

MAR 13 1988

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DES MOINES, IOWA



# IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XI  
March 8, 1989

NUMBER 18  
Pages 1629 to 1708

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## PREFACE

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

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

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

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

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

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

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### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
19	Friday, March 3, 1989	March 22, 1989
20	Friday, March 17, 1989	April 5, 1989
21	Friday, March 31, 1989	April 19, 1989

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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, 1988, to June 30, 1989	\$160.95 plus \$6.45 sales tax
Second quarter	October 1, 1988, to June 30, 1989	\$120.45 plus \$5.01 sales tax
Third quarter	January 1, 1989, to June 30, 1989	\$ 81.40 plus \$3.26 sales tax
Fourth quarter	April 1, 1989, to June 30, 1989	\$ 40.70 plus \$1.63 sales tax

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

### Iowa Administrative Code

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

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(Price includes 16 volumes of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders can be purchased for \$3.30 plus \$0.13 tax.)

**Iowa Administrative Code Supplement** - \$255.20 plus \$10.21 sales tax

(Subscription expires June 30, 1989)

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

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

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## Schedule for Rule Making 1989

FILING DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 6	Jan. 25	Feb. 14	Mar. 1	Mar. 22	Apr. 26	July 24
Jan. 20	Feb. 8	Feb. 28	Mar. 15	Apr. 5	May 10	Aug. 7
Feb. 3	Feb. 22	Mar. 14	Mar. 29	Apr. 19	May 24	Aug. 21
Feb. 17	Mar. 8	Mar. 28	Apr. 12	May 3	June 7	Sep. 4
Mar. 3	Mar. 22	Apr. 11	Apr. 26	May 17	June 21	Sep. 18
Mar. 17	Apr. 5	Apr. 25	May 10	May 31	July 5	Oct. 2
Mar. 31	Apr. 19	May 9	May 24	June 14	July 19	Oct. 16
Apr. 14	May 3	May 23	June 7	June 28	Aug. 2	Oct. 30
Apr. 28	May 17	June 6	June 21	July 12	Aug. 16	Nov. 13
May 12	May 31	June 20	July 5	July 26	Aug. 30	Nov. 27
May 26	June 14	July 4	July 19	Aug. 9	Sep. 13	Dec. 11
June 9	June 28	July 18	Aug. 2	Aug. 23	Sep. 27	Dec. 25
June 23	July 12	Aug. 1	Aug. 16	Sep. 6	Oct. 11	Jan. 8 '90
July 7	July 26	Aug. 15	Aug. 30	Sep. 20	Oct. 25	Jan. 22 '90
July 21	Aug. 9	Aug. 29	Sep. 13	Oct. 4	Nov. 8	Feb. 5 '90
Aug. 4	Aug. 23	Sep. 12	Sep. 27	Oct. 18	Nov. 22	Feb. 19 '90
Aug. 18	Sep. 6	Sep. 26	Oct. 11	Nov. 1	Dec. 6	Mar. 5 '90
Sep. 1	Sep. 20	Oct. 10	Oct. 25	Nov. 15	Dec. 20	Mar. 19 '90
Sep. 15	Oct. 4	Oct. 24	Nov. 8	Nov. 29	Jan. 3 '90	Apr. 2 '90
Sep. 29	Oct. 18	Nov. 7	Nov. 22	Dec. 13	Jan. 17 '90	Apr. 16 '90
Oct. 13	Nov. 1	Nov. 21	Dec. 6	Dec. 27	Jan. 31 '90	Apr. 30 '90
Oct. 27	Nov. 15	Dec. 5	Dec. 20	Jan. 10 '90	Feb. 14 '90	May 14 '90
Nov. 10	Nov. 29	Dec. 19	Jan. 3 '90	Jan. 24 '90	Feb. 28 '90	May 28 '90
Nov. 24	Dec. 13	Jan. 2 '90	Jan. 17 '90	Feb. 7 '90	Mar. 14 '90	June 11 '90
Dec. 8	Dec. 27	Jan. 16 '90	Jan. 31 '90	Feb. 21 '90	Mar. 28 '90	June 25 '90
Dec. 22	Jan. 10 '90	Jan. 30 '90	Feb. 14 '90	Mar. 7 '90	Apr. 11 '90	July 9 '90

20 days from the publication date is the **minimum** date for a public hearing or cutting off public comment.

35 days from the publication date is the **earliest** possible date for the agency to consider a noticed rule for adoption. It is the regular effective date for an adopted rule.

180 days See 17A.4(1)"b." If the agency does not adopt rules within this time frame, the Notice should be terminated.

## NOTICE

Rules will not be accepted after 12 o'clock noon on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

## UNIFORM RULES OF STATE AGENCY PROCEDURE

Governor Terry E. Branstad appointed a nine-member Task Force in the summer of 1985 to draft uniform rules of agency procedure.

On December 5, 1986, the Task Force presented a report to the Governor. The Governor has accepted the Task Force recommendations on agency procedure for rule making which have been printed at the front of the Iowa Administrative Code for adoption by state agencies. [Green Tab — Uniform Rules]

## To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]</b> Emergency shelter grants, 24.3, 24.4 IAB 3/8/89 ARC 9730	Conference Room Economic Development Department 200 E. Grand Ave. Des Moines, Iowa	March 28, 1989 10 a.m.
<b>ELDER AFFAIRS DEPARTMENT[321]</b> Small business regulatory flexibility analysis, Entrepreneurial activities of area agencies on aging, 6.14 IAB 3/8/89 ARC 9731 (See IAB 7/27/88 ARC 9031)	Department Offices 914 Grand Ave. 236 Jewett Bldg. Des Moines, Iowa	March 10, 1989 10 a.m.
<b>ENVIRONMENTAL PROTECTION COMMISSION[567]</b> Financial responsibility for underground storage tanks, 135.3(3)"d"(3), ch 136 IAB 2/22/89 ARC 9685	Conference Room Fifth Floor Wallace State Office Bldg. Des Moines, Iowa	March 16, 1989 1 p.m.
<b>HUMAN SERVICES DEPARTMENT[441]</b> ADC electronic benefits transfer, amendments to chs 40, 41, 43, 45, 46 IAB 3/8/89 ARC 9715	Cedar Rapids District Office Conference Room—6th Floor 221 4th Ave., S.E. Cedar Rapids, Iowa Council Bluffs District Office 417 E. Kaneshville Blvd. Lower Level Council Bluffs, Iowa Davenport District Office Conference Room—5th Floor 428 Western Ave. Davenport, Iowa Des Moines District Office City View Plaza Conference Room 100 1200 University Des Moines, Iowa Mason City District Office Mohawk Square 22 North Georgia Ave. Mason City, Iowa Ottumwa District Office First Floor Conference Room 226 West Main Ottumwa, Iowa Sioux City District Office Suite 615-617 507-7th Street Sioux City, Iowa Waterloo District Office Black Hawk County Conference Room 2nd Floor—KWWL Bldg. 500 East 4th Waterloo, Iowa	March 29, 1989 10 a.m.  March 29, 1989 10 a.m.  March 29, 1989 10 a.m.  March 29, 1989 1 p.m.  March 29, 1989 1 p.m.  March 29, 1989 10 a.m.  March 29, 1989 1 p.m.  March 29, 1989 1 p.m.

**HUMAN SERVICES DEPARTMENT[441] (cont'd)**

Application and investigation, health maintenance organizations, amendments to chs 76, 88 IAB 2/22/89 ARC 9693	Cedar Rapids District Office Conference Room—6th Floor 221 4th Ave., S.E. Cedar Rapids, Iowa	March 20, 1989 10 a.m.
	Council Bluffs District Office 417 E. Kanesville Blvd. Lower Level Council Bluffs, Iowa	March 17, 1989 10 a.m.
	Davenport District Office Conference Room—5th Floor 428 Western Ave. Davenport, Iowa	March 17, 1989 10 a.m.
	Des Moines District Office City View Plaza Conference Room 100 1200 University Des Moines, Iowa	March 20, 1989 1 p.m.
	Mason City District Office Mohawk Square 22 North Georgia Ave. Mason City, Iowa	March 17, 1989 10 a.m.
	Ottumwa District Office First Floor Conference Room 226 West Main Ottumwa, Iowa	March 16, 1989 10 a.m.
	Sioux City District Office Suite 615-617 507-7th Street Sioux City, Iowa	March 17, 1989 1 p.m.
	Waterloo District Office Black Hawk County Conference Room 2nd Floor—KWWL Bldg. 500 East 4th Waterloo, Iowa	March 17, 1989 10 a.m.
Amount, duration and scope of medical and remedial services, intermediate care facilities, 78.12, 81.3 IAB 2/22/89 ARC 9691	Des Moines District Office City View Plaza Conference Room 100 1200 University Des Moines, Iowa	March 16, 1989 1 p.m.
<b>JOB SERVICE DIVISION[345]</b>		
Employer's contribution and charges, claims and benefits, benefit payment control, appeals procedure, amendments to chs 3, 4, 5, 6, IAB 2/22/89 ARC 9687	Division of Job Service 1000 East Grand Ave. Des Moines, Iowa	March 15, 1989 9:30 a.m.
<b>LOTTERY DIVISION[705]</b>		
Lotto America, amendments to ch 12 IAB 2/22/89 ARC 9671 (See also ARC 9672)	Lottery Offices 2015 Grand Ave. Des Moines, Iowa	March 16, 1989 9 a.m.
<b>NATURAL RESOURCE COMMISSION[571]</b>		
Waterfowl and coot hunting seasons, amendments to ch 91 IAB 3/8/89 ARC 9716	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 15, 1989 10 a.m.
Pheasant, quail and gray (Hungarian) partridge hunting, 96.1, 96.2, 96.3 IAB 3/8/89 ARC 9720	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 15, 1989 10 a.m.
Common snipe, Virginia rail and sora, woodcock and ruffed grouse, amendments to ch 97 IAB 3/8/89 ARC 9718	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 15, 1989 10 a.m.

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

Wild turkey fall hunting, ch 99 IAB 3/8/89 ARC 9717	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 15, 1989 10 a.m.
Falconry regulations for hunting game, 102.3 IAB 3/8/89 ARC 9724	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 15, 1989 10 a.m.
Deer hunting regulations, amendments to ch 106 IAB 3/8/89 ARC 9723	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 15, 1989 10 a.m.
Rabbit and squirrel hunting, 107.1, 107.2, 107.3 IAB 3/8/89 ARC 9722	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 15, 1989 10 a.m.
Mink, muskrat, raccoon, badger, opossum, weasel, striped skunk, fox (red and gray), beaver, coyote, otter and spotted skunk seasons, amendments to ch 108 IAB 3/8/89 ARC 9721	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 15, 1989 10 a.m.
Scientific collecting and wildlife rehabilitation, ch 111 IAB 2/22/89 ARC 9686	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	March 15, 1989 10 a.m.
<b>PERSONNEL DEPARTMENT[581]</b> Pay, leave, benefits, political activity, equal employment opportunity and affirmative action, amendments to chs 4, 14, 15, 16, 20 IAB 2/8/89 ARC 9650	Conference Room First Floor South Grimes State Office Bldg. Des Moines, Iowa	March 23, 1989 10 a.m.
<b>PUBLIC DEFENSE DEPARTMENT[601]</b> Disaster services, enhanced 911 systems, ch 10 IAB 3/8/89 ARC 9725 (See also ARC 9726, herein)	Conference Room A Level Hoover State Office Bldg. Des Moines, Iowa	April 3, 1989 9 a.m.
<b>REGENTS BOARD[681]</b> Policy on competition with private enterprise, 9.4 IAB 3/8/89 ARC 9728	State Board Room Second Floor Grimes State Office Bldg. Des Moines, Iowa	April 4, 1989 10 a.m.
<b>TRANSPORTATION DEPARTMENT[761]</b> OWI and implied consent, 620.1, 620.4(2)"e" IAB 2/8/89 ARC 9633	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	March 21, 1989
Notice of divestment, 800.10 IAB 2/8/89 ARC 9646	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	March 21, 1989
Train speed ordinances, 800.15 IAB 3/8/89 ARC 9698	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	April 18, 1989
Recreational trails program, ch 165 IAB 2/8/89 ARC 9637	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	May 2, 1989
<b>UTILITIES DIVISION[199]</b> Rates for buy-back of energy produced by alternate energy and small hydro facilities, amendments to ch 15 IAB 1/25/89 ARC 9618	Hearing Room First Floor Lucas State Office Bldg. Des Moines, Iowa	March 13, 1989 10 a.m.

## AGENCY IDENTIFICATION NUMBERS

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

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

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

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in lowercase type at the left-hand margin, e.g., Beef Industry Council, Iowa [101].

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

### AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

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## 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:

April 1, 1987 — April 30, 1987	10.90%
May 1, 1987 — May 31, 1987	10.90%
June 1, 1987 — June 30, 1987	10.90%
July 1, 1987 — July 31, 1987	10.90%
August 1, 1987 — August 31, 1987	10.90%
September 1, 1987 — September 30, 1987	10.90%
October 1, 1987 — October 31, 1987	10.90%
November 1, 1987 — November 30, 1987	10.90%
December 1, 1987 — December 31, 1987	10.90%
January 1, 1988 — January 31, 1988	10.90%
February 1, 1988 — February 29, 1988	10.90%
March 1, 1988 — March 31, 1988	10.90%
April 1, 1988 — April 30, 1988	10.90%
May 1, 1988 — May 31, 1988	9.75%
June 1, 1988 — June 30, 1988	9.75%
July 1, 1988 — July 31, 1988	9.75%
August 1, 1988 — August 31, 1988	9.75%
September 1, 1988 — September 30, 1988	9.75%
October 1, 1988 — October 31, 1988	10.00%
November 1, 1988 — November 30, 1988	10.00%
December 1, 1988 — December 31, 1988	10.00%
January 1, 1989 — January 31, 1989	10.25%
February 1, 1989 — February 28, 1989	10.50%

### ARC 9730

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 24, "Emergency Shelter Grants Program," Iowa Administrative Code.

The Emergency Shelter Grants Program is designed to help improve the quality of existing emergency shelters for the homeless, to help make available additional emergency shelters, to help meet the costs of operating emergency shelters, and to provide certain essential social services to homeless individuals.

The proposed amendments reflect recent revisions in federal law and bring the Iowa program into conformance with the changes. The changes are: (1) expanding eligible grant recipients to include nonprofit organizations; (2) increasing the limitation on essential services to 20 percent of total grant award; and (3) allowing funds to be used for homelessness prevention.

A public hearing will be held on March 28, 1989, at 10 a.m. in the main conference room of the Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa, to receive public comment on the proposed amendments. Persons wishing to present oral testimony at the public hearing should contact Roselyn Wazny no later than March 27, 1989, at 4:30 p.m. to be placed on the hearing agenda. Any interested persons may present written or oral comments concerning the proposed rules until March 28, 1989, by contacting Roselyn Wazny at the Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, or by calling (515)281-3890.

These rules are intended to implement the Stewart B. McKinney Homeless Assistance Amendment Act of 1988 (P.L. 100-628) and Iowa Code section 15.108.

ITEM 1. Rescind rule 24.3 (P.L. 99-500) and insert in lieu thereof the following:

**261—24.3(P.L.100-628) Eligible applicants.** The following are eligible applicants for the emergency shelter grants program:

1. Cities in Iowa with populations of over 10,000 persons, according to the last available U.S. Census, and any county government not otherwise prohibited by the U.S. Department of Housing and Urban Development; and

2. Nonprofit organizations, when the unit of local government in which the assisted projects are located certifies that it approves of the proposed project.

ITEM 2. Amend rule 24.4(P.L.99-500) as follows:

**261—24.4(P.L. 99-500) Eligible activities.** As authorized by the ~~Homeless Act of 1986~~ *Stewart B. McKinney Homeless Assistance Amendment Act of 1988* and as further defined in 24 Code of Federal Regulations Part 575, activities assisted by this program may include only the following:

1. Renovation, major rehabilitation, or conversion of buildings for use as emergency shelters for the homeless;

2. Provision of essential services if the service is (a) a new service or (b) a quantifiable increase in the level of service. No more than ~~fifteen percent (15%)~~ *20 percent* of the grant may be used for this purpose;

3. *Payment for activities that assist in homelessness prevention. Examples of eligible activities include, but are not limited to: short-term subsidies to help defray rent and utility arrearages for families faced with eviction or termination of utility services; security deposits or first month's rent for a family to acquire its own apartment; programs to provide mediation services for landlord tenant disputes; or programs to provide legal representation to indigent tenants in eviction proceedings. Other possible types of homeless prevention efforts include making needed payments to prevent a home from falling into foreclosure. Homeless prevention activities are to be treated as essential services for purposes of calculating the 20 percent limitation; and*

4. *Payment of maintenance, operation, insurance, utilities and furnishings.*

**ARC 9731****ELDER AFFAIRS  
DEPARTMENT[321]****SMALL BUSINESS REGULATORY  
FLEXIBILITY ANALYSIS**

The Iowa Department of Elder Affairs proposed rules (ARC 9031) that were published in the Iowa Administrative Bulletin on July 27, 1988, and were intended to develop guidelines for Iowa's thirteen area agencies on aging concerning area agency on aging entrepreneurial activities.

The National Federation of Independent Business of Iowa (NFIBI), an organization representing more than twenty-five persons and represented by Mr. David E. Brasher, State Director, submitted to the Department of Elder Affairs a request for a small business regulatory impact analysis of the proposed rules pursuant to Iowa Code section 17A.31(4), on August 17, 1988.

Ms. Betty Grandquist, Executive Director of the Iowa Department of Elder Affairs, responded to questions or comments of the Administrative Rules Review Committee members on August 17, 1988. In so doing, Ms. Grandquist explained the position of the Department of Elder Affairs to the effect that, although the Department itself clearly constitutes a state agency, area agencies on aging are not state agencies for purposes of compliance with Iowa Code section 17A.31. This position is supported by opinions of the Iowa Attorney General dealing with the status of area agencies on aging. See 1978 Op. Att'y Gen. 449; Op. Att'y Gen. #79-8-2(L).

Ms. Grandquist also pointed out that the proposed rules do not sanction unlimited fund-raising activities. They are intended to provide guidance to, and oversight of, the area agencies on aging, in their endeavor to raise funds to enable them to maintain services to elders. The area agencies on aging, with current uncertainties of federal and state funds and increasing costs of providing services to growing numbers of Iowans aged 60 and older, are seeking ways to develop additional funds.

As stated in the proposed rules, state and federal funds received from the Department may not be used in conjunction with entrepreneurial activities. The concern expressed by the National Federation of Independent Business is addressed by this restriction. In most cases, the elder groups engaging in fund-raising activities are small, independent groups of elders who host bingo games, suppers, trips and craft sales to support their own activities. The Department has no control over these entities as they are not allocated funds by the Department.

The NFIBI expressed concern over what they felt was a discrepancy in wording of the proposed rules between subrules 6.14(3) and 6.14(5) concerning activities of entities allocated funds by the Department. The Department feels that no discrepancy exists in that subrule 6.14(3) prohibits area agencies on aging from using Department allocations for fund-raising activities, while subrule 6.14(5) indicates that when other funds are used, it should be clear to the community organizations that there is no conflict.

To allow interested persons to comment on this analysis, a public hearing is scheduled on March 10, 1989, at 10 a.m., at the Department of Elder Affairs, 914 Grand, 236 Jewett Building, Des Moines, Iowa 50319. A copy of this analysis may be obtained at the

Department office at the same address between 8 a.m. and 4:30 p.m. Those requesting a copy will be charged for the cost of reproduction.

To address the issues contained in Iowa Code section 17A.31(4), as requested, the following information is presented:

a. The Department's proposed rules affect only Iowa's thirteen area agencies on aging which are nonprofit, nongovernmental agencies which receive allocations from the Department. This section does not apply.

b. The Department does not establish compliance or reporting requirements for small business. This section does not apply.

c. The Department does not establish rules for small business. This section does not apply.

d. The Department does not establish rules for small business. This section does not apply.

e. This section does not apply as the proposed rule establishes procedures for area agencies on aging which are nonprofit, nongovernmental agencies.

f. The Department is not proposing to require reports from small business. This section does not apply.

g. The Department's proposed rules apply only to thirteen nonprofit, nongovernmental area agencies on aging which receive Department allocations. This section does not apply.

h. Small businesses are not affected by the proposed rules in any manner requiring such services. This section does not apply.

i. Implementation of this section will make it necessary for an area agency on aging to invest staff time in planning meetings with elders who have a desire to initiate fund-raising activities, presenting written material to the area agency on aging board and advisory council and submitting the written material to the Commission for the Department of Elder Affairs. Depending on the scope and complexity of the fund-raising activity, area agency on aging staff hours invested might be 10 to 40 hours, printing costs could be \$30 to \$50 and mailing costs \$20 to \$30. The possible costs of this rule could range from \$100 to \$500 to an area agency on aging depending upon the nature of the activity. No impact on state revenue is foreseen. The cost to the Department for preparing and presenting the activity to the Commission may range from 2 to 10 hours of staff time.

j. The benefit of the rule is oversight of entrepreneurial activities and assurance that funds allocated by the Department to the area agency on aging are not used in this type of activity.

Inaction by the Department might bring about situations where inappropriate fund-raising activities occur in area agencies on aging. Federal funds might be used for these activities instead of providing the services that are required by AoA.

k. The Department believes that no less costly or less intrusive methods would provide the same oversight possibilities that the rule provides. The rule provides the benefit of equitable treatment to all situations arising in area agencies on aging regarding fund-raising activities, and provides guidelines that are public information to prevent inappropriate activities.

l. The Department considered issuing a policy statement concerning entrepreneurial activities, but a policy statement would not provide the extent of public input as does the rule process.

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

The Department also considered the alternative of doing nothing, but inaction might result in a situation where inequitable treatment occurs. Prior knowledge of standards would appear to prevent inappropriate action.

**ARC 9715****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 239.18, the Department of Human Services proposes to amend Chapter 40, "Application for Aid," Chapter 41, "Granting Assistance," Chapter 42, "Unemployed Parent," Chapter 43, "Alternative Payees," Chapter 45, "Payment," and Chapter 46, "Recoupment," appearing in the Iowa Administrative Code.

These amendments will allow for the Electronic Benefits Transfer of Aid to Dependent Children (ADC) benefits. Electronic Benefits Transfer (EBT) is the application of electronic funds transfer to the delivery of benefits. With EBT recipients will use magnetic stripe plastic cards to receive cash at Automatic Teller Machines (ATMs) or to receive and spend benefits at Point of Sale terminals. Other types of terminals employed in electronic funds transfer may also be used. ATMs are located in stores, shopping malls, at sidewalk locations, in banks, and in some public buildings. Point of Sale terminals are usually located in stores where groceries are sold, but there are beginning to be some Point of Sale devices at gas stations and other merchant locations. The Department and other state agencies are looking at EBT as a way to improve delivery of benefits.

A pilot project will use EBT in Linn County, beginning in July. Linn County clients will receive a magnetic card and a personal identification number (PIN). The PIN will be given to the client in a sealed envelope and will be completely confidential to the client. The PIN will not be recorded in any case record or computer system. The client and the case worker and another Department staff person will sign a form to certify that the procedures for issuing and safeguarding the PIN are followed and understood.

The Linn County project will use EBT to deliver ADC and Refugee Cash Assistance, some child support rebate payments and medical transportation reimbursement payments.

Clients will use magnetic cards and PINs just as any other bank card user does, by inserting the card into the terminal and entering the PIN on the terminal's number pad. The terminal reads the amount of the withdrawal request. The card and the PIN transmit the information (the PIN in scrambled form) back to the Electronic Funds Transfer (EFT) network. The network accesses the file for the Department EBT accounts and verifies that the card and PIN are valid and the amount requested does not exceed the client's balance. When the

transaction is valid, the amount of withdrawal immediately debits the client's balance. If the terminal issues a receipt stating the current balance for other accounts, it will also state the EBT balance.

The Department is not giving recipients bank accounts. Settlement is with the Department. The client cannot deposit funds with the EBT card and the account is not subject to garnishment.

Clients will be trained via a video tape prior to implementation of EBT. A letter will be sent to recipients regarding the training sessions. Those who fail to show up for the sessions will continue to receive their grants as they currently do, i.e., either by a paper warrant or by automatic deposit in the client's own bank account. In addition, after attending the training session those who do not wish to be put on EBT may continue to receive their grants in the usual manner.

Applicants will also be given the option of using EBT. If the applicant chooses EBT, cards and PINs will be given prior to approval of applications. This ensures that benefits are in no way delayed, and if an application is denied after issuance of the card and PIN, no harm is done because there will be no authorization or credit associated with the card and PIN in the EBT account.

If the magnetic card is lost or stolen, the local office will immediately give the client a new card and PIN. The PIN and new card may be used the day following the day they are issued.

If the balance is not withdrawn by the client, it will remain in the EBT account for six months from the last activity (credit or debit) for the card and PIN combination. This parallels the time limit for warrants which are not cashed. The same processes in place for paper warrants for claiming the benefits after the six-month period will be applicable.

EBT for ADC delivery has been successfully tested in Ramsey County, Minnesota. Clients there liked EBT and used it readily. The benefits are: with EBT, benefits are not delayed following a change in address, clients can keep funds in a safe place, theft will be reduced, clients will find it easier to budget money they aren't having to carry around, and clients won't have to pay fees to receive and spend their benefits. (Currently, many clients pay check-cashing and money order fees.)

With EBT, clients will use, and their children will see, technologies used in the workplace. In addition, the stigma of receiving welfare will be greatly diminished. Self-esteem suffers from standing in line on ADC day, but self-esteem is important to successful entry or return to the workplace.

Consideration will be given to all written data, views, or 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 March 29, 1989.

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

Cedar Rapids - March 29, 1989 10 a.m.  
Cedar Rapids District Office  
Conference Room - 6th Floor  
221 4th Avenue, S.E.  
Cedar Rapids, Iowa 52401

Council Bluffs - March 29, 1989 10 a.m.  
Council Bluffs District Office, Lower Level  
417 E. Kaneshville Boulevard  
Council Bluffs, Iowa 51501

## HUMAN SERVICES DEPARTMENT[441] (cont'd)

Davenport - March 29, 1989 10 a.m.  
 Davenport District Office  
 5th Floor Conference Room  
 428 Western Avenue  
 Davenport, Iowa 52801

Des Moines - March 29, 1989 1 p.m.  
 Des Moines District Office  
 City View Plaza, Conference Room 100  
 1200 University  
 Des Moines, Iowa 50314

Mason City - March 29, 1989 1 p.m.  
 Mason City District Office  
 Mohawk Square  
 22 North Georgia Avenue  
 Mason City, Iowa 50401

Ottumwa - March 29, 1989 10 a.m.  
 Ottumwa District Office  
 First Floor Conference Room  
 226 West Main  
 Ottumwa, Iowa 52501

Sioux City - March 29, 1989 1 p.m.  
 Sioux City District Office  
 Suite 624-625  
 507 7th Street  
 Sioux City, Iowa 51101

Waterloo - March 29, 1989 1 p.m.  
 Waterloo District Office  
 Black Hawk County Conference Room  
 2nd Floor - KWWL Building  
 500 East 4th  
 Waterloo, Iowa 50701

These rules are intended to implement Iowa Code section 239.5.

The following amendments are proposed:

ITEM 1. Amend subrule 40.7(4), paragraph "e," subparagraph (9), and paragraph "f," subparagraph (9), as follows:

(9) Receipt of a **warrant grant** that exceeds the amount on the most recent notice from the department by **ten dollars** (\$10) or more or receipt of a duplicate **warrant grant**.

(9) The date the recipient receives a **warrant grant** that exceeds the amount on the most recent notice from the department by **ten dollars** (\$10) or more or a duplicate **warrant grant**.

ITEM 2. Amend subrule 41.7(1), paragraph "h," subparagraph (1), as follows:

(1) Any nonexempt cash support payment, for a member of the eligible group, made while application is pending shall be treated as unearned income and deducted from the initial assistance **warrant(s) grant(s)**. Any nonexempt cash support payment, for a member of the eligible group, received by the recipient after the date of decision as defined in 40.4(4), shall be refunded to the child support recovery unit.

ITEM 3. Amend subrule 41.8(4) as follows:

**41.8(4) Period of adjustment.** When a parent recovers from the condition which caused incapacity, or when the absent parent and parent establish or reestablish a home for the child, assistance shall continue for the existing eligible group, if there is need, for a period not to exceed the issuance of three **warrants monthly grants**.

ITEM 4. Amend rule 441—42.8(239), introductory paragraph, and subrule 42.8(1), as follows:

**441—42.8(239) Assistance continued.** When the qualifying parent becomes employed, assistance shall continue if the family is otherwise eligible for a period not to exceed the issuance of three **warrants monthly grants**.

**42.8(1)** An adjustment period following the incapacitated parent's recovery or the absent parent's return home shall continue for only as long as is necessary to determine whether there is eligibility on the basis of parental unemployment. When deprivation on the basis of unemployment cannot be established, assistance shall be continued for a maximum of three **warrants monthly grants**.

ITEM 5. Amend subrule 43.2(2), paragraph "e," as follows:

e. Continued inability to plan and spread necessary expenditures over the usual period between assistance **checks grants**.

ITEM 6. Amend subrule 43.3(3), paragraph "f," as follows:

f. The balance of the assistance payment not used for the vendor payment shall be paid to the recipient **in the form of a regular assistance warrant**.

ITEM 7. Amend rule 441—45.1(239) as follows:

**441—45.1(239) Address.** Assistance warrants shall be mailed to the recipient's current address or, upon request, to a post office box, bank, or to any other address for which the recipient has good reason for the request. Assistance warrants shall be mailed to the protective payee, conservator, or guardian (if applicable) in cases involving said persons. *Assistance shall also be paid by direct deposit to the recipient's own account in a financial institution or by means of electronic benefits transfer.*

ITEM 8. Amend rule 441—46.1(239), definitions of "Client error" and "Recoupment," as follows:

"Client error" means and may result from:

False or misleading statements, oral or written, regarding the client's income, resources, or other circumstances which may affect eligibility or the amount of assistance received;

Failure to timely report changes in income, resources, or other circumstances which may affect eligibility or the amount of assistance received;

Failure to timely report the receipt of and, if applicable, to refund assistance in excess of the amount shown on the most recent Notice of Decision, Form PA-3102-0, or the receipt of a duplicate **warrant grant**; or

Failure to refund to the child support recovery unit any nonexempt payment from the absent parent received after the date the decision on eligibility was made.

False or misleading statements regarding the existence of a sponsor or the income or resources of the sponsor and the sponsor's spouse, when a sponsor is financially responsible for an alien according to 41.5(6) and 41.7(10).

"Recoupment" means the repayment of an overpayment, either by a payment from the client or an amount withheld from the assistance **warrant grant** or both.

ITEM 9. Amend subrule 46.2(2) as follows:

**46.2(2) Warrant Grant issued.** When recoupment is made by withholding from the aid to dependent children grant, the **warrant grant** issued shall be for no less than **ten dollars** (\$10).

## HUMAN SERVICES DEPARTMENT[441] (cont'd)

ITEM 10. Amend subrule 46.4(1) as follows:

**46.4(1) Agency error.** When an overpayment is due to an agency error, recoupment shall be made, including those instances when errors by the department prevent the requirements in subrule 41.2(6) or 41.2(7) from being met or when the client receives a duplicate ~~warrant grant~~. An overpayment of any amount is subject to recoupment with one exception: When the client receives a ~~warrant grant~~ that exceeds the amount on the most recent notice from the department, recoupment shall be made only when the amount received exceeds the amount on the notice by ~~ten dollars~~ (\$10) or more. The client is required to timely report receipt of excess assistance under 40.7(4). An overpayment due to agency error shall be computed as if the information had been acted upon timely.

