the home*, or there is a decrease in the services covered under the policy. *The policyholder shall report changes that may affect the availability or cost-effectiveness of the policy within ten calendar days from the date of the change. Changes may be reported by telephone, in writing, or in person. A HIPP Change Report, Form 470-3007, shall accompany all premium payments.*

When employment terminates, hours of employment are reduced, or some other qualifying event affecting the availability of health insurance coverage occurs, the department shall verify whether insurance may be continued under the provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985. The Employer Verification of COBRA Eligibility, Form 470-3037, shall be used for this purpose. If cost-effective, the department shall pay premiums to maintain insurance coverage for eligible Medicaid recipients after the occurrence of the qualifying event which would otherwise result in termination of coverage.

ITEM 4. Amend subrule 75.21(13), paragraph "c," as follows:

c. The policy is no longer available to the family (e.g., the employer drops insurance coverage or the policy is terminated by the insurance company).

A timely and adequate notice shall be provided to the household informing them of a decision to discontinue

payment of the health insurance premium because the department has determined the policy is no longer cost-effective or because the recipient has failed to cooperate in providing information necessary to establish continued eligibility for the program.

ITEM 5. Amend subrule 75.21(14) as follows:

75.21(14) Rate refund. The department shall be entitled to any rate refund made when the health insurance carrier determines a return of premiums to the policyholder is due, ~~because of lower than anticipated claims,~~ for any time period for which the department paid the premium.

ITEM 6. Amend rule 75.21(249A) by adding the following new subrule 75.21(15).

75.21(15) Reinstatement of eligibility.

a. When eligibility for the HIPP program is canceled because the persons covered under the policy lose Medicaid eligibility, HIPP eligibility shall be reinstated when Medicaid eligibility is reestablished if all other eligibility factors are met.

b. When HIPP eligibility is canceled because of the recipient's failure to cooperate in providing information necessary to establish continued eligibility for the HIPP program, benefits shall be reinstated the first day of the first month in which cooperation occurs.

ARC 5309A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services proposes to amend Chapter 152, "Contracting," appearing in the Iowa Administrative Code.

This amendment limits the Department's ability to use copyrighted materials that are based on the activities and results of rehabilitative treatment and supportive services contract activity without charge to internal use only. This amendment is being promulgated in response to provider concerns.

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 January 11, 1995.

This amendment is intended to implement Iowa Code section 234.6.

The following amendment is proposed.

Amend rule 441—152.5(234) as follows:

441—152.5(234) Copyright and patents. The activities and results of contract activity may be published subject to

HUMAN SERVICES DEPARTMENT[441](cont'd)

confidentiality requirements. The provider shall furnish a copy of the published material free of charge to the department within ten days of publication.

The department reserves the right to use, and duplicate, or disclose the publication in any manner for any authorized internal state purpose purposes. In no event shall the department be charged for the use of the copy-righted materials.

ARC 5320A

INSURANCE DIVISION[191]

**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 505.21 and 17A.4(1)"b," the Iowa Division of Insurance hereby terminates the rule making to adopt Chapter 74, "Health Care Access," which was published in the Iowa Administrative Bulletin on October 12, 1994, as ARC 5161A and gives Notice of Intended Action to adopt a new Chapter 74, "Health Care Access," Iowa Administrative Code.

The rules were published as a Notice of Intended Action on October 12, 1994, as ARC 5161A. A public hearing was held Tuesday, November 1, 1994. Persons presented testimony concerning the rules as published. The Division received approximately 500 letters and telephone calls regarding the rules and their application to Iowa employers. The Division presented information concerning intended revision to the published rules. In addition, the Division requested assistance from the Administrative Rules Review Committee on the definition of "employee" to be used in the rules. The Committee instructed the Division to terminate the rule making on the proposed rules, revise the rules as suggested, and submit the revised rules for further comment.

Therefore, the Division terminates the rules as published under ARC 5161A. The Division hereby gives Notice of Intended Action to adopt a new Chapter 74, "Health Care Access," Iowa Administrative Code.

The purpose of the rules is to implement 1994 Iowa Acts, chapter 1176, section 6, which authorized the Division of Insurance to implement rules requiring employers to provide access to health care to employees. The rules provide written guidelines to employers doing business in Iowa to offer employees access to health insurance and how this requirement will be satisfied.

Any interested person may make written or oral suggestions or comments on these proposed rules on or before January 10, 1995. Comments should be directed to Susan E. Voss, Projects Director, Division of Insurance, Lucas State Office Building, Des Moines, Iowa 50319, telephone number (515)281-6836 or fax (515)281-3059.

There will be a public hearing on Tuesday, January 10, 1995, at 1 p.m. in the Conference Room, Sixth Floor,

Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa. 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 Susan E. Voss, Projects Director, at least two days prior to the date of the hearing.

These rules are intended to implement Iowa Code section 505.21.

The following new chapter is proposed.

**CHAPTER 74
HEALTH CARE ACCESS**

191—74.1(505) Purpose. The purpose of this chapter is to implement Iowa Code section 505.21 requiring an employer to provide at a minimum access to health care or health insurance to the eligible employees of an employer. The employer is required to make health care information or health insurance information available to the employer's eligible employees. However, the employer is not required to pay for the health care or health insurance.

191—74.2(505) Applicability and scope. This chapter shall apply to all employers doing business within the state of Iowa. An independent contractor is not considered an employee for purposes of this chapter.

191—74.3(505) Definitions. As used in this chapter:

74.3(1) "Division" means the insurance division of the state of Iowa.

74.3(2) "Eligible employee" means a natural person who is employed in this state for wages by an employer and works on a permanent full-time or permanent part-time basis. An eligible employee may include a commission salesperson who takes orders or performs services on behalf of a principal and who is paid on the basis of their commissions but does not include persons who purchase for their own account for resale.

For purposes of this chapter:

a. An eligible employee does not include a temporary employee which means an employee who works for a limited period of time, or an employee with seasonal, intermittent, internship, trainee, or temporary status.

b. A minor as defined in Iowa Code chapter 599 is not an eligible employee.

c. The following persons engaged in agriculture are not eligible employees:

(1) The spouse of the employer and relatives of either the employer or spouse including relatives employed by a family farm corporation.

(2) A person engaged in agriculture as an owner-operator or tenant-operator and the spouse or relatives of either.

(3) Neighboring persons engaged in agriculture who are exchanging labor or other services.

d. An independent contractor is not an eligible employee.

e. A natural person who is a general partner in a partnership and is actively engaged in the partnership's business shall be deemed to be an employee of the partnership.

74.3(3) "Employer" means a person, as defined in Iowa Code chapter 4, doing business in the state who in this state employs for wages a natural person. An employer does not include a client, patient, customer, or other person who obtains professional services from a licensed person who provides the services on a fee service basis or as an independent contractor.

INSURANCE DIVISION[191](cont'd)

74.3(4) "Independent contractor" means a person who has a distinct trade, occupation, business, or profession in which services are offered to the public to be performed without the control of those seeking the benefit of the person's training or experience. Whether a person is an "employee" or an "independent contractor" is determined by the specific facts and circumstances of the relationship between the person offering the services and the person receiving them.

191—74.4(505) Access to health care or health insurance for an employee.

74.4(1) An employer who hires an employee shall offer the employee at the minimum information concerning health care or health insurance. Access to health care or health insurance means a written referral as to where the employee can receive information concerning health care or health insurance. An oral presentation of the written referral by the employer may be necessary to ensure the information is communicated to a person unable to read or understand English. To satisfy the requirement of this rule, the employer shall contact a health insurance agent, health insurance carrier, or other health care organization which agrees with the employer to provide information to the employee about health care or health insurance and the possible purchase of health care or health insurance.

74.4(2) An employer who is providing any of the following to the eligible employees has satisfied the health care access requirement of subrule 74.4(1) and is not required to provide the written referral to the eligible employees:

a. Health care coverage through an insurer or health maintenance organization authorized to do business in Iowa.

b. Access to health benefits through a health benefits plan qualified under the federal Employee Retirement Income Security Act of 1974.

c. Joining a health purchasing insurance cooperative as defined in 191 IAC 73 whereby the employees may purchase health insurance offered by several health insurance or health care benefit programs.

d. Any organized delivery system as defined in 641 IAC 201 or other form of health care delivery system.

74.4(3) The employer shall provide the information to the employee within a reasonable time of hiring the employee. When an employer offers or provides health care coverage to an employee following a probationary time period, the access to health care shall be satisfied and the written information referral need not be provided the employee.

191—74.5(505) Employer participation. The employer shall offer payroll deduction of employee contributions to the health care program or health insurance program to which the employer referred the employee. However, payroll deduction shall occur only if the employee has adequate wages to pay the cost of the health care or health insurance. In the event that the insurance carrier or health care organization does not provide for payroll deduction, an automatic withdrawal from the employee's savings or checking account shall comply with Iowa Code section 505.21.

191—74.6(505) Violation of chapter. A violation of this chapter may be reported to the consumer and legal affairs bureau of the division. The division, upon finding that the employer has failed to offer an employee access to

health care or health insurance, may do any of the following:

1. Issue a cease and desist order instructing the employer to cure the failure to provide access to health care and desist from future violations of this chapter.

2. Issue an order requiring the employer who has previously been the subject of a cease and desist order to pay an employee's reasonable health insurance premiums necessary to prevent or cure a lapse in health care coverage due to the employer's failure to offer access to health care.

3. Assess the reasonable costs of the division's investigation and enforcement to the employer.

191—74.7(505) Report to general assembly. The division shall annually provide a written report to the general assembly which evaluates the effects of this chapter on providing universal coverage for all Iowans beginning January 1, 1995, through 1999. If the division determines that the state has not achieved a level of individuals without health care coverage of less than 3 percent of the total population through voluntary means by June 30, 1999, the division shall make recommendations for the implementation of and financing mechanism for a requirement that all individuals in the state procure and maintain health care coverage for themselves and their dependents.

These rules are intended to implement Iowa Code section 505.21.

ARC 5327A

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

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 455G.4(3), the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to amend Chapter 11, "Remedial or Insurance Claims," Iowa Administrative Code.

Chapter 11 sets forth policy dealing with eligibility for benefits under Iowa Code sections 455G.9 and 455G.11. The proposed amendments will add language clarifying Board procedure and policy for paying benefits to counties pursuant to Iowa Code section 455G.9(1)"d." The proposed amendments will allow counties to be eligible for benefits after January 1, 1995, if they acquire property after that date and report to the Board and to the Iowa Department of Natural Resources within 60 days of acquiring the property.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 10, 1995. Written materials should be directed to the Administrator of the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 1000 Illinois Street, Suite B, Des Moines, Iowa 50314.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

Persons who want to convey their views orally should contact Patrick Rounds, Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, at the above address or may call (515)284-1616 during regular business hours.

There will be a public hearing on January 10, 1995, at 10 a.m., in the Division of Insurance, Sixth Floor Conference Room, Lucas State Office Building, Des Moines, Iowa. Persons may present their views at this meeting either orally or in writing.

These amendments were proposed by the Board at its December 1, 1994, meeting. The Board anticipates the effective date of these amendments to be March 22, 1995.

These amendments are intended to implement Iowa Code section 455G.9(1)"d."

The following amendments are proposed.

ITEM 1. Amend 11.7(1)"d"(2)"1" as follows:

1. All counties making application for benefits under Iowa Code section 455G.9(1)"d" shall notify the board on or before January 1, 1995, *or within 60 days after the date when the county acquires the property through a delinquent tax sale procedure*, that a site exists in the county which might be subject to this section.

ITEM 2. Amend 11.7(1)"d"(2)"3" as follows:

3. For benefits to be paid, a claim form as provided by the board shall be completed and mailed to the board on or before January 1, 1995, *or within 60 days after the date when the county acquires the property through a delinquent tax sale procedure*, to receive benefits. The claim form shall also include information on the prior owners, last known addresses and contact names.

ARC 5325A**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]****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 455G.4(3), the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to amend Chapter 17, "Appeals—Contested Cases," Iowa Administrative Code.

Chapter 17 provides for administrative procedures to be followed in contested case proceedings under the jurisdiction of Iowa's Comprehensive Petroleum Underground Storage Tank Fund Board. There have been a large number of appeals under these administrative procedures which necessitate a large number of contested case hearings. The number of appeals and limited legal resources have resulted in a large backlog of appeals awaiting contested case hearings.

The proposed amendment adds a new rule to Chapter 17 which provides that legal assistants or paralegals may

represent the Board and the Administrator in contested case hearings. Pursuant to applicable ethical requirements, the proposed rule also provides that the legal assistants or paralegals must be supervised by the attorneys from the Office of Attorney General who represent the Board. The proposed rule is intended to help expedite the appeals process so the disputes which are the subject of contested case proceedings may be resolved more quickly.

The proposed rule will not necessitate additional annual expenditures exceeding \$100,000 by political subdivisions or agencies and entities which contract with political subdivisions. Therefore, no fiscal note accompanies this Notice.

Any interested person may make written suggestions or comments on this proposed rule on or before January 10, 1995. Such written comments should be directed to the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, Robert Galbraith, Department of Justice, Executive Hills East, 1223 E. Court Avenue, Des Moines, Iowa 50319.

Persons who want to orally convey their views should contact Robert Galbraith, Department of Justice, at (515) 281-7020 or at the Department of Justice offices at Executive Hills East, 1223 E. Court Avenue in Des Moines, Iowa.

There will be a public hearing on January 10, 1995, at 10 a.m. in the Conference Room of the Department of Insurance, Sixth Floor, Lucas State Office Building, Des Moines, Iowa. Persons may present their views at this public hearing either orally or in writing.

This rule was also Adopted and Filed Emergency and is published herein as ARC 5323A. The content of that submission is incorporated by reference.

This rule is intended to implement Iowa Code section 17A.12 and chapter 455G.

ARC 5312A**PUBLIC SAFETY DEPARTMENT[661]****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 690.1, the Iowa Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 11, "Identification Section of the Division of Criminal Investigation," Iowa Administrative Code.

This amendment proposes a new rule to implement requirements for fingerprinting of juveniles by law enforcement agencies in Iowa and the submission to and retention by the Division of Criminal Investigation of those prints. Authority to collect and maintain these fingerprints was expanded by the passage of 1994 Iowa Acts, chapter 1172, section 25, which amended Iowa Code section 232.148.

A public hearing on the proposed amendment will be held on January 12, 1995, at 10 a.m., in the Third Floor

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Conference Room (East Half) of the Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Plans, Training, and Research Bureau, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, at the address indicated or by telephone at (515)281-5524, at least one day prior to the public hearing. Any written comments or information regarding these rules should be directed to the Plans, Training, and Research Bureau at the address indicated. Persons who wish to convey their views orally may contact the Plans, Training, and Research Bureau by telephone or in person at the Bureau office at least one day prior to the public hearing.

The following amendment is proposed.

Amend 661—Chapter 11 by adding the following new rule:

661—11.19(232) Juvenile fingerprints.

11.19(1) A law enforcement agency may fingerprint and photograph any juvenile who is 14 years of age or older and who has been taken into custody and charged with the commission of an offense which would be an aggravated misdemeanor or felony if committed by an adult. Fingerprints of juveniles taken pursuant to this subrule shall be submitted to the division of criminal investigation.

11.19(2) If jurisdiction over a juvenile suspect has been transferred from juvenile court to adult court, then fingerprints of that suspect taken pursuant to Iowa Code section 232.148 and transmitted to the division of criminal investigation shall be handled by the division in the same manner as fingerprints of adult suspects are handled and are subject to the same provisions of law and these rules which govern fingerprints of adult criminal suspects.

