

IOWA ADMINISTRATIVE BULLETIN

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August 7, 1991

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Pages 165 to 304

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PREFACE

The Iowa Administrative Bulletin is published in pamphlet form biweekly pursuant to Iowa Code Chapter 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies [continue to refer to General Information for drafting style and form].

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

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

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

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

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

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SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

First quarter	July 1, 1991, to June 30, 1992	\$210.00 plus \$8.40 sales tax
Second quarter	October 1, 1991, to June 30, 1992	\$157.50 plus \$6.30 sales tax
Third quarter	January 1, 1992, to June 30, 1992	\$105.00 plus \$4.20 sales tax
Fourth quarter	April 1, 1992, to June 30, 1992	\$ 52.50 plus \$2.10 sales tax

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Iowa Administrative Code

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

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

Iowa Administrative Code - \$955.00 plus \$38.20 sales tax

(Price includes 18 volumes of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders can be purchased for \$8.50 plus \$0.34 tax.)

Iowa Administrative Code Supplement - \$332.00 plus \$13.28 sales tax
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Iowa State Printing Division
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Des Moines, IA 50319
Phone: (515)281-8796

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FILING DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 7 '90	Dec. 26 '90	Jan. 15	Jan. 30	Feb. 20	Mar. 27	June 24
Dec. 21 '90	Jan. 9	Jan. 29	Feb. 13	Mar. 6	Apr. 10	July 8
Jan. 4	Jan. 23	Feb. 12	Feb. 27	Mar. 20	Apr. 24	July 22
Jan. 18	Feb. 6	Feb. 26	Mar. 13	Apr. 3	May 8	Aug. 5
Feb. 1	Feb. 20	Mar. 12	Mar. 27	Apr. 17	May 22	Aug. 19
Feb. 15	Mar. 6	Mar. 26	Apr. 10	May 1	June 5	Sep. 2
Mar. 1	Mar. 20	Apr. 9	Apr. 24	May 15	June 19	Sep. 16
Mar. 15	Apr. 3	Apr. 23	May 8	May 29	July 3	Sep. 30
Mar. 29	Apr. 17	May 7	May 22	June 12	July 17	Oct. 14
Apr. 12	May 1	May 21	June 5	June 26	July 31	Oct. 28
Apr. 26	May 15	June 4	June 19	July 10	Aug. 14	Nov. 11
May 10	May 29	June 18	July 3	July 24	Aug. 28	Nov. 25
May 24	June 12	July 2	July 17	Aug. 7	Sept. 11	Dec. 9
June 7	June 26	July 16	July 31	Aug. 21	Sept. 25	Dec. 23
June 21	July 10	July 30	Aug. 14	Sep. 4	Oct. 9	Jan. 6 '92
July 5	July 24	Aug. 13	Aug. 28	Sep. 18	Oct. 23	Jan. 20 '92
July 19	Aug. 7	Aug. 27	Sep. 11	Oct. 2	Nov. 6	Feb. 3 '92
Aug. 2	Aug. 21	Sep. 10	Sep. 25	Oct. 16	Nov. 20	Feb. 17 '92
Aug. 16	Sep. 4	Sep. 24	Oct. 9	Oct. 30	Dec. 4	Mar. 2 '92
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Sep. 13	Oct. 2	Oct. 22	Nov. 6	Nov. 27	Jan. 1 '92	Mar. 30 '92
Sep. 27	Oct. 16	Nov. 5	Nov. 20	Dec. 11	Jan. 15 '92	Apr. 13 '92
Oct. 11	Oct. 30	Nov. 19	Dec. 4	Dec. 25	Jan. 29 '92	Apr. 27 '92
Oct. 25	Nov. 13	Dec. 3	Dec. 18	Jan. 8 '92	Feb. 12 '92	May 11 '92
Nov. 8	Nov. 27	Dec. 17	Jan. 1 '92	Jan. 22 '92	Feb. 26 '92	May 25 '92
Nov. 22	Dec. 11	Dec. 31	Jan. 15 '92	Feb. 5 '92	Mar. 11 '92	June 8 '92
Dec. 6	Dec. 25	Jan. 14 '92	Jan. 29 '92	Feb. 19 '92	Mar. 25 '92	June 22 '92
Dec. 20	Jan. 8 '92	Jan. 28 '92	Feb. 12 '92	Mar. 4 '92	Apr. 8 '92	July 6 '92

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

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

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

PRINTING SCHEDULE FOR IAB		
ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
5	Friday, August 16, 1991	September 4, 1991
6	Friday, August 30, 1991	September 18, 1991
7	Friday, September 13, 1991	October 2, 1991

NOTICE

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

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

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
ALCOHOLIC BEVERAGES DIVISION[185]		
Vending machines dispensing alcoholic beverages prohibited, 4.41 IAB 8/7/91 ARC 2210A	Conference Room Division Central Offices 1918 S.E. Hulsizer Ave. Ankeny, Iowa	August 27, 1991 1:30 p.m.
DISASTER SERVICES DIVISION[607]		
Emergency response commission, 103.3, 103.4, ch 104 IAB 8/7/91 ARC 2202A	Labor Services Office 1000 East Grand Ave. Des Moines, Iowa	August 30, 1991 10 a.m. (If requested)
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Export trade assistance, 61.3, 61.4 IAB 8/7/91 ARC 2214A (See also ARC 2215A, herein)	Conference Room International Division 200 East Grand Ave. Des Moines, Iowa	August 27, 1991 10 a.m.
Rural community leadership development, ch 68 IAB 8/7/91 ARC 2223A (See also ARC 2219A, herein)	Conference Room 200 East Grand Ave. Des Moines, Iowa	August 28, 1991 1:30 p.m.
HUMAN SERVICES DEPARTMENT[441]		
Restructuring of central, regional and county offices, amendments to ch 1 IAB 8/7/91 ARC 2237A	Cedar Rapids District Office Conference Room - 6th Floor 221 4th Avenue, S.E. Cedar Rapids, Iowa	August 28, 1991 10 a.m.
	Community Hall 205 So. Main Council Bluffs, Iowa	August 28, 1991 10 a.m.
	Davenport District Office Fifth Floor Conference Room 428 Western Davenport, Iowa	August 28, 1991 10 a.m.
	Des Moines District Office City View Plaza, Conference Room 100 1200 University Des Moines, Iowa	August 28, 1991 1 p.m.
	Mason City District Office Mohawk Square 22 North Georgia Avenue Mason City, Iowa	August 28, 1991 10:30 a.m.
	Ottumwa District Office Fifth Floor Conference Room 226 West Main Ottumwa, Iowa	August 28, 1991 10 a.m.
	Sioux City District Office Suite 624 507 7th Street Sioux City, Iowa	August 28, 1991 2 p.m.

HUMAN SERVICES DEPARTMENT[441](cont'd)

	Waterloo District Office Pinecrest Conference Room 1407 Independence Ave. Waterloo, Iowa	August 28, 1991 10 a.m.
Copayment exemption removed; Medicare for RCFs, maximum copayment--home health care, 52.1(3), 79.1(13) IAB 7/24/91 ARC 2162A	Conference Room--6th Floor 221 4th Ave. S.E. Cedar Rapids, Iowa	August 15, 1991 10 a.m.
	Lower Level 417 E. Kaniesville Blvd. Council Bluffs, Iowa	August 14, 1991 10 a.m.
	Conference Room--5th Floor 428 Western Davenport, Iowa	August 14, 1991 10 a.m.
	City View Plaza Conference Room 201 1200 University Des Moines, Iowa	August 14, 1991 9 a.m.
	Mohawk Square 22 North Georgia Ave. Mason City, Iowa	August 15, 1991 10 a.m.
	Conference Room--5th Floor 226 West Main Ottumwa, Iowa	August 14, 1991 10 a.m.
	Suite 624 507 7th St. Sioux City, Iowa	August 15, 1991 1 p.m.
	Conference Room M-1 501 Sycamore St. Waterloo, Iowa	August 15, 1991 10 a.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

License category for transient food service, inspection frequency, licensure requirements, amendments to chs 30, 31, 32, 37 IAB 8/7/91 ARC 2199A	Conference Room Third Floor - Side 1 Lucas State Office Bldg. Des Moines, Iowa	August 30, 1991 9 a.m.
Intermediate care facilities for persons with mental illness, ch 65 IAB 8/7/91 ARC 2200A	Conference Room Third Floor - Side 2 Lucas State Office Bldg. Des Moines, Iowa	September 6, 1991 9 a.m.

JOB SERVICE DIVISION[345]

Employer's contribution and charges, claims and benefits, benefit payment control, amendments to chs 3, 4, 5 IAB 8/7/91 ARC 2195A	Division of Job Service 1000 East Grand Ave. Des Moines, Iowa	August 28, 1991 9:30 a.m.
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August 30, 1991
9 a.m.
(If requested)

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IAB 8/7/91 ARC 2229A

Conference Room
Fourth Floor-West
Wallace State Office Bldg.
Des Moines, Iowa

August 28, 1991
10 a.m.

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Conference Room
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Des Moines, Iowa

August 27, 1991
11 a.m.

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refuges, state parks and recreation
areas, deer population management
areas, 51.3(1)"e," 52.1(1), 61.2,
61.6(3), ch 105
IAB 8/7/91 ARC 2225A

City Hall
Brighton, Iowa

August 28, 1991
7 p.m.

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and recreation areas, ch 65
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Conference Room
Fifth Floor-East
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August 27, 1991
10 a.m.

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August 27, 1991
10 a.m.

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Des Moines, Iowa

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1:30 p.m.

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10 a.m.

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IAB 6/26/91 ARC 2073A

Hearing Room--1st Floor
Lucas State Office Bldg.
Des Moines, Iowa

August 29, 1991
10 a.m.

CITATION of Administrative Rules

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

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

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

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

AGENCY IDENTIFICATION NUMBERS

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

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

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

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

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

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ARC 2210A

ALCOHOLIC BEVERAGES
DIVISION[185]

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 123.21, the Alcoholic Beverages Division hereby gives Notice of Intended Action to amend Chapter 4, "Liquor Licenses--Beer Permits--Wine Permits," Iowa Administrative Code.

The proposed rule prohibits a liquor control licensee or beer and wine permittee from utilizing a vending machine for the purpose of selling, serving, or dispensing alcoholic beverages.

Any interested party may make written suggestions or comments on this proposed rule prior to August 27, 1991. Such written materials should be directed to the Chief, Licensing and Regulation Bureau, Alcoholic Beverages Division, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021. Persons who want to convey their views orally should contact the Chief, Licensing and Regulation Bureau, Alcoholic Beverages Division at (515)281-7431.

Also, there will be a public hearing on Tuesday, August 27, 1991, at 1:30 p.m. in the conference room in the division's central office at 1918 S.E. Hulsizer Avenue, Ankeny, Iowa. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Chief, Licensing and Regulation Bureau at least one day prior to the date of the public hearing.