ITEM 11. Amend rule 441—46.5(239), introductory paragraph, as follows:

**441—46.5(239) Source of recoupment.** Recoupment shall be made from basic needs or in accordance with 46.4(5) above. The minimum recoupment amount shall be the amount prescribed in 46.5(3). Regardless of the source, the client may choose to make a lump sum payment, make periodic installment payments when an agreement to do this is made with the department of inspections and appeals, or have repayment withheld from the ~~warrant grant~~. The client shall sign either Form PA-3164-0, Agreement to Repay Overpayment, or Form PA-3167-0, Agreement to Repay Overpayment after Probation, when requested to do so by the department of inspections and appeals. When the client fails to make the agreed upon payment, the agency shall reduce the ~~warrant grant~~. Recoupment, whether it be by a lump sum payment, periodic installment payments, or withholding from the ~~warrant grant~~, can be made from one or both of the following sources:

## ARC 9712

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 239.18, the Department of Human Services proposes to amend Chapter 41, "Granting Assistance," appearing in the Iowa Administrative Code.

Under current policy a loan is excluded from available income to an Aid to Dependent Children (ADC) household only when it is obtained and used under conditions that preclude its use to meet current living expenses. This policy was intended to prevent duplication between funds provided by the ADC program for current living expenses and funds from other sources which are available for the same living expenses.

The Department of Human Services has received a memorandum from the United States Department of

Health and Human Services (HHS) advising that federal policy is being amended on the treatment of loans to provide that states shall not count loans from any source as income or resources.

Regulations are being developed and will specify criteria that must be satisfied to ensure that the loan is bona fide. Until federal regulations are published, HHS has advised states that they may disregard a bona fide loan from any source as income and resources and has suggested criteria for determining if a loan is bona fide.

These amendments exempt bona fide loans as income and resources for purposes of the ADC program and list criteria which may be used for determining when a loan is bona fide. A loan may be considered to be bona fide if there is a written agreement to repay the money within a specific time or if the loan is obtained from a person engaged in the business of making loans, or, if the loan is obtained from a person not normally engaged in the business of making loans, the following may exist: the borrower's acknowledgment of obligation to repay; the borrower's express intent to repay when funds become available in the future; or a timetable and plan for repayment.

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 March 29, 1989.

This rule is intended to implement Iowa Code section 239.5.

The following amendments are proposed:

Amend rule 441—41.7(239) as follows:

Amend subrule 41.7(6), paragraphs "q" and "r," as follows:

q. ~~Loans and grants~~ Grants obtained and used under conditions that preclude their use for current living costs.

r. Any ~~loan or grant~~ to any undergraduate student for educational purposes made or insured under any program administered by the United States Secretary of Education.

Further amend subrule 41.7(6) by adding the following new paragraph:

v. Bona fide loans. Evidence of a bona fide loan may include any of the following:

(1) The loan is obtained from an institution or person engaged in the business of making loans.

(2) There is a written agreement to repay the money within a specified time.

(3) If the loan is obtained from a person not normally engaged in the business of making a loan, there is a borrower's acknowledgment of obligation to repay (with or without interest), or the borrower expresses intent to repay the loan when funds become available in the future, or there is a timetable and plan for repayment.

Amend subrule 41.7(9), paragraph "c," subparagraph (2), first paragraph, as follows:

(2) Nonrecurring lump sum income. Moneys received as a nonrecurring lump sum, except as specified in 41.6(4), 41.6(7), 41.7(8)"b," and 41.7(8)"c," shall be treated in accordance with this rule. Nonrecurring lump sum income shall be considered as income in the budget month and counted in computing eligibility and the amount of the grant for the payment month, unless the income is exempt. Nonrecurring lump sum unearned income is defined as a payment in the nature of a windfall, for example, an inheritance, an insurance settlement for

## HUMAN SERVICES DEPARTMENT[441] (cont'd)

pain and suffering, an insurance death benefit, a gift, lottery winnings, or a retroactive payment of benefits, such as social security, job insurance or workers' compensation. A lump sum payment of earned income credit shall be treated as a nonrecurring lump sum payment of earned income. When countable income, exclusive of the aid to dependent children grant but including countable lump sum income, exceeds the needs of the eligible group, the case shall be canceled or the application rejected. In addition, ~~unless the lump sum was from a loan~~, the eligible group shall be ineligible for the number of full months derived by dividing the income by the standard of need for the eligible group. Any income remaining after this calculation shall be applied as income to the first month following the period of ineligibility and disregarded as income thereafter.

## ARC 9713

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.

Under current policy when a stepparent's income causes ineligibility for Aid to Dependent Children (ADC), Medicaid eligibility is also denied unless eligibility under the Medically Needy coverage group is established.

The Health Care Financing Administration has interpreted stepparent deeming as a financial responsibility requirement that is prohibited for ADC-related Medicaid programs under the Social Security Act unless the stepparent is legally liable under a state law of general applicability. It has been determined that Iowa does not have a law of general applicability. A law of general applicability would require stepparents to be treated exactly like parents, regardless of whether the stepparents are living in the home with the children.

Therefore, these amendments provide Medicaid coverage to children who are ineligible for ADC because of the excess income of a stepparent. These amendments will permit the household to voluntarily exclude the needs of the parent and common children and the stepparent's income from the eligibility determination. This will allow Medicaid coverage to be provided to the stepchild without regard to the stepparent's income. While the stepparent's income cannot be considered in the stepchild's eligibility determination, the income shall be considered in the spouse's eligibility determination. Therefore, the parent of the child (spouse of the stepparent) shall be excluded from the eligible group if the stepparent's income is excluded.

Consideration will be given to all written data, views, or 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 March 29, 1989.

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

The following amendments are proposed:

Amend subrule 75.1(2) as follows:

Amend paragraph "a" by adding the following new subparagraph:

(4) Stepparents of eligible children.

Amend paragraph "b" as follows:

b. The needs of persons whose income or resources are excluded shall also be excluded. If the income of the self-supporting parent(s) of a minor unmarried parent is excluded, then the needs of the minor unmarried parent shall also be excluded and the earned income disregards shall not be allowed against the income of the minor unmarried parent. *If the income of the stepparent is excluded, the needs of the natural parent shall also be excluded.*

## ARC 9732

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 176, "Dependent Adult Abuse," appearing in the Iowa Administrative Code.

The Department of Inspections and Appeals is responsible for investigating reports of dependent adult abuse in facilities licensed by the Department of Inspections and Appeals, such as nursing homes. The Department of Inspections and Appeals forwards reports they complete to the Department of Human Services for entry on the Registry.

This rule clarifies that the Department of Inspections and Appeals is responsible for making a decision on requests for correction or expungement of reports which were completed by the Department of Inspections and Appeals and for providing persons dissatisfied with their decision an opportunity to appeal.

Consideration will be given to all written data, views, or 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 March 29, 1989.

This rule is intended to implement Iowa Code section 235B.1.

The following amendment is proposed:

Amend 441—Chapter 176 by adding the following new rule:

**HUMAN SERVICES DEPARTMENT[441] (cont'd)**

**441—176.17(235B) Request for correction or expungement.** The department of human services is responsible for correction or expungement of reports prepared by department staff. The department of inspections and appeals is responsible for correction or expungement of reports prepared by that department's staff and that determination shall be binding on the registry.

**176.17(1)** Within six months of the date of the notice of evaluation results, a person may file with the registry a written statement to the effect that the dependent adult abuse information referring to the person is partially or entirely erroneous. The person may also request a correction of that information or of the findings of the report. The registry will record all requests and immediately forward the requests to the division of health facilities, department of inspections and appeals, when the reports were prepared by the department of inspections and appeals. The registry will notify the person requesting a correction that the report has been sent to the department of inspections and appeals.

**176.17(2)** Unless the designated department corrects the information or findings as requested, the designated department shall provide the person with an opportunity for a hearing as provided by 441—Chapter 7 to correct the information or the findings. The department may defer the hearing until the conclusion of a pending district court case relating to the information or findings.

**ARC 9714**

**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 600.22, the Department of Human Services proposes to amend Chapter 201, "Subsidized Adoptions," appearing in the Iowa Administrative Code.

These amendments make the following changes in administration of the subsidized adoption program:

1. Change the definition of child.
2. Define presubsidy.
3. Limit nonrecurring expenses to attorney fees, court filing fees, and other court costs.
4. Clarify that in order for the child to be eligible for subsidy the Department or private agency must document efforts to place the child in an appropriate adoptive home without a subsidy.
5. Clarify the reasons for a child to be determined "special needs" and lower the age criteria for minority children from four to two.
6. Provide that the nonrecurring expenses of adoption are reimbursable for intercountry adoptions that meet criteria in federal law.
7. Remove parental income guidelines.

8. Require special services costing \$500 or more not available through Medicaid to be approved by the central office adoption unit manager.

9. Limit attorney fees to \$400 per child.

10. Revise the reasons for terminating subsidy payments.

11. Clarify presubsidy recovery.

These changes are being made based on revised federal regulations and recommendations from the Department of Health and Human Services following a Title IV-E adoption assistance audit and review of policy, and to clarify confusion regarding current policy.

The definition of a child has been revised at federal direction to conform with Public Law 96-272. The only condition that will now permit the subsidy to continue to age 21 is if the child has a mental or physical handicap.

The Department has been paying presubsidy under the foster parent rules but it has not been clear in these rules. A new rule is added to clarify that the Department's costs for presubsidy payments may be recovered from the child's unearned income and escrow account.

Federal regulations issued December 14, 1988, now require states to make payments for nonrecurring expenses for any child with special needs, including intercountry adoptions.

Parental income guidelines are being removed to eliminate any possibility of a means test for subsidized adoptions following a federal audit and review. Although rules were revised to indicate that negotiation should take place, parental income guidelines continue to indicate to many Department workers that parental income is a significant part of approval or rejection of an application or review. Continued use of the income guidelines could jeopardize IV-E funding for the subsidy.

Central office approval of special services costing \$500 or more and the limit of \$400 on attorney fees are being added because of inappropriate charges to the program.

The reasons for terminating subsidizing are revised based on federal instructions.

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 March 29, 1989.

These rules are intended to implement Iowa Code sections 600.17 to 600.21.

The following amendments are proposed:

ITEM 1. Amend rule 441—201.1(600) as follows:

**441—201.1(600) Administration.** The Iowa department of human services, through the *director administrator* of the division of social services, shall administer the subsidized adoption program, in conformance with the legal requirements for adoption as defined in Iowa Code chapter 600.

ITEM 2. Amend rule 441—201.2(600) as follows:

Amend the definitions of "Child," "Maintenance subsidy," and "Special services subsidy" as follows:

"Child" means ~~the same as defined in Iowa Code section 234.1~~ a person who has not attained age 18, or a person with a physical or mental handicap who has not attained age 21.

"Maintenance subsidy" means a monthly payment to ~~cover~~ assist in covering the cost of room, board, clothing, and spending money. The child will also be eligible for medical assistance pursuant to 441—Chapter 75.



## HUMAN SERVICES DEPARTMENT[441] (cont'd)

"Special services subsidy" means reimbursement payment to a provider or the parent for medical, dental, therapeutic, or other services, equipment or appliances required by a child because of a handicapping condition.

Add the following new definitions in alphabetical order:

"Escrow account" means an interest-bearing account in a bank or savings and loan association which is maintained by the department in the name of a particular child.

"Nonrecurring expenses" means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs. These shall be limited to attorney fees, court filing fees and other court costs.

"Presubsidy" means payment for maintenance or special services for a special needs child who is placed in an adoptive home but whose adoption is not finalized.

ITEM 3. Amend rule 441—201.3(600) as follows:

Amend subrule 201.3(1), introductory paragraph and paragraphs "a," "c," "d," "e," and "g," as follows:

**201.3(1)** The child is eligible for subsidy if *when the department or a private agency has documented that they have been unable to place the child in an appropriate adoptive home without a subsidy and the child is determined to be "special needs" based on one or more of the following reasons:*

a. The child has a medically diagnosed disability which substantially limits one or more major life activities, requires frequent professional treatment, assistance in self-care, or the purchase of special equipment.

c. The child has been determined to be at high risk of being mentally retarded by a qualified mental health or mental retardation professional, *of being emotionally disabled by a qualified mental health professional, or of being physically disabled by a physician. Until a determination has been made that the child is mentally retarded, emotionally handicapped, or physically disabled, only a special services subsidy can be provided.*

d. The child has been diagnosed by a qualified mental health professional to have a psychiatric condition which impairs the child's mental, intellectual, or social functioning, and for which the child receives requires professional services.

e. The child has been diagnosed by a qualified mental health professional to have a behavioral or emotional disorder characterized by situationally inappropriate behavior which deviates substantially from behavior appropriate to the child's age or significantly interferes with the child's intellectual, social and personal adjustment.

g. The child is aged four two or over and a member of a minority race or ethnic group, not Caucasian, or whose biological parents are of different races.

Amend subrule 201.3(2) as follows:

**201.3(2)** The child is not eligible for subsidy if the A child who enters the United States from another country, on the basis of a visa classifying the child as an orphan; where the child entered the country, in accordance with the Immigration and Naturalization Act, Section 204-(4)(A)(i)(ii) for the purpose of adoption by a specific United States family: *is not eligible for subsidized adoption maintenance payments, medical assistance or special services except for nonrecurring expenses in the following situations:*

a. *The child from another country who meets the criteria in subrule 201.3(1) and whose adoption was finalized before January 1, 1987, but whose nonrecurring adoption expenses were paid after January 1, 1987, or whose adoption was finalized between January 1, 1987, and June 14, 1989, is eligible for reimbursement for nonrecurring expenses. The family must file an application on Form SS-6102-6, Application for Subsidy, complete Form SS-6602-6, Adoption Subsidy Agreement, and file the claim for reimbursement on Form IFAS #A-1, Claim Order/Claim Voucher, by December 14, 1990. Receipts must be included.*

b. *The child from another country who meets the criteria in subrule 201.3(1) and whose adoption is finalized after June 14, 1989, must file an application on Form SS-6102-6, Application for Adoption Subsidy and complete Form SS-6602-6, Adoption Subsidy Agreement, prior to or at the time of a final decree of adoption. The claim for reimbursement must be filed on Form IFAS #A-1, Claim Order/Claim Voucher, within two years of the date of the adoption decree and must include receipts.*

c. *If the adoptive placement disrupts prior to finalization or if the parental rights of the adoptive parents are terminated after the adoption is finalized and the department is named guardian of the child, the child may be eligible for subsidy in another adoptive placement.*

ITEM 4. Amend rule 441—201.4(600) as follows:

**441—201.4(600) Application.** Application for the presubsidy or subsidy may shall be made on Form SS-6102-6 (Application for Adoption Subsidy) at the time of the adoptive placement of the child, or at any time in the adoptive process prior to finalization of the adoption.

**201.4(1)** The prospective adoptive family residing in Iowa who has been studied and approved for adoptive placement by the department, a child placing agency licensed by the department, a certified adoption investigator, or, for a family residing outside of the state of Iowa, studied and approved by a governmental child-placing agency or a licensed child-placing agency in that state, may apply for subsidy for an eligible Iowa child.

**201.4(2)** Withdrawal of the application for the subsidy shall be reported to the department as soon as this information is available immediately.

**201.4(3)** The effective date for the agreements Adoption Subsidy Agreement will be the date the agreement is signed, which may be the date the child is placed in the adoptive home or any time date up to and including the date the adoption is finalized. The agreement shall state the amount of the presubsidy or subsidy, and the frequency and duration of payments.

Further amend rule 441—201.4(600) by adding the following new subrule:

**201.4(4)** An application for subsidy cannot be taken after the child is adopted except as provided in 201.3(2)"a."

ITEM 5. Amend rule 441—201.5(600) as follows:

Amend the catchwords and subrules 201.5(1) and 201.5(2) as follows:

**441—201.5(600) Negotiation of amount of presubsidy or subsidy.**

**201.5(1)** The amount of need presubsidy or subsidy shall be negotiated between the department and the adoptive parents, and shall be based upon the needs of

## HUMAN SERVICES DEPARTMENT[441] (cont'd)

the child, and the financial circumstances of the family, including any unearned income of the child. The child's unearned income shall be used to meet the needs of the child before utilizing subsidy payments. When negotiations are completed, the Adoption Subsidy Agreement, Form SS-6602-6 shall be completed. The agreement will be reviewed annually to determine whether there is a change of circumstances that could alter the need for, or amount of, subsidy necessary to meet the needs of the adoptive special needs child.

**201.5(2)** Other services available to the family free of charge to meet the needs of the child, such as other federal, state, and local governmental and private assistance programs, shall be explored and used prior to the expenditure of subsidy funds. Similarly, unearned income of the child from sources such as Social Security, veterans administration, railroad compensation, trust funds, and the family's insurance will shall also be assessed and used where appropriate before subsidy funds are employed expended. Unearned income of the child shall be verified by documentation from the source of the income.

Rescind and reserve subrules **201.5(3)**, **201.5(4)**, and **201.5(5)**.

Amend subrule **201.5(7)** as follows:

**201.5(7)** A review of the child's eligibility, the family circumstances, the needs of the child, and the child's unearned income shall be completed annually to renegotiate the amount of subsidy.

ITEM 6. Amend rule 441—201.6(600) as follows:

**441—201.6(600) Types of subsidy.**

**201.6(1)** Special services only. Reimbursement is provided to the adoptive family, or direct payment made to a provider, for medical services, dental services, therapeutic services, supplies and equipment, nonrecurring expenses, or other services required by the child's special needs. Any single special service of \$500 or more not available through the Medicaid program must have prior approval from the central office adoption unit manager before expending funds.

a. The need for special services shall be established through by a report in the child's record from the private or public agency having guardianship of the child, plus and substantiating information from specialists providing the services.

b. Attorney fees and court costs for adoptive services are considered a nonrecurring special service. Attorney's fees, a nonrecurring expense, shall be based on the usual and customary fee for the area but not to exceed \$400 per child.

c. For special needs children as defined in 201.3(1), medical assistance pursuant to 441—Chapter 75 may be the only service necessary to meet the child's needs.

d. When a special needs child who is in an adoptive home dies, the adoptive family may apply for funeral benefits in accordance with subrule 156.8(5).

**201.6(2)** Maintenance only. A monthly allotment payment for to assist with room, board, clothing and spending money may be provided, as determined under 201.5(600). The child will also be eligible for medical assistance pursuant to 441—Chapter 75.

**201.6(3)** Maintenance and special services. For special needs children, a special services subsidy may also be included when a maintenance subsidy is provided.

ITEM 7. Rescind rule 441—201.7(600) and insert the following in lieu thereof:

**441—201.7(600) Termination of subsidy.** Subsidy will terminate when any of the following occur:

**201.7(1)** The adoptive child no longer meets the definition of child in rule 441—201.1(600).

**201.7(2)** The child marries.

**201.7(3)** The adoptive parents are no longer using the maintenance payments to support the child.

**201.7(4)** Death of the child, or death of the parents of the child (one in a single-parent family and both in a two-parent family).

**201.7(5)** Upon conclusion of the terms of the agreement.

**201.7(6)** Upon request of the adoptive parents.

**201.7(7)** The adoptive parents are no longer legally responsible for the child.

**201.7(8)** The family fails to participate in the renewal process.

ITEM 8. Amend rule 441—201.8(600) as follows:

**441—201.8(600) Reinstatement of subsidy.** Reinstatement of subsidy will be made when the subsidy was terminated because of a change in the child's special need or for reasons in 201.7(3) or 201.7(5) to 201.7(10) and a the reason for termination no longer exists.

These rules are intended to implement Iowa Code sections 600.17 to 600.21.

ITEM 9. Amend rule 441—201.10(600) as follows:

Amend the introductory paragraph as follows:

**441—201.10(600) Medical assistance based on residency.** Children receiving Special needs children eligible for any type of subsidy are entitled to medical assistance as defined in 441—Chapter 75. The funding source for medical assistance is based on the following criteria:

Amend subrule **201.10(2)**, paragraph "a," as follows:

a. Non-IV-E children from Iowa residing in Iowa from Iowa or from a state where no adoption assistance interstate compact exists shall be covered by Iowa's medical assistance.

ITEM 10. Amend 441—Chapter 201 by adding the following new rule:

**441—201.11(600) Presubsidy recovery.** The department shall recover the cost of presubsidy maintenance and special services provided by the department as follows:

**201.11(1)** Funds shall be applied to the cost of presubsidy maintenance and special services from the unearned income of the child.

**201.11(2)** The department shall serve as payee to receive the child's unearned income. The income shall be placed in an account from whence it shall be applied toward the cost of the child's current care and the remainder placed in an escrow account.

**201.11(3)** When a child has funds in escrow these funds may be used by the department to meet the current needs of the child not covered by the presubsidy payments and not prohibited by the source of the funds.

**201.11(4)** When the child leaves presubsidy care, funds in the escrow shall be paid to the adoptive parents, or to the child if the child has attained the age of majority.

**ARC 9707****LIBRARY DIVISION[224]****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)<sup>b</sup>.

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

Pursuant to the authority of Iowa Code section 17A.3, the Library Division of the Department of Cultural Affairs proposes to rescind 560—Chapter 1 and adopt a new 224—Chapter 1, "Description of Organization," Iowa Administrative Code.

Due to the reorganization of state government in 1986 Iowa Acts, chapter 1245, the Library Department was transferred to the "umbrella" of Cultural Affairs Department[221] as the Library Division[224].

The purpose of these rules is to describe the functions and mission of the Library Division, (State Library of Iowa), including the State Library Commission and the Library Services and Construction Act (LSCA) grant program.

Consideration will be given to all written public comments received by the State Librarian, State Library of Iowa, Old Historical Building, East 12 and Grand Avenue, Des Moines, Iowa 50319, on or before March 28, 1989.

These rules are intended to implement Iowa Code sections 303.2(3) and 303.91 to 303.94.

Rescind 560—Chapter 1 and adopt the following new chapter:

**CHAPTER 1****DESCRIPTION OF ORGANIZATION**

**224—1.1(303) Function.** The library division of the department of cultural affairs (the state library of Iowa) consists of the bureau of library development and the bureau of information services. The bureau of information services includes a law library, medical library, general reference collection, federal and state documents depositories and support functions. The state library's function is to provide for the development and improvement of statewide library service and to provide library service to governmental agencies, the state legislature, and the residents of Iowa.

**224—1.2(303) Organization and operations.**

**1.2(1) Location.** The state library is located in the Old Historical Building, East 12 and Grand, Des Moines, Iowa 50319; telephone (515) 281-4118. Office hours are 8 a.m. to 4:30 p.m. Monday through Friday, excepting legal holidays.

**1.2(2) The state library commission.** The state library commission consists of seven members under the leadership of a chair elected by the membership. Six members are appointed by the governor to serve a term of four years. The seventh member is appointed by the supreme court. One of the gubernatorial appointees must represent the medical profession. Not more than three of the members appointed by the governor shall be of the same gender. The state librarian shall be appointed by and serve at the pleasure of the commission. The commission shall advise the state librarian with respect to the policies and programs of the state library.

**1.2(3) Meetings.** The commission shall meet at the time and place specified by call of the chairperson. Notice of a meeting is published ten days in advance of the meeting and shall be mailed to interested persons upon request. The notice shall contain the specific date, time, and place of the meeting. The operation of commission meetings will be governed by the following rules of procedure:

a. A quorum shall consist of four members.

b. When a quorum is present a position is carried by an affirmative vote of a majority of those present.

c. Persons wishing to appear before the commission shall submit the request to: State Library, State Librarian, Old Historical Building, East 12 and Grand Avenue, Des Moines, Iowa 50319, not less than ten days prior to the meeting. Presentations may be made at the discretion of the chair and only upon matters appearing on the agenda.

d. Persons wishing to submit written material shall do so at least ten days in advance of the scheduled meeting to ensure that commission members have adequate time to receive and evaluate the material.

e. At the conclusion of each meeting the commission shall set the time, date and place of the next meeting.

f. The presiding officer shall exclude any persons from the meeting for repeated behavior that disrupts or obstructs the meeting.

**1.2(4) Minutes.** Minutes of commission meetings are prepared and are available at the state librarian's office for inspection during business hours. Copies may be obtained without charge by contacting the office.

**224—1.3(303) Administration of the library division.** The state library commission appoints a state librarian who is responsible for the day-to-day administration of the library division's activities. This activity is carried out by two bureaus which are directly responsible to the state librarian.

**1.3(1) Bureau of library development.** This bureau provides specialized consulting to local libraries, coordinates statewide interlibrary loan network, administers the Library Services and Construction Act (LSCA) federal grant program, manages the audio visual program, operates a continuing education program, and monitors the condition, development and growth of libraries in Iowa. The bureau may be reached during business hours at (515) 281-4400 or (800) 248-4483.

**1.3(2) Library Services and Construction Act (LSCA) grant program.** LSCA handbooks containing application instructions are available at the state library without charge. As described in the handbook, a letter of intent and a completed application must be submitted to the State Library, Bureau of Library Development, Old Historical Building, East 12 and Grand Avenue, Des Moines, Iowa 50319.

a. The state LSCA advisory council. As required by federal regulations for the Library Services and Construction Act (administered by the U.S. Department of Education), the state LSCA advisory council, appointed by the state librarian, contains a minimum of nine members. The council may include additional members in order to extend representation of the library and information resources of the state. The membership of the advisory council shall include persons broadly representative of each of the following:

- (1) Public libraries,
- (2) School libraries,
- (3) Academic libraries,

## LIBRARY DIVISION[224] (cont'd)

- (4) Special libraries, such as law or medical libraries,
- (5) Institutional libraries, such as reformatory or hospital libraries,
- (6) Libraries serving the handicapped in the state,
- (7) Users of these libraries. These users shall comprise at least one-third of the council membership, and at least one member shall be a representative of disadvantaged persons.

The council advises the state library on the development of the state plan, including the preparation of long-range and annual programs which are required by the U.S. Department of Education, and assists the state library in evaluating LSCA programs and activities.

b. Grant process. The annual competitive grant award procedure for LSCA funds is announced in Footnotes (the state library's monthly newsletter) and by a mailing of LSCA handbooks to all public and regional libraries in Iowa. Eligibility requirements and application deadline dates are specified in the handbook.

(1) All LSCA applications are first reviewed by state library staff for determination of eligibility.

(2) Eligible applications are reviewed by the LSCA advisory council according to the schedule in the annual handbook. Depending upon the volume of applications, subcommittees of the advisory council (peer review teams) may assist the council in the evaluation of the applications. The council scores all eligible applications using the evaluation form printed in the handbook.

(3) The council reports scores and recommendations to the state librarian who makes final grant award decisions according to the schedule in the handbook.

(4) Recipients submit to the state library documentation of expenses and periodic and final project reports as described in the handbook and required by the U.S. Department of Education.

(5) Projects are monitored by the bureau of library development staff.

c. Appeal of grant decisions. If, as a result of the competitive process, an application is not selected for funding, appeals of selection decisions shall be conducted in the following manner:

(1) When any application for LSCA funds is not selected for funding, a written notice shall be sent to the applicant within 15 calendar days of the decision to decline funding.

(2) Appeals shall be made on procedural grounds only, that is, procedures were not applied uniformly to all applicants.

(3) Applicants may, within 15 calendar days of receipt of written notice of decision, request information regarding reasons why their application was not selected.

(4) A written request for a hearing with the director of the department of cultural affairs shall be made within ten days of receipt of information regarding reasons why the application was not selected. The hearing shall be held within 15 days of the date of the request at a reasonable time in the state library. The hearing shall be held before the director of cultural affairs or such members of a review board as the director of cultural affairs designates. A stenographer shall be present at all hearings to record all statements, comments, and decisions in a transcription that shall become part of the application award.

(5) Procedures for an appeal hearing. The director of the department of cultural affairs shall:

1. Notify the appellant as to day, hour and location of hearing.

2. Inform the appellant of the right to submit any written documents that the appellant wishes.

3. Inform the appellant that a spokesperson must be appointed if the appeal involves more than one person per project. The director or designated members of the review board shall direct questions only to the appellant during the hearing. Any other discussion or comments shall be reserved for a closed executive session. No indication of decision shall be given at the time of the hearing.

4. Notify the appellant in writing of the final decision within five days of the hearing.

These rules are intended to implement Iowa Code sections 303.2(3) and 303.91 to 303.94.

**ARC 9716****NATURAL RESOURCE  
COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 107.24, 109.38, 109.39 and 109.48, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 91, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code.

These rules give the regulations for hunting waterfowl and coots and include season dates, bag limits, possession limits, shooting hours and areas open to taking.

Adoption of the final rule is contingent upon frameworks provided by the U.S. Fish and Wildlife Service.

The adopted rules will be emergency implemented and become effective upon filing with the Administrative Rules Coordinator as provided for in Iowa Code section 17A.5(2)"b"(2). This is necessary in order to prevent an undue hardship on the segment of the public which participates in this activity since the federal frameworks normally are provided to the state on about September 1 of each year and to follow the normal procedure for publication plus 35 days would delay the opening of such seasons until sometime in November. By this date, a great part of the waterfowl would already have migrated through and from the state.

Any interested person may make written suggestions or comments on these proposed rules prior to April 15, 1989. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515) 281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 15, 1989, at 10 a.m. in the auditorium of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

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

These rules are intended to implement the provisions of Iowa Code sections 109.38, 109.39 and 109.48.

The following amendments are proposed:

ITEM 1. Amend rule 571—91.1(109), introductory paragraph, to read as follows:

**571—91.1(109) Ducks (split season).** Open season for hunting ducks shall be October 8 7 to October 9 8, 1988 1989; October 22 21 to November 18 17, 1988 1989, in that portion of the state lying north of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border; and October 22 21 to October 28 27, 1988 1989, November 5 4 to November 27 26, 1988 1989, in that portion of the state lying south of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border. Shooting hours are sunrise to sunset each day.

ITEM 2. Amend rule 571—91.2(109), introductory paragraph, to read as follows:

**571—91.2(109) Coots (split season).** Open season for hunting coots shall be October 8 7 to October 9 8, 1988 1989, October 22 21 to November 18 17, 1988 1989, in that portion of the state lying north of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border; and October 22 21 to October 28 27, 1988 1989; November 5 4 to November 27 26, 1988 1989, in that portion of the state lying south of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border. Shooting hours are sunrise to sunset each day.

ITEM 3. Amend rule 571—91.3(109), introductory paragraph, to read as follows:

**571—91.3(109) Geese.** The open season for hunting Canada, snow and white-fronted geese and brant shall be from ~~October~~ September 1 30 to ~~November~~ December 14 8, 1988 1989, and snow and white-fronted geese and brant shall be from October 1 to December 9, 1988; except for that part of the state lying south and west of State Highway 92 and west of U.S. Highway 71, a line running north from the Iowa-Missouri state line along U. S. Highway 71 to I-80, west on I-80 to U. S. Highway 59, north on U.S. Highway 59 to State Highway 37, then northwest on State Highway 37 to State Highway 175, then west on 175 to the Nebraska-Iowa border, where the season shall be October 15 14 to ~~November~~ December 28 22, 1988 1989, for Canada all geese and brant. ~~October 15 to December 23, 1988; for snow and white-fronted geese and brant.~~ Shooting hours are sunrise to sunset each day.