11.19(3) Fingerprints entered into Automated Fingerprint Identification System (AFIS).

a. Fingerprints of juveniles who remain under the jurisdiction of a juvenile court shall be entered into the AFIS maintained by the department of public safety. A criminal history sheet shall not be initiated on these individuals unless authorized by Iowa Code section 232.45A or 690.4.

b. The division of criminal investigation shall expunge the fingerprints of juveniles entered into the AFIS from that system if either of the following conditions apply:

(1) The department of public safety receives written notification from the guardian or legal counsel of the juvenile that a juvenile petition was not filed regarding the offense or suspected offense which led to the taking of the juvenile's fingerprints, or that such a petition was filed and subsequently dismissed.

(2) The department of public safety receives a petition from an individual who has reached the age of 21 whose fingerprints were taken when the person was a juvenile provided that the individual was neither adjudicated delinquent nor convicted of an aggravated misdemeanor or felony which occurred on or after the person's sixteenth birthday.

c. The division of criminal investigation shall establish an internal procedure for maintaining records of fingerprints expunged from the AFIS for audit purposes only.

This rule is intended to implement Iowa Code section 232.148 as amended by 1994 Iowa Acts, chapter 1172, section 25.

ARC 5313A**TRANSPORTATION
DEPARTMENT[761]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 17A.4(1)"b," 307.12 and 307A.2, the Department of Transportation hereby terminates the rule making initiated by its Notice of Intended Action, **ARC 4950A**, published in the Iowa Administrative Bulletin on July 20, 1994, to amend Chapter 165, "Recreational Trails Program," Iowa Administrative Code.

The Notice proposed an amendment to 165.5(2)"a" to allow the Transportation Commission to grant an exception to the funding requirements for recreational trails, specifically to correct a misunderstanding about funding for a snowmobile trail. The Administrative Rules Review Committee was concerned about adding the funding flexibility and requested that the amendment be rescinded as soon as the funding situation was corrected.

**NOTICE—PUBLIC FUNDS
INTEREST RATES**

In compliance with Iowa Code chapter 74A and section 12C.6, the Committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Banking Richard Buenneke, and Auditor of State Richard D. Johnson have established today the following rates of interest for public obligations and special assessments. The usury rate for December is 9.75%.

**INTEREST RATES FOR PUBLIC
OBLIGATIONS AND ASSESSMENTS**

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED for 74A.3 and 74A.7: A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to

PUBLIC FUNDS INTEREST RATES(cont'd)

provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective December 8, 1994, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7 -31 days	Minimum 4.00%
32 -89 days	Minimum 4.50%
90 -179 days	Minimum 5.30%
180 -364 days	Minimum 5.70%
One year	Minimum 5.90%
Two years or more	Minimum 6.90%

These are minimum rates only. The one year and less are six-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

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:

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%
May 1, 1994 — May 31, 1994	8.50%
June 1, 1994 — June 30, 1994	9.00%
July 1, 1994 — July 31, 1994	9.25%
August 1, 1994 — August 31, 1994	9.00%
September 1, 1994 — September 30, 1994	9.25%
October 1, 1994 — October 31, 1994	9.25%
November 1, 1994 — November 30, 1994	9.50%
December 1, 1994 — December 31, 1994	9.75%

ARC 5314A

INSURANCE DIVISION[191]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 513B.17 and 17A.4(2), the Iowa Division of Insurance hereby adopts an amendment to Chapter 71, "Small Group Health Benefit Plans," Iowa Administrative Code.

Since the adoption of Iowa Code chapter 513B, "Small Group Health Coverage," there has been confusion as to applicability of the chapter to the Internal Revenue Code, Section 125, insurance plans where the employer makes no contribution to the plan. This concern has continued due to 1994 Iowa Acts, chapter 1176, section 6, the health care access statute.

This statute requires employees to provide written information to their employees where they can obtain information about health care coverage and the purchase of health care coverage. There is no requirement that the employee contribute to the coverage or offer a group plan. This coverage will in most cases be individual policies. The statute also requires employers to offer payroll deduction to employees who purchase health care coverage through this access.

Payroll deduction or insurance plans under Section 125 of the Internal Revenue Code where all contributions are made by the employee do not subject the plan to the small group health benefit plan law.

Pursuant to Iowa Code section 17A.4, the Commissioner finds that because 1994 Iowa Acts, chapter 1176, section 6, goes into effect January 1, 1995, and this amendment confers a benefit on the public, notice and public comment are not necessary.

In accordance with Iowa Code section 17A.5(2)"b"(2), the Insurance Division finds that the usual effective date of these rules, 35 days after publication, should be waived and the rules be made effective January 1, 1995.

This amendment is intended to implement Iowa Code section 513B.17.

The amendment will become effective January 1, 1995. The following amendment is adopted.

Amend subrule 71.3(4) as follows:

71.3(4) An individual health insurance policy shall not be subject to 513B and this chapter solely because the policyholder elects a *business expense* deduction under Section 162(1) of the Internal Revenue Code, *the health benefit plan is treated as part of a plan or program for purposes of Section 125 of the Internal Revenue Code for which the employee makes all the contributions, or the employer provides payroll deduction of health insurance premiums on behalf of an employee.*

[Filed Emergency 12/1/94, effective 1/1/95]
[Published 12/21/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/94.

ARC 5323A

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

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 455G.4(3), the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby adopts an amendment to Chapter 17, "Appeals—Contested Cases," Iowa Administrative Code.

Chapter 17 provides for administrative procedures to be followed in contested case proceedings under the jurisdiction of Iowa's Comprehensive Petroleum Underground Storage Tank Fund Board. There have been a large number of appeals under these administrative procedures which necessitate a large number of contested case hearings. The number of appeals and limited legal resources have resulted in a large backlog of appeals awaiting contested case hearings.

This amendment adds a new rule to Chapter 17 which provides that legal assistants or paralegals may represent the Board and the Administrator in contested case hearings. Pursuant to applicable ethical requirements, the proposed rule also provides that the legal assistants or paralegals must be supervised by the attorneys from the Office of Attorney General who represent the Board. This rule is intended to help expedite the appeals process so the disputes which are the subject of contested case proceedings may be resolved more quickly.

The proposed rule will not necessitate additional annual expenditures exceeding \$100,000 by political subdivisions or agencies and entities which contract with political subdivisions. Therefore, no fiscal note accompanies this Notice.

In accordance with Iowa Code section 17A.4(2), the Board finds that further notice and public participation are impracticable because there are numerous appeals awaiting hearing which can be more timely conducted with this rule in effect to the benefit of appellants. Therefore, this rule both confers a benefit on the public and removes a restriction on the public.

In addition, this rule is also published herein under Notice of Intended Action as ARC 5325A which will give the public the opportunity to comment on and critique this rule.

The Board finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this rule, 35 days after publication, should be waived because the rule confers a benefit to small business by allowing appeals to be expedited.

This rule was approved by the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board at their meeting held December 1, 1994.

This rule became effective December 2, 1994.

This rule is intended to implement Iowa Code section 17A.12 and chapter 455G.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

The following rule is adopted.

Amend 591—Chapter 17 by adding the following new rule:

591—17.33(17A,455G) Use of legal assistants or paralegals. The UST board and the administrator may be represented by legal assistants or paralegals at contested case hearings.

Legal assistants or paralegals representing the UST board and the administrator shall be under the supervision of the UST board's counsel from the office of the attorney general.

This rule is intended to implement Iowa Code section 17A.12 and chapter 455G.

[Filed Emergency 12/2/94, effective 12/2/94]
[Published 12/21/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/94.

ARC 5311A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on November 22, 1994, emergency adopted an amendment to Chapter 165, "Recreational Trails Program," Iowa Administrative Code.

The Department is eliminating language which allowed the Transportation Commission to grant an exception to a funding requirement; this language allowed the Commission to correct a misunderstanding about the funding for a snowmobile trail. The language was adopted in an emer-

gency amendment on June 28, 1994, and published in the Iowa Administrative Bulletin on July 20, 1994, as **ARC 4945A**. Simultaneously, a Notice of Intended Action, **ARC 4950A**, was published to solicit comments; none were received. However, the Administrative Rules Review Committee was concerned about adding the funding flexibility and requested that the language be eliminated when the situation was corrected.

Under Iowa Code subsection 17A.4(2), the Department of Transportation finds that notice and public participation are unnecessary because the situation requiring the amended language no longer exists and because no public comments have been received during the four months since the Notice was published. Notice and public participation are also impracticable because of the necessity to remove the outdated language now that the situation has been corrected.

Under Iowa Code section 17A.5(2)"b"(2), the Department of Transportation finds that this amendment confers a benefit on the public by eliminating outdated and misleading language.

Accordingly, this amendment shall become effective November 28, 1994.

This amendment is intended to implement Iowa Code chapter 312.

The following amendment is adopted.

Amend subrule **165.5(2)**, paragraph "a," as follows:

a. The transportation commission is solely responsible for all funding commitments and shall determine the projects to be funded, subject to the availability of recreational trails funds. The commission may approve, modify, or deny an application ~~and may grant an exception to a specific requirement.~~ The commission may fund all or part of a project and may make funding conditional upon adherence to a time schedule or to fulfillment of an agreement.

[Filed Emergency 11/28/94, effective 11/28/94]
[Published 12/21/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/94.

ARC 5318A

AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 159.5(11), 159.6(2), and 163.1(1), the Iowa Department of Agriculture and Land Stewardship hereby adopts amendments to Chapter 64, "Infectious and Contagious Diseases," pseudorabies disease segment, Iowa Administrative Code.

The purpose of these amendments is to make known infected herds not on an approved herd cleanup plan subject to restricted movement to slaughter; establish program areas; establish a method to maintain status of progeny from monitored and qualified negative herds; recognize qualified negative herd status in herds in Stage IV or V State/Areas or areas equivalent to Stage IV or V State/Areas; and provide for movement of feeder pigs after April 1, 1995. The amendment to rule 21—64.158(166D), regarding movement of feeder pigs, is not intended to become effective until April 1, 1995. The existing language will also remain in the Iowa Administrative Code until that date.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 26, 1994, as ARC 5179A. This notice has been amended by adding a new subrule 64.156(5) which recognizes the Stage IV, or V, or equivalent free status for the importation of breeding animals.

A public hearing was held on November 15, 1994, from 10 a.m. to 12 noon in the Second Floor Conference Room, Wallace State Office Building, Des Moines, Iowa. No comments were received.

These amendments are intended to implement Iowa Code chapter 166D.

These amendments will become effective January 25, 1995.

The following amendments are adopted.

ITEM 1. Amend rule 21—64.151(163,166D) by adding a new subrule as follows:

64.151(2) Infected herds not on an approved cleanup plan. All known pseudorabies infected herds, not on an approved herd cleanup plan, are subject to restricted movement to slaughter according to 64.154(2)"c" and 64.155(8).

ITEM 2. Amend subrule 64.153(1) as follows:

64.153(1) Pseudorabies disease program areas as declared by the Iowa department of agriculture and land stewardship: *all counties in the state of Iowa.* ~~counties of Allamakee, Audubon, Benton, Black Hawk, Bremer, Buchanan, Buena Vista, Butler, Calhoun, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clay, Clayton, Clinton, Crawford, Dallas, Delaware, Des Moines, Dickinson, Dubuque, Fayette, Floyd, Franklin, Greene, Grundy, Guthrie, Hamilton, Hardin, Harrison, Henry, Howard, Humboldt, Ida, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Lee, Linn, Louisa, Lyon, Mahaska, Marshall, Mitchell, Muscatine, O'Brien, Osceola, Palo Alto, Plymouth, Pocahontas, Pottawattamie, Poweshiek, Sac, Scott, Shelby, Sioux, Story, Tama, Wapello, Washington, Webster, Winneshiek, Woodbury, Worth and Wright.~~ The department may

~~designate additional counties as provided for in Iowa Code section 166D.4.~~

ITEM 3. Amend subrule 64.153(2) as follows:

64.153(2) All producers will permit sufficient swine in their herds to be tested at program expense to determine the health status of the herd at intervals during the course of the program as deemed necessary by the department.

The swine tested may be sufficient in number, and by method of selection, to qualify for the surveillance program required to attain and maintain the program stages according to the most recent "State-Federal-Industry Program Standards" for pseudorabies eradication.

ITEM 4. Amend subrule 64.154(2) as follows:

64.154(2) Approved identification.

a. Breeding swine.

(1) Ear tags or tattoos with an ~~alphanumeric numbering~~ *alphabetic or numeric* system to provide unique identification for each animal.

(2) Ear notches or ear tattoos, if applied according to the standard breed registry system.

(3) Electronic devices, other devices, or marks which, when applied, will permanently and uniquely identify each animal.

b. Feeder swine.

(1) Ear tags or tattoos with an ~~alphanumeric numbering~~ *alphabetic or numeric* system to provide unique identification with each herd, each lot, or each individual swine.

(2) Electronic devices, other devices, or marks which, when applied, will provide permanent identification with each herd, each lot, or each individual swine.

c. No change.

ITEM 5. Amend subrule ~~64.154(3)~~, paragraphs "a" and "b," as follows:

a. Pink tags to identify pseudorabies vaccinated ~~breeding~~ swine.

b. Silver tags to identify ~~native Iowa~~ feeder pigs from pseudorabies noninfected herds.

ITEM 6. Amend subrule ~~64.156(2)~~ by adding a new paragraph "e" as follows:

e. Monitored status feeder pigs moved to a facility not within the vicinity of the herd of origin and unexposed to lesser status swine may regain monitored status by a negative test of all or 30 head, whichever is less, within 30 days prior to sale or movement.

ITEM 7. Amend 21—64.156(166D) by adding two new subrules 64.156(4) and 64.156(5) as follows:

64.156(4) Maintaining qualified negative status (progeny). Progeny from qualified negative (unvaccinated) or from qualified negative (vaccinated) herds moved to a facility not within the vicinity of the herd of origin and unexposed to lesser status swine may maintain qualified negative status by a monthly negative test of 10 percent or 60 head, whichever is less, of swine that have been on the premises for at least 30 days.

64.156(5) Any breeding herd in Stage IV or V State/Area or an area outside the United States with a low incidence of pseudorabies equivalent to a Stage IV or V State/Area is recognized as a qualified pseudorabies negative herd.

ITEM 8. Effective on April 1, 1995, amend rule 21—64.158(166D) by rescinding subrules ~~64.158(2)~~ and ~~64.158(6)~~ and inserting the following new subrule:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

64.158(2) Feeder Pig Cooperator Plan Agreement—revised effective April 1, 1995.

Feeder Pig Cooperator Plan Agreement—Revised

Date:

Herd I.D. Number:

Owner's Name:

Address:

Telephone Number:

The Feeder Pig Cooperator Plan Agreement shall include the following:

1. The herd has not experienced clinical signs of pseudorabies within the previous six months.
2. Maintain the breeding herd on an approved vaccination program, at least four times per year.
3. Wean and segregate progeny by five weeks of age or less and maintain progeny group isolation until moved as feeder pigs.
4. The herd must be visited at least quarterly by the herd veterinarian to monitor progress of herd cleanup plan; this shall include quarterly testing, if applicable, overseeing management procedures including all-in, all-out swine movement, ventilation, animal waste handling, sanitation, disinfection and vaccine handling.
5. Feeder pigs may be marketed or moved intrastate as cooperator pigs of unknown status provided that all requirements of this plan are followed.
6. All feeder pigs must be vaccinated prior to sale. Vaccine shall be administered according to individual's herd plan.
7. All feeder pigs must be tagged prior to sale or movement with an official pink feeder pig ear tag. The producer shall obtain a health certificate (which must include a permit number from the department) from the herd veterinarian prior to movement from premises of origin and said health certificate shall accompany each shipment. All feeder pigs are quarantined to farm of destination until sold to slaughter.
8. Breeding swine shall move directly to slaughter or an approved premises. No swine from infected herds may be represented as breeding swine.
9. The producer shall maintain a record of all test charts, all sales transactions by way of health certificates, and vaccine purchases for at least two years. These records shall be available to department officials upon request.
10. When this herd is determined, through procedures as detailed in Iowa Code section 166D.9 to become a noninfected herd or is depopulated, the plan is completed.
11. I agree, if this plan is not followed, is discontinued, or is not progressing in a satisfactory manner as determined by the department, the herd is a quarantined herd and subject to restricted movement, direct to slaughter or to an approved premises.