The following amendment is proposed.

Amend 185--Chapter 4 by adding the following new rule:

185-4.41(123) Vending machines to dispense alcoholic beverages prohibited. A liquor control licensee or beer or wine permittee shall not install or permit the installation of vending machines on the licensed premises for the purpose of selling, dispensing or serving alcoholic beverages.

This rule is intended to implement Iowa Code sections 123.47, 123.47A, 123.49(1), 123.49(2)"b," 123.49(2)"h", and 123.49(2)"k."

ARC 2202A

DISASTER SERVICES
DIVISION[607]

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 30.5 and 17A.3(1), the Iowa Emergency Response Commission hereby gives Notice of Intended Action to amend Chapter 103, "Local Emergency Planning Committees," and adopt a new Chapter 104, "Required Reports and Records," Iowa Administrative Code.

These rules relate to filing of forms and information with the Emergency Response Commission and agencies under Iowa Code chapter 28E agreements with the Commission.

If requested by August 27, 1991, a public hearing will be held on August 30, 1991, at 10 a.m. in the office of the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa. Any interested person will be given the opportunity to make oral or written submissions concerning the proposed rules. Written data or arguments to be considered in adoption may be submitted by interested persons no later than August 30, 1991, to Chair, Iowa Emergency Response Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

The Commission has determined that this Notice of Intended Action may have an impact on small business. The agency has considered the factors listed in Iowa Code section 17A.31. The Commission will issue a regulatory flexibility analysis as provided in Iowa Code section 17A.31 if a written request is filed by delivery or by mailing postmarked no later than August 28, 1991, to Chair, Iowa Emergency Response Commission, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under the Act, or an organization of small businesses representing at least 25 persons which is registered with the Commission under the Act.

These rules will not necessitate additional annual expenditures exceeding \$100,000 by any political subdivision or agency or any contractor providing services to political subdivisions or agencies.

These rules are intended to implement Iowa Code sections 30.7, 30.8, and 30.9.

The following amendments are adopted:

ITEM 1. Amend subrule 103.3(2) by striking the words "tier II" and inserting the words "form Tier Two".

ITEM 2. Rescind rule 607--103.4(30) and insert in lieu thereof the following:

607--103.4(30) Emergency response plan development. The IERC recognizes that emergency planning includes more than chemical release planning. The chemical re-

DISASTER SERVICES DIVISION[607](cont'd)

lease planning required by this chapter and EPCRA shall be included in the comprehensive emergency planning conducted by the joint administration as required by Iowa Code chapter 29C and planning standards of the Iowa division of disaster services.

ITEM 3. Adopt a new 607--Chapter 104.

CHAPTER 104
REQUIRED REPORTS AND RECORDS

607--104.1(30) Department of public defense, disaster services division.

104.1(1) Emergency planning notification. The owner or operator of each facility subject to the requirement shall notify the department of public defense, disaster services division, that the facility is subject to the requirements of Section 302, Emergency Planning and Community Right to know Act, 42 USC 11002. The notification is to be on forms provided by the division. The facility owner or operator shall submit the notification by March 1 for covered chemicals in its possession on January 1 of that year. The report shall be revised by a notification within 60 days after the acquisition of chemicals meeting the reporting requirements.

104.1(2) Plan development. Each local emergency planning committee (LEPC) shall prepare a comprehensive emergency response plan(s) pursuant to 42 USC 11033 which shall become an integrated portion of the emergency plan established by the joint administration. Where a local emergency planning district exceeds the jurisdictional boundaries of a single joint administration, a comprehensive emergency response plan shall be developed for each joint administration at least annually. The plan shall be reviewed and revised as necessary. The joint administration shall not change the plan without the approval of the LEPC.

104.1(3) Submissions. Plans and notifications required under this rule shall be submitted to the Department of Public Defense, Disaster Services Division, Hoover State Office Building, Level A, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code sections 30.5 and 30.9.

607--104.2(30) Department of natural resources.

104.2(1) Emergency notifications of releases. Each release subject to the requirements of Section 304, Emergency Planning and Community Right to know Act, 42 USC 11004, shall be submitted to the department of natural resources. This notification shall be done in conjunction with the notification required by 567--131.2(455B). Notifications of release shall be telephoned to the department at (515)281-8694 immediately. A written follow-up emergency notice shall be made within 30 days.

104.2(2) Toxic chemical release form. The owner or operator of a facility subject to the requirements of Section 313, Emergency Planning and Community Right-to-know Act, 42 USC 11023, shall submit information required by EPA regulations to the department of natural resources. The information for the previous calendar year shall be submitted by July 1 of the following year.

104.2(3) Submissions. Written notifications and reports required under this rule shall be submitted to the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. For additional information, see rule 567--131.2(455B).

This rule is intended to implement Iowa Code sections 30.5 and 30.8.

607--104.3(30) Department of employment services, labor services division.

104.3(1) Material safety data sheet information. The owner or operator of a facility required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act shall submit a list of each chemical required to be submitted under Section 311, Emergency Planning and Community Right to know Act, 42 USC 11021. The list shall be submitted to the department of employment services, labor services division, in addition to the appropriate local emergency planning committee (LEPC) and the fire department in whose jurisdiction the facility is located. The submission of material safety data sheets in lieu of a list is not permitted. A form is not designated.

104.3(2) Emergency and hazardous chemical inventory form (Tier Two). The owner or operator of a facility required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act shall submit an emergency and hazardous chemical inventory form required to be submitted under Section 312, Emergency Planning and Community Right to know Act, 42 USC 11022. The form shall be submitted to the Department of Employment Services, Labor Services Division, in addition to the appropriate local emergency planning committee (LEPC) and the fire department within whose jurisdiction the facility is located. The federal Tier Two form shall be used. Tier One forms will not be accepted.

104.3(3) Submissions. Notifications and reports required under this rule shall be submitted to the Department of Employment Services, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. For additional information, see rules 347--130.12(30,89B) and 347--140.10(30,89B).

This rule is intended to implement Iowa Code sections 30.5 and 30.7.

ARC 2214A

**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.6(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 61, "Iowa Export Trade Assistance Program," Iowa Administrative Code.

The proposed amendments will allow companies whose corporate offices are not located within the state, but who employ at least 75 percent of their employees within the state to qualify for the program. Also, the maximum amount of reimbursement is being reduced from \$5000 to \$4000.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on August 27, 1991. Interested persons may submit written or oral comments by contacting: Michael Doyle, International Division, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515) 242-4743.

A public hearing to receive comments about the proposed amendments will be held on August 27, 1991, at 10 a.m. at the above address in the International Division Conference Room. Individuals interested in providing comments at the hearing should contact Michael Doyle by 4 p.m. on August 26, 1991, to be placed on the hearing agenda.

These amendments were also Adopted and Filed Emergency and are published herein as ARC 2215A. The content of that filing is incorporated here by reference.

ARC 2223A

ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to establish a new Chapter 68, "Rural Community Leadership Development Program," Iowa Administrative Code.

The proposed new rules provide guidelines for the operation of the rural leadership program which is to be administered by the Iowa Department of Economic Development. The purposes of this program are to develop individual leadership skills, develop team building skills, and encourage multicomunity development initiatives and cooperation. The target audience is rural community residents as defined in the proposed administrative rules. Cooperative partners in delivery of this program include Iowa's independent colleges and universities, merged area schools, and Iowa State University Extension.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on August 28, 1991. Interested persons may submit written or oral comments by contacting: Kathleen Beery, Rural Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)281-4998.

A public hearing to receive comments about the proposed new chapter will be held on August 28, 1991, at 1:30 p.m. at the above address in the IDED main conference room. Individuals interested in providing comments at the hearing should contact Kathleen Beery by 4 p.m. on August 27, 1991, to be placed on the hearing agenda.

These rules were also Adopted and Filed Emergency and are published herein as ARC 2219A. The content of that submission is incorporated here by reference.

ARC 2237A

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 1, "Departmental Organization and Procedures," appearing in the Iowa Administrative Code.

These amendments describe the restructuring of the Department of Human Services' central, regional and county offices.

The Seventy-fourth General Assembly in 1991 Iowa Acts, House File 479, section 129, subsections 5 and 6, mandated the Department to review the current field operations service delivery system and, within the funds budgeted and full-time equivalent positions authorized, make changes necessary to improve the system's administrative efficiency and effectiveness and to streamline these functions; and to eliminate the district offices in all districts except for the Des Moines district and to work with the Iowa State Association of Counties and the affected counties to develop a transition plan for the office elimination and to equitably spread the associated costs.

The Department has chosen to eliminate all district offices in favor of a unified administrative structure which will consist of five regional offices responsible for administrative support to the area, local, and satellite offices. These area, local, and satellite offices will be responsible for the direct delivery of all services. Each county will continue to have at least one office. However, all county offices will be designated as either an area office, local office, or satellite office based on county population and caseload sizes.

Area offices shall serve as the base for the area human services director and shall be open on a full-time basis. Activities of the area office include income maintenance and social service program delivery, including child protection, adoption, family therapy services (in some area offices), youth services and foster care medical eligibility services previously provided by the district offices. These services will also be provided to surrounding counties, and the area office will have responsibility for coordinating and supervising services in the area cluster of counties.

Local offices shall serve as the base for at least one line supervisor and shall be open on a full-time basis. Activities of the local offices include income maintenance and social service program delivery and serving as the bases for services to some satellite offices.

Satellite offices shall operate on a reduced number of days per week, dependent on individual client needs. Activities of the satellite offices include income maintenance and social service program delivery.

Each office shall post its hours of operation, and toll-free or collect telephone numbers shall be provided for the use of clients to contact a worker in the base office.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The area cluster concept will enable the Department to maximize limited resources. The appropriation for field operations for this fiscal year (1992) increased the funded caseload for services from 170 to 191 and for income maintenance from 163 to 196.

Under the Department's current structure line staff is based on available resources and described need. In smaller counties, the absence of a worker for any reason voids the county of coverage and work is distributed to the remaining staff in the office, or staff from other counties must be reassigned to assist. Previously, a full-time clerical position at a minimum was needed during office hours to keep the office open regardless of whether a full-time position is justified. This means that some clerical positions are overburdened, while others are not fully utilized. Supervisors must be available to all line staff. Based on current supervisory ratios, currently not all line staff have a dedicated service and income maintenance supervisor. In small counties line staff are often supervised by the local administrator.

Creation of an area cluster of county offices ensures that there will be designated line service and income maintenance supervisors for staff. In addition, it ensures maximum use of clerical staff and creates an area human services director to coordinate county and multicounty service initiatives.

Creation of satellite offices places staff in line with shifting clients and population concentrations, achieves efficiency of operations by specializing staff, allowing direct workers to specialize in few, sometimes one, program area, provides program supervision to benefit direct delivery staff and clients, and reduces the number of administrators in local offices.

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 August 28, 1991.