ITEM 4. Amend subrule 91.4(1) to read as follows:

**91.4(1) Waterfowl and coots.** There shall be no open season for ducks, coots and geese on the east and west county road running through sections 21 and 22, township 70 north, range 43 west, Fremont County; three miles of U. S. Highway 30, located on the south section lines of sections 14, 15, and 16, township 78 north, range 45 west, Harrison County; on the county roads immediately adjacent to, or through, Union Slough National Wildlife Refuge, Kossuth County; Louisa County Road

X61 from the E-W centerline of section 29, township 74 north, range 2 west, on the south, to the point where it crosses Michael Creek in section 6, township 74 north, range 2 west on the north, and also all roads through or adjacent to sections 7, 18, and 19 of this same township and roads through or adjacent to sections 12 and 13, township 74 north, range 3 west; the levee protecting the Green Island Wildlife Area from the Mississippi River in Jackson County wherever the levee is on property owned by the United States or the state of Iowa; certain dikes at Otter Creek Marsh, Tama County, where posted as such; and the NE 1/4, section 23 and the N 1/2, section 24, all in township 70 north, range 19 west, Appanoose County, including county roads immediately adjacent thereto; and all privately owned lands in the S 1/2, section 30, township 71 north, range 20 west, Lucas County, including the county road immediately adjacent thereto; *Cerro Gordo County Road S14 and its right-of-way, between its junction with U. S. Highway 18 and County Road B-35, and portions of Clear Lake and Ventura Marsh; where posted as such in Cerro Gordo County.*

ITEM 5. Amend subrule 91.4(2) by adding two new paragraphs as follows:

j. Area ten. Portions of Winnebago and Hancock counties bounded as follows: on all lands and waters managed by the Winnebago County Conservation Board at Thorpe Park, the Thorpe Recreation Area and the Russ Wildlife Area in Winnebago and Hancock counties.

k. Area eleven. Portions of Winnebago and Worth counties bounded as follows: beginning at a point four miles east of Lake Mills, Iowa, at the junction of State Highway 105 and County Road S16; thence south along said county road one and one-half mile; east two miles; thence south one mile; thence east one-half mile; thence south two miles to County Road A38; thence west eight and one-half miles along County Road A38; thence north four miles along County Road R72; thence northeasterly along State Highway 69 approximately three and one-half miles to the county road intersection; thence east three-fourths mile; thence north one-half mile to County Road A25; thence east along County Road A25 three miles to its junction with County Road S16; thence south along County Road S16 two miles to the point of beginning.

These rules are intended to implement Iowa Code sections 109.38, 109.39 and 109.48.

**ARC 9720**

**NATURAL RESOURCE  
COMMISSION[571]**

**Notice of Intended Action**

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

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 107.24, 109.38 and 109.39, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 96, "Pheasant, Quail and Gray (Hungarian) Partridge Hunting Seasons," Iowa Administrative Code.

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

These rules give the regulations for hunting pheasants, quail and gray partridges and include season dates, bag limits, possession limits, shooting hours and areas open to hunting.

Any interested person may make written suggestions or comments on these proposed rules prior to April 15, 1989. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515) 281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 15, 1989, at 10 a.m. in the auditorium of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

These rules are intended to implement Iowa Code sections 109.38, 109.39 and 109.48.

The following amendments are proposed:

ITEM 1. Amend subrule 96.1(1) to read as follows:

**96.1(1) Open season.** Open season for hunting pheasants shall be October ~~29~~ ~~28~~, ~~1988~~ ~~1989~~, through January ~~8~~ ~~10~~, ~~1989~~ ~~1990~~. Bag limit three cock birds daily; possession limit twelve cock birds. Shooting hours shall be from 8 a.m. to 4:30 p.m. Entire state open.

ITEM 2. Amend rule 571—96.2(109) to read as follows:

**571—96.2(109) Gray (Hungarian) partridge season.** Open season for hunting gray partridge shall be October ~~29~~ ~~7~~, ~~1988~~ ~~1989~~, through January ~~31~~, ~~1989~~ ~~1990~~. Bag limit eight birds daily; possession limit sixteen birds. Shooting hours shall be from 8 a.m. to 4:30 p.m. Entire state open.

ITEM 3. Amend rule 571—96.3(109) to read as follows:

**571—96.3(109) Quail season.** Open season for hunting quail shall be October ~~29~~ ~~28~~, ~~1988~~ ~~1989~~, through January ~~31~~, ~~1989~~ ~~1990~~. Bag limit eight birds daily; possession limit sixteen birds. Shooting hours shall be from 8 a.m. to 4:30 p.m. Entire state open.

These rules are intended to implement Iowa Code sections 109.38, 109.39 and 109.48.

These rules give the regulations for hunting common snipe, Virginia rail and sora, woodcock and ruffed grouse and include season dates, bag limits, possession limits, shooting hours and areas open to hunting.

The final rules for common snipe, Virginia rail and sora and woodcock are contingent upon compliance with frameworks to be established by the U.S. Fish and Wildlife Service.

Any interested person may make written suggestions or comments on these proposed rules prior to April 15, 1989. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515) 281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 15, 1989, at 10 a.m. in the auditorium of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

The following amendments are proposed.

ITEM 1. Rule 571—97.1(109) is amended to read as follows:

**571—97.1(109) Common snipe season.** Open season for hunting common snipe shall be from September ~~3~~ ~~2~~ through December ~~18~~ ~~17~~, ~~1988~~ ~~1989~~. Shooting hours shall be from sunrise to sunset each day. Daily bag limit 8 birds; possession limit 16 birds. Entire state open.

ITEM 2. Rule 571—97.2(109) is amended to read as follows:

**571—97.2(109) Virginia rail and sora season.** Open season for hunting Virginia rails and sora shall be from September ~~3~~ ~~2~~ through November ~~11~~ ~~10~~, ~~1988~~ ~~1989~~. Shooting hours shall be from sunrise to sunset each day. Daily bag limit 15 and possession limit 25 in aggregate of both species. Entire state open.

ITEM 3. Rule 571—97.3(109) is amended to read as follows:

**571—97.3(109) Woodcock season.** Open season for hunting woodcock shall be from September ~~17~~ ~~16~~ through November ~~20~~ ~~19~~, ~~1988~~ ~~1989~~. Shooting hours shall be from sunrise to sunset each day. Daily bag limit 5; possession limit 10. Entire state open.

ITEM 4. Rule 571—97.4(109), introductory paragraph, is amended to read as follows:

**571—97.4(109) Ruffed grouse season.** Open season for hunting ruffed grouse shall be from October ~~8~~ ~~7~~, ~~1988~~ ~~1989~~, through January ~~31~~, ~~1989~~ ~~1990~~. Shooting hours shall be from sunrise to sunset each day. Bag limit 3; possession limit 6.

These rules are intended to implement Iowa Code sections 109.38, 109.39 and 109.48.

These regulations are based on the best biological data available as determined by research conducted by the department of natural resources.

**ARC 9718****NATURAL RESOURCE  
COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 107.24, 109.38 and 109.39, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 97, "Common Snipe, Virginia Rail and Sora, Woodcock and Ruffed Grouse Hunting Seasons," Iowa Administrative Code.

**ARC 9717**  
**NATURAL RESOURCE**  
**COMMISSION[571]**  
**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 107.24, 109.38 and 109.39, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 99, "Wild Turkey Fall Hunting," Iowa Administrative Code.

These rules give the regulations for hunting wild turkeys during the fall and include season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take and transportation tag requirements.

Any interested person may make written suggestions or comments on these proposed rules prior to April 15, 1989. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515) 281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 15, 1989, at 10 a.m. in the auditorium of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

These rules are intended to implement the provisions of Iowa Code sections 109.38, 109.39 and 109.48.

The following amendments are proposed:

ITEM 1. Amend subrules 99.1(2) and 99.1(3) to read as follows:

**99.1(2) Seasons.** Wild turkey of any age or sex may be taken only by the use of shotguns, muzzleloading shotguns, and bow and arrow during specified periods as follows:

a. Combination shotgun-or-archery season. The open fall season for hunting wild turkey with shotguns, muzzleloading shotguns and bow and arrow shall be October 19 through November 27 26, 1988 1989.

b. Archery only. The open fall season for hunting wild turkey with bow and arrow only shall be October 1 through December 2 1, 1988 1989, and December 19 18, 1988 1989, through January 10, 1989 1990.

**99.1(3) Daily, possession and season limits.** The daily bag limit is one wild turkey per license; the possession and season limit is one wild turkey per license; the season limit is one wild turkey per license.

ITEM 2. Amend rule 571—99.4(109) to read as follows:

**571—99.4(109) Application procedure.** All applications for wild turkey hunting licenses for the 1988 1989 fall wild turkey hunting season must be made on forms provided by the department of natural resources and returned to the Department of Natural Resources, Des

Moines, Iowa 50319, with a remittance of \$20. Individual applications only will be accepted. Application periods for the two types of licenses will differ.

**99.4(1) Applications for shotgun and muzzleloading shotgun licenses.** Applications for 1988 1989 fall wild turkey gun hunting licenses shall be received and accepted from July 6 5 to August 19 18, 1988 1989, or if the application form bears a valid and legible U.S. Postal Service postmark during the same period. No person shall submit more than one application. At the end of the period, if applications have been received in excess of the license quota for any hunting zone, the department of natural resources shall conduct a drawing to determine which applicants shall receive licenses. Incomplete or improperly completed applications, applications not meeting the above conditions, or applications received prior to or after the application period shall not be considered valid applications for the drawing. If the quota for any hunting period or zone has not been filled by applications received during the application period, licenses shall then be issued in the order in which applications are received thereafter and shall continue to be issued until the quota has been met or until September 26 25, 1988 1989, whichever first occurs. Persons who have obtained one gun license during either of the earlier application periods may obtain one additional gun license beginning September 22 21, 1988 1989, if licenses are still available. No more than 100 gun licenses will be issued for zone 1; no more than 200 gun licenses will be issued for zone 2; no more than 100 gun licenses will be issued for zone 3; no more than 3,500 gun licenses will be issued for zone 4; no more than 500 gun licenses will be issued for zone 5; no more than 3,000 gun licenses will be issued for zone 6; and no more than 200 gun licenses will be issued for zone 7.

**99.4(2) Applications for bow and arrow licenses.** Applications for 1988 1989 fall wild turkey bow hunting licenses will be accepted at any time after July 6 5, 1988 1989. The number of bow licenses will not be restricted.

**99.4(3) Special turkey hunting licenses.** Applications for special turkey hunting licenses, as provided for in Iowa Code section 109.38, subsection 3, shall be on forms furnished by the department, and shall be received at the department offices no later than September 11 10, 1988 1989.

These rules are intended to implement Iowa Code sections 109.38, 109.39 and 109.48.

**ARC 9724**  
**NATURAL RESOURCE**  
**COMMISSION[571]**  
**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 107.24, 109.38 and 109.39, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 102, "Falconry Regulations for Hunting Game," Iowa Administrative Code.

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

These rules give the regulations for falconry hunting of waterfowl and small game and include season dates, bag limits, possession limits and areas open to hunting.

Any interested person may make written suggestions or comments on these proposed rules prior to April 15, 1989. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515) 281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 15, 1989, at 10 a.m. in the auditorium of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

These rules are intended to implement Iowa Code sections 109.38, 109.39 and 109.48.

The following amendments are proposed:

Amend rule 571—102.3(109) to read as follows:

**571—102.3(109) Pheasant, quail, gray partridge, cottontail rabbit, and jackrabbit.** Seasons and limits for the taking of pheasant (both sexes), quail, *gray partridge*, cottontail rabbit, and jackrabbit, by falconry only, shall be as follows:

**102.3(1) Seasons.**

a. Pheasant (both sexes), quail, *gray partridge*, and jackrabbit. The season for the taking of pheasant, quail, *gray partridge* and jackrabbit by means of falconry shall be from October 1 of each year through ~~January~~ *March* 31 of the following year.

b. Cottontail rabbit. The season for the taking of cottontail rabbits by means of falconry shall be from August 1 of each year through March 31 of the following year.

c. Squirrel, ~~gray partridge~~, common snipe, Virginia rail and sora, woodcock, and ruffed grouse. The seasons for the taking of squirrel, ~~gray partridge~~, common snipe, Virginia rail and sora, woodcock, and ruffed grouse, by means of falconry, shall be the same as those established in 571—Chapters 107, 96, and 97 of the Iowa Administrative Code.

**102.3(2) Limits.**

a. Pheasant (both sexes) and jackrabbit. The daily limit taken by means of falconry for pheasant and jackrabbit shall be one pheasant (either sex) and one jackrabbit; possession limit shall be two pheasants and two jackrabbits.

b. Quail, *gray partridge*, and cottontail rabbit. The daily limit taken by means of falconry for quail, *gray partridge*, and cottontail rabbit shall be two quail, *two gray partridge*, and two cottontail rabbits; possession limit shall be four quail, *four gray partridge*, and four cottontail rabbits.

c. Squirrel, ~~gray partridge~~, and ruffed grouse. The daily and possession limits taken by means of falconry for squirrel, ~~gray partridge~~, and ruffed grouse shall be the same as those established in 571—Chapters 107, 96, and 97 of the Iowa Administrative Code.

Further amend 571—Chapter 102 by adding the following paragraph following the implementation paragraph at the end of rule 102.5(109).

*These rules are based on the best biological data available as determined by research conducted by the department of natural resources.*

## ARC 9723

## NATURAL RESOURCE COMMISSION[571]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 107.24, 109.38 and 109.39, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 106, "Deer Hunting Regulations," Iowa Administrative Code.

These rules give the regulations for hunting deer and include season dates, bag limits, possession limits, season limits, shooting hours, areas open to hunting, license quotas, licensing procedures, means and methods of take and transportation tag requirements.

Any interested person may make written suggestions or comments on these proposed rules prior to April 15, 1989. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 15, 1989, at 10 a.m. in the auditorium of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

These rules are intended to implement the provisions of Iowa Code sections 109.38, 109.39 and 109.48.

The following amendments are proposed:

ITEM 1. Amend rule 571—106.1(109), introductory paragraph, to read as follows:

**571—106.1(109) Licenses.** Every hunter must have in possession a valid ~~1988 1989~~ deer license when hunting, possessing, or transporting deer. No person, while hunting deer, shall carry or have in possession any license or transportation tag issued to another person.

ITEM 2. Amend rule 571—106.2(109) to read as follows:

**571—106.2(109) Season dates.** Deer may be taken in ~~1988 1989~~ only during the following periods.

**106.2(1) Bow season.** Deer of any age or sex may be taken by bow and arrow only from October 1 through December ~~2 1, 1988 1989~~, and December ~~19 18, 1988 1989~~, through January 10, ~~1989 1990~~, except at the Iowa Army Ammunition Plant deer may be taken during these dates only as described in subrule 106.1(4).

**106.2(2) Regular gun season.** Deer may be taken with gun only in accordance with the type, tenure, and zone of license issued, from December ~~3 2~~ through December ~~7 6~~, or from December ~~10 9~~ through December ~~18 17, 1988 1989~~.

**106.2(3) Special muzzleloader season.** Deer may be taken by muzzleloader only in accordance with the type of license issued, from October ~~15 14~~ through October



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

23 22, or from December 19 18, 1988 1989, through January 10, 1989 1990.

106.2(4) Iowa Army Ammunition Plant. Deer may be taken from December 3 2 through December 7 6, or from December 10 9 through December 18 17, 1988 1989, in accordance with subrule 106.1(4). Additional hunting periods may be allowed on December 31 30, 1988 1989, and January December 1 31, 1989, and January 7 6 and 8 7, 1989 1990, for gun hunters holding an unfilled transportation tag as described in subrule 106.1(4). Hunter numbers for the additional hunting periods of December 31 30, 1988 1989, and January December 1 31, 1989, and January 7 6 and 8 7, 1989 1990, may be regulated by the Iowa Army Ammunition Plant authorities.

ITEM 3. Amend rule 571—106.4(109) to read as follows:

**571—106.4(109) Limits.**

106.4(1) Bow season. Daily bag limit one deer; possession limit one deer *per license*, except at the Iowa Army Ammunition Plant.

106.4(2) Muzzleloader season. Daily bag limit one deer; possession limit one deer.

106.4(3) Regular gun seasons. Bag limit shall be one deer for each hunter in the party who has a valid deer transportation tag. Possession limit shall be one deer *per license*; "possession" shall mean that the deer is in possession of the person whose license number matches the number of the transportation tag on the carcass of the deer.

106.4(4) Iowa Army Ammunition Plant. A hunter's bag limit shall be one deer for each transportation tag in accordance with subrule 106.1(4). Possession limit shall be two deer; "possession" shall mean that the deer is in possession of the person whose license number matches the number of the transportation tag on the carcass of the deer.

106.4(5) Maximum annual possession limit. *The maximum annual possession limit varies with the type of weapon(s) used.*

a. General. Hunters may possess a maximum of two deer. One taken with a bow and one taken during a gun season.

a. Bow season. Hunters may possess a maximum of two deer taken with a bow and no other deer except at the Iowa Army Ammunition Plant.

b. Regular gun season. Hunters may possess two deer if one is taken with an antlerless-only permit.

c. Regular gun season and bow season. Hunters may possess two deer, if one is taken with a bow and one with a gun, or three deer if two are taken with a gun and one with a bow.

b d. Iowa Army Ammunition Plant. Maximum possession limit is two deer taken with a bow or two deer taken with a gun.

e e. Combined Iowa Army Ammunition Plant and general other. Maximum possession limit is three deer. A hunter can take one deer with a bow outside the IAAP and two with a gun inside the IAAP or take two deer with a bow inside the IAAP and one with a gun outside the IAAP.

ITEM 4. Amend subrule 106.5(2), paragraphs "d" and "e," to read as follows:

d. Zone 4. Beginning at the point where Interstate Highway 35 and U.S. Highway 30 intersect; thence along Interstate Highway 35 to its eastern junction with Interstate Highways 80 and 235; thence along Interstate Highway 235 to its western junction with Interstate

Highways 80 and 35; thence along Interstate Highway 35 to the Missouri-Iowa state line; thence along the Missouri-Iowa state line to U.S. Highway 59; thence along U.S. Highway 59 to State Highway 141; thence along State Highway 141 to State Highway 4; thence along State Highway 4 to U.S. Highway 30; thence along U.S. Highway 30 to the point of beginning. *Zone 4A is that portion of Zone 4 falling in Montgomery, Page, Adams, Taylor, Union, Ringgold, Clarke and Decatur counties.*

e. Zone 5. Beginning at the point where where Interstate Highway 235 and State Highway 163 intersect; thence along State Highway 163 to State Highway 92; thence along State Highway 92 to U.S. Highway 218; thence along U.S. Highway 218 to U.S. Highway 34; thence along U.S. Highway 34 to U.S. Highway 63; thence along U.S. Highway 63 to the Missouri-Iowa state line; thence along the Missouri-Iowa state line to Interstate Highway 35; thence along Interstate Highway 35 to its western junction with Interstate Highways 80 and 235; thence along Interstate Highway 235 to the point of beginning. *Zone 5A is that portion of Zone 5 falling in Clarke, Decatur, Lucas, Wayne, Monroe, Appanoose, Wapello and Davis counties.*

ITEM 5. Amend rule 571—106.6(109) to read as follows:

**571—106.6(109) License quotas.** A limited number of deer licenses or a limited number of certain types of licenses will be issued as follows:

106.6(1) Bow season. There will be no restrictions on the number or type of licenses issued for the bow and arrow deer season. *A second antlerless-only bow and arrow license may be purchased for \$20 from the department of natural resources Des Moines office.*

106.6(2) Regular gun season. A quota will be established for the number of paid any sex deer regular gun season licenses to be issued for each specific zone zones. Quotas for paid any sex regular gun license by zone and period will be as follows: in Zone 1, 2,000 for the first period and unlimited for the second period; in Zone 2, 1,000 for the first period and unlimited for the second period; in Zones 3 through 10, unlimited any sex licenses for both first and second periods. The department shall conduct a drawing in period 1, Zones 1 and 2 to determine which applicants are to receive an any sex license except all free landowner-tenant licenses received during the application period will be any sex. *All persons receiving an any sex license for the second period in Zones 4, 5, and 6 will be eligible to apply for a second antlerless permit for the second period that is valid for all or part of the respective zone. In Zone 6 the antlerless permit will be good for the entire zone. In Zone 5 antlerless permits are valid only in Zone 5A. In Zone 4 antlerless permits will be valid only in Zone 4A.* Those applicants submitting their certificate issued when they received a bucks only license in 1987 1988, except those requesting an antlered deer only license and those failing to designate the zone on the application form, shall receive first priority in the drawing for any sex deer licenses. All other regular gun season applicants will receive a license valid only for antlered deer. Antlered deer are defined as those deer having at least one three-inch antler.

106.6(3) Special muzzleloader season. No more than ~~3,500~~ 5,000 any sex licenses will be issued for the period October 15 14 through October 23 22 and unlimited licenses issued for December 19 18, 1988 1989, through

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

January 10, 1989 1990, will be any sex. If applications exceed that number, the department shall conduct a drawing to determine which applicants are to receive a deer license.

ITEM 6. Amend subrule 106.7(4) and add the following new subrule 106.7(5).

**106.7(4)** Prohibited weapons and devices. The use of dogs, domestic animals, salt or bait, rifles other than muzzleloaded, handguns, crossbows, automobiles, aircraft, or any mechanical conveyance or device is prohibited.

*It shall be illegal for a licensed bow hunter to have on their person a handgun while bow hunting for deer. It shall be illegal for a licensed gun deer hunter, special muzzleloader or regular gun seasons, to have on their person a centerfire rifle while gun hunting for deer.*

**106.7(5)** Discharge of firearms from roadway. No person shall discharge a shotgun shooting slugs from a road right-of-way during the regular gun seasons in Zones 1, 2 and 10.

ITEM 7. Amend rule 106.8(109) to read as follows:

**571—106.8(109) Application procedures.**

**106.8(1)** Bow season licenses. Paid bow and arrow deer licenses will be issued by county recorders and the Des Moines office of the department of natural resources upon receipt of the \$20 fee. All applications for landowner-tenant bow and arrow licenses and second antlerless-only paid bow licenses shall be made on forms furnished by the department of natural resources and returned to the department of natural resources in Des Moines, Iowa. Applications for paid second antlerless-only bow licenses must be received and accepted between July 24 and August 25, 1989, or if the application bears a valid and legible postmark during the same period.

**106.8(2)** Regular gun season licenses. All applications for regular gun season deer hunting licenses for the 1988 1989 deer hunting season shall be made on forms provided by the department of natural resources and returned to the department of natural resources office in Des Moines, Iowa. Applications for paid regular gun season deer hunting licenses must be accompanied by \$20 for each license. Only individual applications and only individual remittances of the \$20 fee will be accepted. Applications will be received and accepted only from July 25 24 through September 7 6, 1988 1989, or if the application form bears a valid and legible U.S. Postal Service postmark during the same period. Any incomplete or improperly completed application, any application not meeting the above conditions, or any application received prior to the application period will not be considered as a valid application, except that any application for a gun license not showing the designated zone or received after the application period through ~~October~~ September 31 30, 1988 1989, shall be presumed to be a valid application for an antlered deer only license provided it meets all other conditions. If the quota of any sex regular gun season deer licenses has not been filled, licenses shall then be issued in the order in which applications are received and shall continue to be issued until the quota has been met or until ~~October~~ September 31 30, 1988 1989, whichever first occurs.

**106.8(3)** Special muzzleloader season licenses. All applications for special muzzleloader season deer hunting licenses for the 1988 1989 season must be made on forms provided by the department of natural resources and returned to the department in Des Moines, Iowa.

Applications must be accompanied by \$20. Only individual applications and only individual remittances of the \$20 fee will be accepted. Applications will be received and accepted only from July 25 24 through September 7 6, 1988 1989, or if the application form bears a valid and legible U.S. Postal Service postmark during the same period. Any incomplete or improperly completed application, any application not meeting the above conditions, or any application received prior to or after the application period will not be considered as a valid application. If the quotas for special muzzleloader season deer licenses have not been filled, licenses shall then be issued in the order in which applications are received and shall continue to be issued until quotas have been met or until ~~October~~ September 31 30, 1988 1989, whichever first occurs.

**106.8(4)** Iowa Army Ammunition Plant. All applications for special Iowa Army Ammunition Plant gun season deer licenses for the 1988 1989 deer hunting season shall be made on forms provided by the Iowa Army Ammunition Plant. Applications must be accompanied by \$20. All hunters will be required to have an Iowa Army Ammunition Plant permit to hunt at the Iowa Army Ammunition Plant.

**106.8(5)** Restrictions. No person shall obtain more than one regular deer bow license and one second antlerless-only deer license, and no person shall obtain more than one regular gun deer license and one second antlerless-only gun deer license. Those persons purchasing an antlerless-only bow deer license will not be eligible to apply for any gun deer license. A gun deer license is a license issued for the regular gun season or a license issued for a special muzzleloader season.

These rules are intended to implement Iowa Code sections 109.38, 109.39 and 109.48.

**ARC 9722****NATURAL RESOURCE  
COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 107.24, 109.38 and 109.39, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 107, "Rabbit and Squirrel Hunting," Iowa Administrative Code.

These rules give the regulations for hunting rabbits and squirrels and include season dates, bag limits, possession limits, shooting hours and areas open to hunting.

Any interested person may make written suggestions or comments on these proposed rules prior to April 15, 1989. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515) 281-6156 or

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

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

Also, there will be a public hearing on April 15, 1989, at 10 a.m. in the auditorium of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

These rules are intended to implement Iowa Code sections 109.38, 109.39 and 109.48.

The following amendments are proposed:

ITEM 1. Amend rule 571—107.1(109) to read as follows:

**571—107.1(109) Cottontail rabbit season.** Open season for hunting cottontail rabbits shall be from September 3 2, 1988 1989, through February 28, 1989 1990. Bag limit shall be ten per day; possession limit twenty. Legal hunting hours shall be from sunrise to sunset. Entire state open.

ITEM 2. Amend rule 571—107.2(109) to read as follows:

**571—107.2(109) Jackrabbit season.** Open season for hunting jackrabbits shall be from October 29 28, 1988 1989, through December 11 10, 1988 1989. Bag limit shall be three per day; possession limit six. Legal hunting hours shall be from sunrise to sunset. Entire state open.

ITEM 3. Amend rule 571—107.3(109) to read as follows:

**571—107.3(109) Squirrel season.** Open season for hunting squirrels (fox and gray) shall be from September 3 2, 1988 1989, through January 31, 1989 1990. Bag limit shall be six squirrels per day; possession limit twelve. Entire state open.

These rules are intended to implement Iowa Code sections 109.38, 109.39 and 109.48.

These rules are based on the best biological data available as determined by research conducted by the department of natural resources.

## ARC 9721

NATURAL RESOURCE  
COMMISSION[571]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 107.24, 109.6, 109.38 and 109.39, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 108, “Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, Otter and Spotted Skunk Seasons,” Iowa Administrative Code.

These rules give the regulations for taking furbearers (except groundhog) and include season dates, bag limits, possession limits, shooting hours and areas open to harvest.

Any interested person may make written suggestions or comments on these proposed rules prior to April 15, 1989. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515) 281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on April 15, 1989, at 10 a.m. in the auditorium of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

These rules are intended to implement the provisions of Iowa Code sections 109.6, 109.38, 109.39, 109.87 and 109.90.

The following amendments are proposed:

ITEM 1. Amend rule 571—108.1(109), introductory paragraph, and subrule 108.1(2) to read as follows:

**571—108.1(109) Mink, muskrat and weasel.** Open season for the taking of mink, muskrat and weasel shall be from 8 a.m., November 5 4, 1988 1989, through January 22 21, 1989 1990. Entire state open. No bag or possession limit.

**108.1(2) Game management areas.** Open season for taking muskrats on certain state game management areas, certain federal national wildlife refuges, and certain county conservation board areas, only where approved by the natural resource commission and posted accordingly, shall be from 8 a.m., March 4 3 through April 9 8, 1989 1990. The use of leghold traps during this season is prohibited unless each trap is placed completely inside a muskrat house. No bag or possession limit.

ITEM 2. Amend rule 571—108.2(109) to read as follows:

**571—108.2(109) Raccoon, badger, opossum and striped skunk.** Open season for the taking of raccoon, badger, opossum, and striped skunk shall be from 8 a.m., November 5 4, 1988 1989, through January 22 21, 1989 1990. Entire state open. No bag or possession limit.

ITEM 3. Amend rule 571—108.3(109) to read as follows:

**571—108.3(109) Red and gray fox.** Open season for the taking of red and gray fox shall be from 8 a.m., November 5 4, 1988 1989, through January 22 21, 1989 1990. Entire state open. No bag or possession limit.

ITEM 4. Amend rule 571—108.4(109) to read as follows:

**571—108.4(109) Beaver.** Open season for the taking of beaver shall be from 8 a.m., November 5 4, 1988 1989, through April 9 8, 1989 1990. No bag or possession limit.

ITEM 5. Amend rule 571—108.5(109) to read as follows:

**571—108.5(109) Coyote.**

**108.5(1) Hunting.** Continuous open season. Entire state open. No bag or possession limit.

**108.5(2) Trapping.** Open season for trapping coyote shall be 8 a.m., November 5 4, 1988 1989, through January 22 21, 1989 1990. Entire state open. No bag or possession limit. Any conservation officer or wildlife biologist may authorize a landowner, tenant or designee to trap coyotes causing damage outside the established trapping season dates.

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

ITEM 6. Amend subrule 108.7(2) by adding the following new paragraphs:

j. Area ten. That portion of the Winnebago River floodplain in Cerro Gordo County between County Road S18 and U.S. Highway 18.

k. Area eleven. That portion of the Cedar River floodplain in Mitchell County between the Minnesota-Iowa border and U.S. Highway 9.

These rules are intended to implement Iowa Code sections 109.6, 109.38, 109.39, 109.87, and 109.90.

These rules are based on the best biological data available as determined by research conducted by the department of natural resources.

## ARC 9725

PUBLIC DEFENSE  
DEPARTMENT[601]

DISASTER SERVICES DIVISION

## 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 477B.3, the Disaster Services Division hereby gives Notice of Intended Action to adopt 601—Chapter 10, "Enhanced 911 Telephone Systems," Iowa Administrative Code.

The substance of these rules was also adopted and filed emergency and is published herein as ARC 9726. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference. Consideration will be given to all written data, views or arguments thereto, received by the Disaster Services Division, Hoover State Office Building, Des Moines, Iowa 50319, on or before March 28, 1989.

There will also be a public hearing on Monday, April 3, 1989, at 9 a.m. in the conference room on A level of the Hoover State Office Building. Persons who wish to make oral presentations at the public hearing should contact the Administrator of the Disaster Services Division no later than March 28, 1989.

These rules are intended to implement Iowa Code chapter 477B.

## ARC 9703

PROFESSIONAL LICENSURE  
DIVISION[645]BOARD OF EXAMINERS FOR  
LICENSING AND REGULATION OF  
HEARING AID DEALERS

## 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 154A.4, the Board of Examiners for Licensing and Regulation of Hearing Aid Dealers amends Chapter 120, Iowa Administrative Code.

The proposed amendment removes the requirement that advertising of hearing testing is to be followed by the phrase "testing for the purpose of selecting, adapting, fitting and sale of hearing aids".

Any interested person may make written comments on this proposed rule not later than March 28, 1989, addressed to Carol J. Barnhill, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The proposed rule implements Iowa Code section 154A.4.

Rescind subrule 120.212(8), paragraph "d," as follows:

d. Failure to place in an advertisement, which advertises hearing tests or free hearing tests or hearing measurement or free hearing measurement for the purpose of determining whether a hearing aid will assist hearing, the qualifying words in the same size type "for the purpose of fitting, selection, adaption, and sale of hearing aids".

## ARC 9719

## REAL ESTATE COMMISSION[193E]

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 117.9, the Iowa Real Estate Commission hereby gives Notice of Intended Action to amend Chapter 1, "Business Conduct," Iowa Administrative Code.

The Federal Trade Commission has clearly established that there is confusion in regard to real estate agency relationships which has been detrimental to the public and which has led to a sharp increase in lawsuits against real estate licensees. The proposed rules require written disclosure of the agency relationship to each party in a transaction. Actual enforcement of the rules will be delayed until January 1, 1990, to give the Commission time to educate the licensees and for the licensees to develop appropriate forms and revise contracts.

REAL ESTATE COMMISSION[193E] (cont'd)

The proposed rules will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions. The proposed rules will not have an impact on small business within the meaning of Iowa Code section 17A.31.

Any interested persons may make written suggestions on these proposed rules no later than March 31, 1989, to the Executive Secretary, Iowa Real Estate Commission, 1918 S.E. Hulsizer, Ankeny, Iowa 50021. Persons who wish to convey their views orally should contact the Executive Secretary at (515)281-3183 or at the above address.

These rules are intended to implement Iowa Code section 117.34(4).

Amend 193E—Chapter 1 by adding the following new rules:

193E—1.37(117) Definitions. As used in this chapter:

“Buyer” includes a vendee, lessee, party to an exchange, or grantee of an option.