I am currently enrolled in an approved herd cleanup plan. I further agree to comply with all the requirements contained in this Feeder Pig Cooperator Plan Agreement.

Herd Owner: _____ Date: _____

Herd Veterinarian: _____ Date: _____

ITEM 9. Amend 21—Chapter 64 by adding the following new rule:

21—64.161(166D) Sales to approved premises. After March 31, 1995, all feeder pigs and feeder swine except those from "noninfected herds" must be moved directly to an approved premises, or through a Class IV market to an approved premises, for further feeding; however, these pigs may continue to move as cooperator pigs of unknown status if a "Feeder Pig Cooperator Plan Agreement—Revised" is approved by the department and movement is permitted by the department.

[Filed 12/1/94, effective 1/25/95]

[Published 12/21/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/94.

ARC 5319A

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 144C.5, the Iowa Division of Insurance hereby adopts new Chapter 100, "Community Health Management Information System," Iowa Administrative Code.

The purpose of the rules is to implement Iowa Code section 144C.5 which authorized the Division of Insurance to adopt rules pursuant to Iowa Code chapter 17A to carry out the Division's role in the regulation of Iowa Code chapter 144C, "Community Health Management Information System Act." The Community Health Management Information System, also known as CHMIS, is a system to facilitate the exchange of medical and transactional information among providers and other interested entities. This system will include a data repository to collect health care data and provide information as provided by statute. CHMIS will provide for the uniform exchange of health care information which will result in a more efficient and cost-effective health care transaction process. CHMIS is a nonprofit corporation with regulatory oversight by the Division of Insurance.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 26, 1994, as **ARC 5182A**. A public hearing was held November 15, 1994. No substantive comments were received. There are no changes in the rules from those published under Notice of Intended Action.

These rules are intended to implement Iowa Code chapter 144C.

These rules will become effective January 25, 1995.

The following new chapter is adopted:

INSURANCE DIVISION[191](cont'd)

CHAPTER 100
COMMUNITY HEALTH MANAGEMENT
INFORMATION SYSTEM

191—100.1(144C) Authority and function. The community health management information system is established by Iowa Code chapter 144C. Its function is to formulate, implement, and administer a community health management information system which will result in a more efficient and cost-effective health care transaction process. The system shall facilitate the exchange of medical and transactional information among providers and other interested entities. A data repository is also established which shall collect health care data and provide information pursuant to Iowa Code section 144C.3.

191—100.2(144C) Scope. The rules contained in this chapter shall regulate the administration and duties of CHMIS, the CHMIS board and its advisory committees, the data repository and the duties of the insurance division as they relate to Iowa Code chapter 144C.

191—100.3(144C) General definitions. The definitions set out in Iowa Code section 144C.2 shall be considered to be incorporated verbatim in these rules. However, for purposes of this chapter, the community health management information system shall also be referred to as CHMIS.

191—100.4(144C) Organization.

100.4(1) The community health management information system is a not-for-profit corporation organized under Iowa Code chapter 144C, and for which articles of incorporation are filed in the office of the secretary of state and, together with its bylaws, in the office of the county recorder of Polk County, Iowa.

100.4(2) A governing board is established according to the provisions of Iowa Code section 144C.5.

100.4(3) The affairs of CHMIS and the data repository are administered by employees or officers of the governing board as may be duly authorized or act on behalf of the governing board.

191—100.5(144C) Duties of the board.

100.5(1) The board shall carry out the duties as required in Iowa Code chapter 144C.

100.5(2) The board may also do those acts as provided in Iowa Code section 144C.4, subsection 6.

100.5(3) The board shall file a written report to the general assembly on or before January 15 of each year concerning the operation of the system as prescribed in Iowa Code section 144C.4, subsection 7.

100.5(4) The policies and procedures established by the board and its committees shall be subject to the review and approval of the insurance division and shall be available to the public.

191—100.6(144C) Duties of the insurance division.

100.6(1) The policies and procedures of the board and its committees are subject to review and approval by the insurance division. The division shall notify the board in writing of policies and procedures which the division believes do not conform to the statute or other state law, rule or regulation, and request the policy or procedure be rewritten. The division shall respond within 20 days of receipt of the rule or procedure to the board concerning the approval or denial of a policy or procedure. Upon receipt by the board of the denial of a policy or procedure,

the board shall have 20 days to respond. The division shall maintain copies of all board policies and procedures which shall be available to the public.

100.6(2) Upon a recommendation of the board or upon the action of the division, a payor, provider, a transaction network or the board which fails to comply with Iowa Code chapter 144C or the rules of this chapter shall be subject to a civil penalty.

The division shall notify the noncomplying party of the nature of the noncompliance and that failure to correct the noncompliance will subject the party to a civil penalty not to exceed \$500 for each offense. The party to which a civil penalty has been imposed may appeal the action of the division pursuant to Iowa Code chapter 17A and 191—Chapter 3.

100.6(3) Agreements between payors, providers, transaction networks, the data repository, and the board which will assist in the implementation of Iowa Code chapter 144C but could violate antitrust law without government approval shall be submitted to the commissioner for approval prior to enactment.

191—100.7(144C) Advisory committees. The board shall establish the following committees and appoint members to those committees as necessary to carry out their duties:

1. Ethics and confidentiality review committee.
2. Data advisory committee.
3. Technical advisory committee.
4. Communications and education committee.
5. Quality review and advisory committee.

The board may appoint other advisory committees as necessary to carry out duties and functions of the board, CHMIS, or the data repository.

191—100.8(144C) Confidentiality of information.

100.8(1) The board is responsible for establishing policy and procedure that will ensure the dissemination of reports and access to the CHMIS data. The ethics and confidentiality review committee shall administer the policies and procedures set forth in this rule by the board.

100.8(2) Access to the CHMIS data resources will be granted to those individuals and organizations which demonstrate the following:

- a. The questions they want to answer are answerable using the data resource to which they are requesting access;
- b. The requester's stated purpose and proposed uses of data are in accordance with the CHMIS mission and policies;
- c. The requester's method of analysis reasonably addresses the questions posed and is appropriate for the data requested.

100.8(3) Those organizations and individuals who are granted access to the CHMIS database must, as a condition of access, agree to assume full responsibility for the analysis and use of those data. They must also agree not to sell or otherwise transfer the data in whole or in part for purposes not stated in the original agreement with the CHMIS.

100.8(4) All policies and procedures concerning the confidentiality and dissemination of patient information shall be filed with the division and shall be available for public inspection. This shall include procedures by the board for the review of a denial of access to records in CHMIS.

INSURANCE DIVISION[191](cont'd)

191—100.9(144C) Transaction networks.

100.9(1) The board shall certify transaction networks which shall operate within and without the state. A transaction network which is not certified by the board shall not operate within CHMIS.

100.9(2) The board shall establish procedures including any fees for certification of transaction networks subject to the approval of the division pursuant to subrule 100.6(1).

191—100.10(144C) System implementation. The board shall implement CHMIS according to Iowa Code section 144C.8 as to phases I through III. The board shall establish policies and procedures with the review and approval of the division prior to the implementation of each phase.

This chapter is intended to implement Iowa Code chapter 144C and Iowa Code section 505.20.

[Filed 12/1/94, effective 1/25/95]

[Published 12/21/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/94.

ARC 5316A

**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 8, "Minimum Standards for the Practice of Pharmacy," Iowa Administrative Code.

The amendments modify requirements of the pharmacist to counsel patients regarding new prescription medications.

Notice of Intended Action was published in the May 11, 1994, Iowa Administrative Bulletin as **ARC 4801A**. Amended Notice of Intended Action, providing for a public hearing held on Wednesday, September 14, 1994, was published in the July 20, 1994, Iowa Administrative Bulletin as **ARC 4947A**. These amendments were modified in response to numerous comments received and differ from those published under Notice as follows:

1. The word "orally" is removed from the proposed first sentence of subrule 8.20(1);

2. Renumbered subrule 8.20(2) is changed to allow the pharmacist to exercise professional judgment in determining the appropriate forms of counseling; and

3. Renumbered subrule 8.20(2) is further changed to encourage use of a combination of oral and alternative forms of counseling.

The amendments were approved during the November 16, 1994, meeting of the Board of Pharmacy Examiners and will become effective on January 25, 1995.

These amendments are intended to implement Iowa Code section 155A.13.

The following amendments are adopted.

Amend rule 657—8.20(155A) as follows:

657—8.20(155A) Pharmaceutical care—patient counseling.

8.20(1) Upon receipt of a new prescription drug order and following a review of the patient's record, a pharmacist shall counsel each patient or patient's caregiver. The counseling shall be on matters which, in the pharmacist's professional judgment, will enhance or optimize drug therapy. Appropriate elements of patient counseling may include:

- a. The name and description of the drug;
- b. The dosage form, dose, route of administration, and duration of drug therapy;
- c. Intended use of the drug, if known, and expected action;
- d. Special directions and precautions for preparation, administration, and use by the patient;
- e. Common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
- f. Techniques for self-monitoring drug therapy;
- g. Proper storage;
- h. Prescription refill information;
- i. Action to be taken in the event of a missed dose;
- j. Pharmacist comments relevant to the individual's drug therapy including any other information peculiar to the specific patient or drug.

~~8.20(2) When the patient or the patient's caregiver is present, counseling shall be in person.~~

~~8.20(3) When the patient or patient's caregiver is not present, the pharmacist shall counsel the patient or patient's caregiver either by initiating telephone discussion or by sending with the medication or device legible written notice including all of the following:~~

~~a. Patient specific information satisfying all elements identified in subrule 8.20(1) and including the statement: "If any of this information is unclear or contrary to the instructions of the prescriber, contact the pharmacist at (insert toll free telephone number)."~~

~~b. A statement of the patient's right to request consultation; and~~

~~c. A toll free telephone number at which the patient may obtain oral consultation from a pharmacist who has ready access to the patient's record.~~

~~8.20(4) 2) If in the pharmacist's professional judgment oral counseling is not practicable, the pharmacist may use alternative forms of patient information. Alternative forms of patient information shall be used to supplement patient counseling when appropriate. Examples may include written information leaflets, pictogram labels, and video programs, or information generated by electronic data processing equipment. When used in place of oral counseling, alternative forms of patient information shall advise the patient or caregiver that the pharmacist may be contacted for consultation in person at the pharmacy by toll-free telephone or collect telephone call. A combination of oral counseling and alternative forms of counseling is encouraged.~~

~~8.20(5) 3) Patient counseling, as described above, shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the drugs.~~

~~8.20(6) 4) A pharmacist shall not be required to counsel a patient or caregiver when the patient or caregiver refuses such consultation. A patient or caregiver's refusal of consultation shall be documented by the pharmacist. The absence of any record of a refusal of the pharmacist's~~

PHARMACY EXAMINERS BOARD[657](cont'd)

attempt to counsel shall be presumed to signify that the offer was accepted and that counseling was provided.

[Filed 11/30/94, effective 1/25/95]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/94.

ARC 5317A**PHARMACY EXAMINERS
BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 155A.14 and 1994 Iowa Acts, chapter 1009, section 18, the Iowa Board of Pharmacy Examiners hereby amends Chapter 19, "Nonresident Pharmacy Licenses," Iowa Administrative Code.

The amendments change the dates when penalties are enforced due to late renewal of nonresident pharmacy licenses to provide consistency with other business and professional license renewals regulated by this Board and correct Iowa Code references pursuant to the reorganization of the Code in 1993.

Notice of Intended Action was published in the October 12, 1994, Iowa Administrative Bulletin **ARC 5140A**. Item 1 of the adopted amendments is identical to the proposed amendments published under Notice. Item 2 is added to correct Iowa Code references in response to the reorganization of the Code in 1993. The Board finds, pursuant to Iowa Code subsection 17A.4(2), that public notice is unnecessary as regards Item 2 in that the changes confer a benefit upon the public by removing potential confusion resulting from reference to outdated Code numbers and the amendments are herein adopted without Notice.

The amendments were approved during the November 16, 1994, meeting of the Board of Pharmacy Examiners and will become effective on January 25, 1995.

These amendments are intended to implement Iowa Code section 155A.13A as amended by 1994 Iowa Acts, chapter 1009, section 18, and section 155A.14.

The following amendments are adopted.

ITEM 1. Amend subrule 19.2(1) as follows:

19.2(1) A nonresident pharmacy license shall expire on December 31 of each year. The fee for a new or renewal license shall be \$100. A nonresident pharmacy license form shall be issued upon receipt of the license application information required in subrule 19.2(2) and payment of the license fee.

Failure to renew the license before ~~February~~ **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.

ITEM 2. Amend rule 657—19.3(155A), introductory paragraph, and implementation statement as follows:

657—19.3(155A) Discipline. Pursuant to 657—Chapter 9, the board may deny, suspend, or revoke a nonresident pharmacy license for any violation of Iowa Code Supplement section 155A.13A; Iowa Code Supplement section 155A.15, subsection 2, paragraph "a," "b," "d," "e," "f," "g," "h," or "i"; Iowa Code chapter ~~124, 124A, 124B, 126 203B, 204, 204A, 204B,~~ or 205; or a rule of the board promulgated thereunder unless the Iowa Code or Iowa Administrative Code conflicts with law, administrative rule, or regulation of the home state. The more stringent of the two shall apply when there is a conflict of law regarding services to Iowa residents.

These rules are intended to implement Iowa Code Supplement section 155A.13A.

[Filed 11/30/94, effective 1/25/95]
[Published 12/21/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/94.

ARC 5326A**REVENUE AND FINANCE
DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 421.14, the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Iowa Administrative Code.

Notice of Intended Action was published in the October 26, 1994, Iowa Administrative Bulletin as **ARC 5198A**.

Iowa Code section 421.7 requires the Director of Revenue and Finance to determine the interest rate for each calendar year. The Director has determined that the rate of interest on interest-bearing taxes arising under Iowa Code Title XVI shall be 9 percent for the calendar year 1995. The interest rate is 2 percent above the average prime rate charged by banks on short-term business loans as published in the Federal Reserve Bulletin for the 12-month period ending September 30, 1994. For the past 12 months, the average prime rate was 7 percent.

The 9 percent annual rate is equivalent to an interest rate of 0.8 percent per month on all outstanding taxes. The rate will be applied to all taxes owing or becoming payable on or after January 1, 1995. Under Iowa law, each fraction of a month is considered a whole month when interest is computed. When required to pay interest on taxpayers' refunds, the Department will also pay interest at the 9 percent rate on refunds owing or becoming payable on or after January 1, 1995.

This amendment is identical to that published under Notice of Intended Action.

This amendment will become effective January 25, 1995, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This amendment is intended to implement Iowa Code chapter 421.

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

The following amendment is adopted.