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

Cedar Rapids - August 28, 1991 Cedar Rapids District Office Conference Room - 6th Floor 221 4th Avenue, S.E. Cedar Rapids, Iowa 52401	10 a.m.
Council Bluffs - August 28, 1991 Community Hall 205 So. Main Council Bluffs, Iowa 51501	10 a.m.
Davenport - August 28, 1991 Davenport District Office Fifth Floor Conference Room 428 Western Davenport, Iowa 52801	10 a.m.
Des Moines - August 28, 1991 Des Moines District Office City View Plaza, Conference Room 100 1200 University Des Moines, Iowa 50314	1 p.m.

Mason City - August 28, 1991 Mason City District Office Mohawk Square 22 North Georgia Avenue Mason City, Iowa 52401	10:30 a.m.
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Ottumwa - August 28, 1991 Ottumwa District Office Fifth Floor Conference Room 226 West Main Ottumwa, Iowa 52501	10 a.m.
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Sioux City - August 28, 1991 Sioux City District Office Suite 624 507 7th Street Sioux City, Iowa 51101	2 p.m.
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Waterloo - August 28, 1991 Waterloo District Office Pinecrest Conference Room 1407 Independence Ave. Waterloo, Iowa 50703	10 a.m.
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These rules are intended to implement Iowa Code section 17A.3(1)"a."

The following amendments are proposed:

ITEM 1. Amend rule 441--1.3(17A) as follows:
Amend the introductory paragraph as follows:

441--1.3(17A) Organization at state level. The director oversees all service and administrative functions of the department. The deputy director for administration, the deputy director for services, the commandant of the Iowa Veterans Home, the ~~chief of public policy and public information~~ under the office of communication and legal services report directly to the director.

Amend subrule 1.3(1), introductory paragraphs, as follows:

1.3(1) Deputy director for administration. The deputy director for administration manages the general support functions of all divisions of the department. Principal responsibilities include development of program and operational budgets, accounting and administrative control of appropriation expenditures, design and development of data processing systems, and monitoring and processing of provider payments.

The administrators of the divisions of data management, fiscal management, support services, and ~~chief~~ **chiefs** of the office of program evaluation ~~and employee services~~ report directly to the deputy director for administration.

Further amend subrule 1.3(1) by adding the following new paragraph "e":

e. The chief of the office of employee services is responsible for supervising employee training activities, personnel document processing, the professional library, the disaster assistance program and the department's volunteer program.

Amend subrule 1.3(2), introductory paragraphs, and paragraphs "e" and "f," as follows:

1.3(2) Deputy director for services. The deputy director for services manages the development and delivery of the financial, medical and social services programs for eligible Iowans.

The administrators of the divisions of adult, children and family services, economic assistance, medical services, mental health, mental retardation, developmental

HUMAN SERVICES DEPARTMENT[441](cont'd)

disabilities, policy coordination, the chief of the office of field support, and the ~~district~~ regional administrators of the ~~eight district~~ five regional offices report directly to the deputy director for services.

e. The administrator of the division of policy coordination is responsible for primary support services to all line elements of the department in the areas of child support and foster care collections, and refugee services ~~and volunteer services~~. In addition, the administrator ensures consistency with appropriate standards and operations, provides federal liaison services, maintains legislative relations, reviews selected client or constituent concerns, works on special planning and development projects, coordinates payment and contracting for purchased services, develops training programs and provides library services, ensures compliance with equal opportunity and affirmative action standards and goals and has responsibility for the department's Title XIX case management policy and budget.

f. The chief of the office of field support is responsible for the day-to-day contact with the ~~district~~ regional offices on administrative and program operation issues and addressing client or constituent concerns.

Amend subrule 1.3(4) as follows:

1.3(4) Office of communications. The office of communications addresses the different facets of the department's internal and external communication needs. The office is divided into two components, public policy and public information.

a. ~~The chief of public policy is responsible for maintaining legislative relations, reviewing selected client or constituent concerns, and working on special planning and development projects.~~

b. ~~The chief of public information~~ the office of communications is responsible for providing public information to clients, constituency groups, and the media, while also facilitating internal communications within the department.

ITEM 2. Amend rule 441--1.4(17A) as follows:

441--1.4(17A) Organization at local level.

1.4(1) *Delivery system*. The department's community service delivery system functions through ~~district~~ regional offices, each headed by an administrator. Each ~~district~~ regional system is composed of area, local, and satellite offices strategically located for purposes of client accessibility.

1.4(2) *Regional offices*. The ~~district~~ regional administrator shall be responsible for managing all department offices at the local level and directing all area, local, and satellite and ~~district~~ regional personnel within the geographic boundaries of the ~~district~~ region; and for implementing policies and procedures, within departmental priorities, to provide effective social services to those persons who need them, and the development of social service resources within the community, human services planning, complaints about area, local, and satellite offices, and technical support to area, local, and satellite offices. The ~~districts~~ regions have supervisory responsibilities for ~~protective service investigation, day care licensing, foster care licensing, adoptions, and purchase of service, and youth services~~. *District Regional* offices are located in major population centers. Persons interested in contacting a ~~district~~ regional office may inquire at the area, local, or satellite office for the location of the one serving their county.

1.4(3) *Area, local, and satellite offices*. There shall be at least one ~~(1) local~~ office in each county. ~~Local~~ These offices are generally located in the county seat in each county, but may be located in the major population center within each county. *These offices shall be designated as either area, local, or satellite offices.*

a. *Area offices shall serve as the base for the area administrator and shall be open on a full-time basis. Activities of the area office include income maintenance and social service program delivery, child protection and other specialized services that will also be provided to surrounding counties, and responsibility for coordinating and supervising services with the area cluster of counties,*

b. *Local offices shall serve as the base for at least one line supervisor and shall be open on a full-time basis. Activities of the local offices include income maintenance and social service program delivery and serving as the bases for some satellite offices.*

c. *Satellite offices shall operate on a reduced number of days per week dependent on individual county needs. Activities of the satellite offices include income maintenance and social service program delivery.*

~~The local office has the responsibility to implement all financial assistance and human service programs as designated by the department of human services. The local office, in a majority of counties, has the responsibility to administer the county general relief program. Persons interested in the general relief program may inquire at the local office on whether the program is administered in that county.~~

This rule is intended to implement Iowa Code section 17A.3(1)"a."

FISCAL NOTE
FIELD RESTRUCTURING

(Pursuant to Iowa Code section 25B.6 as amended by 1991 Iowa Acts, Senate File 182.)

The following are figures provided by the Legislative Fiscal Bureau regarding the cost estimates assumed by the Legislature in mandating the closure of district offices.

The Legislative Fiscal Bureau estimated a cost shift to counties of 1.53 million dollars and a savings to the state of 2.27 million dollars based on the elimination of seven district offices and the retention of the Des Moines district office.

The Department of Human Services (DHS) anticipated that the cost shift to the counties will be less than the figure projected by the Legislature based upon the redeployment of some staff in regional offices. However, the transition is expected to take from 6 to 8 months and during that time DHS will be working with the Iowa Association of Counties (ISAC) and affected counties to minimize the cost and equitably spread those costs. Projections cannot be more detailed than the original estimate at this time.

Further complicating the task of projecting the costs to counties is the overall budget picture for DHS. The 3.25% across-the-board budget reductions will have a significant impact on field staffing levels. Until a transition plan is complete and the total staffing pattern for the field is resolved, it is unknown how many staff will be deployed in each office.

At this time DHS is reasonably confident that the costs to counties should not be more than the estimate made by the Legislative Fiscal Bureau.

ARC 2199A
INSPECTIONS AND APPEALS
DEPARTMENT[481]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 10A.104(5), the Department of Inspections and Appeals gives Notice of Intended Action to amend Chapter 30, "Field Survey Administration"; Chapter 31, "Food Establishment Inspections"; Chapter 32, "Food Service Establishment Inspections"; and Chapter 37, "Hotel and Motel Inspections," Iowa Administrative Code.

In accordance with 1991 Iowa Acts, Senate Files 269 and 529, the proposed amendments establish a new license category for a transient food service establishment and implement changes in the inspection frequency of establishments. Additionally, the amendments clarify and expand on licensure requirements.

Any interested person may make written comments or suggestions on the proposed amendments prior to August 27, 1991. Written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; FAX (515) 242-5022.

Oral comments may be made at a public hearing on August 30, 1991, at 9 a.m., Side 1 of the Third Floor Conference Room, Lucas State Office Building, Des Moines, Iowa.

These rules are intended to implement Iowa Code sections 137A.6, 137A.8, 137A.12, 137B.2, 137B.3, 137B.6(2), 137B.7, 137C.9, 137C.11, 137D.2, 137E.9 and 1991 Iowa Acts, Senate Files 269 and 529.

The following amendments are proposed:

ITEM 1. Amend rule 481--30.2(10A) by adding the following new definition in alphabetical order:

"Transient food service establishment" means a food service establishment which operates at various locations during the year, if the establishment does not operate at one location for more than three consecutive days in conjunction with a single event or celebration.

ITEM 2. Amend subrule 30.3(4) as follows:

30.3(4) Any change in business ownership or business location requires a new license. Vending machines and transient food service establishments may be moved without obtaining a new license.

ITEM 3. Rescind rule 481--30.4(137A, 137B, 137C, 137D, 137E) and insert in lieu thereof the following:

481--30.4(137A, 137B, 137C, 137D, 137E) Licensing. The license fee is the same for an initial license and a renewal license. Licenses expire one year from the date of issuance; except for temporary food service establishments. Applications for licenses are available from the Department of Inspections and Appeals, Inspections Division, Lucas State Office Building, Des Moines, Iowa 50319-0083; or from a contracting local health depart-

ment. License fees are set by the Iowa Code sections listed below and charged as follows:

30.4(1) Food establishments are based on annual gross sales of food and drink (Iowa Code section 137A.8) as follows:

- a. For annual gross sales of less than \$10,000 - \$20;
- b. For annual gross sales of \$10,000 to \$250,000 - \$50;
- c. For annual gross sales of \$250,000 to \$500,000 - \$75;
- d. For annual gross sales of \$500,000 to \$750,000 - \$100;
- e. For annual gross sales of \$750,000 or more - \$150.

30.4(2) Food service establishments are based on annual gross sales of food and drink for individual portion service (Iowa Code section 137B.7) as follows:

- a. For annual gross sales of less than \$50,000 - \$40;
- b. For annual gross sales of \$50,000 to \$100,000 - \$70;
- c. For annual gross sales of more than \$100,000 to \$250,000 - \$125;
- d. For annual gross sales of \$250,000 or more - \$150.

30.4(3) Food and beverage vending machines, \$2 per machine (Iowa Code section 137E.9).

30.4(4) Home food establishments, \$25 (Iowa Code section 137D.2(1)).