“Contract between the buyer and seller” includes an offer to purchase, a sales contract, an option, a lease-purchase option, an offer to lease, or a lease.

“Listing broker” means the real estate broker who obtains a listing of real estate or of an interest in a residential cooperative housing corporation.

“Seller” includes a vendor, lessor, party to an exchange, or grantor of an option.

“Selling broker” means a real estate broker who acts in cooperation with a listing broker and who finds and obtains a buyer in a transaction.

“Transaction” means any real estate transaction or a sale or exchange or option involving an interest in a residential cooperative housing corporation, but excluding leases for one year or less.

193E—1.38(117) Disclosure of agency. Enforcement of this rule and its subrules will commence January 1, 1990.

1.38(1) No person licensed pursuant to Iowa Code chapter 117 shall represent any party or parties to a real estate transaction or otherwise act as a real estate broker or salesperson unless that person makes an affirmative written disclosure to all parties to the transaction identifying which party that person represents in the transaction. The disclosure shall be acknowledged by separate signatures of the buyer and seller.

1.38(2) The disclosure required by this rule must be made by the licensee prior to any offer being made by the buyer or accepted by the seller. A change in licensee’s representation that makes the initial disclosure incomplete, misleading, or inaccurate requires that a new disclosure be made at once.

1.38(3) The seller may, in the listing agreement, authorize the seller’s broker to disburse part of the broker’s compensation to other brokers, including a buyer’s broker solely representing the buyer. A broker representing a buyer shall make known to the seller or the seller’s agent the fact of the agency relationship before any showing or negotiations are initiated. The obligation of either the seller or buyer to pay compensation to a broker is not determinative of the agency relationship.

1.38(4) A licensee may not be the agent for both the buyer and the seller without obtaining the written consent of both the buyer and the seller. The written consent shall state that the licensee made a full disclosure

of the type of representation the licensee will provide and shall briefly describe the type of representation the licensee will provide to the buyer and to the seller. A general statement in the consent signed by the buyer and seller that the licensee represents both buyer and seller is not sufficient.

1.38(5) No particular disclosure language is required. To assist licensees, the commission approves the following language when representing one party to the transaction:

\_\_\_\_\_, and all licensees (print Name of Broker) employed by or associated with the broker, represents the \_\_\_\_\_ By

(Buyer or Seller)

signing below, the Buyer and Seller confirm that written disclosure of representation was provided to them before the signing of the transaction contract.

\_\_\_\_\_  
(Buyers’ Signatures) (Sellers’ Signatures)

(Date)

(Date)

a. Failure of a licensee to comply with this rule is prima facie evidence of a violation of Iowa Code section 117.34(4).

b. Failure of a licensee to act consistent with disclosure representations made pursuant to this rule is prima facie evidence of a violation of Iowa Code section 117.34(4).

c. Nothing in this rule shall affect the validity of title to real property transferred based solely on the reason that any licensee failed to conform to the provisions of this rule.

ARC 9728

REGENTS BOARD[681]

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 262.9, the State Board of Regents gives Notice of Intended Action to amend Chapter 9, “Policies, Practices and Procedures,” Iowa Administrative Code.

The rules replace emergency rules implemented in July of 1988, and set forth the policy of the State Board of Regents that activities in competition with private enterprise will be carried out only when they promote or relate to the institutions’ mission, consistent with the provisions of Iowa Code chapter 23A

The rules identify and clarify which of the activities pursued by the institutions under the control of the State Board of Regents are covered by Iowa Code chapter 23A. The rules establish an institutional review requirement and an appeal process. The rules also require that institutions develop a procedure for consultation with

**REGENTS BOARD[681] (cont'd)**

community interests in its review process in order to analyze the impact of any proposed activity on local business interests. The proposed rules will not have an impact on small business except to the extent that business opportunities for private enterprise may increase.

These rules are proposed to comply with the requirements of Iowa Code chapter 23A relating to governmental competition with and purchasing from private enterprise.

Any interested person may make written comments on these proposed rules prior to April 4, 1989. Such written material should be directed to R. Wayne Richey, Executive Secretary, Iowa State Board of Regents, Lucas State Office Building, Des Moines, Iowa 50319. An opportunity for oral presentations will be provided at 10 a.m. on April 4, 1989, in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa.

These rules are intended to implement Iowa Code chapter 23A.

Rescind 681—9.4(23A) and adopt the following new rule:

**681—9.4(23A) Policy on competition with private enterprise.**

**9.4(1) Policy statement.** A primary responsibility of the board of regents is to oversee institutions whose missions include the creation and dissemination of knowledge. These missions encompass teaching, research, and services. To fulfill their missions effectively, institutions under the control of the state board of regents occasionally provide goods and services which enhance, promote, or support the instructional, research, public service, and other functions to meet the needs of students, faculty, staff, patients, visitors, and members of the public participating in institutional events.

It is the policy of the board of regents that the institutions shall not engage in competition with private enterprise unless the activity will assist in the education, research, extension or service mission of the institutions.

All activities involving the sale of goods, services, or facility usage shall be in accordance with an authorization and statement of purpose approved by the chief business officer at each institution. This approval will be given only after review which demonstrates that one or more of the following conditions are met:

a. The activity is deemed to be an integral part of the institution's educational, research, public service and campus support functions, and other educational and support activities;

b. The activity is needed to provide an integral good or service which is not reasonably available in the community; or the activity is needed to provide an integral good or service at time, price, location, or terms which are not reasonably available in the community.

c. The activity is carried out for the primary benefit of the campus community and is incidental to the education, research, service, or extension missions of the university.

d. The activity is carried out due to the importance of maintaining the quality of the institution.

**9.4(2) Definitions.**

"Institutions under the control of the state board of regents" means the State University of Iowa, the University of Northern Iowa, Iowa State University of Science and Technology, Iowa School for the Deaf, and Iowa Braille and Sight-Saving School.

"Private enterprise" means an individual, firm, partnership, joint venture, corporation, association, or other legal entity engaging in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing, or advertising of goods or services for profit.

**9.4(3) Policy in writing.** Each institution under the control of the state board of regents shall have in writing:

a. A mechanism for reviewing proposed activities involving the sale of goods, provision of services, or usage of facilities to ensure that activities are consistent with board of regents policies; and

b. A procedure for receiving, reviewing, and responding to inquiries about activities carried out by the institution.

**9.4(4) Prohibition.** State board of regents institutions shall not engage in activities provided by private enterprise except as provided below.

**9.4(5) Exceptions provided by statute.** This prohibition does not apply to the on-campus activities of an institution under the control of the state board of regents as provided in Iowa Code section 23A.2(10)"k"(1) to (10).

**9.4(6) Exemptions.** The state board of regents exempts the following activities from the prohibition against competition with private enterprise.

a. Goods and services that are directly and reasonably related to the mission of the institution including (activities such as):

(1) Conferences, institutes, outreach programs, specialized centers and other efforts and programs which provide continuing education;

(2) Child day care services and health services provided to members of the university community;

(3) Educational media, publication, distribution, and audiovisual centers and services;

(4) Family and guest housing;

(5) Laundry, custodial, maintenance, and similar services.

b. Goods and services offered to only students, employees, or guests of the institution or school and which cannot be provided by private enterprise at the same or lower cost, including (activities such as):

(1) Gift shops which offer a limited and specialized array of goods;

(2) Specialized instruction in the visual or performing arts;

(3) Dormitory-based shops which serve students and offer a limited range of goods.

c. The acquisition, maintenance, and use of institutional aircraft and a vehicle fleet maintained for the purpose of transportation for educational and related purposes, including field trips.

d. Durable medical equipment or devices sold or leased for use off premises of an institution, school, or University of Iowa Hospitals and Clinics when

(1) The equipment is needed to initiate or effectuate a treatment regimen (i.e., implants); or

(2) The equipment is essential to a rehabilitation program (i.e., crutches, prostheses); or

(3) The equipment is of a specialized nature and is not reasonably available elsewhere (i.e., customized or adaptive equipment for the handicapped); or

(4) A short-term supply of equipment is provided to avoid disruption in a treatment regimen when a patient is discharged.

e. Goods or services which are not otherwise available in the quantity or quality required by the institution,

## REGENTS BOARD[681] (cont'd)

including (activities such as) specialized course materials, equipment, supplies, software, and publications.

f. Telecommunications systems utilized for communications within the institution's community of interest and broadcast and narrowcast communication systems, including microwave, fiber optic and satellite communications.

g. Facilities, programs, and associated support services for fitness and recreation initiated and maintained primarily for the benefit of students, faculty, and staff.

h. Food services and sales located on campus and initiated and maintained primarily for the benefit of students, faculty, staff, and guests of the institution.

i. Sales of books, records, tapes, software, educational equipment and supplies offered primarily to students, faculty, and staff of the institution; sales of personal computers and associated hardware pursuant to institutional policy and limited to students, faculty, and staff.

9.4(7) Provision for consultation with community and related business interests. Each institution under the control of the state board of regents shall establish a mechanism for consultation with business interests in its community or area. This will involve the chief financial officer of the institution, and representatives of the institution, and will include the following:

a. Advising the institution on policies and procedures regarding the sale of goods or services which might compete with private enterprise.

b. Making recommendations, at the request of the institution, on particular activities.

c. Other duties as may be requested by the institution.

9.4(8) Appeal process. An appeal process is essential for resolving complaints involving competition with private enterprise.

a. A private enterprise which seeks to appeal an action or activity of an institution under the control of the state board of regents shall attempt to resolve the issue at the institutional level. The form of appeal to the institution shall be a letter to the chief business officer.

b. If the private enterprise is dissatisfied with the institution's response, the private enterprise may notify the executive secretary of the state board of regents and request assistance. This request shall be in writing and shall describe the action or activity which is being appealed.

c. The executive secretary may then take action to assist the private enterprise and the institution in resolving the issue.

d. If the issue remains unresolved, the executive secretary, at the request of the private enterprise, may docket the matter for review by the board of regents. If the matter is docketed, the executive secretary will prepare a recommendation for the board of regents to consider. A copy of the recommendation with notice of the time, date, and place of the meeting for which the matter has been docketed shall be transmitted to the private enterprise and the institutions prior to the meeting.

e. Board of regents action shall constitute a final agency action.

## ARC 9698

TRANSPORTATION  
DEPARTMENT[761]

## Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Department of Transportation hereby gives Notice of Intended Action to amend 761—Chapter 800, "Items of General Application," Iowa Administrative Code.

A new rule is being added which implements Iowa Code section 327F.31. This legislation provides for Departmental approval of an ordinance or resolution adopted by a political subdivision which relates to the speed of a train in an area within the jurisdiction of the political subdivision.

On April 18, 1989, at their regular meeting at the Department of Transportation Complex, 800 Lincoln Way, Ames, Iowa, the Transportation Commission shall consider this proposed administrative rule.

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

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

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

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

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

5. Be delivered to this office or postmarked no later than April 4, 1989.

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

The proposed rule may have an impact on small business. The Department has considered the factors listed in Iowa Code subsection 17A.31(4), paragraphs "a" to "l." The Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code section 17A.31, or an organization of small businesses representing at least 25 persons which is registered with the Department under section 17A.31 may request the issuance of a regulatory flexibility analysis. The request must:

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

2. Be submitted in writing to the Office of Financial/Operational Analysis at the address listed in this Notice.

3. Be delivered to this office or postmarked no later than 20 days after publication of this Notice in the Iowa Administrative Bulletin.

Proposed rule-making action:

Amend Chapter 800 by adding the following new rule:

**761—800.15(327F) Train speed ordinances.** An ordinance or resolution adopted by a political subdivision

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

which relates to the speed of a train in an area within the jurisdiction of the political subdivision is subject to departmental approval according to the following procedure:

**800.15(1)** The political subdivision shall submit the ordinance/resolution to the department.

**800.15(2)** The department shall notify the affected railroads.

**800.15(3)** The political subdivision and the affected railroads shall have 30 days in which to submit position papers to the department before the department issues an order approving or disapproving the ordinance/resolution.

**800.15(4)** The department shall mail notice of its order approving or disapproving the ordinance/resolution by certified mail, return receipt requested, to the political subdivision and the affected railroads.

**800.15(5)** If the department issues an order approving the ordinance/resolution, it shall go into effect 25 days after the notice is mailed unless the order is contested pursuant to subrule 800.15(6).

**800.15(6)** Within 20 days after the notice is mailed, the political subdivision or an affected railroad may submit to the department a written statement contesting the department's order approving or disapproving the ordinance/resolution.

a. If the order is contested, 761—Chapter 13 applies.

b. If an order approving an ordinance/resolution is contested, the order shall be stayed pending the outcome of the contested case.

**800.15(7)** Submissions to the department under this rule shall be directed to the rail and water division at the address listed in rule 761—800.2(17A).

**800.15(8)** A submission to the rail and water division shall be deemed timely submitted if it is delivered to the rail and water division or postmarked within the time period specified.

This rule is intended to implement Iowa Code section 327F.31.

## NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 453.6, the Committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Banking Edward L. Tubbs, and Auditor of State Richard D. Johnson have established the following rates of interest for public obligations and special assessments. The usury rate for March is 11.00%.

### INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants . . . . . Minimum 7.5%  
64A.4 Special Assessments . . . Maximum 12.0%

**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 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 March 2, 1989, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

### TIME DEPOSITS

7 - 31 days . . . . .	Minimum 8.00%
32 - 89 days . . . . .	Minimum 8.20%
90 - 179 days . . . . .	Minimum 8.40%
180 - 364 days . . . . .	Minimum 8.50%
One year . . . . .	Minimum 8.30%
Two years . . . . .	Minimum 9.05%

These are minimum rates only. The one year and less are six-tenths of a percent below average rates. Public body treasurers and their deputies 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:

April 1, 1987 — April 30, 1987	9.25%
May 1, 1987 — May 31, 1987	9.25%
June 1, 1987 — June 30, 1987	10.00%
July 1, 1987 — July 31, 1987	10.50%
August 1, 1987 — August 31, 1987	10.50%
September 1, 1987 — September 30, 1987	10.50%
October 1, 1987 — October 31, 1987	10.75%
November 1, 1987 — November 30, 1987	11.50%
December 1, 1987 — December 31, 1987	11.50%
January 1, 1988 — January 31, 1988	10.75%
February 1, 1988 — February 29, 1988	11.00%
March 1, 1988 — March 31, 1988	10.75%
April 1, 1988 — April 30, 1988	10.25%
May 1, 1988 — May 31, 1988	10.25%
June 1, 1988 — June 30, 1988	10.75%
July 1, 1988 — July 31, 1988	11.00%
August 1, 1988 — August 31, 1988	11.00%
September 1, 1988 — September 30, 1988	11.00%
October 1, 1988 — October 31, 1988	11.25%
November 1, 1988 — November 30, 1988	11.00%
December 1, 1988 — December 31, 1988	10.75%
January 1, 1989 — January 31, 1989	11.00%
February 1, 1989 — February 28, 1989	10.75%
March 1, 1989 — March 31, 1989	11.00%



## ARC 9729

ECONOMIC DEVELOPMENT, IOWA  
DEPARTMENT OF[261]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development emergency adopts and implements an amendment to Chapter 23, "Community Development Block Grant Nonentitlement Program," Iowa Administrative Code. This amendment was adopted by the Department of Economic Development Board on February 16, 1989.

The amendment to subrule 23.6(3) allows a transfer of unobligated funds that have accrued in the economic development set-aside account due to federal restrictions on the use and beneficiaries of these funds. It allows a one-time transfer of funds to the general competitive component of the Community Development Block Grant program at the discretion of the Director of the Department. The general competitive fund provides grant assistance to Iowa communities to address their needs in areas including infrastructure, housing, redevelopment, and essential governmental responsibilities.

This action will allow the Department to meet federally imposed deadlines on obligation of funds. At the same time, it will provide additional moneys on a timely basis to communities for their development needs.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation are unnecessary, impracticable and contrary to the public interest because any delay would withhold the availability of funds to Iowa communities. Federally imposed deadlines require action be taken in the most timely manner possible or place future appropriations at risk.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of the rule, 35 days after publication, should be waived and be made effective upon filing with the Administrative Rules Coordinator because the rule confers a benefit on the public by making federal assistance funds more readily available by transferring funds to the competitive program component and reducing the risk of loss of federal funds.

This amendment implements Iowa Code section 15.108(1)"a" and Public Law 93-383, as amended.

The following amendment is adopted:

Amend subrule 23.6(3) as follows:

**23.6(3)** Funds reserved for economic development set-aside. Up to 25 percent of total program funds will be reserved each year for the economic development set-aside program. If this ~~fund allocation for the current fiscal year~~ is not fully allocated in any year, the excess will be reallocated to the economic development set-aside program for the following program year. *For fiscal year 1989 only, at the director's discretion, funds may be reallocated which have been carried forward from previous years' reserves for the economic development set-aside program to the general competitive program upon receipt of the funding allocation for fiscal year 1989.*

[Filed emergency 2/17/89, effective 2/17/89]

[Published 3/8/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/8/89.

## ARC 9699

## EDUCATION DEPARTMENT[281]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 256.7(5), the Department of Education hereby adopts an amendment to Chapter 64, "Child Development Coordinating Council," Iowa Administrative Code.

In compliance with Iowa Code section 17A.4(2), the Department finds that public notice and participation are impracticable since the amendment is not controversial and no comments are expected. This amendment is proposed in response to a request for clarification by the Administrative Rules Review Committee.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), the normal effective date of this rule, 35 days after publication, should be waived and the rule be made effective upon filing with the Administrative Rules Coordinator on February 10, 1989, as it confers a benefit upon the public to ensure speedy and uniform compliance with the Department's legislative mandate.

The State Board of Education adopted this rule on February 9, 1989.

This amendment clarifies subrule 64.4(2) by changing "members" to "appointed members".

This rule is intended to implement Iowa Code section 256A.3.

The following amendment is adopted:

Amend subrule 64.4(2) as follows:

**64.4(2)** When a quorum is present, a position shall pass when approved by a majority of ~~voting~~ *appointed* members.

[Filed emergency 2/10/89, effective 2/10/89]

[Published 3/8/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/8/89.

## ARC 9705

HUMAN SERVICES  
DEPARTMENT[441]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 65, "Administration," appearing in the Iowa Administrative Code.

These amendments make two changes in administration of the food stamp program.

1. Under current policy foster children are included as members of the food stamp household and foster care payments are considered as income for purposes of eligibility determination and grant computation. These amendments provide that foster children will not be considered in the household of the foster parents unless the foster parent chooses to have them included. Foster care payments will be excluded from the foster parent's income if the foster child is not included in the food stamp household.

## HUMAN SERVICES DEPARTMENT[441] (cont'd)

The Department does not normally implement changes without federal regulations or a court directive which is binding on the state. In this instance, states received a written memorandum from the United States Department of Agriculture (USDA) which informed the states of the change in the treatment of foster care payments and foster children and instructed states to implement the change no later than February 1, 1989. USDA is changing the policy as a result of recent circuit court decisions. The federal district court for Minnesota has declared the current federal regulations to be in violation of the Food Stamp Act. The Federal Court of Appeals for the 8th Circuit, which includes Iowa, has affirmed that decision.

USDA is developing interim regulations which were to be published by January 1, 1989. These regulations have been delayed.

The Department will provide benefits retroactive to October 20, 1988. The memorandum from USDA was sent to states on October 20, 1988, with the instructions that the policy change is to be made no later than February 1, 1989. Federal regulations, including an implementation date, have not been issued by USDA.

2. Under current policy advance Earned Income Tax Credit (EITC) payments are considered as income to the food stamp household. These amendments provide that advance EITC payments will not be considered as income to the food stamp household.

On December 23, 1988, the Department received a letter from the Denver Regional Office of USDA which authorized states to implement the EITC provision of the Hunger Prevention Act prior to publication of regulations. This letter instructed states to exclude these payments effective January 1, 1989.

As stated previously, the Department does not normally implement changes without federal regulations or a court directive which is binding on the state. In this instance, states received a letter from USDA which authorized states to implement the exclusion of advanced EITC payments effective January 1, 1989. USDA is changing the policy as a result of changes to the Food Stamp Act and will be issuing interim regulations in the near future.

The Department will provide benefits retroactive to January 1, 1989.

The Department of Human Services finds that notice and public participation on these amendments are unnecessary. The only option permitted the Department in these rules is when to implement the foster children changes. The Department chose to implement the changes at the earliest possible date to allow households affected the most benefit possible. Therefore, these rules are filed pursuant to Iowa Code section 17A.4.

The Department of Human Services finds these rules confer a benefit on the food stamp households affected in two ways. First, by allowing food stamp households who have foster children to choose to have the foster children excluded from the household, households no longer experience a reduction in food stamp benefits due to the decision to become foster parents. Second, by excluding advance EITC payments from consideration as income, households receive a possible food stamp allotment increase. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

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

These rules are intended to implement Iowa Code section 234.12.

These rules became effective February 16, 1989.

The following amendments are adopted:

Amend 441—Chapter 65 by adding the following new rules:

**441—65.24(234) Inclusion of foster children in household.** Foster children living with foster parents will not be considered to be members of the food stamp household unless the household elects to include the foster children in the food stamp household. Foster care payments received for foster children not included in the household will be excluded from the income of the household receiving the payment.

**441—65.34(234) Exclusion of advance earned income tax credit payments from income.** Any payment made to the household under Section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income tax credit) shall be excluded from income.

[Filed emergency 2/16/89, effective 2/16/89]

[Published 3/8/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/8/89.

**ARC 9726**

**PUBLIC DEFENSE  
DEPARTMENT[601]**

DIVISION OF DISASTER SERVICES

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3 and 477B.3, the Disaster Services Division emergency adopts and implements a new Chapter 10, "Enhanced 911 Telephone Systems," Iowa Administrative Code.

This new chapter establishes rules for a program authorized by Iowa Code chapter 477B. The rules provide for uniform procedures regarding the joint 911 service boards and the submittal of enhanced 911 service plans. These rules describe procedures and define terms relative to the plan approval or disapproval process, the accountability for the surcharge moneys in the E911 service funds. Minimal operational and technical standards are established for E911 systems.

In accordance with Iowa Code section 17A.4(2) the Division finds that public notice and participation are contrary to the public interest in that the normal waiting period for rule making will delay implementation of these rules. It is in the interest of the joint 911 service boards to have effective rules so that service plans, due March 1, 1989, can be reviewed and approved and the surcharge imposition process may commence in a timely manner.

Simultaneous submission of a Notice of Intended Action, published herein as **ARC 9725**, will provide for public comment at a later date.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of these rules, 35 days after publication, should be waived as they confer a benefit to ensure speedy and uniform compliance with the legislative mandates for the Division and joint 911 service boards.

## PUBLIC DEFENSE DEPARTMENT[601] (cont'd)

These rules shall become effective immediately upon filing with the Administrative Rules Coordinator, February 17, 1989.

These rules are intended to implement Iowa Code chapter 477B.

Adopt the following new chapter:

**CHAPTER 10  
ENHANCED 911 TELEPHONE SYSTEMS**

**601—10.1(477B) Program description.** The purpose of this program is to provide a funding mechanism for the implementation of enhanced 911 telephone systems. This program will enable the orderly development, installation, and operation of enhanced 911 emergency telephone systems. Under the provisions of Iowa Code chapter 477B, whether a joint 911 service board or 28E entity, as provided therein, is established, these rules shall apply.

**601—10.2(477B) Definitions.**

"Access line" means the telephone service line which connects a subscriber's main telephone(s) or equivalent main telephone(s) to the telephone company's switching office. Exchange access service means: telephone access lines or channels, which provide local access from the premises of a subscriber in this state to the local telecommunications network to effect transfer of information. This definition is provided as a means of establishing the point at which the E911 telephone surcharge is applied.

"Administrator" means the administrator of the division of disaster services of the department of public defense.

"Alternate routing" means selective routing which allows 911 calls to be routed to a designed alternative location if all incoming 911 lines to the primary PSAP are busy or if the primary PSAP closes down for a period.

"Automatic call distributor (ACD)" means equipment used to distribute large volumes of incoming calls in approximate order of arrival to call answerers not already working on calls or to "store" calls until a call answerer becomes available.

"Automatic location identification (ALI)" means a system capability that enables an automatic display of information defining a geographical location (e.g., a street address) of the telephone used to place the 911 call.

"Automatic number identification (ANI)" means a capability that enables the automatic display of the seven-digit number of the telephone used to place the 911 call.

"Base rate" means the established telephone exchange rate, exclusive to mileage, for main telephone, auxiliary or trunk line services.

"Base rate area" means that portion of the exchange area within which exchange service, other than rural line service, is offered at base rates for each grade of service without mileage or highway construction charges.

"Call answerer" means the initial answerer of a 911 call.

"Call detail recording" means a written record by telephone number of all 911 calls received by a PSAP.

"Called party hold" means a telephone system feature that enables the PSAP to control the 911 call and to maintain a connection through the telephone system's switching facilities (even if the 911 caller has hung up the telephone), or to permit the tracing of a call.

"Call relay method" means the 911 call is answered at the PSAP (where the pertinent information is gathered) and the call answerer relays the caller's information to the appropriate public or private safety agency for further action.

"Call transfer method" means the PSAP call answerer determines the appropriate responding agency and transfers the 911 caller to that agency.

"CCS" means hundred second calls or the total amount of traffic in seconds divided by 100.

"Central office (CO)" means the smallest subdivision in the telephone system which has relatively permanent geographic service boundaries. The CO is also referred to as a wire center (a switching unit in a telephone system).

"Centrex" means a type of private branch exchange with the switching equipment as part of the telephone company's central office. Centrex systems enable incoming calls to be dialed directly to an extension without an operator's assistance and are often used to tie together numerous separate offices or locations. Outgoing intercom calls are dialed directly by the extension users. When making an emergency call from a Centrex telephone, it is necessary to dial "9" before dialing the 911 emergency number.

"Class of service" means service order code designation of the combination of telephone service features (equipment, calling area units, dial types) to which business and residence customers subscribe. It is used for rating, identification and assignment purposes.

"Coin free access (CFA)" means coin free dialing or no coin dial tone which enables a caller to dial 911 or "0" for operator on pay telephones without depositing money.

"Control office" also called a tandem switcher (a Bell system term for the telephone company central office which provides tandem switching capability for selectively routed 911 calls), the control office controls the switching of ANI and selective routing information to the PSAPs, provides standard ESS speed calling features, call transfer capability, and certain maintenance functions for each PSAP.

"Data management system" means a system of manual procedures and computer programs used to create, store and update the data required to provide selectively routed 911 service.

"Default routing" means a selective routing feature which allows 911 calls to be routed to a designed alternate location (the default PSAP) if the incoming 911 call cannot be selectively routed due to ANI failure, garbled digits, or other causes which may prevent selective routing.

"Direct dispatch method" means 911 call answering and radio dispatching functions for a particular agency are both performed at the PSAP.

"Direct distance dialing (DDD)" means telephone service which permits subscribers to dial their own long distance calls.

"Direct inward dialing (DID)" means an outside call dialed directly to an extension without going through the switchboard which serves an office, store, building, etc. (Centrex Service).

"Direct outward dialing (DOD)" means a reverse direction of DID, an extension user dials "out" without switchboard operator assistance.

"Direct trunking" means a telephone system design which will ensure the telephone line connection has no

## PUBLIC DEFENSE DEPARTMENT[601] (cont'd)

intermediate switching points between the originating CO and the PSAP.

"Dispatch center/radio dispatch center" means the location from which a public or private safety agency's mobile units are dispatched.

"Dispatcher" means an individual who uses radio or other means to dispatch public or private safety agency's resources. This person may or may not function as a 911 call answerer.

"Display and transfer unit" means a special console and associated common equipment that allows display of ANI numbers at the 911 call answerer's position and is used by the call answerer to activate the fixed transfer or selective transfer features.

"Division" means the division of disaster services, department of public defense.

"Electronic automatic exchange (EAX)" means a modern central office with programmable telephone switching logic.

"Electronic switching system (ESS)" means a central office with programmable telephone switching logic.

"Emergency call" means a telephone request for service which requires immediate actions to prevent loss of life, reduce bodily injury, prevent or reduce loss of property and other emergency situations determined by local policy.

"Emergency service number (ESN)" means the definition of selective agencies which are served by a particular telephone number.

"Enhanced 911 (E911)" means the general term referring to emergency telephone systems with specific electronically controlled features, such as ALI, ANI, selective routing, and which use the MSAG geofile.

"Enhanced 911 service area" means the geographic area to be served, or currently served under an enhanced 911 service plan, provided that any enhanced 911 service area must at a minimum encompass one entire county. The enhanced 911 service area may encompass more than one county and need not be restricted to county boundaries.

"Enhanced 911 service surcharge" means a charge set by the 911 service area operating authority and assessed on each access line which physically terminates within the 911 service area.

"Exchange" means a defined geographic area served by one or more central offices in which the telephone company furnishes services.

"Extended area service (EAS)" means telephone service that allows subscribers in an exchange area to pay flat monthly or measured rates instead of long distance charges for calls to nearby exchange areas.

"Fixed transfer" means a selective routing feature which allows the call answerer to transfer 911 calls to secondary PSAPs by use of a single button. Each button corresponds to a designated secondary PSAP.

"Forced disconnect" means a telephone feature which allows the PSAP to break or disconnect a telephone connection and avoid caller jamming of 911 lines.

"Foreign exchange (FX)" means a telephone service which provides local telephone access from a central office which is outside (foreign to) the PSAPs exchange area.

"Functional specification" means a detailed description of system performance requirements.

"Grade of service" means the probability (P) expressed as a decimal fraction of a telephone call being blocked by busy lines. For example P.01 is the grade of service

reflecting the probability that one call out of one hundred calls will be uncompleted (or busy).

"Idle circuit tone application" means a telephone system feature which applies a distinctive tone to the 911 call answerer to indicate the calling party has hung up. This tone may indicate whether the calling party has hung up before or after the PSAP answers.

"Implementation" means the activity between formal approval of a 911 service plan and a given system design, and commencement of operations.

"Independents" means nonregulated telephone companies providing service in various areas of the state.

"Joint 911 service board/joint E911 service board" means those entities created under the provisions of Iowa Code section 477B.3, which include the legal entities created pursuant to Iowa Code chapter 28E referenced in Iowa Code section 477B.3(3).

"Key telephone equipment" means an instrument that has the capability of multiple line terminations. Most telephones in offices which have six, ten, or more "buttons" are examples of key telephones. Each line can be accessed by depressing one of the buttons or "keys."

"Local service area" means that area that can be called without incurring multmessage units or a toll charge.

"Main station" means a telephone that is connected directly to a central office and has a unique telephone number. It is not an extension station.

"Manual transfer" means a call routing feature which allows the call answerer to transfer an incoming call by pressing a single button and dialing either a telephone number or a two-digit speed calling code.

"Master street address guide (MSAG)" means the computerized geographical file which consists of all streets and address ranges within the E911 system area. This data base is the key to the selective routing capability of E911 systems and requires constant updating after the initial file is established.

"Message unit" means the unit of measurement for charging for local message use based upon time and distance.

"Multiparty line" means a local subscriber line terminating on the switching equipment that serves two or more main subscriber locations.

"Network" means a series of points interconnected by communications channels. The switched telephone network is the network of telephone lines normally used for dialed telephone calls. A private line network is a network of communications channels confined to the use of one customer.

"Night service" means an arrangement allowing an answering agency to close its operation and have all 911 calls to it forwarded to a preselected alternate agency.

"911 CALL" means any telephone call that is made by dialing the digits 911.

"911 call answerer" means the initial answerer of a 911 call. This individual may or may not be a dispatcher.

"911 system" means a telephone system that encompasses a three-digit telephone number which automatically connects the emergency caller to a PSAP.

"Nonrecurring costs" means a one-time cost, including but not limited to, capital outlays, installation costs, plan preparation costs, referendum costs, and purchase of subscriber names, addresses and telephone information.

"One-button transfer" means another term for a (fixed) transfer which allows the call answerers to transfer an incoming call by pressing a single button. For example, one button would transfer voice and data to a fire agency,

## PUBLIC DEFENSE DEPARTMENT[601] (cont'd)

and another button would be used for police—also known as “selective transfer.”