Amend rule 701—10.2(421) by adding the following **new** subrule:

10.2(14) Calendar year 1995. The interest upon all unpaid taxes which are due as of January 1, 1995, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1995. In addition, this interest rate will accrue on tax refunds which by law accrue interest, re-

gardless of whether the tax to be refunded is due before, on or after January 1, 1995. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1995.

[Filed 12/2/94, effective 1/25/95]
[Published 12/21/94]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/94.

ENVIRONMENTAL PROTECTION COMMISSION[567]**ECONOMIC IMPACT STATEMENT**

Pursuant to Iowa Code section 17A.4, the Environmental Protection Commission gives notice of issuance of an Economic Impact Statement relative to proposed amendment to Chapter 43, "Water Supplies—Design and Operation," published under Notice of Intended Action in the October 12, 1994, Iowa Administrative Bulletin as **ARC 5167A**.

Specifically, proposed amendments to paragraph 43.2(3)"b" create a new fee schedule for the operation of a public water supply. This Economic Impact Statement was prepared in response to the directive received from the Administrative Rules Review Committee at its meeting held on November 15, 1994.

SECTION 1. SUMMARY

The rule amendments have been proposed to implement provisions of Senate File 2314, the appropriations bill for the Department of Agriculture and the Department of Natural Resources. The proposed amendments contain new fee structures that revise the existing rules for the assessment of fees for water supply operation and construction permits. The proposed fee structures are anticipated to generate the funds authorized by 1994 Iowa Acts, Senate File 2314, Section 48.

The Iowa General Assembly recognized that additional resources are needed by the DNR drinking water program to retain primary implementation responsibility for the Safe Drinking Water Act. SF 2314 increased the general fund appropriation for the program and established a Water Quality Protection Fund. The legislation allowed for construction permit fees and operation fees based on the type and size of the public water supply.

The cost of service concept for the proposed fee structure is familiar to water utilities and is one of several alternatives considered. In proposing the cost of service concept for the proposed rules, the DNR recognizes that most of the cost associated with implementing the Safe Drinking Water Act and the reductions in monitoring costs apply to smaller public water supplies. Smaller public water supplies represent approximately 95% of the public water supplies in Iowa.

The benefits in reduced monitoring cost (cost avoidance) exceed the proposed fees for small public water supplies serving less than 3300 persons. It is estimated that at least \$3.7 million in monitoring cost avoidance benefits will be received annually by Iowa's public water supplies.

SECTION 2. BACKGROUND

In 1974, the US Congress passed the Safe Drinking Water Act (SDWA). The SDWA was reauthorized in 1986. The SDWA allows Iowa to have primary enforcement responsibility, known as primacy, for public water systems if Iowa: 1) has adopted drinking water regulations consistent with and not less stringent than federal standards; 2) has adopted and is implementing adequate procedures for enforcement of State regulations, including inspections and monitoring; 3) keeps records and makes reports on the above activities; 4) follows the variances and exemption provisions of the Act; and, 5) adopts and implements a plan for emergency circumstances.

The Iowa Department of Natural Resources (DNR) has had primacy for the drinking water program since 1978. In fact, Iowa has regulated water supplies for over 60 years. From 1978 to 1993, the DNR managed to meet all of the requirements of EPA for primacy.

In November 1993, EPA informed the DNR that the drinking water program was insufficiently staffed and that if staffing were not increased to meet EPA's minimum requirements, primacy would be withdrawn.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Under a State administered program, application of standards and requirements may be tailored to specific water supplies rather than the "one size fits all" approach under a federally administered program. This can result in substantial cost savings to Iowa community public water supplies and granting of greater flexibility to water supply operators, while continuing to ensure the safety of Iowa's public drinking water systems. As a result, representatives of local governments and public water supply operators supported legislation that would provide needed additional resources, in part, through a permit fee system. The result was enactment of Senate File 2314 which provided the funds necessary to increase the resources to maintain primacy of the drinking water program.

SECTION 3. EXPLANATION OF SF 2314

Senate File 2314, the appropriations bill for the Department of Agriculture and the Department of Natural Resources contained provisions for providing the additional resources needed for the drinking water program.

The important provisions of the bill dealing with the drinking water program are that:

1. It is the intent of the General Assembly that Iowa retain primacy of the drinking water program.
2. Fee rules are to be adopted by December 31, 1994.
3. The sections of the law dealing with primacy became effective when it was signed by the Governor.
4. DNR is to establish programs to assist public water supplies by providing technical assistance and advice and by performing vulnerability and viability studies.
5. DNR may contract with persons to provide assistance and services if it can be done in a cost effective manner and ensures compliance. Money is to come from the Public Water Supply System (PWSS) Account.
6. The Water Quality Protection Fund is created under the control of DNR:
 - Money appropriated from General Fund, fees, and other moneys go into this fund.
 - The fund has two accounts: the Administrative Account and the PWSS account.
7. The Administrative Account is to be used for carrying out the requirements of the SDWA.
8. In addition to the permit fees, the bill called for \$404,000 in general fund moneys and \$300,000 in lottery moneys to be used for the drinking water program. With these additional funds, the DNR is to add 15 FTEs to the drinking water program.
9. The Environmental Protection Commission (EPC):
 - Is to adopt fees for construction, installation or modification of PWS;
 - Is to adopt fees for operation permits (fees may be based on type and size of community);
 - Shall adopt a fee schedule; and,
 - Shall calculate fees to produce:

Amount	Fiscal Year
\$475,000	1995
700,000	1996
900,000	1997
1,200,000	1998 and on

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

10. For FY 1995 - \$25,000 of the fees are to go to the Administration Account and \$450,000 into the PWSS Account.
11. For FY 1996 and thereafter, one-half of the fees go into the Administration Account and one-half go into the PWSS Account.
12. The DNR is to develop private-public partnerships to provide technical assistance including vulnerability and viability studies. Technical assistance priorities are to water supplies serving 7000 or less people. Two full time equivalents (FTEs) are allocated to provide technical assistance to these systems.
13. The DNR is to provide an estimate, by May 1st each year, of the anticipated revenue so that fees may be adjusted. Each November 1st, the DNR must report on the amount of money deposited in, and expended from, each account, and provide a projection of revenues, expenditures, obligated moneys and the balance that will remain at the end of the fiscal year.

SECTION 4. DEVELOPMENT OF FEES

Fees for operation and construction permits were originally adopted in 1982. The population and category of public water supply were the criteria used to calculate fees for operation permits. The construction permit fee was based on the part of the public water supply that was being constructed, i.e. distribution system, treatment units, or new water supply well.

Annual Operation Fee

The DNR looked at the following funding mechanisms to allocate the annual operation fees.

1. NUMBER PEOPLE SERVED
2. NUMBER CONNECTIONS
3. AMOUNT OF WATER PUMPED
4. WATER USED PER PERSON
5. NUMBER OF COMMUNITY WATER SUPPLIES (CWS), NON-TRANSIENT NON-COMMUNITY WATER SUPPLIES (NTNC), AND TRANSIENT NON-COMMUNITY WATER SUPPLIES (TNC)
6. PERMIT RENEWAL SCHEDULE
7. SOURCE OF WATER
8. FEE FOR SERVICE
9. COST OF SERVICE
10. TYPE OF SYSTEM

The DNR also evaluated the funding mechanisms based on the following factors:

1. EASE OF ADMINISTRATION
2. EASY TO UNDERSTAND BY PUBLIC
3. ANNUAL VS TRIENNIAL FEES
4. ABILITY TO PLACE IN MULTI-YEAR SCHEDULE
5. ABILITY TO ESTIMATE ACCURATELY

In addition, the DNR worked with the Local Government Environmental Resources Council, (LGERC). This newly formed group of associations and elected officials is concerned with the drinking water program and other environmental programs that are the responsibility of the DNR.

Based on the type of funding mechanisms available, the factors to be considered in developing and implementing the fee system, and the direction provided by the LGERC, the DNR developed the proposed fee rules. In developing the proposed rules, the DNR used the following principles:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

PRINCIPLES

- FEES SET ON A COST OF SERVICE BASIS
- ALL SYSTEMS TO PAY THE BASE FEE
- PER CAPITA FEE TO BE PAID BY COMMUNITY SYSTEMS SERVING OVER 3300 PERSONS
- THE AMOUNT OF MONEY RAISED BY THE BASE FEE AND THE PER CAPITA FEE ARE TO BE KEPT AT THE SAME RATIO EACH YEAR
- THE CONSTRUCTION PERMIT FEES ARE TO RAISE A TOTAL OF \$75,000 EACH YEAR
- THE NUMBER OF PUBLIC WATER SUPPLIES WOULD DECREASE EACH YEAR

The first principle is key to the issue being raised by both small and large public water systems. Since the DNR devotes a large amount of its resources to inspecting and monitoring small systems, the application of the cost of service principle means that the small public water supplies pay the major portion of the money to be collected by fees. Small systems, those serving under 3300 persons, make up 95% of the public water supplies.

It is important to note that the water supply industry has historically used the cost of service concept. The customers that are getting the most service pay the higher fee. The use of this concept in the proposed rules is consistent with the practices followed by most public water supplies.

The DNR recognized at the beginning of the rule making process that any proposed funding mechanism would generate adverse comments. The Iowa General Assembly did not provide guidance as to the development of the fee rules other than to state: "The fees may be based on the type and size of community served by the system," and to stipulate the aggregate amount of annual revenues to be generated by fees. The DNR believes that the "cost of service" principle is a fair way to establish the fees.

SECTION 5. COST OF PROGRAM TO PUBLIC WATER SUPPLIES

The following three tables provide a comparison of the cost of the annual operation fee with the cost reductions (cost avoidance) that public water supplies are now or will be receiving in the near future.

Table 1 presents the proposed annual operation fee. It breaks down the cost into groupings that readily coincide with the group benefits identified in Tables 2 and 3.

Table 2 represents the cost saving (cost avoidance) that a public water supply can expect to receive. Public water supplies may be unaware of these cost containment efforts being implemented by the DNR since drinking water program compliance costs have increased and will continue to increase in the future due to EPA regulations. The table demonstrates the costs that can be avoided as a result of the DNR's completion of sanitary surveys, issuing monitoring waivers and approving reduced monitoring frequencies.

The annualized cost saving estimated in Table 2 is for systems that obtain all their water from wells which are not under the direct influence of surface water, are not vulnerable to contamination and have no other water quality or operational problems that may effect drinking water quality. It also assumes that the base monitoring requirement is four organic chemical samples every three years.

Table 3 provides the annualized statewide cost savings resulting from monitoring waivers and reduced monitoring requirements.

The additional resources provided by SF 2314 will allow the DNR to extend the waiver program from the four current analytes to as many as twenty and the repeat monitoring frequency from the one sample per three years (used in the above estimates) to as few as one sample per six years or one sample per nine years. It is estimated that this will allow public water supplies to avoid an additional \$1.4 million in annualized monitoring cost each year beginning in 1998.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

TABLE 1 - PROPOSED ANNUAL PERMIT FEE

Type & Size of PWS	Fiscal Year			
	1995	1996	1997	1998
TNC	\$185	295	405	565
NTNC & CWS (serving < 1001 persons)	185	295	405	565
NTNC & CWS (serving 1000 to 3,300 persons)	185	295	405	565

CWS (serving >3,300 persons)	185 + .04/person*	295 + .06/person*	405 + .08/person*	565 + .11/person*
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* Applies to the portion of the population over 3,300 persons.

TABLE 2 - ANNUALIZED COST SAVINGS (COST AVOIDANCE)

Type & Size of PWS	Fiscal Year			
	1995	1996	1997	1998
TNC	\$700	700	700	700
NTNC & CWS (serving < 1001 persons)	3460	3460	3460	1260
NTNC & CWS (serving 1001 - 2500 persons)	1550	1550	1550	1050
(serving 2501 - 3300 persons)	1430	1430	1430	930
CWS (serving 3,301 - 4,100 persons)	1310	1310	1310	810
(serving > 4,100 persons)	1190	1190	1190	690

TABLE 3-ANNUALIZED STATEWIDE COST SAVINGS (COST AVOIDANCE)

Analyte Group	Fiscal Year			
	1995	1996	1997	1998
Bacteria	0.8 million	0.8 million	0.8 million	0.8 million
Inorganic & Organic Chemicals*	2.9 million	2.9 million	2.9 million	0.6 million

* excludes savings from reduced lead and copper monitoring.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Table 4 represents the proposed construction permit fees. The proposed construction permit fee amendment is based on the part of the public water supply being constructed, reconstructed or modified. The fees reflect the cost to the DNR for providing these services.

TABLE 4 - PROPOSED CONSTRUCTION PROJECT PERMIT FEES

Type of Construction	Fee
Distribution System (includes as-built water mains & pump stations)	\$100
Treatment Units per unit process (except projects) submitted pursuant with 43.3(4))	\$100
Simple Chemical Feed pursuant to 43.3(4) a	\$350
Self Contained Treatment Unit pursuant to 43.3(4) b	\$350
Storage Facilities	\$100
New Water Source (includes as-built)	\$350
As Built treatment or storage	\$350
Request for Variances from design standards	\$350

SECTION 6. CONCLUSIONS

Additional resources are needed by the DNR drinking water program to retain primary implementation responsibility for the Safe Drinking Water Act. This need was recognized by the Iowa General Assembly which responded by enacting SF 2314 which increased the general fund appropriation for the program and established a Water Quality Protection Fund. The legislation allowed for construction permit fees and operation fees based on the type and size of the public water supply.

The cost of service concept for the proposed fee structure is familiar to water utilities and is one of several alternatives considered. In proposing the cost of service concept for the proposed rules, the DNR recognizes that most of the cost associated with implementing the Safe Drinking Water Act and the reductions in monitoring costs apply to smaller public water supplies. Smaller public water supplies represent approximately 95 % of the public water supplies in Iowa.

The benefits in reduced monitoring cost (cost avoidance) exceed the proposed fees for small public water supplies serving less than 3300 persons. It is estimated that at least \$3.7 million in monitoring cost avoidance benefits will be received annually by Iowa's public water supplies.

For a comparison with other the surrounding state fees, see Appendix 1.

For the proposed drinking water program budgets for 1993 to 1998, see Appendix 2.