30.4(5) Hotels are based on the number of rooms provided to transient guests (Iowa Code section 137C.9) as follows:

- a. For 1 to 15 guest rooms - \$20;
- b. For 16 to 30 guest rooms - \$30;
- c. For 31 to 75 guest rooms - \$40;
- d. For 76 to 149 guest rooms - \$50;
- e. For 150 or more guest rooms - \$75.

30.4(6) Mobile food unit or pushcart, \$10 (Iowa Code section 137B.7).

30.4(7) Temporary food service establishments issued for up to 12 consecutive days, \$10 for each fixed location (Iowa Code section 137B.7).

30.4(8) Transient food service establishment, \$40 (Iowa Code section 137B.7).

ITEM 4. Amend 481--30.6(137A,137B), first unnumbered paragraph, as follows:

A food establishment and a food service establishment which occupy the same premises must be licensed separately and the applicable fees paid. *The license fee for each is based on only the annual gross sales of food and drink covered under the scope of that particular type of license.* Licensed food establishments serving only coffee, soft drinks, popcorn, prepackaged sandwiches or other food items manufactured and packaged by a licensed establishment need only a food establishment license.

ITEM 5. Rescind rule 481--30.8(137A, 137B, 137C, 137D, 137E) and insert in lieu thereof the following:

481--30.8(137A, 137B, 137C, 137D, 137E) Inspection frequency.

30.8(1) Food establishments with an inspection score of 90 or greater shall be inspected at least once biennially. All other food establishments shall be inspected at least once annually.

30.8(2) Food service establishments (except summer camps, schools, vending machine commissaries, substance abuse residential and halfway houses) with an inspection score of 90 or greater shall be inspected at least once

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

biennially. All other food service establishments shall be inspected at least once annually.

30.8(3) Hotels shall be inspected at least once biennially.

30.8(4) Home food establishments and vending operators license holders shall be inspected at least once annually.

This rule is intended to implement Iowa Code sections 137A.12, 137B.3, 137C.11, 137D.2 and 137E.13.

ITEM 6. Amend rule 481--31.1(137A), numbered paragraph "4," as follows:

4. Food establishments are inspected before a license is granted ~~and annually thereafter~~. *Food establishments with an inspection score of 90 or greater shall be inspected at least once biennially. All other food establishments shall be inspected at least once annually.*

ITEM 7. Amend rule 481--32.1(10A), numbered paragraph "3," as follows:

3. Section 10-201 is amended to say that all food service establishments are inspected before a license is granted ~~and annually thereafter~~. *Food service establishments (except summer camps, schools, vending machine commissaries, substance abuse residential and halfway houses) with an inspection score of 90 or greater shall be inspected at least once biennially. All other food service establishments shall be inspected at least once annually.*

Further amend rule 481--32.1(10A) by adding the following new numbered paragraph "9":

9. Section 7-703 is amended so that category (2) detergents, sanitizers, and related cleaning or drying agents; and category (3) caustics, acids, polishes, and other chemicals can be stored together. Category (1) insecticides and rodenticides shall be stored separately.

ITEM 8. Amend rule 481--32.3(137B) by adding the following new subrule:

32.3(7) Transient food service establishments shall comply with Chapter 9 of the Ordinance.

ITEM 9. Amend rule 481--37.8(137C) as follows:

481--37.8(137C) Inspections. *Hotels shall be inspected at least once biennially. An inspector may enter a hotel at any reasonable hour and shall be given free access to every part of the premises for each inspection. The inspector shall receive any help needed to make a thorough and complete inspection.*

ARC 2200A

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 10A.104(5), 135C.2(3) and 135C.14, the Department of Inspections and Appeals gives Notice of Intended Action

to adopt a new Chapter 65, "Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI)," Iowa Administrative Code.

The proposed chapter sets standards to be met by facilities licensed to provide intermediate care for persons with mental illness. There are currently no standards which may be used to determine compliance.

Any interested person may make written comments or suggestions on this chapter on or before September 6, 1991. Written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; FAX (515)242-5022.

Oral comments may be made at a public hearing scheduled for September 6, 1991, at 9 a.m., Side 2 of the Third Floor Conference Room, Lucas State Office Building, Des Moines, Iowa.

These rules are intended to implement Iowa Code sections 135C.4, 135C.6(2), 135C.6(3), 135C.7, 135C.8, 135C.14, 135C.14(2), 135C.14(8), 135C.16(2), 135C.23, 135C.24, 135C.25, 135C.31, and 227.4.

The following new chapter is proposed:

CHAPTER 65

INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL ILLNESS (ICF/PMI)

481--65.1(135C) Definitions. For the purposes of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in Iowa Code section 135C.1 shall be considered incorporated verbatim in the rules. The use of the words "shall" and "must" indicate these standards are mandatory.

"Abuse" means any of the following as a result of the willful or negligent acts or omissions of a caretaker:

1. Physical abuse;
2. Physical injury to or unreasonable confinement or cruel punishment of a resident;
3. Sexual abuse;
4. Mental abuse;
5. Verbal abuse;
6. Exploitation of a resident; or
7. The deprivation of the minimum food, shelter, clothing, supervision, physical and mental health care, and other care necessary to maintain a resident's life or health as a result of the acts or omissions of the resident.

"Academic services" means those activities provided to assist a person to acquire general information and skills which establish the basis for subsequent acquisition and application of knowledge.

"Activity coordinator" means a person who has completed the state-approved activity coordinator's course.

"Age appropriate" means those activities, settings, and personal appearance and possessions commensurate with the person's chronological age.

"Chronic mental illness" means a persistent mental or emotional disorder that seriously impairs an adult's functioning relative to such primary aspects of daily living as personal relations, living arrangements or employment.

"Commission" means the mental health and mental retardation commission.

"Community living training services" are those activities provided to assist a person to acquire or sustain the knowledge and skills essential to independent functioning to the person's maximum potential in the physical and social environment. These services may focus on the following areas:

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1. Independent living skills which include those skills necessary to sustain oneself in the physical environment and are essential to the management of one's personal property and business. This includes self-advocacy skills.

2. Socialization skills which include self-awareness and self-control, social responsiveness, group participation, social amenities and interpersonal skills.

3. Communication skills which include expressive and receptive skills in verbal and nonverbal language, including reading and writing.

4. Leisure time and recreational skills which include the skills necessary for a person to use leisure time in a manner which is satisfying and constructive to the person.

5. Parenting skills which include those skills necessary to meet the needs of the person's child. This service is designed to assist the person with mental illness to acquire or sustain the skills necessary for parenting.

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

"Diagnosis" means the investigation and analysis of the cause or nature of a person's condition, situation or problem.

"Direct care staff" means those staff persons who provide a homelike environment for the residents and assist or supervise the resident in meeting the goals in the resident's program plan.

"Evaluation services" means those activities designed to identify a person's current functioning level and those factors which are barriers to maintaining the current level or achieving a higher level of functioning.

"Exploitation" means the act or process of taking unfair advantage of a resident, or the resident's physical or financial resources for one's own personal or pecuniary profit by the use of undue influence, harassment, duress, deception, false representation or false pretenses.

"Goals" means general statements of attainable expected accomplishments to be achieved in meeting identified needs.

"Incident" means all accidental, purposeful, or other occurrences within the facility or on the premises affecting residents, visitors, or employees whether there is apparent injury or where hidden injury may have occurred.

"Individual program plan" (IPP) means a written plan for the provision of services to the resident that is developed and implemented using an interdisciplinary process that is based on the resident's functional status, strengths, and needs and that identifies service activities designed to enable a person to maintain or move toward independent functioning. The plan identifies a continuum of development and outlines progressive steps and anticipated outcomes of services.

"Informed consent" means an agreement by a person, or by the person's legally authorized representative, based upon an understanding of:

1. A full explanation of the procedures to be followed including an identification of those that are and are not experimental;

2. A description of the attendant discomforts, risks, and benefits to be expected; and

3. A disclosure of appropriate alternative procedures that would be advantageous for the person.

"Interdisciplinary process" means an approach to assessment, individual program planning, and service implementation in which planning participants function as a team. Each participant utilizing the skills, competencies, insights and perspectives provided by the participant's

training and experience focuses on identifying the service needs of the resident and the resident's family. The purpose of the process is for participants to review and discuss, face to face, all information and recommendations and to reach decisions as a team. Participants share all information and recommendations, and develop as a team, a single, integrated individual program plan to meet the resident's needs and, when appropriate, the resident's family's needs.

"Interdisciplinary team" means the group of persons who develop a single, integrated individual program plan to meet a resident's needs for services. The interdisciplinary team consists of, at a minimum, the resident, the resident's legal guardian, if applicable, the resident's advocate, if desired by the resident, a referral agency representative, other appropriate staff members, the resident's attending psychiatrist and QMHP, other providers of services, and other persons relevant to the resident's needs.

"Least restrictive environment" means the environment in which the interventions in the lives of people with mental illness can be carried out with a minimum of limitation, intrusion, disruption, and departure from commonly accepted patterns of living.

It is the environment which allows residents to participate, to the maximum extent possible, in everyday life and to have control over the decisions that affect them. It is an environment that provides needed supports which do not interfere with personal liberty and do not unduly interfere with a person's access to the normal events of life.

"Legal services" means those activities designed to assist the person in exercising constitutional and legislatively enacted rights.

"Level of functioning" means a person's current physiological and psychological status and current academic, community living, self-care and vocational skills.

"Mechanical restraint" means a device applied to a person's limbs, head or body which restricts a person's movement and includes, but is not limited to, leather straps, leather cuffs, camisoles or handcuffs.

"Mental abuse" means, but is not limited to, humiliation, harassment, and threats of punishment or deprivation.

"Mental health counselor" means a person who is certified or eligible for certification as a mental health counselor by the National Academy of Certified Clinical Mental Health Counselors.

"Mental health, mental retardation commission" means the commission described in Iowa Code section 225C.5.

"Mental illness" means a substantial disorder of thought or mood which significantly impairs judgment, behavior, or the capacity to recognize reality or the ability to cope with the ordinary demands of life. Mental disorders include the organic and functional psychoses, neuroses, personality disorders, alcoholism and drug dependence, behavioral disorders and other disorders as defined by the current edition of "American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders".

"Normalization" means helping persons, in accordance with their needs and preferences, to achieve a life-style that is consistent with the norms and patterns of general society in ways which incorporate the age appropriate and least restrictive principles.

"Objectives" means specific, time limited, and measurable statements showing outcomes or accomplishments necessary to progress toward the goal.

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"Physical abuse" means, but is not limited to, corporal punishment and the use of restraints as punishment.

"Physical injury" means damage to any bodily tissue to the extent the tissue must undergo a healing process in order to be restored to a sound and healthy condition. It may also mean damage to the extent the bodily tissue cannot be restored to a sound and healthy condition, or results in the death of the resident whose bodily tissue sustained the damage.

"Physical or physiological treatment" means those activities designed to prevent, halt, control, relieve, or reverse symptoms or conditions which interfere with the physical or physiological functioning of the human body.