“One-stage system” means the same individual(s) at the PSAP answers the 911 calls and functions as a dispatcher.

“Political subdivision” means a county and incorporated city or town. Excluded from this definition are departments and divisions of state government and agencies of the federal government.

“Primary PSAP” means the initial answering location for 911 calls in a selectively routed 911 system.

“Private branch exchange (PBX)” means a telephone switchboard with many stations not individually identifiable to the telephone utilities switching network —also called a PABX.

“Private line” means a telephone line used only for communication between two points and which does not connect with the public telephone system.

“Provider” means a person who provides, or offers to provide, 911 equipment, installation, maintenance, or exchange access services within an enhanced 911 service area.

“Public or private safety agency” means a unit of state or local government, a special purpose district, or a private firm which provides or has the authority to provide fire fighting, police, ambulance, or emergency medical services.

“Public safety answering point (PSAP)” means a 24-hour local jurisdiction communications facility which receives 911 service calls and directly dispatches emergency response services or relays calls to the appropriate public or private safety agency.

“Recurring costs” means repetitive costs including, but not limited to, data base management, lease of access lines, lease of equipment, network access fees, and all applicable maintenance costs.

“Ringback” means a telephone system feature that permits the answering point to ring the hung up telephone on a held circuit; this feature is useful when a calling party has failed to provide all necessary information to the answering point before hanging up.

“Secondary PSAP” means a location to which 911 calls are transferred from the primary PSAP.

“Selective routing (SR)” means a telephone system feature that enables all 911 calls originating from within a defined geographical region to be answered at a predesignated PSAP.

“Serving central office” means the telephone company’s central office area in which the PSAP is located.

“Speed calling” means dialing two digits which causes telephone equipment to automatically ring a pre-designated seven-digit number.

“Step-by-step (SxS)” means any type of electromechanical switches used in central office switching equipment where the (dial) pulses cause vertical or horizontal movement of contact switches to select and connect the input to an output line; generally two to four “stages” of switches are used in a local office connection.

“Subscriber” means the entity in whose name the 911 surcharge is billed.

“Switched network” means a complex of diversified channels and equipment that automatically routes communications between the calling and called person or data equipment.

“Switchhook status indication” means a telephone system feature that allows the PSAP to monitor, by means of supervisory lamps, the status of a calling party

being held; indicates whether the calling party still is connected, is on hold, or has disconnected.

“Tandem trunking” means an arrangement where a telephone line connection has one or more intermediate switching points which are required or permitted (usually on a controlled dial pulse basis) before reaching the final destination (called party).

“Tariff” means a document filed by a telephone company with the state telephone utility regulatory commission which lists the communication services offered by the company and gives a schedule for rates and charges.

“Telecommunications device for the deaf (TDD)” means any type of instrument, such as a typewriter keyboard connected to the caller’s telephone and involving special equipment at the PSAP which allows an emergency call to be made without speaking — also known as a TTY.

“Telephone line” means a telephone line from a telephone utility’s central office that is connected to key or nonkey telephone equipment.

“Telephone utility” means any public utility which is engaged in the business of supplying the public with telephone or telephonic service or operating a telephone exchange.

“Terminal equipment” means telephone call answering and transfer equipment.

“Trunk” means a circuit used for connecting a subscriber in a central office to all other services in/out of the switching equipment (e.g., long distance trunk, operator trunk, recorded announcement trunk, etc.).

“Two-stage system” means the 911 call answering and radio dispatching functions are performed by separate individuals.

**601—10.3(477B) Joint 911 service boards.** Each county board of supervisors shall establish a joint 911 service board by January 1, 1989.

**10.3(1) Membership.**

a. Each political subdivision of the state having a public safety agency serving territory within the E911 service area is entitled to voting membership.

b. Each private safety agency, such as privately owned ambulance services, airport security agencies, and private fire companies, serving territory within the E911 service area is entitled to a nonvoting membership on the board.

c. Public and private safety agencies headquartered outside and operating within an E911 service area are entitled to membership.

d. The joint 911 board elects a chairperson and vice chairperson.

e. The joint 911 board may expand its membership, after establishment by the county board of supervisors.

f. Members of the joint 911 service board shall be considered public officials of the county by virtue of their membership on the board.

**10.3(2) Meetings.**

a. The provisions of Iowa Code chapter 21, “Official Meetings Open to the Public,” are applicable to joint 911 service boards.

b. The joint 911 service boards shall conduct official meetings with a quorum of no less than two-thirds of the members eligible to vote.

c. Meetings shall be conducted in accordance with “Robert’s Rules of Order.”

## PUBLIC DEFENSE DEPARTMENT[601] (cont'd)

**601—10.4(477B) Referendum and surcharge.**

**10.4(1)** The surcharge referendum may be initiated only by the joint 911 service board and may be a referendum by mail ballot to all subscribers within the proposed E911 service area or may be included in any election, including a special election, and excluding a primary election, in which all voters of the proposed E911 service area will be eligible to vote. A special election may not be held for the exclusive purpose of the surcharge referendum. The surcharge is not a local option tax that can be presented to the voters under Iowa Code chapter 422B. A subscriber for purposes of the surcharge referendum is the person in whose name the service is billed and need not be a qualified elector.

**10.4(2)** The following requirements shall be filed with and approved by the division before the surcharge may be imposed.

a. A notarized statement signed by the chairperson of the joint 911 service board that all eligible subscribers or voters, or both, within the proposed E911 service area have been afforded the opportunity to vote.

b. A copy of the "Abstract of Election" (Form 156-K) for the election(s) allowing for the imposition of a surcharge for E911 service, or a copy of the official mail ballot results as determined by the commissioner of elections, or both.

c. E911 service plan for the proposed E911 service area.

d. A listing of each telephone exchange and the number of access lines in each exchange eligible for collection of the surcharge for the E911 service area.

**10.4(3)** The following agencies, individuals, and organizations are exempt from imposition of the E911 surcharge:

a. Federal agencies and tax exempt instrumentalities of the federal government.

b. Indian tribes for access lines on the tribe's reservation.

c. An enrolled member of an Indian tribe for access lines on the reservation who does not receive 911 service and who annually files a signed statement with the provider that the person is an enrolled member of an Indian tribe living on a reservation and does not receive 911 service. The provider shall maintain the statements as part of its business record for five years. However, once 911 service is provided, the member is no longer exempt.

d. Official station testing lines owned by the provider.

e. Individual subscribers to the extent that they shall not be required to pay on a single periodic billing the surcharge on more than 100 access lines, or their equivalent, in an E911 service area.

**10.4(4)** All other subscribers not listed above, that have or will have the ability to access 911, are required to pay the surcharge, if imposed.

**10.4(5)** Collection of a surcharge shall terminate at the end of 24 months if E911 service is not initiated for all or a part of the E911 service area as stated in Iowa Code section 477B.6(1). An extension may be granted by the administrator for good cause.

a. The administrator shall provide 90 days' prior written notice to the joint 911 service board or the operating authority and to the service provider(s) collecting the fee of the surcharge collection termination.

b. Individual subscribers within the E911 service area may petition the joint 911 service board or the operating authority for a refund. Petitions shall be filed within

one year of termination. Refunds may be prorated and shall be based on funds available and subscriber access lines billed.

c. At the end of one year from the date of termination any moneys not refunded and remaining in the E911 service fund and all interest accumulated shall be payable to the state disaster services division. Moneys received by the division shall be used only to offset the costs for the administration of the E911 program.

**601—10.5(477B) E911 service fund.**

**10.5(1)** The joint E911 service board has the responsibility for the E911 service fund.

a. The E911 service fund shall be established in the office of the county treasurer.

b. Collected surcharge moneys and any interest thereon, as imposed in Iowa Code section 477B.6(1), shall be deposited into the E911 service fund. Surcharge moneys must be kept separate from all other sources of revenue utilized for E911 systems.

c. Withdrawal of moneys from the E911 service fund shall be made on warrants drawn by the county auditor supported by claims and vouchers signed by the chairperson or vice chairperson of the joint 911 service board or the appropriate operating authority.

**10.5(2)** The E911 service funds shall be subject to examination by the division at any time during usual business hours. The joint 911 service board shall, no later than September 30 of each year, provide an annual accounting, to include dates of each expenditure, whether it was recurring or nonrecurring, revenues collected, and beginning and ending balance, of the E911 service fund, as established in subrule 10.5(1), for the previous fiscal year. E911 service funds are subject to the audit provisions of Iowa Code chapter 11. A copy of all audits of the E911 service fund shall be furnished to the division within 30 days of receipt. If through the audit or monitoring process the division determines that a joint 911 service board is not adhering to an approved plan or is not using funds in the manner prescribed in these rules or Iowa Code chapter 477B, the administrator may, after notice and hearing, suspend surcharge imposition and order termination of expenditures from the E911 service fund. The joint 911 board is not eligible to receive or expend surcharge moneys until such time as the administrator determines that the board is in compliance with the approved plan and fund usage limitations.

**601—10.6(477B) Operating budgets.**

**10.6(1)** Each joint 911 service board shall provide a copy, to the division, within 30 days of adoption, of the operating budget for the ensuing fiscal year for the fund as established under subrule 10.5(1).

**10.6(2)** The division shall, upon review of the operating budget, make necessary adjustments to the surcharge as provided in Iowa Code section 477B.6(5).

**601—10.7(477B) Limitation on use of funds.** Money in the E911 service fund, under rule 10.5(477B) may be used only to pay costs directly attributable to the provision of E911 telephone systems in accordance with Iowa Code chapter 477B.

**601—10.8(477B) Enhanced 911 service plan.**

**10.8(1)** Joint 911 service boards shall be responsible for developing an E911 service plan as required by Iowa Code chapter 477B and as set forth in these rules. The plan will remain the property of the joint 911 service board. Each joint 911 board shall coordinate their

## PUBLIC DEFENSE DEPARTMENT[601] (cont'd)

planning with each contiguous joint 911 board. A copy of the plan and any modifications and addenda shall be submitted to:

- a. State disaster services division.
  - b. All public and private safety agencies serving the E911 service area.
  - c. All providers affected by the E911 service plan.
- 10.8(2)** The E911 service plan, at a minimum, shall encompass the entire county. Each plan shall include:
- a. The mailing address of the county joint E911 service board.
  - b. A list of voting members on the service board.
  - c. A list of nonvoting members on the service board.
  - d. The name of the chairperson or cochairperson of the service board.
  - e. A geographical description of the enhanced 911 service area.
  - f. A list of all public and private safety agencies within the E911 service area.
  - g. The number of public safety answering points within the E911 service area.
  - h. Identification of the agency responsible for management and supervision of the E911 emergency telephone communication system.
  - i. A statement of estimated costs to be incurred by the joint 911 service board, including separate estimates of recurring and nonrecurring costs. These costs shall be limited to costs directly attributable to the provision of E911 service. The costs shall include the following:
    - (1) Item(s) or unit(s) of measurement, or both, and the associated tariff prices applicable in the development of the costs.
    - (2) Where tariff prices are not available, work papers showing the development of the costs by item(s)/unit(s) shall be included.
    - (3) Costs must be justified as being directly attributable to the provision of E911 telephone service.
  - j. Information from telephone service providers detailing the current equipment operated by the provider to provide telephone service and additional central office equipment or technology upgrades, or both, necessary to implement E911 service.
  - k. The total number of telephone access lines by telephone company or companies having points of presence within the E911 service area and the number of this total that is exempt from surcharge collection as provided in subrule 10.4(3) and Iowa Code section 477B.6(3).
  - l. The estimated number of pay telephones within the E911 service area.
  - m. If applicable, a schedule for implementation of the plan throughout the E911 service area. A joint 911 service board may decide not to implement E911 service.
  - n. The total property valuation in the E911 service area.
    - o. Maps of the E911 service area showing:
      - (1) The jurisdictional boundaries of all law enforcement agencies serving the area.
      - (2) The jurisdictional boundaries of all fire-fighting districts and companies serving the area.
      - (3) The jurisdictional boundaries of all ambulance and emergency medical service providers operating in the area.
      - (4) Telephone exchange boundaries and the location of telephone company central offices, including those located outside but serving the service area.
      - (5) The location of PSAPs within the service area.

p. A schematic for each telephone central office within the service area showing the method by which the 911 call will be delivered to the PSAP(s).

**10.8(3)** All plan modifications, and addenda shall be filed with, reviewed, and approved by the division prior to implementation.

**10.8(4)** The division shall base acceptance of the plan upon compliance with the provisions of Iowa Code chapter 477B and the rules herein.

**10.8(5)** The division will notify, in writing within 20 days of review, the chairperson of the joint 911 service board of the approval or disapproval of the plan.

a. If the plan is disapproved the joint 911 service board will have 60 days from receipt of notice to submit revisions/addenda.

b. Notice for disapproved plans will contain the reasons for disapproval.

c. The division will notify, in writing within 25 days of review, the chairperson of the approval or disapproval of the revisions.

**601—10.9(477B) Minimal operational and technical standards.** The operational and technical standards outlined herein are not all inclusive, but are minimal standards for E911 systems which are supplemented with E911 surcharge moneys.

**10.9(1)** Each E911 system shall, at a minimum, employ the following features:

- a. ALI (Automatic Location Identification).
- b. ANI (Automatic Number Identification).
- c. Ability to selectively route.
- d. Idle circuit tone application.
- e. Switchhook status indication.
- f. Two dedicated "telephone operator" ringdown circuits to be used by the telephone company operators in transferring a calling party to the PSAP.
- g. All 911 lines shall have a visual and audible indication of an incoming call.
- h. Standard tone signals (audible ringing, busy tone, and all trunks busy) will be provided to the 911 calling party in the normal manner. The tone signal received on all calls will be the same as that received on 911 calls.
- i. A minimum of two 911 circuits from each telephone central office main switch to each 24-hour PSAP.
- j. The terminating trunks from the serving central office to the PSAP shall provide at least a grade of service allowing for not more than 1 busy in 1000 attempts during the average busy hour for 911 calls.
- k. The 911 trunking between central offices shall be designed, at a minimum, to provide the same level of service as exists for the direct long distance dialing network.
  - l. Whenever the transfer method is employed, special equipment considerations shall be made. This method calls for the PSAP operator to directly connect the calling party on the incoming 911 trunk to another communication line, to signal out on a second line, and complete the call to a third party who will initiate action. Whenever the transfer method is employed, the secondary circuitry in the transfer shall be a properly designed dedicated facility, such as a switchboard (PBX or PABX) extension, a direct tie line/trunk, or microwave facility.
  - m. The telephone company shall provide intercept of 911 calls from nonparticipating central offices contiguous to the 911 serving central offices whenever equipment arrangement code conflicts are not involved.
  - n. The telephone company may take regular service measurements on the 911 terminating trunk group to

## PUBLIC DEFENSE DEPARTMENT[601] (cont'd)

determine the actual grade of service being experienced. These service measurements should provide a basis for corrective action which would achieve the objective grade of service. As necessary, the telephone company will provide the involved agencies with an appropriate report on the grade of service for the terminating line/trunk.

o. Data base/master street address guide information shall be maintained and updated in such a manner as to allow for a 95 percent or greater degree of accuracy.

**10.9(2)** E911 public safety answering points shall adhere to the following minimum standards:

a. The PSAP shall operate 7 days per week, 24 hours per day, with operators on duty at all times.

b. The primary published emergency number in the E911 service area shall be 911.

c. All PSAPs will maintain interagency communications capabilities for emergency coordination purposes, to include radio as well as land line direct or dial line.

d. Each PSAP shall develop and maintain a PSAP standard operating procedure for receiving and dispatching emergency calls.

e. The date and time of each 911 emergency call shall be documented using a communications center log or tape recording device. If a tape recording device is used, tapes must be stored and not reissued or used for a period of not less than 90 days.

f. If a transfer method of handling 911 calls is employed, a 99 percent degree of reliability of transferred calls from a PSAP to responding agencies shall be maintained. All transferred calls shall be monitored by the PSAP operator to ensure the call has been properly transferred.

g. PSAPs not employing the transfer method of handling 911 emergency calls shall use the call relay method. Information shall be exchanged between the PSAP receiving the call and an appropriate emergency response agency or dispatch center having jurisdiction in the area of the emergency. In no case, during an emergency 911 call, shall the caller be referred to another telephone number and required to hang up and redial. The call relay method shall also prevail in circumstances where emergency calls enter the 911 system (whether by design or by happenstance) from outside the E911 service area.

h. Access control and security of PSAPs and associated dispatch centers shall be designed to prevent disruption of operations and provide a safe and secure environment of communication operations.

i. PSAP supervision shall ensure that all telephone company employees, whose normal activities may involve contact with facilities associated with the 911 service, are familiar with safeguarding of facilities' procedures.

j. Emergency electrical power shall be provided for the PSAP environment that will ensure continuous operations and communications during a commercial power outage. Such power should start automatically in the event of power failure and shall have the ability to be sustained for a minimum of 48 hours.

k. In no case shall the PSAP allow for the intrusion by automatic dialers, alarm systems, or automatic dialing and announcing devices on a 911 or operator ringdown line/trunk. If intrusion by one of these devices should occur, those responsible for PSAP operations shall make every attempt to ensure there is no such further occurrence.

**10.9(3)** Telephone service providers.

a. The PSAP shall be notified at least one week in advance of any routine maintenance work to be performed which may impact the performance of the E911 system. This advance notice must be done in writing by an authorized representative of the telephone company which performs the service. All routine maintenance shall be scheduled at a time that produces the least disruption to the operation of the emergency telephone system as determined by the manager of the PSAP.

b. All telephone companies providing E911 service shall submit separate itemized bills to the appropriate authority.

c. The telephone company shall respond, within a reasonable length of time, to all appropriate requests for information from the joint 911 service board or operating authority and shall comply with the provisions of Iowa Code section 477B.7.

**601—10.10(477B) Waivers, variance request, and right to appeal.**

**10.10(1)** All requests for variances shall be submitted to the administrator in writing and shall contain the following information:

a. A description of the variance(s) or waiver being requested.

b. Supporting information setting forth the reasons the variance is necessary.

c. A resolution or copy of minutes of the joint 911 service board meeting which authorizes the application for a variance or waiver.

d. The signature of the chairperson of the joint 911 service board.

**10.10(2)** The administrator may grant a waiver or variance based upon the provisions of Iowa Code chapter 477B or a demonstration of either or both of the following:

a. The equipment of the serving telephone utilities is of such design or state of repair that it is not possible or practical to design an enhanced 911 telephone system that conforms to established design standards. A written statement from an official of the telephone company or company involved is required, explaining in detail why the company cannot comply with required standards.

b. The cost to local government to include areas required to comply with these rules would require a tax levy which would impose an unrealistic burden upon the taxpayers of the county.

**10.10(3)** Upon receipt of a request for a waiver/variance the administrator shall evaluate the request and schedule a review within 20 working days of receipt of the request. Review shall be informal and the petitioner may present materials, documents and testimony in support of their request. The administrator shall determine if the request meets the criteria established and shall issue a decision within 15 working days. The administrator shall notify, in writing, the petitioner of the acceptance or rejection of the petition. If the petition is rejected, such notice shall include the reasons for denial.

**601—10.11(477B) Administrative hearings and appeals.**

**10.11(1)** Division decisions regarding the acceptance or refusal of an E911 service plan, in part or in whole, the implementation of E911 and the imposition of the



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E911 surcharge within a specific E911 service area may be contested by an affected party.

**10.11(2)** Request for a hearing must be made in writing to the division within 30 days of the division's mailing or serving a decision and shall state the reason(s) for the request and shall be signed by appropriate authority.

**10.11(3)** The administrator shall schedule a hearing within 10 working days of receipt of the request for hearing. The administrator shall preside over the hearing at which time the appellant may present any

evidence, documentation, or other information regarding the matter in dispute.

**10.11(4)** The administrator shall issue a ruling regarding the matter within 15 working days of the hearing. The ruling by the administrator shall be final.

These rules are intended to implement Iowa Code chapter 477B.

[Filed emergency 2/17/89, effective 2/17/89]

[Published 3/8/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/8/89.

## ARC 9701

### EDUCATION DEPARTMENT[281]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa State Board of Education adopts Chapter 16, "Educational Opportunities Outside a Student's Resident District," Iowa Administrative Code.

The chapter defines "educational opportunity" and "substantial educational opportunity" for purposes of open enrollment appeals under Iowa Code sections 280.16 and 282.18.

The definitions provide the grounds for appealing out of one's school district of residence, and specify what conditions must exist for appeal. Specifically, the necessary courses or programs sought cannot be available in one's resident district, and a person seeking to use the appeal provisions must prove the student has an educational need for a program; an appeal cannot be based on a mere desire to attend school in another district. Both provisions exempt special education appeals as there is a separate statute and procedure for special education placement decisions.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 28, 1988, as **ARC 9558**.

Interested persons were allowed to comment on these proposed rules. A public hearing was scheduled for January 17, 1989; however, no comment was received. There are no changes from the Notice.

The State Board adopted these rules on February 9, 1989.

These rules will become effective on April 12, 1989.

These rules are intended to implement Iowa Code sections 280.16 and 282.18.

The following chapter is adopted:

#### CHAPTER 16

#### EDUCATIONAL OPPORTUNITIES OUTSIDE A STUDENT'S RESIDENT DISTRICT

**281—16.1(256) "Educational opportunity" defined.** For the purposes of Iowa Code section 280.16 "educational opportunity" is defined as courses or a sequence of courses, educational programs, or extracurricular or cocurricular offerings not available in the pupil's district of residence and for which the pupil has a legitimate, articulable or demonstrable need as opposed to a generalized desire. The term does not encompass special education programs or services as defined by state and federal law and regulations.

**281—16.2(256) "Substantial educational opportunity" defined.** For the purposes of Iowa Code section 282.18, "substantial educational opportunity" is defined as coursework or programs, for which a pupil has an exceptional and special need, that are not already available in the pupil's district of residence or coursework or programs that are available but inadequate to meet the pupil's educational needs.

Coursework or programs include, but are not limited to, the following examples:

1. Activities or courses for talented or gifted students;
2. Honors or advanced standing programs or courses;
3. Vocational courses or sequence of courses;
4. Alternative educational program for students at risk of failure;

5. Courses or activities in the fine arts including dance, music, theatre, and visual art;
6. Foreign language courses; and
7. Computer and technological courses.

The term does not encompass special education programs or services as defined by state and federal law and regulations.

[Filed 2/10/89, effective 4/12/89]

[Published 3/8/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/8/89.

## ARC 9700

### EDUCATION DEPARTMENT[281]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa Department of Education adopts an amendment to Chapter 56, "Vocational Rehabilitation Division," Iowa Administrative Code.

The amendment reflects changes brought about by Federal Regulation (42 CFR 361) published May 13, 1988, to implement Public Law 99-506, the Rehabilitation Act Amendments of 1986. The rule calls for an impartial hearing officer, sets time limits, and allows the administrator of the Division of Vocational Rehabilitation Services to overrule or modify the impartial hearing officer's decision within certain time frames.

In addition to minor grammatical changes, two changes are made in response to one written comment which was received: A definition of the phrase "impartial hearing officer" and the right to appeal beyond the final agency decision to the district court are included.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 14, 1988, as **ARC 9494**, which was simultaneously adopted and filed emergency as **ARC 9493**.

The State Board of Education adopted this amendment February 9, 1989.

This rule is intended to implement Iowa Code sections 259.1 and 259.3.

This rule will become effective April 12, 1989, and the emergency adopted rule will be rescinded on the same date.

The following amendment is adopted:

Rescind rule 281—56.14(259) and insert in lieu thereof the following:

**281—56.14(259) Hearings on applicants' and clients' appeals.** Disabled persons may appeal from the decision of any counselor to the supervisor, or, in instances where the supervisor has had substantial prior involvement in the case, to the assistant chief. The supervisor or assistant chief has ten working days from receipt of the appeal to decide the issue and notify the client in writing. If the client/applicant is not satisfied with the decision, the client/applicant has ten days from the date of the supervisor's or assistant chief's written decision to appeal. The notice of further appeal shall be in writing, dated, and signed by the applicant/client or their parent, guardian, or other representatives. Appeals from the decision of a supervisor or assistant chief shall be heard by an impartial hearing officer, who shall have a

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

background and experience in, and knowledge of, the delivery of vocational rehabilitation services; shall have no personal or financial interest that would be in conflict with the individual's objectivity; shall not be an employee of a public agency involved in any decision regarding the furnishing or denial of rehabilitation services to a vocational rehabilitation applicant or client; and shall not have been involved in previous decisions regarding the vocational rehabilitation applicant or client. The impartial hearing officer shall have 45 days from the date of the original appeal to hold a hearing, unless the time is extended by the showing of good cause on the part of one party or mutual agreement of both parties.

The impartial hearing officer shall make a decision based on the provisions of the approved state plan and the Act and shall provide a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing to: (1) the applicant or client; (2) if appropriate, the applicant's or client's parent, guardian or other representative; (3) the counselor for the case file; and (4) the administrator of DVRS. The impartial hearing officer's decision is considered final and binding unless the DVRS administrator provides notice to the client/applicant within 20 days of the issuance of the decision of intent to review all or part of the decision. The DVRS administrator shall, within 30 days of indicating intent to review the decision, make a final decision and provide a full report in writing of the decision, and of the findings and grounds for the decision, to the applicant or client.

The final decision of the impartial hearing officer or the results of the agency administrator's review, in cases where the administrator chooses to make a review, may be appealed by the client to the district court.

Notification of the right to appeal is verbal and written at each step of the appeal process.

This rule is intended to implement Iowa Code sections 259.1 and 259.3.

[Filed 2/10/89, effective 4/12/89]

[Published 3/8/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/8/89.

**ARC 9702****EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the Iowa State Board of Education hereby adopts Chapter 102, "Procedures for Charging and Investigating Incidents of Abuse of Students by School Employees," Iowa Administrative Code.

The chapter creates a uniform process for filing reports or allegations of abuse of students by school employees or agents and creates a preliminary investigation procedure for all schools and public school districts to follow in investigating such reports and allegations. This action is taken in response to the requirements of Iowa Code section 280.17.

These rules define students, school employees, and abuse, among other definitions, and provide that any person with knowledge of an incident of abuse may file a report with the designated investigator of a school, appointed by the hiring authority of the school. The charge is to be investigated within 5 school days, and

a report issued within 15 calendar days of the receipt of the report.

The rules also describe legal defenses, called "exceptions to physical abuse," that reflect Iowa law and are applicable to situations where physical force was used by a school employee against a student. These exceptions include, but are not limited to, using reasonable and necessary force to quell a disturbance, protect another student or school employee, obtain custody of a weapon or dangerous object from a student, and protect property.

Two levels of investigation are created by these rules. Level-one investigation is a preliminary inquiry conducted by a trained school employee or appointee and serves the primary purpose of weeding out false or frivolous allegations and establishing the elements necessary to create a school's responsibility to investigate the behavior or actions of a school employee. The level-one investigation may be waived in serious cases of physical abuse and shall be waived in instances where statutory sexual abuse is alleged, turning the investigation over to trained law enforcement officials.

The second level of investigation occurs whenever a level-one investigator concludes that an incident occurred between a school employee and student that did not result in serious injury to the student or that was a sexual allegation that would not rise to the level of a statutory sexual offense. The level-two investigator may not be a school employee and must be someone with professional training and experience in the areas of physical and sexual abuse.

The rules provide for the confidentiality of reports of abuse and investigative reports to the maximum extent possible. Also addressed are emergency procedures for the protection of pupils as needed during the investigative process, and a requirement for counseling of the pupil in cases of founded abuse when requested by the pupil's parent or guardian.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 28, 1988, as ARC 9557.

Interested persons were allowed to comment on the proposed rules. A public hearing was scheduled for January 17, 1989; however, no persons appeared. Several persons, schools, and agencies responded in writing to the proposed rules. As a result, some changes were made between the proposed rules and those adopted.

Changes from the Notice are as follows:

1. In rule 281-102.2(256), the definition of "sexual abuse" was narrowed to exclude acts of the school employee that allow or permit the student to engage in prostitution, but still includes acts which encourage the student to engage in prostitution as defined by Iowa law.

2. The format of subrule 102.4(1), paragraphs "a" through "h," was amended to eliminate the repetitive phrase, "Using reasonable and necessary force." No text was changed.

3. Subrule 102.6(2) now requires a report to be witnessed by a person of majority age.

4. Subrule 102.6(3) now includes a provision whereby an unsigned (anonymous) or unwitnessed report may be investigated, but the designated investigator then has no duty to report findings and conclusions to the reporter.

5. Subrule 102.8(1) now includes an exception to the provision of a copy of the report to the school employee named within if this action would conflict with the terms of a contractual agreement between the employer and employee.

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

6. Subrule 102.8(4) was amended by addressing privacy interests rather than confidentiality interests of the individuals involved.

7. An identical phrase addressing privacy interests was added to subrule 102.9(3).

8. Subrule 102.9(5), first paragraph, was amended by requiring the investigator to defer further level-one investigation if, in the investigator's opinion, it is likely that an incident in the nature of sexual abuse as defined by Iowa Code chapter 709 took place.

9. Rule 281—102.10(256), last unnumbered paragraph, no longer requires the investigator to provide a copy of the investigative report to the person filing the report of abuse, if different from the student's parent or guardian. Instead, the person shall be notified that the level-one investigation has been concluded, and of the disposition or anticipated disposition of the case.

10. Rule 281—102.12(256) includes a new paragraph addressing the level-two investigator's responsibility to preserve the privacy interests of the individuals involved.

11. Rule 281—102.13(256) now specifies that notes, tapes, memoranda, and related materials compiled in the investigation shall be retained by the public or nonpublic school for a minimum of two years. In addition, unfounded reports shall not be placed in an employee's personnel file.

The State Board of Education adopted these rules on February 9, 1989.

These rules are intended to implement Iowa Code section 280.17.

These rules will become effective July 1, 1989.

The following chapter is adopted:

## CHAPTER 102

PROCEDURES FOR CHARGING AND  
INVESTIGATING INCIDENTS OF ABUSE  
OF STUDENTS BY SCHOOL EMPLOYEES

**281—102.1(256) Statement of intent and purpose.** It is the purpose and intent of these rules to create a uniform procedure for the reporting, investigation, and disposition of allegations of abuse of students directly resulting from the actions of school employees or their agents. The scope of this policy is limited to protecting children in prekindergarten and K-12 educational programs.

**281—102.2(256) Definitions.**

"Abuse" may fall into either of the following categories:

1. "Physical abuse" means nonaccidental physical injury to the student as a result of the actions of a school employee. Physical abuse may occur as the result of intentional infliction of injury or excessive, unnecessary, or unreasonable use of force in discipline.

2. "Sexual abuse" means any sexual offense as defined by Iowa Code chapter 709, or any sexual act with or directed toward a student. The term also encompasses acts of the school employee that encourage the student to engage in prostitution as defined by Iowa law.

"Commission" means the Iowa professional teaching practices commission.

"Designated investigator" means the person or persons appointed by the board of directors of a public school district, or the authorities in control of a private school, at level one, to investigate allegations or reports of abuse of students by school employees and shall also refer to the appointed alternate.

"Nonpublic school" means any school in which education is provided to a student, other than in a public school or in the home of the student.

"Preponderance of evidence" means reliable, credible evidence that is of greater weight than evidence offered in opposition to it.

"Public school" means any school directly supported in whole or in part by taxation.

"Reasonable force" is that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat.

"School employee" means a person who works for pay or as a volunteer under the direction and control of:

1. The board of directors or any administrator of a public school district.

2. The board or authorities in control of a nonpublic school.

3. The board of directors or administrator of an agency called upon by a school official to provide services in an educational capacity to students.

4. A residential institution, not currently covered by Iowa Code chapter 232, providing educational services.

School employees are of two classes: certificated and noncertificated. A certificated employee holds an Iowa teacher's certificate issued by the department of education.

"Student" means a person enrolled in a public or nonpublic school or a prekindergarten program in a public or nonpublic school established under Iowa law, or is a resident between the ages of 5 and 21 of a state facility providing incidental formal education.