APPENDIX 1 - SURROUNDING STATES FUNDS GENERATED BY FEES EACH YEAR

Survey of surrounding states Drinking Water Program (From the July, 1993 NCSL Survey Report)

Funding Source	South Dakota	Minnesota	Wisconsin	Illinois
State Budget	\$881,400	\$5,330,000	\$4,361,474	\$5,620,900
EPA Grant	\$484,800	\$1,950,000	\$2,520,800	\$1,914,200
General Fund	\$161,600	\$3,380,000	\$1,840,674	\$1,612,400
Alternative Funding Mechanism-Dedicated	\$235,000	0	0	\$2,067,300
Alternative Funding Mechanism-Not Dedicated	0	\$4,910,000	0	0
Type of Alternative Funding Mechanism (AFM)	Annual Service fee based on Population	Plan Review, Annual Service Connection fee	None	Water Main Permit Application Fee, Operator Certification Fee, Laboratory Service Fee, Solid Waste Management Fee
Revenue raised via AFM	\$235,000	\$4,910,000	0	\$2,067,300

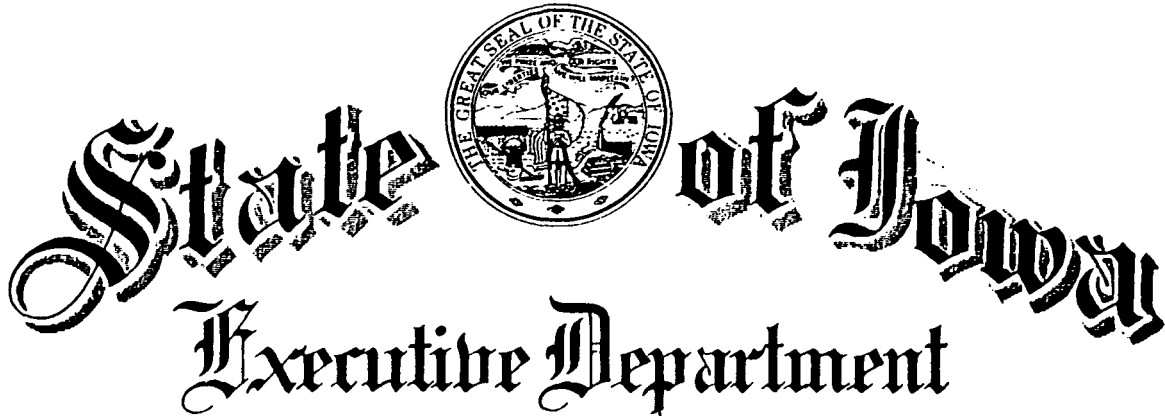
Funding Source	Missouri*	Kansas	Nebraska	Iowa
State Budget	\$2,800,000	\$985,000	\$1,381,438	\$1,255,749
EPA Grant	\$1,000,000	\$535,000	\$781,856	\$941,812
General Fund	\$1,500,000	\$450,000	\$499,582	\$297,937
Alternative Funding Mechanism-Dedicated	\$300,000	0	\$100,000	\$16,000
Alternative Funding Mechanism-Not Dedicated	0	\$459,000	0	\$212,000
Type of Alternative Funding Mechanism (AFM)	Operator Certification fee, Laboratory Services fee	Laboratory Service Fee, Operator Certification fee	Plan Review Fee	Operation Permit fee, Construction Permit fee, Laboratory Certification Fee, Operator Certification Fee
Revenue raised via AFM	\$300,000	\$459,000	0	212,000

*Missouri has implemented a use fee to support the drinking water program.

APPENDIX 2 - IOWA'S DRINKING WATER PROGRAM BUDGET 1993 - 1998

Funding Source	1993	1994	1995	1996
State Budget	\$1,255,749	\$1,159,702	\$1,793,324	\$1,874,000
EPA Grant	941,812	\$869,777	\$919,100	\$919,100
General Fund	\$297,937	\$289,925	\$404,000	\$404,000
Alternative Funding Mechanism-Dedicated	\$16,000	0	\$475,000	\$700,000
Alternative Funding Mechanism-Not Dedicated	\$212,000	\$207,050	0	0
Type of Alternative Funding Mechanism (AFM)	Operation Permit fee Construction Permit fee, Laboratory Certification fee, Operator Certification fee	Operation Permit fee Construction Permit fee	Operation Permit fee Construction Permit fee	Operation Permit fee Construction Permit fee
Revenue raised via AFM	\$212,000	\$207,050	\$475,000	\$700,000

Funding Source	1997	1998
State Budget	\$2,074,000	\$2,374,000
EPA Grant	\$919,100	\$919,100
General Fund	\$404,000	\$404,000
Alternative Funding Mechanism-Dedicated	\$900,000	\$1,200,000
Alternative Funding Mechanism-Not Dedicated	0	0
Type of Alternative Funding Mechanism (AFM)	Operation Permit fee Construction Permit fee	Operation Permit fee Construction Permit fee
Revenue raised via AFM	\$900,000	\$1,200,000



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION

WHEREAS,

the Office of State Senator from the 26th Senate District, consisting of the following areas (51st and 52nd Representative Districts):

- A. The City of Marion.
- B. Those portions of the City of Cedar Rapids and Bertram and Marion townships bounded by a line commencing at the point the south corporate limit of the City of Marion intersects state Highway 13, then proceeding south along state Highway 13 until it intersects the north boundary of Bertram township, then proceeding first east and then in a clockwise manner along the boundary of Bertram township until it intersects the south corporate limit of the City of Cedar Rapids, then proceeding first east and then in a counterclockwise manner along the corporate limits of the City of Cedar Rapids until it intersects the Chicago and Northwestern Transportation Company Railroad track at the west boundary of Bertram township, then proceeding west along the north branch of the Chicago and Northwestern Transportation Company Railroad track until it intersects Cole Street southeast, then proceeding north along Cole Street southeast until it intersects Fir Avenue southeast, then proceeding westerly along Fir Avenue southeast until it intersects Cole Street southeast, then proceeding north along Cole Street southeast until it intersects Otis Road southeast, then proceeding northeasterly along Otis Road southeast until it intersects Memorial Drive southeast, then proceeding northerly along Memorial Drive southeast until it intersects Fourteenth Avenue southeast, then proceeding easterly along Fourteenth Avenue southeast until it intersects Thirty-third Street southeast, then proceeding north along Thirty-third Street

southeast until it intersects Henderson Avenue southeast, then proceeding east along Henderson Avenue southeast until it intersects Thirty-fourth Street southeast, then proceeding north along Thirty-fourth Street southeast until it intersects Dalewood Avenue southeast, then proceeding east along Dalewood Avenue southeast until it intersects Fortieth Street southeast, then proceeding south along Fortieth Street southeast until it intersects Mount Vernon Road southeast, then proceeding easterly along Mount Vernon Road southeast until it intersects the east corporate limit of the City of Cedar Rapids, then proceeding first east and then in a counter-clockwise manner along the corporate limits of the City of Cedar Rapids until it intersects Boyson Road northeast, then proceeding west along Boyson Road northeast until it intersects Brentwood Drive northeast, then proceeding first south and then in a clockwise manner along Brentwood Drive northeast until it intersects Windsor Drive northeast, then proceeding first northerly and then westerly along Windsor Drive northeast until it intersects "C" Avenue northeast, then proceeding north along "C" Avenue northeast until it intersects the north corporate limit of the City of Cedar Rapids to the east of "C" Avenue northeast, then proceeding first east and then in a clockwise manner along the corporate limits of the City of Cedar Rapids until it intersects the north corporate limit of the City of Marion, then proceeding first east and then in a clockwise manner along the corporate limits of the City of Marion to the point of origin.

- C. Those portions of the City of Cedar Rapids and Bertram and Marion townships bounded by a line commencing at the point Dalewood Avenue southeast intersects Thirty-fourth Street southeast, then proceeding west along Dalewood Avenue southeast until it intersects Knoll Street southeast, then proceeding north along Knoll Street southeast until it intersects Soutter Avenue southeast, then proceeding west along Soutter Avenue southeast until it intersects Thirty-second Street southeast, then proceeding north along Thirty-second Street southeast until it intersects Meadowbrook Drive southeast, then proceeding west along Meadowbrook Drive southeast until it intersects Thirtieth Street southeast, then proceeding south along Thirtieth Street southeast until it intersects Dalewood Avenue southeast, then proceeding west along Dalewood Avenue southeast until it intersects Twenty-ninth Street southeast, then proceeding south along Twenty-ninth Street southeast until it intersects Dalewood Avenue southeast, then proceeding west along Dalewood Avenue southeast until it intersects Memorial Drive southeast, then proceeding south along Memorial Drive southeast until

it intersects Mount Vernon Road southeast, then proceeding west along Mount Vernon Road southeast until it intersects Nineteenth Street southeast, then proceeding first north and then in a counterclockwise manner along the boundary of the fifty-third representative district until it intersects Forth-second Street northeast, then proceeding north along Council Street northeast until it intersects the north corporate limit of the City of Cedar Rapids to the east of Council Street northeast and to the north of Seventy-fourth Street northeast, then proceeding first east and then in a clockwise manner along the corporate limits of the City of Marion until it intersects the north boundary of the fifty-first representative district, then proceeding first south and then in a counterclockwise manner along the boundary of the fifty-first representative district to the point of origin.

has become vacant by the reason of the resignation of Senator Paul D. Pate.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested in me by law do hereby proclaim and direct that a special election to fill said vacancy shall be held within said District on

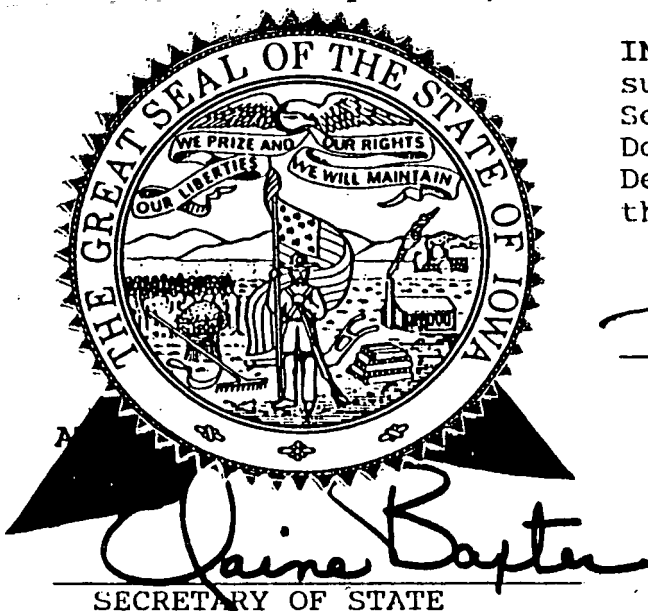
TUESDAY, THE 20th DAY OF DECEMBER, 1994, A.D.

WHEREFORE, all electors within said 26th Senate District will take due notice and the County Commissioner of Elections of said county will take official notice as provided in Chapter 39, Code of Iowa, 1993.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 2nd day of December in the year of our Lord one thousand nine hundred ninety-four.

Terry E. Branstad

 GOVERNOR



* SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA

FILED NOVEMBER 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. 93-1204. MET-COIL SYSTEMS v. COLUMBIA CASUALTY COMPANY.

Appeal from the Iowa District Court for Linn County, L. Vern Robinson and Larry J. Conmey, Judges. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Opinion by McGiverin, C.J.
(25 pages \$10.00)

Plaintiffs (the insured) purchased several insurance policies from defendants which required prompt notice of claims made or suits brought against the insured. The insured later unsuccessfully claimed coverage for lawsuits they had lost, and filed the present action against defendant insurers. The district court granted insurers' motions for summary judgment, ruling that the insurers were prejudiced as a matter of law due to the insured's failure to comply with the policies' notice provisions and that the insured, therefore, had no liability coverage under the policies. The insured appeals. **OPINION HOLDS:** I. The insured failed to meet its burden of showing substantial compliance with the "notice of suit" provisions as a matter of law. It did not promptly or directly inform the insurers of the lawsuits. II. The insured insists that its failure to comply with notice requirements is excused by its reasonable belief that its insurance broker was acting as an agent for the insurers. This is not a sufficient excuse because the "notice of suit" provisions required the insured to forward suit papers directly to the insurance companies. Further, insured's excuse that it did not believe its insurance policies covered patent infringement claims is inadequate as a matter of law. III. We also agree with the district court that the insured's argument that insurers waived the notice conditions because they are ambiguous has no merit as a matter of law. IV. The insured has not presented any evidence to rebut the evidence of substantial prejudice to the insurers in this case. We conclude the district court correctly sustained the insurers' motions for summary judgment.

No. 93-1377. IN RE MARRIAGE OF WALLICK.

Appeal from the Iowa District Court for Polk County, William H. Joy, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Carter, Neuman, Andreasen, and Ternus, JJ. Opinion by Andreasen, J. (13 pages \$5.20)

The issue in this appeal is whether an Iowa district court may exercise in personam jurisdiction in a dissolution modification proceeding over a nonresident parent whose home state initiated interstate income withholding proceedings in Iowa to collect past and present child support. Jonathan and Judith Wallick's marriage was dissolved by a Connecticut dissolution decree in 1985. At the time Judith and their children lived in Connecticut and Jonathan lived in Florida. The Connecticut court granted Judith custody of the parties' three children and ordered Jonathan to pay \$2000 per month in child support. Jonathan later moved to Iowa. Judith and the children moved to Vermont in 1991. When Judith inquired about receiving public assistance she was told she should first contact the office of child support enforcement. The Vermont office of child support enforcement initiated proceedings to require Iowa to enforce the Connecticut child support judgment. The Iowa child support recovery unit entered an ex parte income withholding order and filed it in district court. The order required Jonathan's employer to for payment of current and past support. The order also established the amount of the arrearage. Jonathan filed a motion to quash the income withholding order contesting the amount of the arrearage. The motion was overruled. Jonathan then filed in Iowa a petition for modification of the Connecticut dissolution decree. Judith was served in Vermont with notice of the action. Judith filed a motion to dismiss the modification petition due to lack of personal jurisdiction. The district court overruled her motion. We granted interlocutory appeal. **OPINION HOLDS:** Cases which hold that registration of a foreign support order gives a state jurisdiction to modify the support are not dispositive of this case because neither Judith nor Vermont registered the Connecticut support order in Iowa. Further, Iowa lacks in personam jurisdiction over Judith to enter a binding decree against her. Here the contact between Judith and the State of Iowa is minimal and the nature and quality of the contact is largely involuntary. Basic considerations of fairness suggest that Vermont or Connecticut would be the appropriate forum for adjudication of the modification. We reverse and remand to the district court for dismissal of the modification action.

No. 93-1759. WETTACH v. IOWA BOARD OF DENTAL EXAMINERS.

Appeal from the Iowa District Court for Henry County, R. David Fahey, Judge. **AFFIRMED.** Considered by Harris, P.J., and Carter, Neuman, Andreasen, and Ternus, JJ. Opinion by Andreasen, J. (10 pages \$4.00)

Dr. Steven Wettach and his wife, Dr. Mary Wettach, practice dentistry together in Mount Pleasant, Iowa. Mary was subject to disciplinary proceedings by the Board of Dental Examiners (Board) regarding her competency to practice dentistry. In anticipation of the Board's discipline of his wife, which he expected to receive publicity, Steven sent a letter to their friends and patients defending her. In a disciplinary proceeding against Steven, the Board found that the letter contained many inaccurate and misleading statements about the disciplinary action against Mary, that the letter was sent in an attempt to preserve Steven's relationship with his patients, and that those receiving the letter could have been misled as to the nature and seriousness of the disciplinary action against Mary. The Board found the conduct constituted "dishonorable conduct" in violation of Iowa Code section 153.34(7) (1991). Because of mitigating circumstances, the Board determined no further disciplinary sanctions were warranted. On judicial review, the district court affirmed the Board's decision. **OPINION HOLDS:** I. Iowa Code section 153.34(7) allows the Board to suspend or revoke the license of a licensed dentist for "dishonorable or unprofessional conduct in the practice of dentistry." Steven argues the statute does not sufficiently warn him of what constitutes "dishonorable conduct." We think it is clear that Steven's actions were dishonorable. Misrepresenting the Board's action against his dental partner in an attempt to retain patient patronage is "dishonorable conduct." Because Steven's conduct falls under the statute, he cannot prevail in his vagueness challenge. II. Steven challenges section 153.34(7) as being constitutionally overbroad to the extent the statute is used to restrict speech and publication by dentists. We are not convinced that the prohibition of "dishonorable conduct" presents a realistic danger that the protected free speech rights of third parties not before this court will be chilled. Also, the potential for chilling of protected speech is very small in relation to the statute's legitimate sweep in regulating professional conduct of licensed dentists. We do not find section 153.34(7) to be substantially overbroad. We affirm.