"Physical restraint" means a technique involving the use of one or more of a staff person's arms, legs, hands or other body areas to restrict or control the movements of a resident. This does not include the use of mechanical restraint.

"Physician" means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy.

"Program" means a set of related resources and services directed to the accomplishment of a fixed set of goals and objectives for any of the following:

1. Special target populations;
2. The population of a specified geographic area(s);
3. A specified purpose; and
4. A person.

"Psychiatric nurse" means a person who meets the requirements of certified psychiatric-mental health nurse practitioner pursuant to 655--Chapter 7, Iowa Administrative Code, or is eligible for certification.

"Psychiatrist" means a doctor of medicine or osteopathic medicine and surgery who is certified by the American Board of Psychiatry and Neurology or who is eligible for certification.

"Psychologist" means a person who is licensed to practice psychology in the state of Iowa, or is certified by the Iowa department of education as a school psychologist, or is eligible for certification.

"Psychotherapeutic treatment" means those activities designed to assist a person in the identification or modification of beliefs, emotions, attitudes, or behaviors in order to maintain or improve the person's functioning in response to the physical, emotional and social environment.

"Qualified mental health professional" (QMHP) means a person who:

1. Holds at least a master's degree in a mental health field, including but not limited to: psychology, counseling and guidance, nursing and social work; or is a doctor of medicine (M.D.) or a doctor of osteopathic medicine and surgery (D.O.); and
2. Holds a current Iowa license when required by the Iowa licensure law; and
3. Has at least two years of post degree experience, supervised by a mental health professional, in assessing mental problems and needs of individuals and in providing appropriate mental health services for those individuals. See rule 65.4(135C) for variance procedures.

"Resident" means a person who has been admitted to the facility to receive care and services.

"Seclusion" means the isolation of the resident in a locked room which cannot be opened by the resident.

"Self-care training services" means those activities provided to assist a person to acquire or sustain the

knowledge, habits and skills essential to the daily needs of the person. The activities focus on personal hygiene, general health maintenance, mobility skills and other activities of daily living.

"Service" means a set of interrelated activities provided to a resident pursuant to the IPP.

"Sexual abuse" means, but is not limited to, the exposing of pubes to a resident, the exposure of a resident's genitals, pubes, breasts or buttocks for sexual satisfaction, fondling or touching the inner thigh, groin, buttocks, anus or breast of a resident or the clothing covering these areas, sexually suggestive comments or remarks made to a resident, a genital to genital or rectal, or oral to genital or rectal contact, or the commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2.

"Social worker" means a person who is licensed to practice social work in the state of Iowa, or who is eligible for licensure.

"Support services" means those activities provided to or on behalf of a person in the areas of personal care and assistance and property maintenance in order to allow a person to live in the least restrictive environment.

"Transportation services" means those activities designed to assist a person to travel from one place to another to obtain services or carry out life's activities.

"Verbal abuse" means, but is not limited to, the use of derogatory terms or names, undue voice volume and rude comments, orders or responses to residents.

"Vocational training services" means those activities designed to familiarize a person with production or employment requirements and to maintain or develop the person's ability to function in a work setting. This service includes programming which allows or promotes the development of skills, attitudes and personal attributes appropriate to the work setting.

"Work" means any activity during which a resident provides goods or services for wages.

"Written, in writing or recorded" means that an account or entry is made in a permanent form.

481-65.2(135C) Application for license. In order to obtain an initial license for an ICF/PMI, the applicant must comply with the rules and standards contained in Iowa Code chapter 135C and the standards in 481 IAC 61. Variances from Chapter 61 regulations are allowed under rule 61.2(135C). An application must be submitted to the department which states the type and category of license for which the facility is applying.

65.2(1) Each application shall include:

- a. A floor plan of each floor of the facility drawn on 8½ by 11 inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathroom, and designation of the use to which room will be put and window and door location;
- b. A photograph of the front and side elevation of the facility;
- c. The statutory fee for an intermediate care facility license;
- d. Evidence of a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules.

65.2(2) A resumé of care with a narrative which includes the following information shall be submitted.

- a. The purpose of the facility;
- b. A description of the target population and limitations on resident eligibility;

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c. An identification and description of the services the facility will provide. This shall include at least specific and measurable goals and objectives for each service available in the facility and a description of the resources needed to provide each service including staff, physical facilities and funds;

d. A description of the human service system available in the area, including, but not limited to, social, public health, visiting nurse, vocational training, employment services, sheltered living arrangements, and services of private agencies;

e. A description of working relationships with the human service agencies when applicable which shall include at least how the facility will coordinate with:

(1) The department of human services to facilitate continuity of care and coordination of services to residents; and

(2) Other agencies to identify unnecessary duplication of services and plan for development and coordination of needed services;

f. A list of members of the care review committee; and

g. A description of a program of training for the care review committee concerning their role in the ongoing care and treatment of residents.

65.2(3) In order to obtain a renewal or change of ownership license of the ICF/PMI the applicant must:

a. Submit to the department the completed application form 30 days prior to annual license renewal or change of ownership date of the ICF/PMI license;

b. Submit the statutory license fee for an ICF/PMI with the application for renewal or change of ownership;

c. Have an approved current certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules; and

d. Submit documentation of review of resumé of care pursuant to subrule 65.2(1), paragraph "a," and a copy of any revisions to the plan.

This rule is intended to implement Iowa Code sections 135C.7 and 135C.9.

481--65.3(135C) Licenses for distinct parts. Separate licenses may be issued for distinct parts which are clearly identifiable parts of a health care facility, containing contiguous rooms in a separate wing or building or on a separate floor of the facility, which provide care and services of separate categories.

The following requirements shall be met for a separate licensing of a distinct part:

1. The distinct part shall serve only residents who require the category of care and services immediately available to them within that part. (III)

2. The distinct part shall meet all the standards, rules and regulations pertaining to the category for which a license is being sought.

3. The distinct part must be operationally and financially feasible.

4. A separate personal care staff with qualifications appropriate to the care and services being rendered must be regularly assigned and working in the distinct part under responsible management. (III)

5. Separately licensed distinct parts may have certain services such as management, building maintenance, laundry and dietary in common with each other.

This rule is intended to implement Iowa Code section 135C.6(2).

481--65.4(135C) Variances. Variances from these rules may be granted by the director of the department when:

1. The need for a variance has been established consistent with the resumé of care or the resident's individual program plan.

2. There is no danger to the health, safety, welfare or rights of any resident.

3. The variance will apply only to a specific intermediate care facility for the mentally ill.

Variances shall be reviewed at least at the time of each licensure survey and any other time by the department to see if the need for the variance is still acceptable.

65.4(1) To request a variance, the licensee must:

a. Apply in writing on a form provided by the department;

b. Cite the rule or rules from which a variance is desired;

c. State why compliance with the rule or rules cannot be accomplished;

d. Explain how the variance is consistent with the resumé of care or the individual program plan; and

e. Demonstrate that the requested variance will not endanger the health, safety, welfare or rights of any resident.

65.4(2) Upon receipt of a request for variance, the director will:

a. Examine the rule from which the variance is requested;

b. Evaluate the requested variance against the requirement of the rule to determine whether the request is necessary to meet the needs of the residents;

c. Examine the effect of the requested variance on the health, safety or welfare of the residents;

d. Consult with the applicant to obtain additional written information if required; and

e. Obtain approval of the Iowa mental health, mental retardation commission, when the request is for a variance from the requirement for qualification of a mental health professional.

65.4(3) Based upon this information, approval of the variance will be either granted or denied within 45 days of receipt.

481--65.5(135C) General requirements.

65.5(1) A valid license shall be posted in each facility so the public can easily see it. (III)

65.5(2) Each license is valid only for the premises and person named on the license and is not transferable.

65.5(3) The posted license shall accurately reflect the current status of the facility. (III)

65.5(4) Licenses expire one year after the date of issuance or as indicated on the license.

65.5(5) There shall be no more beds erected than are stipulated on the license. (II, III)

This rule is intended to implement Iowa Code section 135C.8.

481--65.6(135C) Notification required by the department. The department shall be notified within 48 hours, by letter, of any reduction or loss of personal care or dietary staff lasting more than seven days which places the staff ratio below that required for licensing. No additional residents shall be admitted until the minimum staff requirements are achieved. (II, III)

65.6(1) Other required notification and time periods are:

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a. Within 30 days of any proposed change in the resumé of care for the ICF/PMI; (II, III)

b. Thirty days before addition, alteration, or new construction is begun in the ICF/PMI or on the premises; (III)

c. Thirty days before the ICF/PMI closes; (III)

d. Within two weeks of any change of administrator; (II, III) and

e. Within 30 days when any change in the category of license is sought. (III)

65.6(2) Prior to the purchase, transfer, assignment, or lease of an ICF/PMI the licensee shall:

a. Inform the department in writing of the pending sale, transfer, assignment, or lease of the facility; (III)

b. Inform the department in writing of the name and address of the prospective purchaser, transferee, assignee or lessee at least 30 days before the sale, transfer, assignment or lease is completed; (III) and

c. Submit a written authorization to the department permitting the department to release information of whatever kind from the department's files concerning the licensee's ICF/PMI to the named prospective purchaser, transferee, assignee or lessee. (III)

65.6(3) After the authorization has been submitted to the department, the department shall upon request send or give copies of all recent licensure surveys and any other pertinent information relating to the facility's licensure status to the prospective purchaser, transferee, assignee or lessee. Costs for copies requested shall be paid by the prospective purchaser, transferee, assignee or lessee. No information personally identifying any resident shall be provided to the prospective purchaser, transferee, assignee or lessee. (II, III)

This rule is intended to implement Iowa Code sections 135C.6(3) and 135C.16(2).