**281—102.3(256) Jurisdiction.** To constitute a violation of these rules, acts of the school employee must be alleged to have occurred on school grounds, on school time, on a school-sponsored activity, or in a school-related context. To be investigable, the report must include basic information showing that the victim of the alleged abuse is or was a student at the time of the incident, that the alleged act of the school employee meets the definition of abuse as defined in these rules, and that the person responsible for the act is currently a school employee.

**281—102.4(256) Exceptions.**

**102.4(1)** The following do not constitute physical abuse, and no school employee is prohibited from:

a. Using reasonable and necessary force:

(1) To quell a disturbance or prevent an act that threatens physical harm to any person.

(2) To obtain possession of a weapon or other dangerous object within a pupil's control.

(3) For the purposes of self-defense or defense of others as provided for in Iowa Code section 704.3.

(4) For the protection of property as provided for in Iowa Code section 704.4.

(5) To remove a disruptive pupil from school premises or from school-sponsored activities off school premises.

(6) To prevent a student from the self-infliction of harm.

(7) To protect the safety of others.

b. Using incidental, minor, or reasonable physical contact to maintain order and control.

**102.4(2)** In determining the reasonableness of the force used, the following factors shall be considered:

a. The nature of the misconduct of the student, if any, precipitating the physical contact by the school employee.

b. The size and physical condition of the student.

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c. The instrumentality used in making the physical contact.

d. The motivation of the school employee in initiating the physical contact.

**281—102.5(256) Duties of school authorities.** The board of directors of a public school district and the authorities in control of a nonpublic school shall:

**102.5(1)** Annually identify at least one designated investigator and alternate investigator at an open public meeting.

**102.5(2)** Adopt written procedures that establish persons to whom the school authorities will delegate a second level of investigation beyond the level-one procedures specifically described in these rules, including law enforcement authorities or the county attorney's office, personnel of the local office of the department of human services, or private parties experienced and knowledgeable in the area of abuse investigation. The second-level investigator shall not be a school employee, and shall be considered an independent contractor if remunerated for services rendered.

The adopted procedures shall conform to these rules and shall include provisions for the safety of a student when, in the opinion of the investigator, the student would be placed in imminent danger if continued contact is permitted between the school employee and the student. These provisions shall include the options of:

a. Temporary removal of the student from contact with the school employee.

b. Temporary removal of the school employee from service.

c. Any other appropriate action permissible under Iowa law to ensure the student's safety.

**102.5(3)** Annually publish the names and telephone numbers of the designated investigator and alternate:

a. In the student handbook,

b. In a local newspaper of general circulation, and

c. Prominently posting the same information in all buildings operated by the school authorities.

**102.5(4)** Arrange for annual in-service training for the designated investigator and alternate in investigating reports of abuse of students.

**281—102.6(256) Filing of a report.**

**102.6(1)** Who may file. Any person who has knowledge of an incident of abuse of a student committed by a school employee may file a report with the designated investigator.

**102.6(2)** Content of report. The report shall be in writing, signed, and witnessed by a person of majority age, and shall contain the following information:

a. The full name, address, and telephone number of the person filing.

b. The full name, age, address, telephone number, and attendance center of the student.

c. The name and place of employment of the school employee(s) or agents who allegedly committed the abuse.

d. A concise statement of the facts surrounding the incident, including date, time, and place of occurrence, if known.

e. A list of possible witnesses by name, if known.

f. Names and locations of any and all persons who examined, counseled or treated the student for the alleged abuse, including the dates on which those services were provided, if known.

**102.6(3)** Incomplete reports. The designated investigator shall aid parties requesting assistance in completing the report. An incomplete report shall not be rejected unless a reasonable person would conclude that the missing information, unable to be provided by the reporter, would render investigation futile or impossible. An unsigned (anonymous) or unwitnessed report may be investigated, but the designated investigator then has no duty to report findings and conclusions to the reporter.

**281—102.7(256) Receipt of report.** Any school employee receiving a report of alleged abuse of a student by a school employee shall immediately give the report to the designated investigator or alternate and shall not reveal the existence or content of the report to any other person.

**281—102.8(256) Duties of designated investigator—physical abuse allegations.**

**102.8(1)** Upon receipt of the report, the designated investigator shall make and provide a copy of the report to the person filing and to the student's parent or guardian if different from the person filing. The school employee named in the report shall receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract shall control.

**102.8(2)** Within 5 school days of receipt of a report of physical abuse, the designated investigator shall conduct and complete an informal investigation after reviewing the report to determine that the allegations, if true, support the exercise of jurisdiction pursuant to rule 102.3.

**102.8(3)** If, in the investigator's opinion, the magnitude of the allegations in the report suggests immediate and professional investigation is necessary, the designated investigator may temporarily defer the level-one investigation. In cases of deferred investigation, the investigator shall contact appropriate law enforcement officials, the student's parent or guardian and the person filing the report, if different from the student's parent or guardian, documenting in writing the action taken.

**102.8(4)** The investigator shall interview the alleged victim, the school employee named in the report, and any collateral sources who may have knowledge of the circumstance contained in the report. The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

**102.8(5)** The designated investigator's role is not to determine the guilt or innocence of the school employee or the applicability of the exceptions listed in rule 102.4. The designated investigator shall determine, by a preponderance of the evidence, whether it is likely that an incident took place between the student and the school employee, whether or not it rises to the level of "abuse" as defined by these rules.

The second-level investigator appointed, contracted, requested or retained under subrule 102.4(2), when called upon for further investigation, shall consider the applicability of the exceptions listed in rule 102.4 in reaching conclusions as to the occurrence of abuse as defined by these rules.

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**102.8(6)** Within 15 calendar days of receipt of the report, the designated investigator shall complete a written investigative report, unless investigation was temporarily deferred.

**281—102.9(256) Duties of designated investigator—sexual abuse allegations.**

**102.9(1)** Upon receipt of the report, the designated investigator shall make and provide a copy of the report to the person filing and to the student's parent or guardian if different from the person filing. The school employee named in the report shall receive a copy of the report at the time the employee is initially interviewed by any investigator.

**102.9(2)** Upon receipt of a report of sexual abuse or other notice of an allegation of sexual abuse, the designated investigator shall review the facts alleged to determine that the allegations, if true, support the exercise of jurisdiction pursuant to 102.3 of these rules.

**102.9(3)** The investigator shall interview the alleged victim as soon as possible upon receiving notice of the allegation or the report of sexual abuse. The investigator may contact the student's parent or guardian prior to interviewing the student, but shall conduct the interview with the student in the absence of the student's parent or guardian. The investigator may record the interview electronically.

The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

**102.9(4)** The designated investigator's role is not to determine the guilt or innocence of the school employee. The designated investigator shall determine, by a preponderance of the evidence and based upon the investigator's training and experience and the credibility of the student, whether it is likely that an incident took place between the student and the school employee.

**102.9(5)** If, in the investigator's opinion, it is likely that an incident in the nature of sexual abuse as defined by Iowa Code chapter 709 took place, the investigator shall temporarily defer further, level-one investigation. In cases of deferred investigation, the investigator shall immediately contact appropriate law enforcement officials, notifying the student's parent or guardian, and the person filing the report, if different from the student's parent or guardian, of the action taken.

If, in the investigator's opinion, an incident occurred that would not constitute sexual abuse as defined in Iowa Code chapter 709, but that was in the nature of a sexual act, further investigation is warranted. The investigator may proceed to interview the school employee named in the report and any collateral sources who may have knowledge of the circumstance contained in the report, or may arrange for the level-two investigator to carry out a professional investigation.

If, in the investigator's opinion, the allegation of sexual abuse is unfounded and further investigation is not warranted, the investigator shall notify the student's parent or guardian, the person filing the report, if different from the student's parent or guardian, and the school employee named in the report of this conclusion in a written investigative report.

**102.9(6)** Within 15 calendar days of receipt of the report or notice of alleged sexual abuse, the designated investigator shall complete a written investigation report unless the investigation was temporarily deferred.

**281—102.10(256) Content of investigative report.** The written investigative report shall include:

1. The name, age, address, and attendance center of the student named in the report.

2. The name and address of the student's parent or guardian and the name and address of the person filing the report, if different from the student's parent or guardian.

3. The name and work address of the school employee named in the report as allegedly responsible for the abuse of the student.

4. An identification of the nature, extent, and cause, if known, of any injuries or abuse to the student named in the report.

5. A general review of the investigation.

6. Any actions taken for the protection and safety of the student.

7. A statement that, in the investigator's opinion, the allegations in the report are either:

- Groundless, or
- Founded. (It is likely that an incident took place.)

8. The disposition or anticipated disposition of the case.

9. A listing of the options available to the parents or guardian of the student to pursue the allegations. These options include, but are not limited to:

- Contacting law enforcement.
- Contacting private counsel for the purpose of filing a civil suit or complaint.
- Filing a complaint with the commission if the school employee is certificated.

The investigator shall retain the original and provide a copy of the investigative report to the school employee named in the report and the named student's parent or guardian. The person filing the report, if not the student's parent or guardian, shall be notified that the level-one investigation has been concluded, and of the disposition or anticipated disposition of the case.

**281—102.11(256) Founded reports—designated investigator's duties.** The investigator shall notify law enforcement authorities in founded cases of serious physical abuse and in any founded case of sexual abuse under Iowa Code chapter 709. In founded cases of less serious physical incidents or sexual incidents not in the nature of sexual abuse as defined by Iowa Code chapter 709, the investigator shall arrange for the level-two investigator to carry out a professional investigation unless the level-one investigation has resulted in a final disposition of the investigation. In addition, the designated investigator shall give a copy of the investigative report to the employee's supervisor and document all action taken.

Upon receipt of the level-two investigator's report under rule 102.12, the designated investigator shall:

1. Forward copies of the level-two investigator's report to the student's parent or guardian, the person filing the complaint, if different from the student's parent or guardian, the school employee named in the complaint, and the school employee's supervisor;

2. File a complaint with the commission in cases where the level-two investigator or law enforcement officials have concluded abuse occurred as defined in these rules; and

3. Arrange for counseling services for the student on request of the student's parent or guardian.

**281—102.12(256) Level-two investigator's duties.** Upon referral by the designated investigator, the level-two investigator appointed, contracted, requested or

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retained under subrule 102.4(2) shall review the report of abuse and the designated investigator's report, if any; promptly conduct further investigation as deemed necessary; and create a written report. The level-two investigator's report shall state:

1. Conclusions as to the occurrence of the alleged incident; and
2. Conclusions as to the applicability of the exceptions to physical abuse listed in 102.4; or
3. Conclusions as to the nature of the sexual abuse, if any; and
4. Recommendations regarding the need for further investigation.

The written report shall be delivered to the designated investigator as soon as practicable.

The level-two investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the level-two investigator shall maintain the confidentiality of the report.

**281—102.13(256) Retention of records.** Any record created by an investigation shall be handled according to formally adopted or bargained policies on the maintenance of personnel or other confidential records. Notes, tapes, memoranda, and related materials compiled in the investigation shall be retained by the public or nonpublic school for a minimum of two years.

Unfounded reports shall not be placed in an employee's personnel file.

**281—102.14(256) Effective date.** These rules are effective on July 1, 1989, for school years 1989-90 and thereafter.

These rules are intended to implement Iowa Code section 280.17.

[Filed 2/10/89, effective 7/1/89]

[Published 3/8/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/8/89.

## ARC 9708

### EMPLOYMENT APPEAL BOARD[486]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 10A.601(6), the Employment Appeal Board adopts amendments to Chapter 1, "Organization"; Chapter 2, "Definitions"; Chapter 3, "Unemployment Insurance Appeals"; Chapter 4, "Rules of Procedure for OSHA Appeals"; Chapter 5, "Personnel Action"; Chapter 6, "Peace Officer and Capitol Security Appeals"; and adopts a new Chapter 7, "Construction Contractor Registration Appeals," Iowa Administrative Code.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on November 16, 1988, as **ARC 9461**.

A public hearing was scheduled for December 6, 1988, and comments were presented.

Changes were made to the rules as published under Notice. These changes were grammatical, and did not substantively change the rules as filed.

The Employment Appeal Board adopted these rules at a regular meeting on January 23, 1989.

These rules will become effective April 12, 1989.

These rules are intended to implement Iowa Code section 10A.601.

ITEM 1. Amend 486—Chapter 1 as follows:

**486—1.1(71GA,SF2175)(10A) Organization.**

1.1(1) The employment appeal board is comprised of three members appointed by the governor, with approval of the senate. The members are appointed pursuant to ~~1986 Iowa Acts, Senate File 2175, section 515 Iowa Code section 10A.601(2)~~, to represent the interests of management, labor, and the general public.

1.1(2) The employment appeal board is located at ~~1000 E. Grand Avenue in the Lucas State Office Building, Second Floor~~, Des Moines, Iowa, and its office hours are 8 a.m. to 4:30 p.m. Monday through Friday. The office is closed on all state holidays.

1.1(3) No change.

**486—1.2(71GA,SF2175)(10A) Jurisdiction and filing of appeals.**

1.2(1) The employment appeal board has authority to review and decide appeals concerning the following:

1. Unemployment insurance and IPERS ~~appeals entitlements~~ (Iowa Code chapters 96 and 97B).
2. Occupational Safety and Health Act ~~appeals citations~~ (Iowa Code chapter 88).
3. Peace officer and capitol security ~~discharges~~ (Iowa Code chapter 80).
4. Elevator code ~~appeals citations~~ (Iowa Code chapter 104).
5. Department of personnel ~~appeals actions~~ (Iowa Code chapter 19A).
6. ~~Construction contractor registration citations~~ (Iowa Code chapter 10A).

1.2(2) No change.

1.2(3) In all instances, appeals may be filed by mailing the appeal to the Employment Appeal Board, ~~1000 E. Grand Avenue Lucas State Office Building, Second Floor~~, Des Moines, Iowa 50319.

Further amend 486—Chapter 1 by adding the following new rule and amending the implementation clause as follows:

**486—1.3(10A) Declaratory rulings.** Any interested person may submit to the employment appeal board a petition regarding the application of an employment appeal board rule of procedure or other written statement of procedural law or policy to a specific factual situation. The petition shall contain the name of the requesting person, the specific factual background of the question, the employment appeal board rule of procedure or other written statement of procedural law or policy deemed applicable, and the reasons for the request. The employment appeal board shall render a written decision within 30 days unless the employment appeal board is unable to reach a decision on the facts as presented. Should the employment appeal board find the facts insufficient, then no decision need be issued and the employment appeal board shall request that the factual situation be clarified by an amendment to the petition. Failure by the requesting party to amend the petition within 15 days will cause the employment appeal board to dismiss the petition.

These rules are intended to implement ~~1986 Iowa Acts, Senate File 2175, section 515 Iowa Code section 10A.601~~.

ITEM 2. Amend 486—Chapter 2 by striking "(71GA,SF2175)" and inserting "(10A)", deleting the

## EMPLOYMENT APPEAL BOARD[486] (cont'd)

definitions of "Contested case" and "Hearing officer," and amending the implementation clause as follows:

This rule is intended to implement 1986 Iowa Acts, Senate File 2175, section 515 Iowa Code section 10A.601.

ITEM 3. Amend 486—Chapter 3 by striking "(71GA,SF2175)" and inserting "(10A)" wherever it appears and further amend the chapter as follows:

Strike "hearing officer" or "hearing officer's" and insert "administrative law judge" or "administrative law judge's" wherever the terms appear in the following subrules:

3.1(1)	3.2(2)
3.1(5)	3.2(3)
3.1(7)	3.3(1)
3.1(8)	3.3(4)
3.1(17)	3.4(4)
3.2(1)	

Amend subrule 3.1(2) to read as follows:

3.1(2) Form and time of appeal. Any person aggrieved by a job service decision of a hearing officer *an administrative law judge* may appeal to the employment appeal board within 15 days from the date of notification of the parties or mailing the decision. The appeal shall be in writing, signed by the appellant or an authorized agent, and shall state the name of the person signing the appeal. If an appeal is signed by an authorized agent, the name of the appellant shall be shown at the end thereof followed by the signature of the authorized agent. The appeal shall state the grounds for the appeal. The appeal shall be addressed to: the Employment Appeal Board, 1000 E. Grand Avenue Lucas State Office Building, Second Floor, Des Moines, Iowa 50319. The appeal may also be filed at any local office maintained by job service the department of employment services throughout the state.

Amend subrule 3.1(4) to read as follows:

3.1(4) Procedure when appeal is filed. Upon receipt of notice of appeal, the entire record before the hearing officer *administrative law judge* shall be forwarded to the appeal board. One copy of the testimony and evidence received by the hearing officer *administrative law judge* shall be mailed to the appellant and respondent or their designated representative at least seven days before the date of the hearing, if any, specifying the place and time of the hearing *review by the employment appeal board*.

Amend subrule 3.1(8), paragraph "a," to read as follows:

a. An application to present new or additional evidence shall be in writing and shall be filed with the appeal board within ten days after the date of mailing of notice to the parties that an appeal has been filed.

Amend subrules 3.1(9) to 3.1(12) to read as follows:

3.1(9) Postponement of hearing of appeals. Applications and requests for postponement of hearing of appeals scheduled before the appeal board shall be made three days before the date of the scheduled hearing and shall be granted at the discretion of the appeal board. ~~in Des Moines, Iowa.~~ Each party shall be granted only one postponement except as determined by the chairperson of the appeal board.

3.1(10) Adjournment and continuance. Adjournment and continuance may be directed, granted, or ordered for good cause by the appeal board, and notice thereof shall be given by certified mail to all parties at their last known address according to the department's records.

3.1(11) Hearing of appeals. All appeals to the appeal board may be heard and based upon the evidence in the record made before the hearing officer *administrative law judge* or the appeal board. The appeal board may schedule a hearing to permit the parties to offer oral or written argument, or both. (The parties shall be notified by the appeal board at least ten days before the date of the review hearing.)

3.1(12) Remand of appeals. The appeal board may remand any claims or any issue involved in a claim to a hearing officer *an administrative law judge* for the taking of such additional evidence as the appeal board may deem necessary. Such testimony Evidence shall be taken by the hearing officer *administrative law judge* in the manner prescribed for the conduct of hearing hearings. on appeals before the hearing officer. Upon completion of taking of evidence by a hearing officer *an administrative law judge* pursuant to the direction of the appeal board, the claim or the issue involved in such a claim shall be returned to the appeal board for its decision thereon, or the decision of the hearing officer *administrative law judge* may be set aside and the claim or any issue therein may be returned to the hearing officer *administrative law judge* for a de novo hearing thereon.

a. The order of remand shall contain the specific ground or issue for which remand is granted.

b. The hearing officer *administrative law judge* will take testimony on this specific ground or issue and none other. Previously offered Previous testimony or evidence shall not be repeated.

Amend subrule 3.1(14) to read as follows:

3.1(14) Written briefs and oral arguments. The interested parties may be granted a reasonable opportunity to present arguments on all issues and law to be decided. Written briefs and arguments may be submitted within seven days from the date of the mailing of the transcript to the parties. A request for an extension of time in which to file a written brief and argument must be in writing and received by filed with the appeal board prior to the expiration date on which the brief and argument would be due.

The appeal board may afford the interested parties an opportunity to present oral arguments and may limit the time of oral arguments. Requests for oral arguments shall be submitted within ten days from the date of the mailing of the notice from the appeal board to the parties acknowledging receipt of an appeal from the decision of the hearing officer *administrative law judge*.

Amend subrule 3.1(16) to read as follows:

3.1(16) Withdrawal of appeal. Any appeal may be withdrawn by the appellant, by written request, any time before a decision is issued by the appeal board. If such a request is made, the appeal shall be dismissed. An appeal, so dismissed, shall be reinstated by the appeal board if the appellant files a written request therefore to reinstate and shows therein that the request for withdrawal resulted from misinformation given by the department job service division. A request for reinstatement shall be made within 60 days after the mailing of the decision dismissing the appeal; or, in the event of fraud, within 60 days after discovery of such fraud.

Rescind subrule 3.2(4).

Amend subrule 3.3(2) to read as follows:

3.3(2) Following the review of an appeal or the conclusion of a hearing on an appeal, the appeal board shall, within a reasonable time, render a written decision.



## EMPLOYMENT APPEAL BOARD[486] (cont'd)

The decision shall be signed by the members of the appeal board who reviewed the appeal, and shall be duly filed in the offices of the appeal board, with respect to the matters appealed, and its decision. All decisions of the appeal board shall be duly filed in the offices of the department of employment services.

Amend subrule 3.3(5) to read as follows:

**3.3(5)** Copies of the decisions shall be mailed by the appeal board to the claimant and to the other parties to the appeal. The decision shall specify the parties' appeal rights.

Amend subrules 3.3(6) to 3.3(9) to read as follows:

**3.3(6)** The appeal board's decision shall become the final decision of the agency and without further review, 30 days after the decision is mailed to all interested parties of record. An adversely affected party may file a petition an application for rehearing, upon the showing of good cause, within 20 days of the board's decision. In the absence of a petition for rehearing, an aggrieved party may file for judicial review within thirty days of the board's decision.

**3.3(7)** The appeal board's decision on a petition an application for rehearing shall be final and without further review 30 days after the decision is mailed to all the interested parties of record unless within that 30 days a petition for judicial review is filed in the appropriate district court.

**3.3(8)** A petition An application for a rehearing shall be deemed denied unless the appeal board acts upon it within 20 days after it is received by filed with the appeal board. A petition for judicial review may then be filed within 30 days after a petition an application for rehearing is deemed denied.

**3.3(9)** After a decision of the appeal board has become final, the matter shall not be reopened, reconsidered, or reheard. and the The decision shall not be changed except to correct clerical errors.

Amend subrule 3.4(1) to read as follows:

**3.4(1)** Solely on showing of good cause, the appeal board may upon petition application by an adversely affected party, reopen and review any prior department decision, provided that such petition application for rehearing is filed within 20 days after issuance of the prior decisions.

Amend 3.4(2), 3.4(3)"a" and "c," 3.4(4), and 3.4(5) by striking "petition" and inserting "application" wherever it appears.

Amend subrule 3.4(6) to read as follows:

**3.4(6)** If a petition an application for rehearing is denied, all administrative remedies will have been exhausted and the application applicant may petition the district court for judicial review as provided by pursuant to rule and Iowa Code section 17A.19 19, within thirty days from the date of denial of the petition for rehearing.

Amend subrule 3.7(2), paragraph "a," to read as follows:

a. Information from the records of the Iowa department of job service employment services shall be furnished to a party or such the party's representative to the extent necessary for the proper presentation of an appeal only upon application therefore.

Rescind subrules 3.7(3) and 3.7(4).

Amend subrules 3.7(5) to 3.7(7) to read as follows:

**3.7(5)(3)** Payment of benefits.

a. A determination of allowance of benefits shall result in the prompt payment of all benefits due. The filing

of an appeal by the employer shall not serve to stay the payment of benefits.

b. If the appeal board's decision allows benefits by reversing or modifying a hearing officer's an administrative law judge's decision, such benefits shall be promptly paid. The filing of a petition an application for a rehearing or for judicial review shall not operate to stay the effect of the appeal board's decision.

**3.7(6)(4)** Redeterminations.

a. If a claim has been decided under the gross misconduct section of the law Code of Iowa, a redetermination may be made by the representative any time within five years of the effective date of the claim, even though final decision has been made by the appeal board.

b. Such The redetermination may be appealed to the appeal board.

c. If the redetermination results in a reversal of an allowance of benefits and holds that the claimant was discharged for an act of gross misconduct, all benefits paid to such the claimant, prior to the redetermination, shall be assessed as an overpayment and shall be collectible in the manner provided in Iowa Code section 96.14(3) for the collection of past due contributions.

d. If the redetermination results in an allowance of benefits by reversing a previously imposed disqualification for gross misconduct, the claimant shall be paid benefits for all weeks for which such the claimant has submitted a continued claim report form.

e. A request for redetermination may be made only by an interested party to the original case which resulted in the termination, decision, or final decision of the appeal board under the gross misconduct section.

**3.7(7)(5)** Department employees Division of job service employees as witnesses.

a. In all contested cases where the primary issue is failure of the claimant to report as directed; failure to respond to call in; the availability or ability of the claimant to work; failure to accept referral to work; refusal to accept a job offer or recall to work by an employer; the adequacy of the job search by the claimant; or, overpayment, the department shall be named and served notice.

b a. Those department employees of the division of job service directly involved in handling the claim which resulted in the appeal may be called to testify by the hearing officer or the appeal board. as to their knowledge of the facts involved in the appeal.

e b. The department The employee, having direct knowledge of the local job market may be called as an expert a witness by the hearing officer or the appeal board to testify concerning the wages, hours and other conditions of employment relating to the particular job involved in the appeal.

d c. The employer to whom an applicant is referred for work or who offers work or recall to work to an individual shall also be named in the appeal and shall receive all applicable notices.

These rules are intended to implement 1986 Iowa Acts, Senate File 2175, section 615 Iowa Code section 10A.601.

Further amend 486—Chapter 3 by adding the following new rule:

**486—3.8(10A) Retention of records.** Records of proceedings in contested cases, appealed to the employment appeal board, shall be retained:

1. Sixty days following the final date for appeal to the district court.

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2. Sixty days following the entry of a final order by the district court when a petition for judicial review has been filed.

3. Sixty days following the filing of the decision of the court of appeals.

4. Sixty days following the filing of an opinion by the supreme court.

Other records of the employment appeal board may be retained as determined by the board.

ITEM 4. Amend 486—Chapter 4 by striking "hearing officer" or "hearing officer's" and inserting "administrative law judge" or "administrative law judge's" wherever the terms appear in the following:

- 4.7(9)                                    4.71(3)
- 4.11(1)                                  4.72
- 4.11(2)                                  4.74(1)
- 4.21(3)                                  4.76
- 4.66                                      4.77(1)
- 4.67                                      4.77(2)
- 4.67(1)                                  4.90
- 4.67(2)                                  4.90(2)
- 4.67(3)                                  4.102
- 4.67(4)                                  4.110(1)
- 4.70(4)                                  4.110(4)
- 4.71(2)

Further amend 486—Chapter 4 as follows:

Amend rule 4.1(10A,88) by deleting the definition of "Executive secretary" and amending the definitions of "Hearing officer" and "Proceeding" as follows:

"Hearing officer" "Administrative law judge" means an administrative hearing officer with the appeals and fair hearings division, department of inspections and appeals.

"Proceeding" means any proceeding before the hearing officer administrative law judge or the employment appeal board.

Amend subrule 4.7(7), last paragraph, to read as follows:

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act. The citation has been contested and will be the subject of a hearing before a hearing officer of the appeals and fair hearings division an administrative law judge designated by the employment appeal board. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the employment appeal board in its rules of procedure. Notice of intent to participate should be sent at the earliest opportunity to: Employment Appeal Board, State Capitol Complex, Lucas State Office Building, Second Floor, Des Moines, Iowa 50319. All papers relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near the workplace.)

Amend subrule 4.7(10) to read as follows:

4.7(10) A copy of the notice of the hearing to be held before the hearing officer administrative law judge or the employment appeal board shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in 4.7(3), if the employer has not been informed that the authorized employee representative has entered an appearance as of the date such notice is received by the employer.

Amend subrule 4.8(1) to read as follows:

4.8(1) All papers shall be filed with the Executive Secretary, Employment Appeal Board, Lucas State Office Building, 2nd Floor, Des Moines, Iowa 50319.

Amend subrule 4.101(2) as follows:

4.101(2) When such proceeding is ordered, the executive secretary employment appeal board shall notify all parties and intervenors.

ITEM 5. Amend 486—Chapter 5 by striking "(71GA,SF2175)" and inserting "(10A)" and further amending Chapter 5 as follows:

Amend subrule 5.1(1) to read as follows:

5.1(1) Form and time of appeal. Any person aggrieved by a personnel action pertaining to an application rejection; examination rating; removal from eligible list or disqualification; or veteran's points rejection may appeal to the employment appeal board within 30 days from the date of the notification of such the action. The appeal must be in writing, signed by the appellant or authorized agent, and shall state the name of the person signing the appeal. If an appeal is signed by an authorized agent, the name of the appellant shall be shown at the end of the appeal, followed by the signature of the authorized agent.

The appeal shall be addressed to: the Employment Appeal Board, 1000 E. Grand Avenue Lucas State Office Building, Second Floor, Des Moines, Iowa 50319.

Amend subrules 5.1(4) and 5.1(5) to read as follows:

5.1(4) Continuances. Requests for continuance of a hearing must be made not less than three days before the scheduled hearing date. The request must be in writing and signed by the requesting party or their authorized representative. Each party shall be granted only one continuance, unless good cause is established as determined by the chairman chairperson of the appeal board or assigned hearing officer administrative law judge.

5.1(5) Hearings. The hearing may be conducted by a quorum of the employment appeal board or by a hearing officer an administrative law judge designated by the employment appeal board. A quorum of the appeal board shall be two members.

Amend subrules 5.1(7) and 5.1(8) to read as follows:

5.1(7) Decisions. If the hearing is conducted by the employment appeal board, the decision shall be the final decision. If the hearing is conducted by a hearing officer an administrative law judge, the decision shall be a proposed decision, which shall become the final decision 20 days after the issue date of the decision, unless the appeal board reverses, modifies or remands said the proposed decision.

5.1(8) Rehearings and further appeals. The decision of the appeal board, or 20 days after the proposed decision of the hearing officer administrative law judge, shall become the final decision of the agency unless within 20 days of the date of such the decision, an application for rehearing, as provided in Iowa Code section 17A.16(2) as is filed by the aggrieved party. such The application shall be in writing, stating specific grounds for the rehearing, and signed by the aggrieved party or their an authorized agent.

An application for rehearing shall be deemed denied unless acted upon by the appeal board within 20 days after its receipt by the appeal board.

The decision of the appeal board, or 20 days after the proposed decision of the hearing officer administrative

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law judge, shall become final, without further review, unless within 30 days a petition for judicial review is filed in the appropriate district court. A petition for judicial review may be filed within 30 days after an application for rehearing has been denied or deemed denied.

This rule is intended to implement 1986 Iowa Acts, Senate File 2175, section 515 Iowa Code section 10A.601.

ITEM 6. Amend 486—Chapter 6 as follows:

## 486—6.1(71GA, SF2175)(10A) Appeals.

6.1(1) Form and time of appeal. The department of public safety shall file with the employment appeal board, notice of intent to dismiss a member of the department, including capitol security officers covered under Iowa Code section 80.15. The notice of intent to dismiss shall become final unless within 30 days a request (hereafter called an appeal) to appear and defend such the charges is filed by the member person named.

6.1(2) No change.

6.1(3) Hearing date and notice. Upon receipt of the appeal, a hearing date shall be established scheduled and notice of the hearing shall be mailed, by ordinary mail, to the parties not less than ten days prior to the hearing date.

6.1(4) Continuances. A request for continuance shall be granted only upon showing of good cause by the requesting party. The request must be in writing, stating the grounds therefor, and signed by the requesting party or their an authorized agent.

6.1(5) Hearings. The hearing shall be conducted by a quorum of the appeal board or an administrative law judge designated by the appeal board. A quorum of the appeal board shall consist of two members of the board.

6.1(6) Decisions. The decision of the appeal board shall be by majority vote, or if a quorum the two members must be in agreement, and The decision shall be a final decision unless a petition for judicial review is filed; within 30 days of the date of the decision in the appropriate district court.

This rule is intended to implement 1986 Iowa Acts, Senate File 2175, section 515 Iowa Code section 10A.601.

ITEM 7. The following new chapter is adopted:

## CHAPTER 7

## CONSTRUCTION CONTRACTOR REGISTRATION APPEALS

## 486—7.1(549) Appeals.

7.1(1) Form and time of appeal. Any contractor aggrieved by a citation and proposed administrative penalty, if any, may contest the citation or proposed penalty to the employment appeal board within 15 working days from the date of the citation. The contest (hereinafter called appeal) must be in writing, signed by the respondent or authorized agent, and shall state the name of the person signing the appeal. If an appeal is signed by an authorized agent, the name of the respondent shall be shown at the end of the appeal, followed by a signature of the authorized agent.