**No. 94-1068. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT
v. PETERSON.**

On review of the report of the Grievance Commission. **LICENSE REVOKED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Opinion by McGiverin, C.J. (10 pages \$4.00)

The main question here is what action is appropriate upon our de novo review of the report of our Grievance Commission in this attorney disciplinary proceeding involving respondent Dennis D. Peterson of Phoenix, Arizona. Based on Peterson's mishandling of clients' matters and his failure to respond to the Committee's notices regarding such matters, the Committee filed a complaint against Peterson alleging violations of various provisions of the Iowa Code of Professional Responsibility for Lawyers. The Grievance Commission filed its findings of fact, conclusions of law, and recommendation of an indefinite suspension of Peterson's license. **OPINION HOLDS:** In light of Peterson's numerous violations of the Code, his repeated failure to respond to the Committee's inquiries, and his previous record, we revoke Peterson's license to practice law in the courts of this state. Costs shall be taxed to Peterson.

No. 93-885. PODRAZA v. THE CITY OF CARTER LAKE.

Appeal from the Iowa District Court for Pottawattamie County, James M. Richardson, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Carter, Snell, and Andreasen, JJ. Opinion by Snell, J. (15 pages \$6.00)

This is an appeal by defendants from a jury verdict awarding damages to plaintiff Arlynda Podraza for wrongful removal of her privacy fence. Compensatory damages were awarded against the City of Carter Lake and compensatory and punitive damages against Gerald Waltrip. **OPINION HOLDS:** I. Waltrip and Carter Lake have failed to preserve error on most of their arguments challenging the awards of compensatory and punitive damages. In any event, there is no validity to defendants' punitive damages issue raised on appeal. II. The general text of defendants' issues on appeal is that the evidence is insufficient to support the claims of plaintiff. We find that the trial court did not err in submitting the issues to the jury. We award Podraza appellate attorney fees and affirm the judgment for attorney fees for trial court services.

No. 94-1070. COMMITTEE ON PROFESSIONAL ETHICS AND
CONDUCT v. HARRIS.

On review of the report of the Grievance Commission.
LICENSE SUSPENDED. Considered by Harris, P.J., and Carter,
Lavorato, Andreasen, and Ternus, JJ. Opinion by Harris, J.
(6 pages \$2.40)

Edward B. Harris of Davenport, Iowa, represented a husband in a dissolution proceeding. Harris failed to reserve the husband's claim of an interest in a family business for later litigation. The client's subsequent attempt to establish his right to a pension fund was denied because it had not been reserved. The wrong was compounded when Harris failed to advise his client of the court's action. Rather, Harris paid the client from his own funds, representing that the money had been awarded by the court. The client's action against a third party in federal district court was then dismissed because the third-party action did not belong to the client. Harris also withdrew most of the money from a trust account earmarked for other uses to apply toward attorney fees. When the client objected, Harris wrote him a check from the firm's trust account, which resulted in a conversion of funds belonging to other clients. Harris also failed to account for an expensive watch surrendered by the client as a credit toward legal fees. In another mistake of grave proportions, he did not cooperate with the ethics committee's investigation. The grievance commission recommended a one-month suspension based on the above facts. **OPINION HOLDS:** We agree with the committee that the sanction is inadequate. We are confronted with gross misconduct that demands a severe sanction, but we think it calls for something less than revocation. Harris' license to practice law is suspended indefinitely and shall not be reinstated for three years from the date of this opinion.

No. 93-624. STATE v. TAYLOR.

Appeal from the Iowa District Court for Polk County, I. Joel Pasternak, Judge. **AFFIRMED.** Considered by Harris, P.J., and Carter, Neuman, Andreasen, and Ternus, JJ. Per curiam.
(4 pages \$1.60)

The question in the present case is whether the actions of the defendant in displaying and threatening to use a hatchet against two employees of a community center constitutes an assault within the meanings of Iowa Code sections 708.1 and 708.2(3) (1993). **OPINION HOLDS:** We believe defendant's actions constitute an assault and affirm his conviction and sentence.

No. 94-341. **MONTGOMERY v. ROLSCREEN CO.**

Appeal from the Iowa District Court for Polk County, Dale B. Hagan, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Per curiam. (8 pages \$3.20)

Montgomery challenges the district court's order affirming the industrial commissioner's order that denied her claim for whole-body permanent partial disability benefits. The commissioner awarded her benefits for a scheduled injury under Iowa Code section 85.34(2) (1989). She contends (1) the commissioner's denial was arbitrary and unreasonable and (2) the scheduled injury provisions of section 85.34(2) violate the equal protection guarantees of the Iowa and United States Constitutions. **OPINION HOLDS:** I. In a decision filed today, Gilleland v. Armstrong Rubber Co., ___ N.W.2d ___ (Iowa 1994), we upheld the constitutionality of section 85.34(2) over similar challenges. Montgomery's constitutional challenges must fail. II. Montgomery claims the commissioner erred in failing to give Dr. Kienker's opinion greater weight than the opinion of Dr. Neff. We believe there is substantial evidence to support the industrial commissioner's reliance upon Dr. Neff's opinion that Montgomery's back pain was unrelated to her employment at Rolscreen despite Dr. Kienker's opinion to the contrary. We conclude the district court's order affirming the industrial commissioner's decision should be affirmed.

No. 93-1125. **STATE v. ALSPACH.**

Appeal from the Iowa District Court for Wright County, Mark S. Cady, Judge. **AFFIRMED.** Considered by Harris, P.J., and Carter, Neuman, Andreasen, and Ternus, JJ. Per curiam. (8 pages \$3.20)

At issue in the present case is whether the district court erred in failing to suppress allegedly involuntary statements made by the defendant during custodial interrogation by the police because he made those statements on the belief that he would achieve religious redemption. **OPINION HOLDS:** I. We find no hint of evidence in the record to suggest any coercive conduct on the part of the police. We believe the district court was correct in holding the defendant's confession was voluntary. II. We likewise find no merit in the defendant's argument that the district court erred in failing to preclude allegedly privileged conversations with his brother in violation of Iowa Code section 622.10 (1993). We affirm.

No. 93-1193. **THOMAS v. HANSEN.**

Appeal from the Iowa District Court for Woodbury County, Robert Clem, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Opinion by Harris, J. (9 pages \$3.60)

Hansen, a construction company, obtained an extensive construction contract with the plant, Iowa Beef Products, Inc. (IBP). Hansen in turn engaged Morgan for electrical work on the project. Morgan was prevented from separately contracting with IBP because Morgan carried no workers' compensation insurance, a requirement imposed by IBP for all contractors at the plant. Morgan arranged with Hansen to bill IBP through Hansen, who in turn paid Morgan. The only purpose of this arrangement was to allow Morgan to be covered by Hansen's insurance. Morgan's employee, Thomas, fell from an I-beam onto a cement floor from the height of about fifteen feet. He underwent an operation for a broken femur neck. Hansen and its workers' compensation insurer now appeal from a district court decision affirming the industrial commissioner's award of benefits but determining the award was not subject to indemnity rights. **OPINION HOLDS:** I. We agree that substantial evidence supports the finding that a joint venture existed between Hansen and Morgan. We reject Hansen's claim that any joint venture terminated prior to Thomas' injury. II. The district court did not err in concluding that substantial evidence supported the commissioner's finding that Thomas suffered an injury to his body as a whole. III. The district court was correct in holding the indemnity question was not time barred and was for its determination. IV. The district court erred in reversing the commissioner's allowance of indemnity.

No. 93-1950. **STATE v. JONES.**

Appeal from the Iowa District Court for Marshall County, Sandra J. Holien, District Associate Judge. **AFFIRMED.** Considered by Harris, P.J., and Carter, Neuman, Andreasen, and Ternus, JJ. Per curiam. (9 pages \$3.60)

In a search incident to arrest, police discovered an unloaded revolver and ammunition in a zippered pouch under the driver's seat of Randy Jones' pickup. The State charged Jones with carrying weapons in violation of Iowa Code section 724.4(1) (1993). The district court ruled the zippered pouch fell within the exceptions listed in section 724.4(4) as it was a "closed and fastened container" and dismissed the trial information. The State appeals. **OPINION HOLDS:** We agree with the district court that the zippered pouch in which Jones stored his revolver was a "closed and fastened container." The dismissal of Jones' trial information is affirmed.

No. 94-1099. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT
v. HUMPHREYS.

On review of the report of the Grievance Commission.
LICENSE REVOKED. Considered en banc. Opinion by Larson,
J. (10 pages \$4.00)

In 1991, this court temporarily suspended the license of Lloyd E. Humphreys of Dallas, Texas, following his conviction on five counts of federal income tax violations. The Committee on Professional Ethics and Conduct then charged Humphreys with four grounds for discipline under our Code of Professional Responsibility: (1) committing federal income tax violations, (2) commingling funds with clients, (3) improperly advancing money to a client, and (4) improperly entering into business with a client without full disclosures. Our Grievance Commission recommended a five-year suspension, giving the respondent credit for the time he had spent under the temporary suspension of 1991. OPINION HOLDS: I. We believe that the Committee sufficiently established the ethical violations alleged in all four counts of the complaint. We believe a combination of offenses that involve five criminal convictions (including four felonies), commingling, and improper business relationships with a client compels a revocation. We therefore revoke the respondent's license to practice law. Costs shall be taxed to respondent.

No. 94-1179. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT
v. MORRIS.

On review of the report of the Grievance Commission.
LICENSE SUSPENDED. Considered by McGiverin, C.J., and
Harris, Larson, Lavorato, and Snell, JJ. Opinion by
Larson, J. (5 pages \$2.00)

This is a review of a report by our Grievance Commission recommending suspension of license of the respondent, James B. Morris III of Des Moines, on allegations that he had neglected two probate matters and then failed to cooperate with the Committee on Professional Ethics and Conduct in its ensuing investigation. OPINION HOLDS: We agree with the Commission that the respondent has violated several of our disciplinary rules. The respondent has apparently not corrected his office procedures in probate matters, even though he was earlier reprimanded for similar conduct. We therefore suspend the respondent's license to practice law indefinitely with no possibility of reinstatement for three months from the filing of this opinion. Any application for reinstatement shall include a plan for the respondent's future practice in probate matters, by either declining employment in all probate cases or seeking the assistance of a qualified probate lawyer. In addition, he shall furnish proof that he has paid all inheritance tax penalty and interest attributed to his delay in filing any inheritance tax return. Costs are taxed to respondent.

No. 92-1925. ROACH v. CROUCH.

Appeal from the Iowa District Court for Buchanan County, Robert E. Mahan, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Lavorato, Neuman and Ternus, JJ. Opinion by Neuman, J. (9 pages \$3.60)

This interlocutory appeal challenges the district court's ruling that plaintiff Maurice Roach's claims to sole inventorship of a patent cannot be litigated in state court. In 1980, Roach and two colleagues formed Iowa Engineered Processes Corporation (IEPC) to develop, manufacture, and market a machine utilizing a "cascade" process for cleaning and deburring metal parts. The process was patented by Roach and his partners who thereafter assigned the patent to IEPC. In July 1986, the corporation sought a patent for improvements to the cascade process. The patent application designated Roach and defendant Brian Crouch, an IEPC employee, as co-inventors. Roach, claiming sole inventorship, protested the issuance of the patent in Crouch's name and refused to sign either the patent application or any assignment of his patent ownership rights to IEPC. Crouch made the application and assignment on behalf of both of them. In 1989, the Commissioner of Patents and Trademarks issued the patent, listing Roach and Crouch as co-inventors. Roach sought a declaratory judgment in federal court that he was the sole inventor and sole owner of the improved cleaning and deburring machine and process. The defendants moved to dismiss, arguing that Roach's claims rested on ownership rights in the patent that were matters of state law over which the federal court had no jurisdiction. The federal court sustained defendants' motion on the ground that Roach failed to establish a factual basis for federal jurisdiction. Roach proceeded to state court. Defendants moved for partial summary judgment contending that Roach's inventorship--as distinguished from ownership--claims were within the exclusive jurisdiction of the federal court. The Iowa district court ruled that it lacked subject matter jurisdiction over a case involving inventorship and the issuance of patents. It left for trial, however, the issue of Roach's ownership rights in his half of the joint inventorship. Roach claims on this interlocutory appeal that "inventorship equals ownership." He argues the court (1) erroneously declined to assume jurisdiction over the entire suit, and (2) erroneously refused to apply the doctrine of judicial estoppel to prevent the defendants from advancing inconsistent positions in state and federal court. **OPINION HOLDS:** I. We believe the district court correctly ruled that Roach's cause of action for correction of the patent arises under 35 U.S.C. § 256 and poses a substantial federal question, thus rendering federal jurisdiction exclusive. II. Neither an inconsistency nor a deliberate attempt to mislead was shown; therefore, application of the doctrine of judicial estoppel was properly refused.

No. 93-1339. MARSHALL v. STATE.

Appeal from the Iowa District Court for Jones County, William L. Thomas, Judge. STATE'S WRIT OF CERTIORARI SUSTAINED; MARSHALL'S WRIT OF CERTIORARI ANNULLED. Considered en banc. Per curiam. Concurrence in part and dissent in part by Neuman, J. (7 pages \$2.80)

Thomas Marshall and several other inmates were observed fighting at the Iowa Men's Reformatory. Prison disciplinary authorities charged him with fighting, disobeying a lawful order, and disruptive conduct. Marshall claimed self-defense. Before the disciplinary committee met, Marshall asked the prison investigator to obtain a witness statement from inmate Rodriguez, one of the men involved in the fight. The investigator spoke with Rodriguez but Rodriguez refused to comment on the altercation. The disciplinary committee found Marshall guilty as charged. Marshall then filed an application for postconviction relief. He claimed that the prison's refusal to inform him that Rodriguez's comment consisted of no comment at all effectively denied him of his right to call witnesses. He also claimed the disciplinary committee's application of a "some evidence" standard in finding him guilty violated due process. The district court found that any deprivation Marshall suffered over the prison's policy about witness statements was outweighed by institutional concerns over security. It found merit, however, in Marshall's complaint about the burden of proof applied by the disciplinary committee in its adjudication of guilt. The disciplinary decision was, accordingly, reversed. Both parties sought writs of certiorari, which this court granted. OPINION HOLDS: I. We are persuaded that requiring prison officials to reveal inmate witness's statements, even if such statements say "no comment," would be tantamount to allowing witness confrontation. The likelihood that such a practice could lead to inmate altercations justifies a prison policy denying the right for security reasons. We therefore annul Marshall's writ of certiorari. II. In Backstrom v. Iowa District Court for Jones County, 508 N.W.2d 705 (Iowa 1993), this court rejected the argument that use of a "some evidence" standard of proof by prison disciplinary committees violates due process. Backstrom is controlling on the State's petition for writ of certiorari. Accordingly, we sustain the writ. CONCURRENCE IN PART AND DISSENT IN PART ASSERTS: I join part I of the court's opinion, but I respectfully dissent from part II. The "some evidence" rule should be a standard for reviewing courts, not a standard of proof applicable to disciplinary authorities.

No. 93-1074. CHAPMAN'S GOLF CENTER v. CHAPMAN.