481-65.7(135C) Administrator. Each ICF/PMI shall have one person in charge, duly approved by the department or acting in a provisional capacity in accordance with these regulations. (II, III)

65.7(1) The administrator shall be at least 21 years of age and shall meet at least one of the following conditions:

a. Be licensed in Iowa as a nursing home administrator, or certified as a residential care administrator. No residential care facility administrator certified under a waiver from the department shall administer an intermediate care facility for persons with mental illness. The administrator must have at least two years' experience in direct care or supervision of people with mental illness and at least one year of experience in an administrative capacity; (II, III) or

b. Be a qualified mental health professional (QMHP) with at least one year of experience in an administrative capacity. (II, III)

If an ICF/PMI is a distinct part of a licensed health care facility, the administrator of the facility as a whole may serve as the administrator of the ICF/PMI without meeting the requirements of subrule 65.7(1), paragraph "a" or "b." When this occurs, the person in charge of the ICF/PMI distinct part shall meet the requirements of subrule 65.7(1), paragraph "a" or "b." (II, III)

65.7(2) The administrator of more than one facility shall be responsible for no more than 150 beds in total. (II, III)

a. The distance between the two farthest facilities shall be no greater than 50 miles. (II, III)

b. An administrator of more than one facility must designate an administrative staff person in each facility who shall be responsible for directing programs in the facility during the administrator's absence. (II, III)

65.7(3) The administrative staff person shall be designated in writing and immediately available to the facility on a 24-hour basis when the administrator is absent and residents are in the facility. (II, III)

The person(s) designated shall:

a. Have at least two years' experience or training in a supervisory or direct care position in a mental health setting; (II, III)

b. Be knowledgeable of the operation of the facility; (II, III)

c. Have access to records concerned with the operation of the facility; (II, III)

d. Be capable of carrying out administrative duties and of assuming administrative responsibilities; (II, III)

e. Be at least 21 years of age; (III)

f. Be empowered to act on behalf of the licensee during the administrator's absence concerning the health, safety and welfare of the residents; (II, III) and

g. Have training to carry out assignments and take care of emergencies and sudden illnesses of residents. (II, III)

65.7(4) If an administrator serves more than one facility, a written plan shall be developed, implemented and available for review by the department designating regular and specific times the administrator will be available to meet with the staff and residents to provide direction and supervision of resident care and services. (II, III)

65.7(5) When a facility has been unable to replace the administrator, through no fault of its own, a provisional administrator meeting the qualifications of the administrative staff person may be appointed on a temporary basis by the licensee to assume the administrative responsibilities for the facility. This person shall not serve more than three months without approval from the department. The department must be notified before the appointment of the provisional administrator. (III)

65.7(6) A facility applying for initial licensing shall not have a provisional administrator. (III)

This rule is intended to implement Iowa Code section 135C.14(2).

481-65.8(135C) Administration.

65.8(1) The licensee shall:

a. Be responsible for the overall operation of the ICF/PMI; (III)

b. Be responsible for compliance with all applicable laws and with the rules of the department; (II, III)

c. Establish written policies, which shall be available for review by the department or other agencies designated by Iowa Code section 135C.16(3), for the operation of the ICF/PMI including, but not limited to: (III)

(1) Personnel; (III)

(2) Admission; (III)

(3) Evaluation services; (II, III)

(4) Programming and individual program plan; (II, III)

(5) Crisis intervention; (II, III)

(6) Discharge or transfer; (III)

(7) Medication management; (II)

(8) Resident property; (II, III)

(9) Financial affairs; (II, III)

(10) Records; (III)

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- (11) Health and safety; (II, III)
- (12) Nutrition; (III)
- (13) Physical facilities and maintenance; (III)
- (14) Care review committee; (III)
- (15) Resident rights; (II, III) and

d. Furnish statistical information concerning the operation of the facility to the department within 30 days of request. (III)

65.8(2) The administrator shall be responsible for the implementation of procedures to support the policies established by the licensee. (III)

This rule is intended to implement Iowa Code section 135C.14.

481--65.9(135C) Personnel.

65.9(1) The personnel policies and procedures shall include the following requirements:

a. Written job descriptions for all employees or agreements for all consultants, which include duties and responsibilities, education, experience, or other requirements, and supervisory relationships; (III)

b. Annual performance evaluations of all employees and consultants which are dated and signed by the employee or consultant and the supervisor; (III)

c. Personnel records which are current, accurate, complete and confidential to the extent allowed by law. The record shall contain documentation of how the employee's or consultant's education and experience are relevant to the position for which they were hired; (III)

d. Roles, responsibilities, and limitation of student interns and volunteers; (III)

e. An orientation program for all newly hired employees and consultants which includes introduction to facility personnel policies and procedures and a discussion of the safety plan. Items 3, 5 and 9 in paragraph "f," shall be included; (II, III)

f. A plan for a continuing education program with a minimum of twelve in-service programs per year. There shall be a written, individualized staff development plan implemented for each employee. The plan shall take into consideration the duties of the employee and the needs of the facility identified in the resumé of care. The plan shall ensure that each employee has the opportunity to develop and enhance skills and to broaden and increase knowledge needed to provide effective resident care including, but not limited to:

- (1) First aid; (II, III)
 - (2) Human needs and behavior; (II, III)
 - (3) Problems and needs of persons with mental illness; for example, diagnosis and treatment, suicide assessment and prevention; (II, III)
 - (4) Medication; (II, III)
 - (5) Crisis intervention; for example, use of restraints and seclusion; (II)
 - (6) Delivery of services in accordance with the principles of normalization; (III)
 - (7) Infection control and wellness; (III)
 - (8) Fire safety, disaster, and tornado preparation; (II, III) and
 - (9) Resident rights. (II, III)
- g. Equal opportunity and affirmative action employment practices; (III)
- h. Procedures to be used when disciplining an employee; (III) and
- i. Appropriate dress and personal hygiene for staff and residents. (III)

65.9(2) There shall be written personnel policies for each facility which include the following requirements:

a. Employees shall have a physical examination and tuberculin test before employment. At least every four years after beginning employment, employees shall have a physical examination and assessment of tuberculin status. (III)

b. No one shall provide services in a facility if the person has a disease:

(1) Which is transmissible through required workplace contact; (I, II, III)

(2) Which presents a significant risk of infecting others; (I, II, III)

(3) Which presents a substantial possibility of harming others; (I, II, III)

(4) For which no reasonable accommodation can eliminate the risk. (I, II, III)

Refer to 1983 CDC Guidelines PN85-923401-LL to determine 1, 2, and 3.

c. There shall be written policies for emergency medical care for employees in case of sudden illness or accident. These policies shall include the administrative individuals to be contacted. (III)

d. Health certificates for all employees shall be available for review by the department. (III)

65.9(3) Staffing. The facility shall establish, subject to approval of the department, the numbers and qualifications of the staff required in an ICF/PMI using as its criteria the services being offered as indicated on the resumé of care and as required for implementation of individual program plans. (II, III)

a. Direct care staff. Direct care staff shall be present in the facility unless all residents are involved in activities away from the facility. The policies and procedures shall provide for an on-call staff person to be available when residents and staff are absent from the facility. (II, III)

(1) The on-call staff person shall be designated in writing. (II, III)

(2) Residents or another responsible person shall be informed of how to contact the on-call person. (II, III)

The staffing plan shall ensure that at least one qualified direct care staff is on duty to carry out and implement the individual program plans. (II, III)

b. Qualified mental health professional. The ICF/PMI shall, by direct employment or contract, provide for sufficient services of a qualified mental health professional to attain or maintain the highest practicable mental and psychosocial well-being of each resident. Attainment shall be determined by resident assessment and individual plans of care. (I, II, III) Responsibilities of the QMHP shall include, but not be limited to:

(1) Approval of each resident's individual program plan; (II, III)

(2) Monitoring the implementation of each resident's individual program plan, including periodic personal contact; (II, III) and

(3) Participation on each resident's interdisciplinary team. (II, III)

c. Nursing staff. Each facility shall have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practical physical, mental and psychosocial well-being of each resident. Attainment shall be determined by resident assessments and individual plans of care.

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(1) The director of nursing (DON) shall be a registered nurse who is employed by the facility at least 40 hours per week. This person shall have two years' experience in direct care or supervision of people with mental illness. (II, III)

(2) The facility shall provide 24-hour service by licensed nurses, including at least one registered nurse on the day tour of duty, seven days a week. (II, III)

(3) If the DON has other institutional responsibilities, a qualified registered nurse shall serve as the DON's assistant so there is the equivalent of a full-time nursing supervisor on duty. (II, III)

(4) The department shall establish, on an individual facility basis, the numbers and qualifications of the staff required in the facility using as its criteria the services being offered as indicated on the resumé of care and as required for implementation of individual program plans. (II, III)

(5) The DON shall not serve as charge nurse in a facility with an average daily total occupancy of 60 or more residents. (II, III)

(6) A waived licensed practical nurse shall not be allowed as a charge nurse on any shift. (II, III)

(7) There shall be at least two people capable of rendering nursing service awake, dressed, and on duty at all times. (II, III)

d. Activity staff. Each ICF/PMI shall employ a recreational therapist, occupational therapist or activity coordinator to direct the activity program both inside and outside the facility in accordance with each resident's individual program plan. (III)

Staff for the activity program shall be based on the needs of the residents being served as identified on the IPP. (III)

(1) The activity program director shall attend workshops or educational programs which relate to activity programming. These shall total a minimum of ten contact hours per year. (III)

(2) Personnel coverage shall be provided when the activity program director is absent during scheduled activities. (III)

(3) The activity program director shall have access to all information about residents necessary to carry out the program. (III)

e. Responsibilities of the activity program director shall include:

(1) Coordinating all activities, including volunteer or auxiliary activities and religious services; (III)

(2) Ensuring that all records required are kept; (III)

(3) Coordinating the activity program with all other services in the facility; (III) and

(4) Participating in the in-service training program in the facility. This shall include attending as well as presenting sessions. (III)

65.9(4) Personnel record. A personnel record shall be kept for each employee. (III)

a. The record shall include the employee's:

(1) Name and address, (III)

(2) Social security number, (III)

(3) Date of birth, (III)

(4) Date of employment, (III)

(5) References, (III)

(6) Position in the facility, (III)

(7) Job description, (III)

(8) Documentation of experience and education, (III)

(9) Staff development plan, (III)

(10) Annual performance evaluation, (II, III)

(11) Documentation of disciplinary action, (II, III)

(12) Date and reason for discharge or resignation, (III) and

(13) Current physical examination. (III)

b. The personnel records shall be made available to the long-term care resident's advocate/ombudsman of the department of elder affairs in response to a complaint being investigated. (III)

This rule is intended to implement Iowa Code sections 135C.14(2) and 135C.14(6).

481-65.10(135C) General admission policies. There shall be admission policies which address the following:

1. No resident shall be admitted or retained who is in need of greater services than the facility can provide. (II, III)

2. Residents shall be admitted only on a written order signed by a physician. (II, III)

3. A preplacement visit shall be completed prior to admission, except in case of an emergency admission or readmission, to familiarize the applicant with the facility and services offered. The policies and procedures may allow for waiving the requirement at the request of a person seeking admission when the completion of the visit would create a hardship for the person seeking admission. If the distance to be traveled makes it impossible to complete the visit in an eight-hour day, this may be considered to create a hardship. (III)

4. Prior to admission of an applicant, the facility shall obtain sufficient information to determine if its program is appropriate and adequate to meet the person's needs. (III)

5. Admission criteria shall include, but not be limited to, age, sex, current diagnosis from an American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders, substance abuse, dual diagnosis and criteria that are consistent with the resumé of care. (III)

6. Each facility shall maintain a waiting list with selection priorities identified. (III)

7. No ICF/PMI may admit more residents than the number of beds for which it is licensed. (II, III)

8. There shall be a written, organized orientation program for all residents which shall be planned and implemented to resolve or reduce personal, family, business, and emotional problems that may interfere with the health care, recovery, and rehabilitation of the individual and which shall be available for review by the department. (III)

9. Infants and children under the age of 18 shall not be admitted to an ICF/PMI for adults unless given prior written approval by the department. A distinct part of an ICF/PMI, segregated from the adult section, may be established based on a resumé of care submitted by the licensee or applicant which is commensurate with the needs of the residents of the health care facility and has received the department's review and approval. (III)

This rule is intended to implement Iowa Code sections 135C.3 and 135C.23.