The appeal shall be addressed to: Employment Appeal Board, Lucas State Office Building, Second Floor, Des Moines, Iowa 50319.

7.1(2) Taking the appeal. An appeal shall be deemed filed on the date it is delivered to the employment appeal board. If mailed, the postmark date, appearing on a

properly addressed envelope, if postage was prepaid, shall constitute the filing date.

The appeal board shall provide the commissioner of labor a copy of the appeal.

7.1(3) Hearing date and notice. Upon receipt of the appeal, a hearing date shall be established and notice of the hearing shall be mailed, by ordinary mail, to the parties not less than ten days prior to the hearing date.

7.1(4) Continuances. Requests for continuance of a hearing must be made not less than three days before the scheduled hearing date. The request must be in writing and signed by the requesting party or authorized representative. Each party shall be granted only one continuance, unless good cause is established as determined by the chairperson of the appeal board or assigned administrative law judge.

7.1(5) Hearing. The hearing may be conducted by a quorum of the employment appeal board or by an administrative law judge designated by the employment appeal board. A quorum of the appeal board shall be two members.

7.1(6) Procedures during hearings. The hearing shall be conducted in an informal manner as provided under Iowa Code section 17A.12.

7.1(7) Decisions. When the employment appeal board presides at the reception of the evidence in a contested case, the decision of the employment appeal board is a final decision. If the hearing is conducted by an administrative law judge, the decision shall be a proposed decision, which shall become the final decision 20 days after the issue date of the decision, unless the appeal board reverses, modifies, or remands the proposed decision.

7.1(8) Hearings and further appeals. The decision of the administrative law judge is a proposed decision and shall become the final decision of the employment appeal board unless a request for further consideration is filed by the aggrieved party within 20 days.

The decision of the employment appeal board is the final decision of the agency. An application for rehearing, as provided by Iowa Code section 17A.16(2), must be filed within 20 days of the date of the employment appeal board decision. The applications shall be in writing, stating specific grounds for the rehearing, and signed by the aggrieved party or representative.

An application for rehearing shall be deemed denied unless acted upon by the appeal board within 20 days after its receipt by the appeal board.

The decision of the appeal board shall become final, without further review, unless within 30 days a petition for judicial review is filed in the appropriate district court. A petition for judicial review may be filed within 30 days after an application for rehearing has been denied or deemed denied.

This rule is intended to implement Iowa Code section 10A.601 and chapter 549.

[Filed 2/16/89, effective 4/12/89]

[Published 3/8/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/8/89.

**ARC 9704****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 239.18, the Department of Human Services hereby amends Chapter 41, "Granting Assistance," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this rule February 15, 1989. Notice of Intended Action regarding this rule was published in the Iowa Administrative Bulletin on January 11, 1989, as **ARC 9581**.

The Iowa Administrative Procedure Act requires that a description of all forms completed by the public appear in the Iowa Administrative Code. The description shall include the name and number of the form.

This amendment incorporates the name and number of two forms which are in use in the Aid to Dependent Children program and which currently are only indirectly referred to in the rules. These forms are Form CS-1105-5, Requirements of Support Enforcement, and Form CS-1106-5, Requirements of Claiming Good Cause.

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

This rule is intended to implement Iowa Code sections 17A.3 and 239.5.

This rule shall become effective May 1, 1989.

The following amendment is adopted:

Amend subrule 41.2(9), paragraph "a" and paragraph "c," introductory paragraph, as follows:

a. Prior to requiring cooperation, the local office shall notify the applicant or recipient *on Form CS-1105-5, Requirements of Support Enforcement*, of the right to claim good cause as an exception to the cooperation requirement and of all the requirements applicable to a good cause determination. ~~The notice shall be in writing.~~ One copy of this form shall be given to the applicant or recipient and one copy shall be signed by the applicant or recipient and the worker and filed in the case record.

c. When the applicant or recipient makes a claim of good cause or requests additional information regarding the right to file a claim of good cause, the local office shall issue a second notice ~~which~~, *Form CS-1106-5, Requirements of Claiming Good Cause*. *When the applicant or recipient chooses to claim good cause, Form CS-1106-5 shall be signed and dated by the client and returned to the local office. This form:*

[Filed 2/16/89, effective 5/1/89]

[Published 3/8/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/8/89.

**ARC 9706****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 76, "Application and Investigation," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this rule on February 15, 1989. Notice of Intended Action regarding this rule was published in the Iowa Administrative Bulletin on December 28, 1988, as **ARC 9521**.

This amendment clarifies which Medicaid eligibility card will be issued to persons receiving Medicaid under the Qualified Medicare Beneficiary program.

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

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

This rule shall become effective May 1, 1989.

The following amendment is adopted:

Amend rule 441—76.6(249A) by adding the following new subrule:

**76.6(4)** The eligible person is receiving Medicaid under the Qualified Medicare Beneficiary program. These persons shall be issued an Individual Medical Assistance Card, Form 470-2188, by the department.

These persons shall be eligible only for payment of Medicare premiums, deductibles, and coinsurance, as provided in subrule 75.1(29).

[Filed 2/16/89, effective 5/1/89]

[Published 3/8/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/8/89.

**ARC 9710****INSPECTIONS AND APPEALS  
DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 10A.104(5), the Department of Inspections and Appeals amends Chapter 30, "Field Survey Administration"; Chapter 31, "Food Establishment Inspections"; and Chapter 32, "Food Service Establishment Inspections," Iowa Administrative Code.

The amendments allow exceptions to current federal standards. Food establishments are exempt from licensing where no food is prepared, and are required to procure all food items from an approved supplier.

The amendment to rule 31.1(170) is an exception to the Retail Food Store Sanitation Code. The exception allows processing raw chicken or raw pork, but not both, immediately after processing raw beef without breaking down and cleaning equipment. This is not considered contamination. However, processing equipment must be cleaned and sanitized after processing all other food items.

The amendment to rule 32.1(10A) is an exception to the Food Service Sanitation Ordinance. The amendment does not require units or carts used to sell only prepackaged items or food prepared on the mobile unit or cart to report to a licensed food service establishment.

These amendments are identical to those published under Notice in the January 11, 1989, Iowa Administrative Bulletin as **ARC 9585**. No comment was received.

These amendments are intended to implement Iowa Code sections 10A.502, 170.4, 170A.2(5), 170A.2(9) and 170A.4.

These amendments shall become effective April 12, 1989.

The following amendments are adopted:

## INSPECTIONS AND APPEALS DEPARTMENT[481] (cont'd)

ITEM 1. Amend rule 481—30.2(10A) by adding the following numbered paragraph to the definition of "food establishment":

7. Establishments where only prepackaged and sealed candy bars, gum, fried or oiled snack foods, canned or bottled soft drinks and bagged ice are sold on a retail basis. All items must be obtained from a supplier which meets standards referred to in rule 481—31.2(170).

ITEM 2. Amend rule 481—31.1(170) by inserting the following new paragraph "2" and renumbering subsequent paragraphs:

2. Section 2-401(b) is amended to allow processing raw chicken or raw pork immediately after processing raw beef without breaking down, cleaning, and sanitizing processing equipment. All utensils and other equipment must be cleaned and sanitized after every use. Section 2-401(b) applies without amendment when equipment is used to process any product other than beef.

ITEM 3. Amend rule 481—32.1(10A) by adding the following numbered paragraph:

5. Section 8-201 is amended so mobile food units or pushcarts need not report to a licensed food service establishment when they sell only prepackaged items or when all food is prepared on the unit.

[Filed 2/17/89, effective 4/12/89]

[Published 3/8/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/8/89.

**ARC 9727****PROFESSIONAL LICENSURE  
DIVISION[645]**

BOARD OF EXAMINERS  
FOR NURSING HOME ADMINISTRATORS

Adopted and Filed

Pursuant to the authority of Iowa Code section 135E.15, the Board of Examiners for Nursing Home Administrators amends Chapter 141, "Licensure of Nursing Home Administrators," Iowa Administrative Code.

This rule was published in the Iowa Administrative Bulletin on December 14, 1988, as **ARC 9502** and was adopted by the Board of Examiners for Nursing Home Administrators on February 14, 1989. There are no changes from the Noticed rule.

This rule increases the national exam fee from \$50 to \$100 and the fee for the state exam from \$50 to \$75. This will be effective for all applicants beginning with the June 1989 examinations.

This rule is intended to implement Iowa Code section 135E.15.

This rule shall become effective April 12, 1989.

Amend subrule 141.5(1) to read as follows:

141.5(1) The basic application fee required for all applicants is \$50. If the applicant has not successfully passed the examinations, an additional fee of ~~\$50~~ \$100 is required for the national examination and an additional fee of ~~\$50~~ \$75 is required for the state

examination. This will be effective for all applicants beginning with the June 1989 examinations.

[Filed 2/17/89, effective 4/12/89]

[Published 3/8/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/8/89.

**ARC 9709****RACING AND GAMING  
DIVISION[491]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 99D.7, the State Racing Commission hereby adopts amendments to Chapter 4, "Practice and Procedure Before the Racing Commission and Board of Stewards"; Chapter 7, "Greyhound Racing"; Chapter 8, "Mutuel Departments"; and Chapter 10, "Thoroughbred Racing," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 11, 1989, as **ARC 9576**.

There were no public comments received and there are no changes from the Notice of Intended Action.

Items 2 to 10 were adopted and filed emergency IAB 1/11/89 as **ARC 9575**.

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

These amendments will become effective April 12, 1989.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to chs 4, 7, 8, 10] is being omitted. These rules are identical to those published under Notice as **ARC 9576**, IAB 1/11/89.

[Filed 2/17/89, effective 4/12/89]

[Published 3/8/89]

[For replacement pages for IAC, see IAC Supplement, 3/8/89.]

**ARC 9711****REVENUE AND FINANCE  
DEPARTMENT[701]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby amends Chapter 9, "Filing and Extension of Tax Liens and Charging Off of Uncollectible Tax Accounts," Chapter 11, "Administration" and Chapter 63, "Administration," Iowa Administrative Code.

Notice of Intended Action was published in Iowa Administrative Bulletin, volume XI, number 14, on January 11, 1989, as **ARC 9595**.

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

The rules are being amended to allow the charge off of accounts where the administrative cost to collect exceeds the tax liability and to clarify bonding requirements for sales and motor fuel tax purposes.

With the exception of deleting the words "such officer" in the last sentence of 63.23(2) (Item 8), at the request of the Administrative Rules Review Committee, these rules are identical to those published under Notice of Intended Action.

These amendments will become effective April 12, 1989, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to chs 9, 11, 63] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 9595**, IAB 1/11/89.

[Filed 2/17/89, effective 4/12/89]  
[Published 3/8/89]

[For replacement pages for IAC, see IAC Supplement, 3/8/89.]

**ARC 9697****TRANSPORTATION  
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Department of Transportation, on February 7, 1989, adopted amendments to 761—Chapter 400, "Vehicle Registration and Certificate of Title," Iowa Administrative Code.

A Notice of Intended Action for these amendments was published in the December 28, 1988, Iowa Administrative Bulletin as **ARC 9522**.

The primary changes made by these amendments are as follows:

1. The make, model and model year of a kit vehicle shall be taken from the manufacturer's certificate of origin for the kit.

2. The requirement for submission of the registration receipt when transferring title has been deleted.

3. Collegiate plate provisions have been added.

Other amendments are corrective in nature.

These amendments are identical to the ones published under Notice.

These amendments are intended to implement Iowa Code chapter 321.

These amendments will become effective April 12, 1989.

**Rule-making actions:**

ITEM 1. Rescind subrules 400.1(9) and 400.1(10) and insert in lieu thereof the following:

**400.1(9)** Model year, except where otherwise specified, means the year of original manufacture or the year certified by the manufacturer. For purposes of titling and registration, the model year shall advance one year each January 1.

**400.1(10)** Motor vehicle control number is described in subrule 400.3(2).

ITEM 2. Rescind rule 400.3(321), introductory paragraph, and subrule 400.3(1), and insert in lieu thereof the following:

**761—400.3(321) Application for certificate of title or registration for a vehicle.**

**400.3(1)** Application form. To apply for a certificate of title or registration for a vehicle, Form 411007 shall be completed by the applicant. Application shall be made in accordance with Iowa Code sections 321.20, 321.23, 321.46, and 321.71, this rule, and other applicable provisions of law.

ITEM 3. Rescind subrule 400.3(5) and insert in lieu thereof the following:

**400.3(5)** Model year. The applicant shall list on the application form the model year of the vehicle.

ITEM 4. Adopt subrule 400.3(6) as follows:

**400.3(6)** Seller and date of purchase. The applicant shall state on the application form the name and address of the seller and the date of purchase or acquisition.

ITEM 5. Amend rule 400.3(321) by renumbering paragraph "f" of subrule **400.3(12)** as subrule **400.3(13)**, by renumbering subrule **400.3(13)** as **400.3(14)**, and by adding the following catchwords to new subrule **400.3(13)**: "Credit for transfer to spouse, parent or child."

ITEM 6. Amend rule 400.3(321) by adding the following new subrules:

**400.3(15)** to **400.3(19)** Reserved.

**400.3(20)** Transfer of ownership with Iowa title. When transferring ownership of a vehicle with an Iowa title, the application for certificate of title on the reverse side of the title may be used in lieu of Form 411007.

ITEM 7. Amend rule 400.4(321), introductory paragraph, as follows:

**761—400.4(321) Supporting documents Documents required for a certificate of title.** *This rule describes the basic supporting documents to be submitted by an applicant for a certificate of title. An applicant shall submit the following documents when applying for a certificate of title.*

ITEM 8. Amend subrule 400.4(2) as follows:

**400.4(2)** Used vehicle registered or titled in this state. The last issued certificate of title and the registration receipt, properly assigned to the applicant, shall be submitted. ~~When the registration receipt is not available, the certificate of title may be used if it lists the current plate or validation number, or a duplicate registration receipt may be obtained.~~ *An uncanceled security interest noted on the face of the certificate of title, which has not been canceled, shall be noted on the face of the certificate of title issued to the applicant, in addition to any security interest acknowledged by the applicant.*

ITEM 9. Rescind subrule **400.4(3)**, paragraph "f."

ITEM 10. Rescind subrules **400.6(1)** to **400.6(19)** and insert in lieu thereof the following:

**400.6(1)** Registration expiration date.

**400.6(2)** Owner's motor vehicle control number and code, as explained in subrule 400.3(2), and registration month, as explained in subrule 400.3(4).

**400.6(3)** Name and address of last titled owner.

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

**400.6(4)** Description of the vehicle, including the following items. These items may be represented on the title and registration by code letters or numbers.

- a. Vehicle identification number.
- b. Type, such as automobile, trailer, truck, etc.
- c. Style.
- d. Make, model, and model year.
- e. Series.

(1) The series of a motor home shall be the letters "MH" followed by the class designation of the motor home—"A," "B" or "C."

(2) Reserved.

- f. The designation required by 761—Chapter 405.
- g. Number of engine cylinders.
- h. Color.
- i. Weight and registered gross weight.
- j. The square footage of floor space of a mobile home or travel trailer, as determined by measuring the exterior.

**400.6(5)** Previous Iowa title number or the name of the foreign jurisdiction if the previous title is a foreign title.

**400.6(6)** Plate number and previous registration number.

**400.6(7)** List price or value.

**400.6(8)** Fee code, penalties, and security interest receipt number.

**400.6(9)** The following phrase stamped on the reassignment portion of a mobile home title or an official title: "Dealer reassignment not authorized on this certificate of title."

ITEM 11. Amend rule 400.16(321) by adding the following subrules:

**400.16(5)** Reserved.

**400.16(6)** Miscellaneous provisions.

a. The model year of a specially constructed or reconstructed vehicle shall be the year the vehicle is first registered as a specially constructed or reconstructed vehicle.

b. The make, model, and model year of a kit vehicle shall be taken from the manufacturer's certificate of origin for the kit. The model shall be preceded by the word "kit" on the title and registration.

ITEM 12. Amend rule 400.17(321) by adding the following subrule:

**400.17(6)** Miscellaneous provisions.

a. The model year of a remanufactured vehicle shall be the year the vehicle is first registered as a remanufactured vehicle.

b. Reserved.

ITEM 13. Amend the introductory paragraph of rule 400.41(321) as follows:

**761—400.41(321) Special registration plates.** *This rule addresses the following types of special registration plates: amateur Amateur radio call letter, handicapped, national guard, personalized, and prisoner of war and collegiate. These special registration plates shall be issued*

*subject to the following rules in accordance with Iowa Code section 321.34, this rule, and other applicable provisions of law.*

ITEM 14. Amend subrule 400.41(2) by adding paragraph "f" as follows:

f. Collegiate plates.

(1) The collegiate plate application shall be made on Form 411060. The \$50 issuance fee and a photocopy of the current registration receipt shall be submitted with the application.

(2) A vehicle owner who has collegiate plates assigned to a currently registered vehicle may assign the plates to another owner of a currently registered vehicle. A written request for assignment shall be signed by both vehicle owners and shall be submitted to the county treasurer of the assignor's county of residence. The collegiate plates and a registration receipt shall be issued to the assignee by the county treasurer of the assignee's county of residence in exchange for the current registration plates and registration receipt.

(3) Each year the department issues validation stickers for collegiate plates, a validation fee of \$5 shall be paid when the registration renewal fee is due. This fee is in addition to the regular registration fee.

If renewal is made after the last day of the month following the month of expiration, a \$50 issuance fee shall be paid along with the regular registration fee and penalties for late renewal.

(4) An issuance fee of \$50 shall be paid when the department designates a reissuance of collegiate plates.

(5) A gift certificate for collegiate plates may be purchased for \$50 from the department. A purchaser may request a gift certificate by submitting either a written statement or Form 411060. Either form of request shall include the name and address of the recipient and the name, address and signature of the purchaser. The recipient of the gift certificate may redeem it for collegiate plates or a cash refund.

ITEM 15. Amend the implementation clauses of rules 400.1(321) to 400.6(321) as follows:

**761—400.1(321):** Add 321.24, 321.40 and 321.41. Delete 321.46 and 321.113.

**761—400.2(321):** Delete 321.52, 321.101, and 321.492.

**761—400.3(321):** Add 321.8, 321.25, 321.26, 321.31, and 321.34. Delete 321.52.

**761—400.4(321):** Add 321.31, 321.67, and 321.71.

**761—400.5(321):** Add 321.170.

**761—400.6(321):** Add 321.31, 321.40, 321.45, 321.71 and 321.124.

[Filed 2/9/89, effective 4/12/89]

[Published 3/8/89]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/8/89.



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

EXECUTIVE ORDER NUMBER 36

- WHEREAS, Iowa has the potential to become a national leader in the development, marketing, and use of degradable materials that are manufactured from agricultural products; and
- WHEREAS, the agencies of state government are major users of disposable materials; and
- WHEREAS, the purchasing power of state government can have a major impact on the development of suppliers of environmentally safe degradable disposable products; and
- WHEREAS, state government has a role to play as a model for the public and private sectors in Iowa in developing and implementing comprehensive programs for the development and use of degradable disposable products.
- NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested in me by the laws and Constitution of the State of Iowa, do hereby order that:
- I. State government shall be a model for the public and private sectors in Iowa in supporting the development and marketing of and in utilizing degradable products.
  - II. All state agencies, including the Board of Regents institutions, shall meet the following goals for the purchase and use of degradable disposable products in conducting their official business, when those products are reasonably available and cost-competitive as determined by the Department of Natural Resources:
    - A. Effective July 1, 1990, only starch based degradable plastic bags made from agricultural products shall be used for all trash and garbage bags.



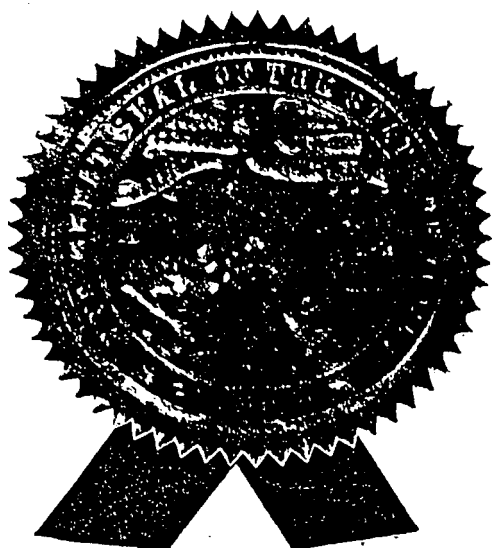
- B. Effective July 1, 1990, only degradable foam products shall be used as food product containers or other product containers unless those containers are recycled or reused by the purchasing entity.
  - C. Effective January 1, 1992, only degradable disposable plastic containers shall be purchased for use unless those containers are recycled or reused by the purchasing entity.
- III. All state agencies, including the Board of Regents institutions, shall comply with the following bans on use or land disposal of nondegradable products:
- A. Effective July 1, 1989, foam products manufactured with chloroflourocarbons for use as food product containers or other product containers shall not be purchased.
  - B. Effective January 1, 1990, nondegradable foam products shall not be used for packing materials..
  - C. Effective January 1, 1991, no land disposal of nondegradable plastic bags or plastic foam products or materials.
  - D. Effective January 1, 1991, beverage containers subject to the provisions of Chapter 455C shall not be sold in state-owned or state-operated facilities in areas of the state where those containers are being land disposed after redemption.
  - E. Effective January 1, 1995, no land disposal of nondegradable disposable plastic containers.
- IV. The Department of Natural Resources shall work with the Department of General Services, Purchasing Division, and all other state agency purchasing units to develop specifications for purchasing degradable disposable plastic materials and products or recyclable disposable plastic materials and products in place of nondegradable disposable plastic materials and products. All state agencies, including the Board of Regents institutions, shall purchase and use degradable disposable plastic office supply, personal convenience, and other frequently used disposable plastic products to the maximum extent practical when those products are determined to be reasonably available

and cost-competitive by the Department of Natural Resources.

- V. The Department of Natural Resources and the Department of General Services shall contact private businesses and local governments throughout the state that are large users of disposable products in an effort to develop joint purchasing agreements for degradable disposable products.
- VI. The Department of Natural Resources and the Department of Economic Development shall work with the Iowa Corn Promotion Board to promote the development of sources which provide degradable materials and products for use in disposable packaging products, food service containers, bags for retail purchases and trash, and personal convenience items.
- VII. The Department of Natural Resources and the Department of Economic Development shall develop a program which recognizes and publicizes Iowa companies and governmental units that make the greatest contributions to the development of degradable disposable products and materials and to the use of degradable products and materials.
- VIII. The Department of Natural Resources shall work with the degradable plastics industry and the United States Food and Drug Administration to develop degradable plastic products that are acceptable to use for food packaging.


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 13th day of February in the year of our Lord one thousand nine hundred and eighty-nine.

  
GOVERNOR



ATTEST:

  
SECRETARY OF STATE



State of Iowa  
Executive Department

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

EXECUTIVE ORDER NUMBER 37

- WHEREAS, reduction of solid waste at the source and the recycling of reusable waste materials will reduce the flow of waste to sanitary landfills and other land disposal projects and increase the supply of reusable materials for the use of the public; and
- WHEREAS, waste reduction and recycling efforts can enhance Iowa's energy conservation and energy independence efforts; and
- WHEREAS, the agencies of state government are major users of paper and generators of paper waste; and
- WHEREAS, the purchasing power of state government can have a major impact on the development of suppliers of recycled paper and the development of markets for waste paper; and
- WHEREAS, state government has a role to play as a model for the public and private sectors in Iowa in developing and implementing comprehensive programs for waste reduction, recycling, and the use of recycled products.
- NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested in me by the laws and Constitution of the State of Iowa, do hereby order that:
1. For the purposes of this Executive Order, "recycled paper" means a paper product with not less than forty percent of its total weight consisting of postconsumer material and recovered paper material. At least ten percent of total weight of recycled paper should be postconsumer material. The Department of Natural Resources shall make a recommendation to the Governor each January regarding the percent of postconsumer material and recovered paper material that should be used in making paper products,

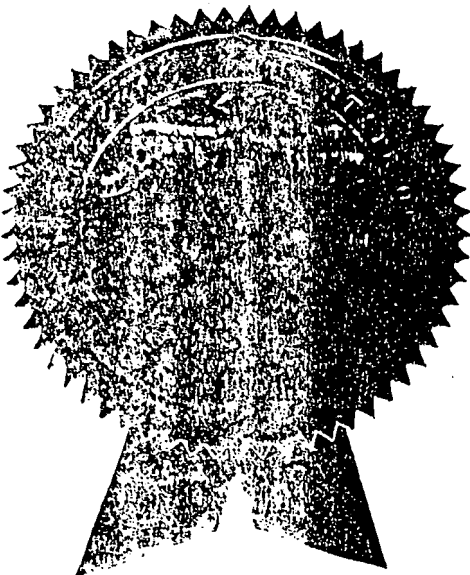
including specialty papers and paper products, used by state government. This recommendation shall consider the availability and cost of paper with varying contents of postconsumer material and recovered paper material.

- II. All state agencies, including the Board of Regents institutions, shall meet the following goals for the purchase and use of recycled printing and writing paper in conducting their official business:
  - A. Twenty-five percent by January 1, 1990.
  - B. Fifty percent by January 1, 1992.
  - C. Seventy-five percent by January 1, 1996, and
  - D. Ninety percent by January 1, 2000.
- III. All state agencies, including the Board of Regents institutions, shall meet the following goals for the purchase and use of recycled tissue products:
  - A. Seventy-five percent by January 1, 1990, and
  - B. One hundred percent by January 1, 1992.
- IV. All Des Moines offices of state agencies, including the Board of Regents and the Ames offices of the Department of Transportation, shall fully participate in the agency generated waste paper recycling program being implemented jointly by the Department of General Services and the Department of Natural Resources by March 1, 1989.
  - V. All state agencies, including the Board of Regents institutions, shall develop and implement a comprehensive program for agency generated waste paper recycling by January 1, 1990. These programs may include contracts with private businesses to accept and recycle waste paper.
- VI. The Department of Natural Resources shall assist all state agencies, including the Board of Regents institutions, in developing and implementing a waste paper recycling program by January 1, 1990. The program shall be designed to support the goals for use of recycled paper specified in Article 2, and to eliminate the land disposal of waste paper generated by state agencies by July 1, 1992.

VII. All publications of state agencies, including the Board of Regents, that are printed on recycled paper should contain the recycled paper logo developed by the Department of Natural Resources on the title page and outside back cover along with a statement indicating that the cover and or contents of the publication are printed on recycled paper.

VIII. The Department of Natural Resources, the Department of General Services, the Department of Transportation, and the Board of Regents institutions shall work together in an effort to make joint purchases of recycled papers and paper products whenever practical in order to acquire these papers and paper products at the lowest possible cost.

IX. The Department of Natural Resources, the Department of General Services, the Department of Transportation, and the Board of Regents shall contact private businesses and local governments throughout the state that are large users of paper in an effort to develop joint purchasing agreements for recycled papers.



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 13th day of February in the year of our Lord one thousand nine hundred and eighty-nine.

Terry E. Branstad  
GOVERNOR

ATTEST:

Chaine Baxter  
SECRETARY OF STATE

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWAFILED FEBRUARY 22, 1989

NOTE: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA, 50319, for a fee of 40 cents per page.

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No. 87-1813. IN RE R.J.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Juvenile Referee. Decision of court of appeals vacated; district court judgment affirmed. Considered by McGiverin, C.J., and Lavorato, Neuman, Snell and Andreasen, JJ. Opinion by McGiverin, C.J. (19 pages \$7.60)

The mother of five children appeals from the juvenile court order terminating her parental rights with four of her children. OPINION HOLDS: The mother's alcoholism severely impairs her ability to adequately parent these four children. Her debilitating condition poses an immediate as well as long range threat to the children's well-being. We hold clear and convincing evidence existed to support the juvenile court's termination of the mother's parental rights.

No. 87-158. KANE v. STATE.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Pottawattamie County, Keith Burgett, Judge. Decision of court of appeals vacated; district court judgment affirmed. Considered by McGiverin, C.J., and Lavorato, Neuman, Snell and Andreasen, JJ. Opinion by McGiverin, C.J. (14 pages \$5.60)

Kane was convicted of first degree murder in violation of Iowa code sections 707.1 and 707.2 (1979). Kane appealed his conviction. At the time of the appeal, Kane's appellate counsel was aware of a communication between judge and jury outside the presence of counsel, but elected not to present this issue on direct appeal. Kane's conviction was affirmed by this court. Kane then filed an application for postconviction relief, alleging he was denied a fair trial. The grounds assigned for relief included Kane's trial counsel's failure to object to certain jury instructions, ineffective assistance of trial and appellate counsel, and improper communication between

No. 87-158. KANE v. STATE. (continued)  
the trial judge and jury. The application was denied by the district court. Kane appealed. OPINION HOLDS: I. Iowa Code section 663A.8 generally bars applicants in postconviction actions from assigning grounds for relief which were not asserted on direct appeal from the criminal conviction. In order to assign new error challenging a conviction, an applicant must not only show 'cause', or 'sufficient reason', for failure to challenge the alleged errors in trial court, but must also show actual prejudice resulting from these errors. Kane asserts that any failure to adequately allege an improper jury communication in his direct appeal was due to the ineffective assistance of his appellate counsel. Our examination of the record leads us to conclude that applicant has not shown that representation by his direct appeal counsel was deficient. In any event, applicant also has not met the second element of the ineffective assistance of counsel test. Kane was not prejudiced by direct appeal counsel's performance such that he was denied a fair hearing. Kane has not shown "sufficient reason" for failure to preserve error on the private jury communication issue in his direct appeal. Kane has also failed to show actual prejudice resulting from the alleged erroneous private jury communication. II. Kane also challenges the effectiveness of his criminal trial counsel in two respects: first, failure to object to certain jury instructions; and second, failure to investigate a potential witness to the shooting. We find no error in either assignment.

NO. 88-110. HUNTER v. SMITH.

Appeal from the Iowa District Court for Story County, Carl D. Baker, Judge. Affirmed. Considered by Harris, P.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Per Curiam. (3 pages \$1.20)

This is an appeal from a judgment entered on a jury verdict that absolved the State of Iowa from any liability for injuries sustained by Ronald Hunter in connection with a one-car accident. OPINION HOLDS: The question posed is whether a litigant who otherwise qualifies as a "party" for comparative fault purposes under Iowa Code chapter 668 is relieved of that status by a discharge in bankruptcy. We need not answer that question, however, because the error, if any, in so instructing the jury is clearly harmless in light of the jury's verdict.

No. 88-09. HERITAGE CABLEVISION v. MARION COUNTY BOARD OF SUPERVISORS.

Appeal from the Iowa District Court for Marion County, Michael J. Streit, Judge. Affirmed. Considered by Harris, P.J., and Larson, Schultz, Carter, and Snell, JJ. Opinion by Harris, J. (7 pages \$2.80)

No. 88-09. HERITAGE CABLEVISION v. MARION COUNTY BOARD OF SUPERVISORS.(continued)

Plaintiff Heritage Cablevision brought this action as a facial constitutional challenge to Iowa Code chapter 427A (1987), which allows a tax exemption to most, but not all, tangible personal property. Heritage owns property which falls in three categories retained for taxation: (1) computers (427A.1(j)); (2) transmission towers and antenna (427A.1(h)); and (3) equipment attached to the towers, structures, and land (427A.1(c) and (d)). Hence the Marion county assessor assessed this property as real property. In this action Heritage challenges the assessment, asserting chapter 427A is unconstitutional. The attack is a facial one, based on the contention that the division of traditional personal property into personal property and real property results in discriminatory taxation. OPINION HOLDS: I. The controlling question is whether the statute is constitutional as applied to Heritage. If a statute is constitutional as applied, it is not unconstitutional on its face. The statute has broad application and does not discriminate against the cable television industry. Heritage has failed to meet its burden to show the statute has a discriminatory effect. The trial court was correct in rejecting the challenge.