Appeal from the Iowa District Court for Linn County, Larry J. Conmey, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Opinion by Snell, J. (13 pages \$5.20)

A 1976 contract for the purchase of Chapman's Golf Center provided that Edward Cole and Andrea Day pay a down payment of \$75,000 with the balance of the \$450,000 purchase price to be paid to Gene and Ailee Chapman in quarterly installments. The interest rate for the first year was set at seven and three-eighths percent with the subsequent rate being calculated on the basis of one percent greater than the average prime interest rate. In 1980, during a time of rapidly rising interest rates, Ailee offered to have interest calculated on the basis of the prime rate only. Cole and Day subsequently made payments calculating interest on the basis of the prime rate. For the first time during the period of the contract the prime rate exceeded nine percent in January of 1979. In 1980 the prime rate reached fifteen percent. In April 1991 Chapman notified Cole and Day that they were in default and directed that the default be cured. Cole and Day subsequently made a claim that the interest rate was usurious. Chapman then commenced a foreclosure action and Cole and Day brought a specific performance action against Chapman. Chapman then requested attorney fees pursuant to the agreement. The two actions were consolidated. The district court determined that Cole and Day were in default and entered a judgment against them for the outstanding interest and principal. The court concluded that Chapman was entitled to interest as the parties had agreed upon in the original contract and subsequent modifications under the business exception to the usury law. Cole and Day appealed. On limited remand the district court entered a decree foreclosing the installment contract and awarded Chapman a judgment plus interest. Attorney fees and costs were awarded to Chapman. This court consolidated the two appeals. **OPINION HOLDS:** In 1976 when the contract was signed by the parties, the applicable interest rate fixed by statute was limited to nine percent. The record supports the trial court's finding that a modification of the contract interest rate binding all parties occurred in June 1980. The "business purpose" exception was then a part of the statutory usury law. The trial court properly found the transaction was for a business purpose and applied the usury exception of Iowa Code section 535(2)(a)(5). The business exception is not modified or supplanted by Iowa Code section 535.2(4)(a) which limits the interest rate based on government notes and bonds. The 1976 contract terms support the award of attorney fees.

No. 93-556. STATE v. LIGGINS.

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Andreasen, and Ternus, JJ. Opinion by Andreasen, J. (18 pages \$7.20)

Stanley Carter Liggins was convicted of murder first degree, willful injury, sexual abuse first degree, and kidnapping first degree. On appeal Liggins claims the Iowa court did not have jurisdiction to subject him to prosecution, the evidence was insufficient to support the convictions, and that the trial court erred in its pretrial rulings, in admitting evidence at trial over his objections, and in its instructions to the jury. **OPINION HOLDS:** I. We believe state territorial jurisdiction remains an essential element of the crime. Only if the jurisdictional facts are undisputed should the court determine the issue by pretrial order. The State is required to prove territorial jurisdiction beyond a reasonable doubt. The court's instruction on the statutory presumption of jurisdiction if a body is found within the state did not create a mandatory presumption shifting the burden of persuasion to Liggins. Although we conclude there was sufficient evidence to support a finding that Iowa had territorial jurisdiction to prosecute Liggins for murder, we do not find sufficient evidence on this issue to prosecute him on the other charges. The convictions on the other charges must be reversed. II. We conclude both testimonial and nontestimonial evidence provided by Liggins to the police was properly admitted at trial. III. We find there is sufficient circumstantial evidence in the record to corroborate the admissions made by Liggins to a cellmate. IV. We conclude there is substantial evidence to overcome Liggins' motion for judgment of acquittal on the murder charge. V. We further find, however, it was an abuse of discretion for the trial court to admit irrelevant evidence that Liggins was a cocaine supplier. Evidence against Liggins was not so overwhelming as to cause us to ignore the ruling on the basis of harmless error. We therefore must reverse the murder conviction and remand for retrial. VI. We address two further matters that may arise on retrial. We conclude the trial court did not abuse its discretion by allowing photographs of the victim's body or the rear portion of Liggins' car into evidence.

No. 93-557. METROPOLITAN JACOBSON DEVELOPMENT
VENTURE v. BOARD OF REVIEW.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge. **AFFIRMED AS MODIFIED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Andreasen, and Ternus, JJ. Opinion by Ternus, J.

(11 pages \$4.40)

Metropolitan Jacobson Development Venture and Washington Avenue Venture own commercial warehouse properties in the City of Des Moines. They challenged the assessments of these properties as excessive and inequitable. The property owners first sought relief from property tax assessments on McDonald Avenue and the East Washington properties in 1986, 1987, and 1988. In these earlier appeals, the property owners claimed that the properties were assessed at more than their market values. They also claimed that the ratio of assessed value to market value was higher for their properties than for comparable properties. The district court entered a decree establishing fair market values for the subject properties and comparable properties. Based on these findings, the court ordered that the assessed values be reduced. Shortly after the district court's initial decision the 1989 assessments for these properties were completed. The city did not change the assessments on any of the properties to the court-established values. When the 1989 assessments were appealed to the Board of Review, the city assessor instructed the deputy assessor to reassess the McDonald Avenue properties. The assessor's office then generated its own fair market values rather than using the lower values set by the district court. It also chose a ratio of assessed value to market value substantially higher than the one used by the court only two months earlier. As a result, the 1989 assessments were significantly higher than the 1988 assessments set by the court. No effort was made to correct the 1989 assessment on the East Washington property. In 1990, the city assessor assessed the McDonald Avenue properties the same as in 1989, but raised the assessment on the East Washington property. In 1991, each of the McDonald Avenue properties received a significant increase in assessment. The assessment on the East Washington property remained the same. The property owners appealed these assessments to the Board of Review. The Board reduced the 1991 assessment on the Washington Avenue property. The other assessments were not changed. The property owners then appealed to the district court. The district court concluded that the fair market values for all the properties remained the same in 1989 through 1991 as they had been in 1988. The court also decided that the properties were assessed at a higher percentage of their market value than any of the comparable properties. Consequently, it ordered the assessor to use a percentage no higher than the highest percentage used for any of the comparable properties in each year. The property owners appealed because they thought the assessed values should be even lower by using a smaller ratio of assessed value to market value. The Board cross-appealed because it believed the court should have found an increase in the market values of these properties in 1991. **OPINION HOLDS:** I. We agree with the district court that the market values of these properties are the values established by the district court in the first appeal. Because the 1991 assessments exceed these market values, we conclude that the property owners carried their burden to prove that the assessed values on these properties were excessive. II. Equality in property taxation requires at a minimum equality within a class of property, not just within a representative group of comparable properties chosen by the parties. We look to

No. 93-557. METROPOLITAN JACOBSON DEVELOPMENT
VENTURE v. BOARD OF REVIEW (continued).

all commercial properties in fixing a fair market-to-assessed-value ratio for the subject properties. The Board introduced evidence of the median ratio of market value to assessed value for all commercial properties in the City of Des Moines for 1989 and 1991. We adopt these ratios as fair and equitable percentages to be applied to the market values of the subject properties for purposes of determining their assessed values. We modify the district court's decision accordingly.

No. 93-1065. ANDERSON v. W. HODGEMAN & SONS, INC.

Appeal from the Iowa District Court for Lyon County, Tom Hamilton, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Andreasen, and Ternus, JJ. Opinion by Ternus, J. Special concurrence by Neuman, J. (8 pages \$3.20)

Ronda Anderson was injured in an automobile accident in Lyon County during the course of her employment with W. Hodgeman & Sons, Inc. (Hodgeman). Anderson filed a petition with the industrial commissioner more than two years after the accident. Hodgeman's motion for summary judgment based on its limitations defense was granted by the industrial commissioner. No hearing was held. Anderson filed a petition for judicial review in Lyon County. Hodgeman filed a motion to change venue, claiming that Lyon County was not the proper county for judicial review. At the hearing on its motion, Hodgeman orally moved to dismiss Anderson's petition on the ground that the Lyon County district court did not have power to transfer the case. The district court ruled that Lyon County was not the proper venue for Anderson's administrative appeal. The court refused to dismiss the case, however, and instead transferred it to Polk County. Hodgeman was granted permission to take an interlocutory appeal. **OPINION HOLDS:** I. Under the statutory framework of Iowa Code sections 86.17, 86.26 and 17A.19(2), Anderson theoretically had three counties in which to petition for judicial review: (1) Polk County; (2) the county in which she resided; and (3) the county in which the hearing was held. At the time Anderson filed her petition for judicial review, she lived in Minnesota, so option two was not available to her. Option three was also not available because no hearing was held in Anderson's workers compensation case. We conclude the only county where Anderson could petition for judicial review was Polk County. The district court was correct in so ruling. II. Because the filing of a judicial review petition in the proper county is a jurisdictional requirement, section 17A.19(2) does not give the district court for Lyon County the power to transfer Anderson's case to the proper county. Iowa Rule of Civil Procedure 175(a), as a general rule governing venue of original actions, has no application to administrative appeals. Consequently, rule 175(a) did not give the district court power to transfer the case to Polk County. The district court erred in transferring this case. We reverse and remand to the district court with directions to grant the appellants' motion to dismiss. **SPECIAL CONCURRENCE ASSERTS:** I agree that the result reached by the majority is compelled by precedent. But to the extent that the opinion on the venue issue extends its reach beyond chapter 17A judicial review proceedings, I am reluctant to join it.

No. 93-681. STATE v. KJOS.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Warren County, John P. Crouch, District Associate Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT REVERSED AND REMANDED.** Considered by Harris, P.J., and Carter, Neuman, Andreasen, and Ternus, JJ. Opinion by Ternus, J. Dissent by Neuman, J.

(7 pages \$2.80)

At his OWI trial, Kjos argued that the results of a breath test he took were inadmissible because the police officer requesting the test erroneously told him he would lose his license if he did not agree to the test. The district court admitted the test results at trial. The jury convicted Kjos of OWI. The court of appeals affirmed his conviction and we granted further review. **OPINION HOLDS:** Under Iowa Code section 321J.6(2) a person offered a chemical test more than two hours after his arrest can refuse the test without risk of license revocation. We hold if the test is offered more than two hours after the defendant's arrest and the defendant's consent is obtained by the false threat of license revocation, then the test results must be excluded. The trial court erred in admitting the results of Kjos' breath test. **DISSENT ASSERTS:** The officer's tardy use of the form did not render Kjos' consent involuntary. Even if this case turned strictly on a statutory violation, exclusion of competent evidence would not be the appropriate remedy. Lack of compliance with the chapter's dictates has heretofore resulted in licensing concessions, not exoneration of criminal penalties. Such an extraordinary remedy should be reserved for situations evidencing bad faith by the State's agents or violation of a statute with constitutional overtones. Iowa Code section 321J.18 specifically permits introduction of test results procured more than two hours after arrest notwithstanding other provisions of chapter 321J. I would affirm.

No. 93-1441. IN RE M.G.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Muscatine County, James A. Weaver, District Associate Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by Harris, P.J., and Carter, Neuman, Andreasen, and Ternus, JJ. Per curiam. (6 pages \$2.40)

In this child-in-need-of-assistance action, we must decide whether the best interests of the minor children require the continuation of foster care, as ordered by the district court, or transfer of custody and guardianship to their maternal grandmother, as directed by the court of appeals. We must also review the conflicting decisions of the district court and court of appeals concerning whether the State should be ordered to file a petition for termination of the mother's parental rights. **OPINION HOLDS:** I. The mother's minimal efforts to improve her parenting skills were unsuccessful. Therefore, the children cannot be returned to her custody and it is appropriate to proceed with termination of her parental rights. II. The record shows that both the grandmother and the foster parents have the ability to care for the children. The children's grandmother and brother are strangers to them, whereas there is significant bonding between the girls and their foster parents. We think the circumstances here warrant a departure from our policy of keeping siblings together. The potential for the mother to influence

No. 93-1441. IN RE M.G. (continued)

and interfere with the grandmother's care of the children is another factor we consider. We agree with the district court that the foster parents will best be able to provide a stable, nurturing environment for these children pending the outcome of the termination of parental rights proceeding and any subsequent adoption action.

No. 93-1651. VENARD v. WINTER.

Appeal from the Iowa District Court for Pottawattamie County, James M. Richardson, Judge. **AFFIRMED IN PART AND REVERSED IN PART AND REMANDED.** Considered by McGiverin, C.J., and Larson, Carter, Lavorato, and Snell, JJ. Opinion by Lavorato, J. (9 pages \$3.60)

Michael Winter represented William Venard in an action to foreclose a mechanic's lien regarding improvements to Venard's property. The property was then sold at a sheriff's sale and was never redeemed within the one-year redemption period. Venard sued Winter for legal malpractice. In his petition Venard alleged, among other things, that (1) pursuant to an oral agreement Venard employed Winter to represent him in the foreclosure action; (2) Venard had the money to redeem the property but Winter told him to wait until just before the expiration of the redemption period to do so; (3) through Winter's efforts, Venard and the party who purchased the property agreed that Venard would redeem the property before the expiration of the one-year period of redemption and that Venard would be notified to do so before then; and (4) despite Winter's continued representation of Venard, Winter did not take the necessary steps to complete the redemption of the property before the redemption period expired. Winter filed a motion for summary judgment claiming Venard failed to comply with the time requirements for expert witness designation in Iowa Code section 668.11. Before the court could rule, Venard voluntarily dismissed his action pursuant to Iowa Rule of Civil Procedure 215. Five days later, Venard filed this action. The petition is identical to the petition in the first action with the exception that he now alleges additional theories. Winter filed a motion to dismiss the petition based on two grounds. First, the present action is barred by the two-year statute of limitations in Iowa Code section 614.1(2). Second, the present action should be dismissed because the first action was dismissed after Venard failed to designate expert witnesses within the time requirements of section 668.11. The district court concluded that the five-year statute of limitations for unwritten contracts in Iowa Code section 614.1(4) applied and overruled Winter's first ground for dismissal. The court agreed as to Winter's second ground and sustained the motion. Venard appeals. **OPINION HOLDS:** I. Iowa Code section 614.1(4)'s five-year statute of limitations governs this legal malpractice case. We affirm that part of the district court's ruling denying Winter's motion to dismiss on this ground. II. Venard had an absolute right under Iowa Rule of Civil Procedure 215 to dismiss without prejudice his first legal malpractice action against Winter despite Venard's failure to designate expert witnesses within the time allowed under section 668.11. We reverse that part of the district court's ruling sustaining Winter's motion to dismiss Venard's petition on this ground. We remand for further proceedings consistent with this opinion.

No. 93-1058. RANDOL v. ROE ENTERPRISES.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Clarke County, Dale B. Hagen, Judge. **COURT OF APPEALS DECISION VACATED; DISTRICT COURT ORDER REVERSED; REMANDED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Opinion by Lavorato, J. (6 pages S2.40)

The court of appeals affirmed a district court order granting summary judgment to Roe Enterprises, Inc. in Randol's comparative fault slip and fall action. We granted further review. **OPINION HOLDS:** We think the district court erroneously discounted the probative value of the circumstantial evidence which generated a genuine issue of material fact on proximate cause in this case. Affording Randol every legitimate inference reasonably deducible from the evidence, a reasonable mind could conclude that she fell at Roe's gas station as a result of stepping off a paved surface onto a lower graveled surface. We vacate the court of appeals decision and reverse the district court order. We remand for further proceedings consistent with this opinion.