481-65.11(135C) Evaluation services. Each resident admitted shall have a physical examination and tuberculin test no more than 30 days before admission and a physical examination annually after that. Each annual examination shall be sufficient to ensure the resident has no physical condition which precludes living in the facility. If the resident is admitted directly from a hospital, a copy of the

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hospital admission physical and discharge summary may meet this requirement. (II, III)

65.11(1) In addition to the required initial physical examination, each resident shall be evaluated to identify physical health, current level of functioning and the need for services. This evaluation shall be completed within 30 days of admission and annually after that. Information from other sources may be used in the evaluation if the information meets the requirements of subrules 65.11(2) and 65.11(3). (II, III)

65.11(2) The portion of the evaluation which describes the resident's physical health shall:

a. Identify current illnesses and disabilities and include recommendations for physical and physiological treatment and services; (II, III)

b. Include a description of the resident's ability for health maintenance; (II)

c. Include a mental status exam and history of mental health and treatments; (II, III) and

d. Be performed by a physician with a valid license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy in Iowa. If the evaluation is not conducted in Iowa, it must be by a physician who holds a current license in the state in which the examination is performed. If the doctor is not a psychiatrist, a psychiatrist or health service provider in psychology licensed under Iowa Code section 154B.7 shall be consulted regarding the results of the mental status exam. (II, III)

65.11(3) The portion of the evaluation which describes the resident's current functioning level and need for services shall:

a. Identify the functioning level and need for services in self-care, community living skills, psychotherapeutic treatment, vocational skills, and academic skills as appropriate; (II, III)

b. Contain sufficient detail about skills and needs to determine appropriate placement; (II, III)

c. Be made without regard to the availability of services; (III) and

d. Be performed by a QMHP, consulting with an interdisciplinary team. (III)

65.11(4) Results of all evaluations shall be in writing and maintained in resident records. After the initial evaluation, all subsequent evaluations shall contain sufficient detail to determine changes in the resident's physical and mental health, skills, and need for services. (II, III)

65.11(5) A narrative social history shall be completed for each resident within 30 days of admission. The social history shall be completed and approved by the qualified mental health professional before the IPP is developed. (III)

a. When a social history is secured from another provider, the information shall be reviewed within 30 days of admission. The date of the review and a summary of significant changes in the information shall be entered in the resident's record. The social worker who reviews the history shall sign it. (III)

b. An annual review of the social history information shall be incorporated in the individual program plan progress notes. (III)

c. The social history shall address at least the following areas:

(1) Referral source and reason for admission; (II, III)

(2) Legal status; (II, III)

(3) Previous living arrangements; (III)

(4) Services received previously and current service involvements; (II, III)

(5) Significant medical and mental health conditions including at least illnesses, hospitalizations, past and current drug therapy, and special diets; (II, III)

(6) Substance abuse history; (II, III)

(7) Work history; (III)

(8) Education history; (II)

(9) Relationship with family, significant others, and other support systems; (III)

(10) Cultural, ethnic and religious background; (II, III)

(11) Hobbies and leisure time activities; (III)

(12) Likes, dislikes, habits, and patterns of behavior; (II, III)

(13) History of aggressive or suicidal behavior; (I, II, III) and

(14) Impressions and recommendations. (II, III)

This rule is intended to implement Iowa Code section 135C.14(7).

481-65.12(135C) Individual program plan (IPP). An initial program plan shall be developed within 24 hours of admission. This plan shall be based on information gained from the resident, family, physician or referring facility. Services to be provided shall be addressed. Intervention to be provided, if and when the need arises, shall also be addressed in the IPP. The plan shall be followed until the IPP required in subrule 65.12(1) is complete. The initial plan shall be completed by a registered nurse, a qualified social worker or a QMHP. (II, III)

65.12(1) An individual program plan for each resident shall be developed by an interdisciplinary team. The resident or the resident's legal guardian has the ultimate authority to accept or reject the plan unless otherwise determined by the court. The IPP shall be approved and have implementation monitored by the QMHP. (II, III)

a. The IPP shall be based on the individual service plan of the referring agency, if available, the information contained in the social history, the need for services identified in the evaluation, and any other pertinent information. (III)

b. The facility shall assist the resident in obtaining access to academic services, community living skills training, legal services, self-care training, support services, transportation, treatment, and vocational education as needed. These services may be provided by the facility or obtained from other providers. (III)

c. Services to the resident shall be provided in the least restrictive environment and shall incorporate the principle of normalization. (III)

d. If needed services are not available and accessible, the facility shall document the actions taken to locate and obtain those services. The documentation shall identify needs which will not be met because of the lack of available services. (III)

e. The IPP shall be developed within 30 days following admission to the facility and renewed at least annually. (II, III)

f. The IPP shall be written, dated, signed by the interdisciplinary team members, and maintained in the resident's record. (III)

g. Written notice of the meeting to develop an IPP shall be mailed or delivered to everyone included in the interdisciplinary team conference at least two weeks before the scheduled meeting. (III)

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65.12(2) The IPP shall include the following:

- a. Goals, (III)
- b. Objectives, (III)
- c. Specific services to be provided, (III)
- d. People or agency responsible for providing services, (III)
- e. Beginning date, (III) and
- f. Anticipated duration of services. (III)

65.12(3) The IPP shall set out the procedure to be used to evaluate whether objectives are achieved. This procedure shall incorporate a process for on-going review and revision. (III)

65.12(4) The interdisciplinary team shall review the IPP at a team meeting at least quarterly and when the resident's condition changes. (II, III)

a. The interdisciplinary team shall develop a written report which addresses:

- (1) The resident's progress toward objectives; (II, III)
- (2) The need for continued services; (II, III)
- (3) Recommendations concerning alternative services or living arrangements; (II, III) and
- (4) Any recommended change in guardianship, conservatorship or commitment status. (II, III)

b. The report shall reflect those involved in the review, the date of the review, and be maintained in the resident's record. (III)

65.12(5) There shall be procedures for recording the activities of each service provider and a mechanism to coordinate the activities of all service providers. Resident response to all activities shall be recorded. (III)

a. Staff shall create a record at the time of a service required by the IPP. If this is not possible, the record shall be written no more than seven days later. (III)

b. When the services are provided more than once a week, staff may make a monthly summarized entry in the resident's record. (III)

c. Entries shall be dated and signed by the person who provides the service. (III)

d. Entries shall be made when incidents occur. (III)

e. Entries shall be written in terms of behavioral observations and specific activities. Entries that involve subjective interpretations of a resident's behavior or progress shall be clearly identified and shall be supplemented with descriptions of behavior upon which the interpretation was based. (III)

This rule is intended to implement Iowa Code section 135C.14.

481-65.13(135C) Activity program. Each ICF/PMI shall have an organized activity program which is directed by a person qualified as required by rule 65.9(3)"d."

65.13(1) An activity program plan for the facility shall be based on needs identified in IPPs and on other interests expressed by residents. The activity program shall include leisure time management. (III)

65.13(2) Activities shall be offered at least daily during the daytime hours if residents are present, twice weekly in the evening and twice on the weekend. (III)

65.13(3) Activities offered shall be varied and shall be planned for individuals, small groups or large groups. (III)

65.13(4) Monthly calendars shall be prepared in advance and shall be kept for review by the department. Substitutions and cancellations shall be noted. (III)

65.13(5) Activities department personnel shall coordinate programs with other facility personnel. (III)

481-65.14(135C) Crisis intervention. There shall be written policies and procedures concerning crisis intervention. (II) These policies and procedures shall be:

1. Directed to maximizing the growth and development of the individual by incorporating a hierarchy of available alternative methods that emphasize positive approaches; (II, III)

2. Available in each program area and living unit; (II, III)

3. Available to individuals and their families; (II, III) and

4. Developed with the participation, as appropriate, of individuals served. (II, III)

65.14(1) Corporal punishment, physical abuse, and verbal abuse; for example, (shouting, screaming, swearing, name calling, or any other activity which might damage an individual's self-respect) shall be prohibited. All residents shall be treated with fairness and respect as required by rule 65.25(135C). (II)

65.14(2) Medication shall not be used as punishment, for the convenience of staff, or as a substitute for a program. Direct care staff shall monitor residents on medication and notify the physician if a resident is too sedated to participate in the IPP. (I, II)

481-65.15(135C) Restraint or seclusion. Physician's orders are required to use any kind of mechanical restraints or seclusion. (I, II, III) Restraints are defined as the following:

1. Type I is physical restraint which uses equipment to promote the safety of the individual. It is not applied directly to a person. Examples: Divided doors and side rails.

2. Type II is mechanical restraint applied to someone's body. A device is applied to the body to promote safety of the individual. Examples: Vests or soft tie devices, hand socks, geriatric chairs.

3. Type III is mechanical restraint applied to any part of the body which inhibits only the movement of that part of the body. Examples: Wrist, ankle or leg restraints and waist straps.

65.15(1) Temporary restraint of residents shall be used only to prevent injury to the resident or to others. (I, II)

65.15(2) Temporary seclusion may be used:

a. To prevent injury to the resident or to others; (I, II)

b. To prevent serious disruption to the treatment program of other residents; (I, II)

c. To decrease stimulation which contributes to psychotic behavior; (I, II) and

d. When other interventions have failed. (I, II)

Restraint and seclusion shall not be used for punishment, for the convenience of staff, or as a substitution for supervision of program. Seclusion shall be used only in a department-approved seclusion room. (I, II)

65.15(3) Restraints shall be stored in an area easily accessible to staff. (I, II, III) Type II and Type III restraints shall be specifically designed, manufactured, and customarily used to restrain individuals hospitalized in licensed psychiatric hospitals. Metal and plastic handcuffs, rope and makeshift devices are prohibited. (I, II)

65.15(4) Under no circumstances shall a resident be allowed to participate in the restraint of another resident. (I, II)

65.15(5) There shall be written policies that address the basic assumption and philosophy that govern the use

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of seclusion and physical and mechanical restraint. These shall:

- a. Define the uses of seclusion and mechanical restraints; (III)
- b. Designate staff who may authorize its use; (III)
- c. Identify procedures to follow when implementing the policy which shall include provisions to ensure privacy and safety for restrained residents; (III) and
- d. A written plan for treatment following the use of restraint or seclusion.