No. 88-580. PRAY v. IOWA DEPARTMENT OF HUMAN SERVICES.

Appeal from the Iowa District Court for Clinton County, C.H. Pelton, Judge. Reversed and remanded. Considered by Harris, P.J., and Larson, Schultz, Carter, and Snell, JJ. Opinion by Harris, J. (4 pages \$1.60)

This is a dispute over funds Marvin Schriener inherited from his mother. Marvin was in default in making child support payments under a 1969 divorce decree. Plaintiff Judith Pray is Marvin's former wife. She sought to recover for back payments from Marvin's interest in the estate. Her dispute is not with Marvin, but with the defendant department of human services which claims the funds under assignments Judith executed as a condition for receiving AFDC benefits. The district court found for the department, but limited its recovery to the amount Marvin was to pay Judith during the months she actually received the benefits. The department appeals. OPINION HOLDS: The assignment clearly transferred to the department all of Judith's rights to Marvin's support payments. It was not limited to Marvin's child support payments accruing during the period Judith received AFDC benefits. The trial court erred in limiting the department's recovery. The department paid more to Judith in benefits (\$15,113) than the entire \$12,300 due to her under the divorce decree. The department is entitled to judgment for the full amount of the fund.



No. 87-1442. STATE v. ADAMS.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Scott County, James R. Havercamp, Judge. Decision of court of appeals vacated; district court judgment reversed and remanded. Considered by Harris, P.J., and Larson, Schultz, Carter, and Snell, JJ. Opinion by Harris, J. (5 pages \$2.00)

On April 14, 1987, a fourteen-year-old girl was walking to a school bus stop when she heard someone whistling to get her attention. She looked up and saw a man exposing himself in an apartment window. She could never identify the man because his face was hidden. The next morning, April 15, a police officer was stationed near the bus stop. As the girl walked to the stop the officer saw a man in the same window exposing himself. But this time the girl did not see the man. The defendant was arrested, charged with the April 15 incident, and convicted of indecent exposure. The court of appeals affirmed the conviction, and the defendant has applied for further review. OPINION HOLDS: The problem in the case is that the necessary elements for the offense do not appear unless they can be derived from events which separately occurred on two different days. Although Adams was charged for the April 15 incident, an element of the offense was missing on that date. The victim did not see Adams and cannot be said to have been offended that day by his conduct. Hence the conviction cannot rest on the happenings of April 15. Nor can Adams be charged with the April 15 incident and be convicted by elements occurring during the April 14 incident. Because the facts presented do not support defendant's conviction it must be set aside.

NO. 88-87. IN RE B.L.B.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Adair County, Robert O. Frederick, Senior Judge. Decision of court of appeals vacated and judgment of district court affirmed. Considered by Harris, P.J., and Larson, Schultz, Carter, and Snell, JJ. Opinion by Schultz, J. (11 pages \$4.40)

The father of two children appeals from the juvenile court order terminating his parental rights. OPINION HOLDS: Our review of the file convinces us that the juvenile court was correct when it terminated the father's parental rights.

No. 88-1068. STATE v. SCHROEDER.

Appeal from the Iowa District Court for Woodbury County, Cameron B. Arnold, Judge. Affirmed. Considered by Harris, P.J., and Larson, Schultz, Carter, and Snell, JJ. Per Curiam. (4 pages \$1.60)

Defendant pled guilty and was sentenced for the offenses of operating a motor vehicle while intoxicated and possession with intent to deliver a Schedule II controlled substance, methamphetamine. He requested immediate

No. 88-1068. STATE v. SCHROEDER.(continued)

sentencing and was sentenced the same day to sixty days confinement for the misdemeanor of OMVI. He was also sentenced on the same day to an indeterminate five-year sentence for the controlled substance offense, which is a class D felony. Defendant appeals, challenging the validity of his guilty plea, asserting that at no time was he notified of the mandatory minimum provisions in effect pertaining to the felony, which made him ineligible for parole. OPINION HOLDS: The court is required by Iowa Rule of Criminal Procedure 8(2)(d) to inform the defendant that any challenges to a plea of guilty based on alleged defects in the plea proceedings must be raised in a motion in arrest of judgment and that failure to so raise such challenges shall preclude the right to assert them on appeal. In this case the court complied with this procedural rule in advising defendant. When he waived time for sentencing and requested immediate sentencing, defendant lost the opportunity to move in arrest of judgment. This is because a motion in arrest of judgment must be made "not later than five days before the date set for pronouncing judgment." Defendant is therefore barred from challenging the consequences of his guilty plea.

NO. 88-908. ROQUET v. JERVIS B. WEBB COMPANY.

Certified questions from the United States District Court for the Northern District of Iowa, David R. Hansen, Judge. Certified questions answered. Considered by Harris, P.J., and Larson, Schultz, Carter, and Snell, JJ. Opinion by Schultz, J. (8 pages \$3.20)

In October 1981 this court recognized a child's independent cause of action for loss of parental consortium. Weitl v. Moes, 311 N.W.2d 259 (Iowa 1981). In the present case the father suffered injuries, and settled his own claim with the tortfeasor, prior to Weitl. Following Weitl the child filed the present action for loss of parental consortium in a federal district court, which then certified a question of law to this court. OPINION HOLDS: We now hold that a child's independent cause of action for loss of parental consortium, first recognized in Weitl, will not be applied retroactively when the injured parent's claims have been concluded by settlement or release on a date prior to the filing of the decision in Weitl.

NOS. 87-1632 & 88-176. DARRAH v. DES MOINES GENERAL HOSPITAL.

Appeals from the Iowa District Court for Polk County, Ray A. Fenton and Gene L. Needles, Judges. Reversed and remanded. Considered by Harris, P.J., and Larson, Schultz, Carter, and Snell, JJ. Opinion by Schultz, J.

(7 pages \$2.80)

Two separate medical malpractice cases against physicians have been consolidated for this appeal. In each case, the defendants filed a motion requesting sanctions under rule 80(a) against the respective plaintiffs. The

NOS. 87-1632 & 88-176. DARRAH v. DES MOINES GENERAL  
HOSPITAL.(continued)

district court, in both cases, denied the motion, stating that the plaintiff's voluntary dismissal terminated the court's jurisdiction to rule on this motion. Both defendants appeal. OPINION HOLDS: Although the general rule is that voluntary dismissal divests the court of jurisdiction, we recognize an exception that retains the court's authority to adjudicate the collateral problem created by prior wrongful conduct of the dismissing party warranting rule 80(a) sanctions. In light of the sanction nature of rule 80(a), we believe the trial court must necessarily retain jurisdiction to rule on motions made shortly after voluntary dismissal which are based on filings made while the case was still pending.

No. 87-1377. STATE v. HYDRO MAG, LTD.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge. Affirmed as modified. Considered by McGiverin, C.J., and Lavorato, Neuman, Snell and Andreasen, JJ. Opinion by Andreasen, J. (18 pages \$7.20)

In this appeal we interpret and apply Iowa's consumer fraud act, Iowa Code section 714.16 (1983). This case is before us on appeal from a district court order permanently enjoining Hydro Mag, Ltd. and Donald Van Gorp from making various claims concerning electromagnetic water-treatment devices. Hydro Mag and Van Gorp were also ordered to pay restoration of monies to several consumers. The State cross appealed from the court's refusal to allow restoration to a customer whose claim had been denied in small claims court. Three issues are raised in this appeal. First, we must determine what elements must be established to maintain an action for injunction and restoration under Iowa Code section 714.16. Second, we must determine whether the State has established those elements in this case. Finally, we will review the district court's holding that a decision in small claims court precluded the restoration of monies to one of the consumers. OPINION HOLDS: I. We now hold that reliance and damages are not elements which need to be established in an action for restoration or injunctive relief under Iowa Code section 714.16. The Iowa Consumer Fraud Act is not merely a codification of common-law fraud. The Consumer Fraud Act provides broader protection to the citizens of Iowa by eliminating common-law fraud elements of reliance and damages. To maintain an action for either injunction or restoration under the Consumer Fraud Act, it is necessary to show a misrepresentation of any material fact with the intent that others rely on this misrepresentation. II. Based on the scientific evidence in this record, we conclude that the electromagnetic treatment of water is a speculative area which is, at best, in an embryonic stage of future development. Van Gorp designed, manufactured, and marketed the Hydro Mag devices with no related scientific expertise. He made several very specific claims promising immediate results. None of these

No. 87-1377. STATE v. HYDRO MAG, LTD.(continued)  
 advertising claims were substantiated by scientific testing. Van Gorp misrepresented the extremely experimental nature of the electromagnetic treatment of water. These misrepresentations were made with the intention that purchasers would rely on them. We find that the State has established the necessary elements of consumer fraud under Iowa Code section 714.16 by a preponderance of clear, convincing and substantial evidence. III. The district court ruled that Guy Gabriel was not entitled to statutory restoration because he had previously brought an action in small claims against Van Gorp. Neither issue nor claims preclusion applies to this case. We find Gabriel is entitled to restitution of monies in accordance with Iowa Code section 714.16.

No. 88-757. IN RE THE INTEREST OF J.D.S.

Appeal from the Iowa District Courts for Polk and Linn Counties, Vincent Hanrahan and Robert Sosalla, District Associate Judges. Affirmed. Considered en banc. Opinion by Snell, J. Dissent by Lavorato, J. (19 pages \$7.60)

The child in interest, sixteen-year-old J.D.S., was adjudicated to be delinquent due to the commission of sexual abuse on a four-year-old boy. J.D.S. has appealed from the adjudication of delinquency and the subsequent dispositional order. OPINION HOLDS: I. During the delinquency hearing the four-year-old boy testified but was separated from J.D.S. by a "one-way mirror" screening device, as permitted by Iowa Code section 910A.14(1). The use of this screening device did not violate J.D.S.'s constitutional right to confront witnesses, because the juvenile court made an individualized finding that the four-year-old victim-witness needed such protection due to his fear and anger toward J.D.S. and the psychological harm he would suffer from a confrontation with J.D.S. See Coy v. Iowa, 487 U.S. \_\_\_\_\_, 108 S. Ct. 2798, 101 L. Ed. 2d 857 (1988). II. J.D.S.'s due process rights were not violated by the court's failure to place the four-year-old witness under oath. The four-year-old's participation in a rote recitation of the oath would have been superfluous. III. J.D.S.'s constitutional right to confront witnesses was not denied or infringed when the four-year-old witness refused or was unable to answer some of the questions posed to him during cross-examination by J.D.S.'s attorney. IV. The evidence was sufficient to establish beyond a reasonable doubt that J.D.S. performed a delinquent act by committing sexual abuse. DISSENT ASSERTS: I would reverse because I do not believe there is sufficient evidence that the delinquent act alleged was committed.

No. 88-1695. COMMITTEE ON PROFESSIONAL ETHICS  
 AND CONDUCT v. HILL.

On review of the report of the Grievance Commission. License suspended. Considered en banc. Opinion by Andreasen, J. Dissent by Snell, J. (7 pages \$2.80)

No. 88-1695. COMMITTEE ON PROFESSIONAL ETHICS  
AND CONDUCT v. HILL.(continued)

The Grievance Commission found that attorney William Hill had violated disciplinary rules DR 1-102(A)(3) and (6), and ethical considerations EC 1-5 and EC 9-6, by having sexual relations with a client in a pending domestic relations matter. OPINION HOLDS: We, like the commission, find that the actions and conduct of Hill constitute unethical and unprofessional conduct. We also reject Hill's argument that our consideration of his sexual intercourse with the client violates his right to privacy. We hold Hill's license to practice law should be suspended indefinitely with no possibility of reinstatement for three months. DISSENT ASSERTS: I believe Hill's license to practice law should be suspended for not less than nine months.

No. 88-182. STATE v. VINCIK.

Appeal from the Iowa District Court for Linn County, Thomas M. Horan, Judge. Affirmed. Considered by Harris, P.J., and LAVORATO, Neuman, Snell, and Andreasen, JJ. Opinion by Snell, J. (12 pages \$4.80)

William Henry Vincik appeals his conviction of second-degree murder in the killing of his wife Inez. He contends (1) physical evidence found by police during a warrantless search of his home should have been suppressed at trial, and (2) the evidence introduced at trial was insufficient to support his conviction. OPINION HOLDS: I. Motion to suppress. Vincik's 911 call, in which he requested help and indicated he had been shot, clearly justified the warrantless entries and victim/suspect searches by police officers. We also conclude, contrary to Vincik's contention, that the further presence of police in the house after it had been secured was merely a continuation of these initial, lawful entries, in light of the discovery of Inez's body and Vincik. Because the officers' presence in the house was lawful, the plain view doctrine was applicable. Therefore, the three .45 shell casings and the gunbox were properly seized and admitted into evidence. They were viewed by a police officer while he was in a place where he had a right to be. The district court also correctly admitted the gun and the t-shirt that was wrapped around it. Although they were not in plain view and were therefore improperly seized, we are convinced the record clearly demonstrates they would inevitably have been discovered during the removal of Inez's body from the bed. Admission of the slug recovered from the wall, the slug recovered from the pillow, and the results of ballistics tests performed on these slugs was perhaps erroneous. These items were not in plain view, nor can we say a preponderance of the evidence in the record establishes they would have been inevitably discovered by lawful means. We do not, however, believe this error, if any, demands a reversal. The challenged evidence was only cumulative to identical evidence properly in the record. II. Sufficiency of evidence. The evidence in the record is more than ample to convince a rational fact finder beyond a reasonable doubt that Vincik murdered his wife and then attempted to commit suicide.

No. 88-259. STATE EX REL. IOWA DEPARTMENT OF  
HUMAN SERVICES v. MUNDIE.

Appeal from the Iowa District Court for Sac County,  
Mark S. Cady, Judge. Affirmed. Considered by McGiverin,  
C.J., and Lavorato, Neuman, Snell, and Andreasen, JJ.  
Opinion by Snell, J. (6 pages \$2.40)

Chad Lankford was born in 1973. In 1979, the State filed an Iowa Code chapter 252A paternity and support action on Chad's behalf against respondent Brian Mundie. On March 24, 1980, the district court dismissed the action on the ground that the five-year statute of limitations under Iowa Code section 614.1(4) was applicable and had not been met. The dismissal was not appealed. In 1981, we held in Stearns v. Kean, 303 N.W.2d 408, 413 (Iowa 1981), that the time for bringing a chapter 252A action for a child was extended by operation of section 614.8, which provided that minors "shall have one year from and after termination" of their minority to commence such actions. In light of Stearns, the State brought the present action in 1987. The district court dismissed this action, concluding that the unappealed dismissal of the prior action barred this action under the doctrine of claim preclusion. The State has appealed. OPINION HOLDS: We affirm the district court's ruling. We are convinced that an "adjudication" occurred in the prior action. We are also convinced that this action is between the same parties and on the same claim (to the extent of determining paternity and recovering support due on March 24, 1980) as the prior action. The issue of paternity, a prerequisite for recovering support, was raised by both the prior action and this action. The State's contention that the application of res judicata violates equal protection by discriminating against children born out of wedlock is without merit.

No. 88-1450. COMMITTEE ON PROFESSIONAL ETHICS  
AND CONDUCT v. O'CALLAGHAN.

On review of the report of the Grievance Commission. License suspended. Considered by Harris, P.J., and Larson, Schultz, Carter, and Snell, JJ. Opinion by Snell, J.  
(5 pages \$2.00)

The complaint in this attorney disciplinary proceeding charged that the respondent, James A. O'Callaghan, commingled his personal funds with funds of his clients in his office trust account for several months in 1987. A division of the Grievance Commission found that commingling occurred and that a misappropriation of client funds took place. OPINION HOLDS: We suspend James A. O'Callaghan's license to practice law in the courts of this state indefinitely, with no possibility of reinstatement for three months from the filing of this opinion.

NO. 87-731. STATE v. HARRIS.

Appeal from the Iowa District Court for Pottawattamie County, Leo F. Connolly, Judge. Affirmed. Considered by Harris, P.J., and Schultz, Carter, Neuman, and Andreasen, JJ. Opinion by Carter, J. (16 pages \$6.40)

Defendant, Daniel Brian Harris, appeals from his conviction of first-degree murder. He claims the district court erred: (1) in overruling his motion for change of venue; (2) in overruling his motion to suppress evidence allegedly obtained as the product of a warrantless search; and (3) in overruling another motion to suppress evidence which, it is alleged, was obtained pursuant to an invalid search warrant. OPINION HOLDS: I. We do not find that the trial court abused its discretion in denying the motion for change of venue. II. After officers had concluded that a shoeprint found at the crime scene resembled that made by a deck shoe, the police went to defendant's residence with an arrest warrant to be executed in connection with a different crime. They awoke defendant and took him into custody. In that process, one police officer observed a pair of deck shoes on the floor of the bedroom. The police subsequently obtained a warrant to seize the shoes. The brand of defendant's shoes was obtained by a visual inspection of objects which came into view during the officer's lawful activities. There was no movement of the shoes in order to expose any concealed portions. The trial court correctly denied defendant's motion to suppress based on a theory of warrantless search. III. The final issue concerns the validity of a warrant issued for the search of defendant's residence different from the search which produced defendant's deck shoes. The application for this warrant was initially presented to a district associate judge solely on the affidavit of a police officer who relied entirely on hearsay statements of a confidential informant. Because the district associate judge to whom the warrant application was presented was less than satisfied with these hearsay averments, he asked that the informant be brought before him. After questioning the informant under oath, the district associate judge issued the warrant. We conclude that the informant evidence in the present case was not supplied as hearsay. Once the informant appeared before the magistrate and, under oath, adopted the statements attributed to him in the officer's affidavit, those statements ceased to be hearsay; they became the sworn testimony of a witness with personal knowledge of the facts. The fact that the warrant was issued indicates, quite conclusively, that the magistrate was satisfied with the witness's credibility. Defendant's challenge to the warrant must be rejected.

No. 87-369. HAMILTON v. FIRST BAPTIST ELDERLY HOUSING FOUNDATION

On review from the Iowa Court of appeals. Appeal from the Iowa District Court for Polk County, A.M. Critelli, Judge. Affirmed. Considered by McGiverin, C.J., Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Lavorato, J. (16 pages \$6.40)

No. 87-369. HAMILTON v. FIRST BAPTIST ELDERLY HOUSING FOUNDATION (continued)

The First Baptist Elderly Housing Foundation, d/b/a Elsie Mason Manor, terminated the employment of Margie Sue Sobotka. Margie and Pat Hamilton, her husband at the time, were hired as a team to live on site. They were dismissed when it was discovered Pat had circulated threatening notes. Margie had not engaged in any misconduct. She sued the Manor on three theories: (1) sex discrimination, (2) breach of an employment contract, and (3) violation of public policy. The district court concluded that Margie had failed to prove any of the three theories. She appealed from this decision, and we transferred the case to the court of appeals. Because the court of appeals was equally divided, the district court's judgment was affirmed by operation of law. We granted Margie's application for further review. OPINION HOLDS: I. The district court found that Margie had established a prima facie case of sex discrimination. But it also found that the Manor had articulated a legitimate, nondiscriminatory reason for her discharge that Margie had not proven was a mere pretext for sex discrimination. Upon our review of the entire record, we are convinced the district court was right. Allowing Margie to live off of the premises would not have been a reasonable alternative because the team concept would have been destroyed. In these circumstances, the district court could rationally conclude that the Manor's decision to terminate Margie's employment was reasonable and had not been motivated by a discriminatory animus. II. The Manor's proffered reason for the termination is not in contravention of, or even covered by, the policy provisions in the Manor employee handbook upon which Margie relies. Margie was not discharged for misconduct; she was discharged because of a nondisciplinary business necessity that went to the heart of the employment relationship. In essence, the material consideration for the hiring--the team concept--failed when the Manor found it necessary to discharge Pat because of his misconduct. In these circumstances, we fail to see how a breach occurred when Margie was also discharged. Thus, we uphold the district court's dismissal of Margie's breach of contract claim. III. Margie failed in her bid to prove sex discrimination. She is forbidden a second bite of the apple in the form of an independent common law action also premised on sex discrimination. The district court properly dismissed her public policy claim.

No. 87-1122. IN RE MARRIAGE OF CARNICLE.

Appeal from the Iowa District Court for Linn County, L. Vern Robinson, Judge. On review from the Iowa Court of Appeals. Court of Appeals decision vacated; judgment of district court affirmed. Considered by McGiverin, C.J., and LAVORATO, Neuman, Snell, and Andreasen, JJ. Per curiam. (8 pages \$3.20)

In this dissolution of marriage action, the district court awarded the wife, Kathleen, alimony of \$300 per month, to continue until Kathleen either remarried or



## No. 87-1122. IN RE MARRIAGE OF CARNICLE.(continued)

died. The court of appeals determined that in addition to Kathleen's remarriage or death, alimony should terminate if Kathleen earned at least \$125 per week. Kathleen has applied for further review. OPINION HOLDS: We vacate the court of appeals decision and affirm the judgment of the district court. The alimony set by the district court, both as to amount and as to length of time, is fair and equitable. The district court properly considered and applied the factors in Iowa Code section 598.21(3).

## No. 88-08. MARTIN-TRIGONA v. BAXTER.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge. Appeal dismissed. Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Lavorato, J. (4 pages \$1.60)

Anthony R. Martin-Trigona, a former candidate for the Democratic presidential nomination, sued the Iowa Democratic Party and Elaine Baxter, who is the Iowa Secretary of State, seeking declaratory and injunctive relief regarding the conduct of the 1988 Iowa Democratic presidential caucuses. OPINION HOLDS: The issues raised here are moot because the nominating process is over. We therefore dismiss the appeal.

## NO. 88-399. NEELANS v. JOHN DEERE COMPONENT WORKS.

Appeal from the Iowa District Court for Black Hawk County, James C. Bauch, Judge. Reversed and remanded. Considered by McGiverin, C.J., and Larson, Schultz, Carter, and Andreasen, JJ. Opinion by Larson, J.

(8 pages \$3.20)

This case turns on the interpretation of our Second Injury Compensation Act, Iowa Code §§ 85.63-.69 (1985). The issue is the extent of liability of an employer when a worker sustains a "scheduled" injury under Iowa Code section 85.34 and that injury has combined with an earlier scheduled injury to cause disability to the body as a whole. Is the present employer's liability for benefits limited to the scheduled benefits for the latest injury, or must the employer pay a pro rata share of the benefits payable for the worker's disability to the body as a whole? In this case, the industrial commissioner interpreted section 85.64 to limit the liability of the present employer, John Deere, to the amount of the scheduled benefits for the present injury, because that injury, standing alone, did not extend to the body as a whole. The district court reversed and ordered that the Second Injury Fund and John Deere share the payment for the benefits provided for disability to the body as a whole. Neelans has settled with John Deere, and it is not involved in the present appeal. OPINION HOLDS: In this case, if it had not been for the prior injuries sustained by Neelans, the employer would be liable only to the extent provided by the schedule for a leg injury. To hold that the present employer would be liable for payment of a greater amount as a result of the preexisting injuries would be inconsistent with the purpose and language of the statute. Accordingly, we reverse and remand for reinstatement of the order by the industrial commissioner.

NOS. 87-1567/87-1518. FULTON v. JIMMY DEAN MEAT CO.

Appeals from the Iowa District Court for Linn County, August F. Honsell, Judge. Affirmed on both appeals. Considered en banc. Per curiam. (3 pages \$1.20)

These consolidated appeals raised an issue which we resolved in the case of Neelans v. John Deere Component Works, #88-399, filed today. OPINION HOLDS: We held in Neelans that, if the current scheduled injury does not itself extend to the body as a whole, the employer is not liable for any of the additional compensation due under Iowa Code section 85.64 which is attributed to whole-body disability. As we held in that case, the Second Injury Fund is liable for all such compensation, after receiving credit for the amount of the current and prior scheduled compensation. Based on Neelans, we affirm the order of the district court in each of these appeals.

NO. 87-848. STATE v. ROYER.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Story County, Carl D. Baker, Judge. Decision of court of appeals vacated; district court judgment reversed and remanded. Considered by McGiverin, C.J., and Larson, Schultz, Carter, and Andreasen, JJ. Opinion by Schultz, J. (16 pages \$6.40)

The defendant was convicted of two counts of murder in the first degree and one count of arson in the first degree. The court of appeals affirmed these convictions, and the defendant has applied for further review. OPINION HOLDS: I. In State v. Jeffries, 430 N.W.2d 728 (Iowa 1988), we modified our analysis of lesser-included offense issues. We apply Jeffries retrospectively to this case. II. With regard to the charge of first-degree arson, the defendant was entitled to lesser-included offense instructions on the crimes of second-degree arson and reckless use of fire. The district court erred by refusing to give these instructions. III. With regard to the charge of first-degree murder, the defendant was entitled to a lesser-included offense instruction on the crime of involuntary manslaughter as defined in Iowa Code section 707.5(1) (unintentionally causing death by the commission of a public offense other than a forcible felony or escape). The district court erred by refusing to give this instruction. However, the defendant was not entitled to a lesser-included offense instruction on the crime of involuntary manslaughter as defined in Iowa Code section 707.5(2), because there was no evidence that he caused a death by an act other than a public offense.

NO. 88-1536. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT v. HANEY.

On review of the report of the Grievance Commission. License suspended. Considered by McGiverin, C.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Neuman, J. (7 pages \$2.80)

This lawyer disciplinary matter is before the court for our review and final disposition in accordance with Iowa

NO. 88-1536. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT v. HANEY. (continued)

Supreme Court rule 118.10. OPINION HOLDS: We find that attorney Haney neglected two probate matters and then failed to remedy the delinquencies or respond to numerous inquiries by the clerk of court and by the Committee on Professional Ethics and Conduct. We therefore suspend James Haney's license to practice law in the courts of this state indefinitely, with no possibility of reinstatement for three months.

NO. 87-1139. SIEREN v. BAUMAN.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Wapello County, Max H. Ruschmeyer, District Associate Judge. Decision of court of appeals and judgment of district court affirmed. Considered by Harris, P.J., and Larson, Schultz, Carter, and Snell, JJ. Opinion by Carter, J. (7 pages \$2.80)

The decree dissolving the marriage of Susan Sieren Bauman and Martin Sieren awarded Susan certain personal property and required her to execute a promissory note in favor of Martin. When Susan defaulted on the note, Martin filed a small claims action to recover the balance. Susan counterclaimed, alleging among other things that Martin had converted some property which under the dissolution decree belonged to her. The action was transferred from the small claims docket to the ordinary civil docket on the basis that, considering the counterclaim, the amount in controversy exceeded \$2000. The district court findings resulted in a judgment of \$1450 in favor of Martin against Susan and a judgment of \$1800 in favor of Susan against Martin. Martin's appeal from the judgment against him was transferred to the court of appeals, which affirmed the judgment. We granted further review. OPINION HOLDS; I. We find no merit in Martin's claim that the district associate judge who heard this action lacked subject matter jurisdiction to resolve the conflicting claims of the parties to property awarded to Susan under the dissolution decree because doing so meant modifying the property division. Because one party relied on the prior judgment as a muniment of title to the disputed property, the judge was required to interpret the scope of the prior judgment. We know of no rule of law, however, which requires that these issues be determined by the dissolution court. II. The district associate judge did not misinterpret the dissolution decree regarding the items awarded to Susan as her "personal effects." The judge reasoned that the dissolution court had awarded Susan all those items which had a use unique to her, e.g., her clothing, jewelry, boots, and the equipment used exclusively by her in her horse-raising hobby; for the most part, these were items which had a unique sentimental value to Susan.

NO. 87-600. STATE v. SORENSEN.

Appeal from the Iowa District Court for Pottawattamie County, J.C. Irvin, Judge. Reversed and remanded on State's appeal; affirmed on defendant's appeal. Considered by McGiverin, C.J., and Larson, Schultz, Carter, and Andreasen, JJ. Opinion by Larson, J. (15 pages \$6.00)

These interlocutory appeals arise out of a quiet-title action involving several parcels of land totaling approximately 150 acres and adjoining the Missouri River. The principal issue is whether Iowa Code section 614.17 (1983), which bars claims to real estate predating 1970, applies to the state. The district court ruled that it did, thus barring the State's claims to several of the parcels of land. The defendants argue that the court should have barred the State's claims as to all of the land, and that it was error to dismiss their counterclaims against the State. We granted both applications for interlocutory appeal. OPINION HOLDS: I. We stop short of holding that section 614.17 is inapplicable to any claims by the State. However, we hold that section 614.17 does not apply to bar claims of the State to public trust property. II. The land in question here is undoubtedly suited for use as public access to the river. We conclude that the land in question here was adequately established to be a part of the public trust and is therefore subject to exception from the application of section 614.17. III. Because we reverse the district court on its original premise that the State's claim is barred by section 614.17, the State should be permitted to establish on retrial that it had title through accretion or other means. IV. We affirm the district court's dismissal of the defendants' damage claim on the ground the claimants failed to comply with the procedural requirements of chapter 25A. We also affirm the district court's dismissal of the defendants' counterclaims under section 1983.

NO. 87-1708. HELMERS v. ALTRUCK FREIGHT SYSTEMS.

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge. Reversed and remanded. Considered by Harris, P.J., and Larson, Schultz, Carter, and Snell, JJ. Opinion by Carter, J. (9 pages \$3.60)

This appeal arises with respect to a workers' compensation review-reopening proceeding brought before the industrial commissioner. The agency entered a default against the employer and insurance carrier for their failure to answer the petition within the time required by agency rules. A final order fixing benefits was later entered. The agency refused to consider a motion to set aside the default filed fifty days after the final order on the ground that it was untimely. The employer and insurance carrier then filed a petition for judicial review seeking to challenge such refusal. That petition was dismissed by the district court on jurisdictional grounds. They now appeal. OPINION HOLDS: I. We believe the agency's refusal to set aside the default was itself a final agency order. Under Iowa Code section 17A.19, the district court always has jurisdiction to review a final order of the agency, includ-

NO. 87-1708. HELMERS v. ALTRUCK FREIGHT SYSTEMS.(continued)  
ing agency orders which dispose of a case for lack of jurisdiction. II. We believe that Iowa Rule of Civil Procedure 236 is applicable to these proceedings. We conclude that the judgment of the district court and agency orders which pertain to appellants' application to set aside the default should be reversed. The case must be remanded to the agency for a consideration of that application. III. We believe that, if the agency action is constitutionally infirm for want of proper notice at the inception of the proceedings, such action does not gain validity because of the passage of time. We believe that the district court could have considered the constitutional claims contained in the petition for judicial review irrespective of the timing of the other grounds of the motion to set aside the default.

NO. 88-737. POEHLS v. GUARANTY NATIONAL INSURANCE CO.

Certified question of law from the United States District Court for the Southern District of Iowa, Harold D. Vietor, Judge. Certified question answered. Considered by Harris, P.J., and LAVORATO, NEUMAN, SNELL and ANDREASEN, JJ. Opinion by Neuman, J. (10 pages \$4.00)

Poehls was killed in a one-car accident as a passenger in a car owned and operated by Kevin Burmeister. Burmeister's vehicle was insured by Guaranty National. Poehls carried no insurance. Guaranty tendered policy benefits to the administrator of Poehls' estate equal to the policy limit for liability coverage for a single person; the policy limit for medical payments coverage; plus an additional amount to reach the policy limit for underinsured motorist coverage. Poehls rejected this offer, claiming entitlement to the sum of the liability policy limits plus medical payments and underinsured motorist coverage. Given this factual background, the federal court has posed the following question: Is the "Limits of Liability" clause contained in Guaranty's policy valid and enforceable against plaintiff under Iowa law, so that the amount of coverage available to plaintiff under the underinsured provisions of the policy will be reduced by any amounts paid to plaintiff pursuant to the liability and medical coverage provisions? OPINION HOLDS: We are persuaded that the limits of liability clause contained in Guaranty's policy is valid and enforceable under Iowa Code section 516A.2 because it is designed to avoid duplication of liability coverage purchased under the policy. Accordingly, the underinsured benefits payable under the policy must be reduced by any amounts paid to Poehls pursuant to the liability and medical payments provisions.





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