No. 93-1298. VENARD v. FLEMING.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Pottawattamie County, James M. Richardson, Judge. **DECISION OF COURT OF APPEALS AFFIRMED IN PART; DISTRICT COURT RULING REVERSED IN PART; REMANDED WITH INSTRUCTIONS.** Considered by McGiverin, C.J., and Larson, Carter, Lavorato, and Snell, JJ. Per curiam. (3 pages S1.20)

Venard filed a legal malpractice action against Fleming regarding Fleming's representation of Venard in a mechanic's lien foreclosure proceeding. Venard voluntarily dismissed the first action after Fleming filed a motion for summary judgment grounded on Venard's failure to designate expert witnesses within the time required by Iowa Code section 668.11 (1989). Four days after Venard voluntarily dismissed the first action, he filed the present action which is identical to the first one. Fleming filed a motion to dismiss. The district court granted the motion on the ground that a former dismissal after failing to designate experts as required by Iowa Code section 668.11 bars a second identical action. The district court did not rule on the statute of limitations issue. On appeal, the court of appeals reversed the district court ruling on the voluntary dismissal issue. The court of appeals also concluded that the five-year limitation period in section 614.1(4), rather than the two-year limitation period in section 614.1(2), applied. We granted further review. **OPINION HOLDS:** I. In a companion case filed today, Venard v. Winter, __ N.W.2d __ (1994), we held that Venard had an absolute right under Iowa Rule of Civil Procedure 215 to dismiss without prejudice his legal malpractice action against Winter despite Venard's failure to designate his expert witnesses within the time allowed under section 668.11. We also held that Iowa Code section 614.1(4)--the five-year statute of limitations--governed the case. Because Venard raises issues identical to those in Winter, that case controls our decision here. We therefore affirm the decision of the court of appeals as to the voluntary dismissal issue. The district court ruling on this issue is reversed and the case is remanded with instructions to reinstate Venard's petition. Although there was no issue preserved regarding the statute of limitations question, we think the court of appeals correctly concluded that the five-year statute of limitations applied.

No. 93-1504. THOMPSON v. STATE.

Appeal from the Iowa District Court for Lee County, William Dowell, Judge. AFFIRMED. Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Per curiam. (7 pages \$2.80)

Thompson challenges the order denying his application for postconviction relief from prison disciplinary action. Thompson was originally sentenced to up to ten years in 1982. In 1986 Thompson was sentenced to another ten-year term to be served consecutive to his original term. He claims the district court erred in finding prison officials had the authority to carry over disciplinary detention received during his first ten-year term into his second term. He also claims he should have the right to appeal from the denial of his application for postconviction relief. OPINION HOLDS: I. Thompson correctly asserts he may appeal to this court as a matter of right. II. We conclude the district court correctly determined Iowa Code section 901.8 (1993) requires that consecutive sentences be treated as one sentence for disciplinary detention purposes. The district court's decision is affirmed.

No. 93-1386. SPAULDING v. EMCO INDUSTRIES.

Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer, Judge. AFFIRMED. Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Per curiam. (6 pages \$2.40)

Susan Spaulding challenges the district court's order affirming the industrial commissioner's decision which denied her claim for additional workers' compensation benefits. She contends the scheduled injury provisions of Iowa Code section 85.34(2) (1993) violate equal protection guarantees of the Iowa and United States Constitutions. She also contends the industrial commissioner erred in finding no causal connection between her work-related injury and a subsequently discovered fracture to the same arm. OPINION HOLDS: I. Based on our decision filed today, Gilleland v. Armstrong Rubber Co., ___ N.W.2d ___ (Iowa 1994), Spaulding's constitutional challenge must fail. II. We believe the industrial commissioner's decision denying Spaulding additional workers' compensation benefits is supported by substantial evidence. Accordingly, we affirm.

No. 93-1029. **LEKUTIS v. UNIVERSITY OF OSTEOPATHIC
MEDICINE.**

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge. **REVERSED AND REMANDED WITH INSTRUCTIONS.** Considered by McGiverin, C.J., and Lavorato, Neuman, Andreasen and Ternus, JJ. Opinion by Neuman, J.
(13 pages \$5.20)

Plaintiff Craig Lekutis enrolled in the College of Osteopathic Medicine and Surgery (COMS) of defendant University of Osteopathic Medicine and Health Sciences in August 1985. Although he was academically successful, irrational and disruptive behavior at the college contributed to the college's insistence that he take a one-year leave of absence. Readmission was conditioned on a positive medical evaluation and proof of regular psychiatric care. Although he showed continued academic success upon his return, Lekutis received a failing grade on the family practice clinical rotation and was unable to complete a hospital rotation due to his inability to interact appropriately with patients and staff. He was advised to withdraw from a second family practice rotation and take an incomplete rather than face certain failure and dismissal. Lekutis did not ask to withdraw and he was dismissed from the college. Lekutis unsuccessfully appealed his dismissal through university channels before proceeding to district court. His petition asserted that the college's decision to dismiss him breached an express and implied contract to provide the instruction and clinical training necessary to complete his osteopathic medicine studies. The district court concluded that school administrators had fostered an atmosphere of prejudice against Lekutis, violated written procedures concerning evaluations and remediation of failed rotations, and generally failed to exercise the level of professional judgment demanded of such situations. The court ordered the college to reinstate him as a student in good standing and offer him "a full and fair opportunity to repeat the family practice clinical rotation." The college has appealed. **OPINION HOLDS:** I. We reject Lekutis' characterization of his dismissal as nonacademic. The fact that Lekutis' failure stemmed from gross lack of interpersonal skills, rather than any intellectual deficit, in no way alters the nature of the inquiry. To the extent that the court's abbreviated expression of the rule requiring deference to be given to the college's academic dismissal decision effectively lowered Lekutis' burden of proof, the court was in error. II. We are convinced that the college's dismissal action neither substantially departed from accepted academic norms nor demonstrated an absence of professional judgment. We find ample evidence that, over the course of three years, the college evaluated Lekutis' fitness to practice medicine and found him grossly lacking in the crucial area of patient care. It was wise

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for the school to recognize his failures and hold him accountable for them despite an outstanding record in his didactic studies. We therefore reverse the judgment of the district court and remand for entry of judgment dismissing Lekutis' claims against COMS and the university.

No. 92-1868. **IN RE MARRIAGE OF HARVEY.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Mahaska County, James P. Rielly, Judge. **DECISION OF COURT OF APPEALS AND DISTRICT COURT JUDGMENT AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Opinion by Harris, J. (6 pages \$2.40)

The marriage of Barbara and Charles Harvey was dissolved in 1986. Barbara was awarded primary physical care of the minor child, and Charles was ordered to pay child support. The child subsequently asked to live with Charles. Barbara agreed to allow the child to stay with Charles. The parties agreed that Charles would not ask Barbara for child support while the child stayed with him. Barbara also agreed to periodically execute release and satisfaction of judgments on Charles' child support obligation. Over three years later, the child returned and Barbara initiated proceedings to recover allegedly delinquent child support for the time the child lived with Charles. The district court denied Barbara's request, eventually relying on the doctrine of equitable estoppel. The matter is before us on further review of a court of appeals decision affirming the district court judgment. **OPINION HOLDS:** I. We agree with Barbara that Iowa Code section 598.21(8)(1) overrules case law which previously held that divorced parents may contract between themselves as to the support of their minor child. II. The statute should not bar the doctrine of equitable estoppel here because to do so would be inappropriate and at variance with the intent of the legislature. We find Charles proved each element of promissory estoppel. Barbara's support claims are therefore barred by that doctrine. We strongly emphasize the limits of our holding.

No. 93-1309. FISHER CONTROLS INTERNATIONAL v. MARRONE

Appeal from the Iowa District Court for Marshall County, Dale E. Ruigh, Judge. **AFFIRMED.** Considered by Carter, P.J., and Lavorato, Neuman, Andreasen, and Ternus, JJ. Opinion by Carter, J. (5 pages \$2.00)

Michael Marrone's employment with Fisher Controls was terminated as part of an overall staff reduction. He then entered into a "severance agreement" that required him to return the gross amount of the "severance pay" upon initiating any legal action relating to his employment. Later, Marrone filed a civil rights complaint with the Iowa Civil Rights Commission, alleging age discrimination against Fisher. As a result, Fisher demanded that Marrone repay his severance pay. Marrone refused. In Fisher's action to recover the lump-sum severance payment, it specifically alleged that the subject of Marrone's civil rights complaint was age discrimination in the termination of his employment. The district court granted summary judgment in favor of Fisher for the amount of Marrone's lump-sum severance pay plus interest. Marrone appealed. **OPINION HOLDS:** The district court correctly concluded that, based on the state of the pleadings at the time that motion was decided, it stood admitted that Marrone's complaint to the Iowa Civil Rights Commission included a challenge to his termination of employment. The filing of a complaint with the Iowa Civil Rights Commission was the equivalent of "initiating any legal action against Fisher" as contemplated in the agreement, which triggered Fisher's right to recoupment of the lump-sum severance pay tendered to Marrone. Neither the district court's ruling on Fisher's entitlement to return of the severance pay nor our decision affirming that ruling reflect on the validity of a release clause in the agreement between the parties.

No. 93-1451. HANIGAN v. HEDSTROM CONCRETE PRODUCTS.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Opinion by Larson, J. (5 pages \$2.00)

Thomas E. Hanigan was injured as a truck driver for Hedstrom Concrete Products, Inc. Hanigan was an intermittent employee, working only when Hedstrom's own truck drivers could not keep up with the work. The question on appeal is whether the industrial commissioner correctly computed his loss of income for workers' compensation benefits. The district court held that the computation was correct, and Hedstrom and its insurance carrier appealed. **OPINION HOLDS:** Hanigan did not produce evidence of what a

No. 93-1451. HANIGAN v. HEDSTROM CONCRETE PRODUCTS (continued).

truly similar employee would have earned. It therefore would be difficult to formulate a fairer test for a wage basis than to average the wages actually received by the employee. It was not error for the commissioner to adopt an averaging test in interpreting and applying Iowa Code sections 85.36(6) and (7). We affirm.

No. 93-380. STATE v. ROJAS.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Woodbury County, Dewie Gaul, Judge. **DECISION OF COURT OF APPEALS AND DISTRICT COURT JUDGMENT AFFIRMED.** Considered by Harris, P.J., and Carter, Neuman, Andreasen, and Ternus, JJ. Opinion by Andreasen, J. Dissent by Carter, J. (12 pages \$4.80)

Rene Rojas was convicted in a bench trial of three counts of sexual abuse in the second degree and one count of indecent contact with a child for abusing his ten-year-old daughter B.R. During the investigation of the abuse, B.R. was interviewed by a social worker, Katie Boley. B.R. indicated to Boley that her father had sexually abused her. At trial B.R. recanted these previous allegations. B.R. said she had not told the truth because she had been threatened. The State sought to admit the videotape of B.R.'s interview with Boley under Iowa Rule of Evidence 803(24) and Iowa Code section 910A.14(3) (1993). Finding the videotape to be trustworthy, the court admitted it under the residual exception to the hearsay rule. Rojas appealed, challenging the admissibility of the videotaped evidence. The court of appeals affirmed and we granted Rojas' application for further review. **OPINION HOLDS:** I. We disagree with Rojas' argument that the State committed a Turecek violation by calling B.R. to testify solely for the purpose of admitting the videotape interview to impeach her recantation. Regardless of whether B.R. testified, the videotape would have been admissible under rule 803(24). II. We read section 910A.14(3) as making it clear that the residual exception to the hearsay rule may be used to admit statements made by a child sex abuse victim when the requirements of the exception are met. The statute does not change the analysis under rule 803(24). III. We find the videotape met the requirements for admissibility under rule 803(24). IV. Although we do not equate the Constitutional requirement with the hearsay rule, in this case we believe the reasons supporting our finding that the videotape was trustworthy for rule 803(24) purposes also support our finding that there was sufficient indicia of reliability to satisfy the requirements of the Confrontation Clause. We affirm. **DISSENT ASSERTS:** I am not disposed to invoke the residual hearsay exception in instances in which the declarant has testified personally at trial.

No. 93-965. GILLELAND v. ARMSTRONG RUBBER CO.

Appeal from the Iowa District Court for Polk County, Michael J. Streit, Judge. **AFFIRMED.** Considered en banc. Per curiam. Special concurrence by Lavorato, J.

(13 pages \$5.20)

Gilleland appeals from a district court order affirming the industrial commissioner's denial of his claim for additional workers' compensation benefits. He contends the scheduled injury provisions of Iowa Code section 85.34(2) (1993) violate the equal protection guarantees of the Iowa and United States Constitutions. He also contends the industrial commissioner erred in giving inordinate weight to the opinion of his treating physician and in failing to reopen the record for additional evidence. **OPINION HOLDS:** I. We reject Gilleland's claims that his challenge to section 85.34(2) should be subject to strict scrutiny. We need only apply the rational basis analysis to Gilleland's alleged constitutional violation. II. Gilleland is correct that a disparity exists between the compensation for scheduled and nonscheduled injuries. However, we believe a rational basis exists for the application of the scheduled injury provisions of section 85.34(2). They reduce controversies through certainty of compensation. Because a rational basis for the scheduled injury provisions exists, we conclude Gilleland's equal protection challenge must fail. III. We reject Gilleland's claim that the industrial commissioner improperly gave the treating physician's opinion greater weight than the opinion of the physician who saw Gilleland once for the purpose of an independent examination. IV. We believe the industrial commissioner was within its discretion in not allowing new evidence to be introduced through an appellate brief. **SPECIAL CONCURRENCE ASSERTS:** I reluctantly agree that the scheduled injury provision is not subject to the constitutional infirmity that Gilleland asserts. Nevertheless, I write separately to express my agreement with a prior concurring opinion that this provision is grossly unfair. The scheduled injury provision is also out of step with recent developments in workers' compensation law. Our court has been chipping away at the unfairness of this provision. The legislature should complete the process we have begun by getting in step with the modern trend to make the scheduled injury provision more fair.

No. 93-1286. WELLSBURG-STEAMBOAT ROCK COMMUNITY SCHOOL DISTRICT v. IOWA DEPARTMENT OF EDUCATION

Appeal from the Iowa District Court for Grundy County, L.D. Lybbert, Judge. **AFFIRMED.** Considered en banc. Opinion by Carter, J. Dissent by Ternus, J.

(12 pages \$4.80)

The Wellsburg Community School District and the Steamboat Rock Community School District began whole-grade sharing in the fall of the 1986-87 school year. As a result, these districts were made eligible for supplemental weighted enrollment school aid funding for the 1987-88, 1988-89, 1989-90, 1990-91, and 1991-92 school years pursuant to Iowa Code section 442.39(2). Prior to November 30, 1990, these two school districts initiated action to bring about a reorganized (merged) district. Following elections, that proposal was approved in 1991, effective for the 1992-93 school year. In the fall of 1991, following final approval of the reorganization, the merged district applied to the Iowa Department of Education (agency) for the first of five additional years of supplemental weighted enrollment funding for which it claimed entitlement under Iowa Code section 442.39A. The agency denied that application. It ruled that application for the additional supplemental weighting authorized by section 442.39A must be made within the time that the individual districts remained eligible to apply for supplemental weighting under section 442.39(2). Because that time had expired, the application was deemed to be untimely. In reversing that determination, the district court found that the agency acted in violation of the controlling statutes. The agency appeals. **OPINION HOLDS:** We agree that the legislature conditioned supplemental weighting under section 442.39A upon reorganization efforts being initiated within a prescribed period of time. We conclude, however, that the two school districts involved in this proceeding did take action within the time established by section 442.39A to bring about a reorganization. Our reading of section 442.39A suggests that the only language establishing a time limit for reorganization as a condition to additional supplemental weighting is the requirement that "the school district [has] initiated an action prior to November 30, 1990, to bring about a reorganization." Because the agency readily concedes that the Wellsburg

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District and the Steamboat Rock District initiated action to effect a reorganized district prior to November 30, 1990, the legislature's time limitation has been satisfied. The legislature abandoned the time of completion of a school reorganization as a condition upon which supplemental weighting eligibility is to be determined. We do not believe that a predictable consequence of the time of reorganization should defeat petitioner's eligibility in the present case. **DISSENT ASSERTS:** The record indisputably shows that pupils were not added in the year preceding the reorganization. Section 442.39A does not allow the computation of funding for a reorganized district to be based on pupils added two years earlier or school aid received one year earlier. That interpretation is not only inconsistent with the unambiguous language of the statute, it is contrary to the historical method of computing state foundation aid.

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