65.15(6) The physician and QMHP shall be notified immediately of the resident's need for placement in restraint or seclusion. An order for restraint or seclusion identifying the type, purpose and duration of use shall be obtained from the physician. If the resident is in seclusion longer than four hours, the physician and qualified mental health professional shall visit and evaluate the resident before the seclusion order is continued. If the resident is in restraint for two hours, the physician shall be called before the restraint order can be continued. If the resident is in restraint longer than four hours, the physician and QMHP shall visit and evaluate the resident before a restraint order is continued. Standing or PRN orders for seclusion or restraint are prohibited. (I, II)

65.15(7) If a resident is restrained with Type II or Type III restraints for six hours or secluded for 12 hours in a 24-hour period; or if the resident is secluded or restrained with Type II or Type III restraints for any amount of time in three consecutive 24-hour periods, the physician and QMHP shall visit the resident and assess the resident's need for a higher level of care. If the need for restraint or seclusion continues, the resident shall be transferred to an acute level of care. (I, II)

65.15(8) During any period of mechanical restraint or seclusion, the facility shall provide for the emotional and physical needs of the resident. (I, II)

65.15(9) The resident shall be informed of the reason for seclusion and restraint and conditions for release. The resident's guardian shall be notified when Type II or Type III restraints or seclusion is used. The facility shall also notify the resident's family or other significant person if the resident has previously signed a form granting consent to do so. (I, II, III)

65.15(10) Each resident's record shall contain all information about restraints or seclusion. The administrator shall maintain a daily record of seclusion use. This record shall be available for review by the department. (II, III)

Documentation of each incident of restraint or seclusion shall include at least:

- a. Clinical assessment before the resident is secluded or restrained; (I, II)
- b. Circumstances that led to seclusion or restraint; (I, II)
- c. Explanation of less restrictive measures used before restraint or seclusion; (I, II)
- d. Physician's order; (I, II)
- e. Visual observation of the resident every 15 minutes, or more frequently if needed, to monitor general well-being including respirations, circulation, positioning and alertness as indicated; (I, II)
- f. Description of the resident's activity at the time of observation to include verbal exchange and behavior; (I, II)
- g. Description of safety procedures taken (removal of dangerous objects, etc.); (I, II)

h. Vital signs, including blood pressure, pulse and respiration, unless contraindicated by resident behavior and reasons documented; (I, II)

i. Release of each mechanical restraint and exercise and massage every two hours; (I, II, III)

j. Record of intake of food and fluid; (I, II, III)

k. Use of toilet; (II, III) and

l. Number of hours and minutes in seclusion. (II, III)

65.15(11) The facility shall educate staff on restraint and seclusion theory and techniques. The training shall be conducted by people with experience and documented education in the appropriate use of restraint and seclusion. (II, III)

a. The facility shall keep a record of the training for review by the department and shall include attendance. (II, III)

b. Only staff who have documented training in restraint and seclusion theory and techniques shall be authorized to assist with seclusion or restraint of a resident. (I, II, III)

65.15(12) The facility shall maintain a record of the hours and minutes of each type of restraint and seclusion used on a monthly basis.

481-65.16(135C) Discharge or transfer. Procedures for the discharge or transfer of the resident shall be established and followed. (II, III)

65.16(1) Discharge plan. The decision to discharge a person and the plan for doing so shall be established through the participation of the resident, members of the interdisciplinary team and other resource personnel as appropriate for the welfare of the individual. (II, III)

a. Discharge planning shall begin within 30 days of admission and be carried out in accordance with the IPP. (II, III)

b. As changes occur in a resident's physical or mental condition necessitating services or care which cannot be adequately provided by the facility, the resident shall be transferred promptly to another appropriate facility pursuant to subrule 65.10(1). (II, III)

c. Notification shall be made to the next of kin, legal representative, attending physician, and sponsoring agency, if any, prior to transfer or discharge of any resident. (III)

d. Proper arrangements shall be made for the welfare of the resident prior to the transfer or discharge in the event of an emergency or inability to reach the next of kin or legal representative. (III)

e. The licensee shall not refuse to discharge or transfer a resident when directed by the physician, resident, legal representative, or court. (II, III)

f. Advanced notification by telephone shall be made to the receiving facility prior to the transfer of any resident. (III)

g. When a resident is transferred or discharged, the current evaluation and treatment plan and progress notes for the last 30 days, as set forth in these rules, shall accompany the resident. (II, III)

h. Prior to the transfer or discharge of a resident to another health care facility, arrangements to provide for continuity of care shall be made with the facility to which the resident is being sent. (II, III)

i. A discharge or transfer authorization and summary shall be prepared for each resident who has been discharged or transferred from the facility. It shall be disseminated to appropriate persons to ensure continuity of

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care and in accordance with the requirements to ensure confidentiality. (II, III)

j. A transfer to a part of a facility that has a different license must be handled the same way as a transfer to another facility, and not as an intrafacility transfer. (II, III)

65.16(2) Intrafacility transfer. Residents shall not be arbitrarily moved from room to room within a health care facility. (II, III)

a. Involuntary relocation may occur only to implement goals and objectives in the IPP and in the following situations:

(1) Incompatibility with or behavior disturbing to roommates, as documented in the residents' records; (I, II)

(2) To allow a new admission to the facility which would otherwise not be possible due to separation of roommates by sex; (II, III)

(3) Reasonable and necessary administrative decisions regarding the use and functioning of the building. (II, III)

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

(1) Punishment or behavior modification; (II) and

(2) Discrimination on the basis of race or religion. (II, III)

c. If intrafacility relocation is necessary for reasons outlined in paragraph "a," the resident shall be notified at least 48 hours prior to the transfer and the reason shall be explained. The legal guardian shall be notified as soon as possible. The notification shall be documented in the resident's record and signed by the resident or legal guardian within seven days unless documentation indicates that it was not possible to contact the legal guardian or obtain their signature. (II, III)

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

65.16(3) Involuntary discharge or transfer--reasons. Residents shall be transferred or discharged from the facility in accordance with contract arrangements and requirements of Iowa Code chapter 135C which states that a resident shall be transferred or discharged only for the following:

a. Medical reasons which include:

(1) Acute stage of alcoholism, mental illness, or an active state of a communicable disease; (I, II) or

(2) Need for medical procedures as determined by a physician, or services which cannot be or are not being carried out in the facility; (I, II)

b. Resident's welfare or welfare of other residents which includes residents who are dangerous to themselves or other residents; (I) or

c. Nonpayment except as prohibited by Medicaid. (II)

65.16(4) Involuntary transfer or discharge--written notice. Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident or responsible party at least 30 days in advance of the proposed transfer or discharge. (II) The 30-day requirement shall not apply in any of the following instances:

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

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

61.16(5) Contents of notice. The notice required by 65.16(4) shall contain all of the following information:

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

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

c. The following statement must be included:

"You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa Department of Inspections and Appeals (hereinafter referred to as department) within seven days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after receipt of your request by the department and you will not be transferred prior to a final decision. Provision may be made for extension of the 14-day requirement upon request to the department designee in emergency circumstances. If you lose the hearing, you will not be transferred before the expiration date of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than five days following final decision of such hearing. To request a hearing or receive further information, call the department at (515)281-4115 or you may write to the department to the attention of: Administrator, Division of Health Facilities, Iowa Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083." (II)

65.16(6) Stay of transfer or discharge. A request for a hearing made under 65.16(5)"c" shall stay a transfer or discharge pending a hearing or appeal decision. (II)

a. The hearing shall be held in the facility and the date and time of the hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by United States mail or delivered in person to the licensee, resident, legal guardian, and Iowa department of elder affairs long-term care resident's advocate/ombudsman of record not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident, and legal guardian, that they have a right to appear at the hearing in person or be represented by their attorneys or other individuals. The hearing shall be dismissed if neither party is present nor represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. The Iowa department of elder affairs long-term care resident's advocate/ombudsman shall have the right to appear at the hearing. (II)

b. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to department rules. The licensee or designee shall have the opportunity to present oral testimony or written materials to show by a preponderance of the evidence just cause

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why a transfer or discharge may be made. The resident and legal guardian shall also have an opportunity to present oral testimony or written material to show just cause why a transfer or discharge should not be made; the burden of proof rests on the party requesting the transfer or discharge. (II)

c. Based upon all testimony and materials submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact, conclusions of law, and issue a decision and order. This decision shall be mailed by regular mail to the licensee, resident, legal guardian, and department of elder affairs long-term care resident's advocate/ombudsman within ten working days after the hearing has been concluded. (II)

d. Requests for review of a proposed decision must be made in writing and mailed to the director of the department by regular mail, or by personal service within ten days after mailing of the decision or order to the aggrieved party. The director will review the appeal and issue a decision. A party who has exhausted all adequate administrative remedies and is aggrieved by the final action of the department may petition for judicial review in the manner provided by Iowa Code chapter 17A. (II)

e. A copy of the notice required by 65.16(4) shall be personally delivered to the resident by the licensed facility and a copy placed in the resident's record. A copy shall also be transmitted to the department, the resident's legal guardian, physician, the person or agency responsible for the resident's placement, maintenance, and care in the facility, and the department of elder affairs' long-term care resident's advocate/ombudsman. (II)

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

g. The involuntary transfer or discharge shall be discussed with the resident, legal guardian, and the person or agency responsible for the resident's placement, maintenance, and care in the facility within 48 hours after notice of discharge has been received. The explanation and discussion of the reasons for involuntary transfer or discharge shall be given by the facility administrator or other appropriate facility representative as the administrator's designee. The content of the discussion and explanation shall be summarized in writing and shall include the names of the individuals involved in the discussions and shall be made a part of the resident's record. (II)

h. The resident shall receive counseling services before (by the sending facility) and after (by the receiving facility) the involuntary transfer to minimize the possible adverse effects of the involuntary transfer. Counseling shall be documented in the resident's record. Counseling shall be provided by a qualified individual who meets one of the following criteria:

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

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

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

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

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

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

k. In the case of an emergency transfer or discharge as outlined in 65.16(4)"b," the resident must still be given a written notice prior to or within 48 hours following transfer or discharge. A copy of this notice must be placed in the resident's file and it must contain all the information required by 65.16(5). In addition, the notice must contain a statement in not less than 12-point type, which reads:

"You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Iowa department of inspections and appeals within seven days after receiving this notice. You have the right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after receipt of your request by the department. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, call the department at (515)281-4115 or you may write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083."

A hearing requested pursuant to this subrule shall be held in accordance with 65.16(6)"a," "b" and "c." (II)

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

This rule is intended to implement Iowa Code sections 135C.14(8), 135C.31, 135C.43, and 135C.46.

481-65.17(135C) Medication management. Medications shall be prescribed on an individual basis by a person who is authorized by Iowa law to prescribe. (I, II)

1. Medication orders shall be correctly implemented by qualified personnel. (II)

2. Qualified staff shall ensure that residents are able to take their own medication. (I, II)

3. Each physician order allowing a resident to take their own medications shall specify whether this self-medication shall be without supervision or under the supervision of qualified staff as defined in 65.17(2). (I, II)

65.17(1) If the physician has documented that the resident is incapable of taking prescribed medication, it must be administered by a qualified person of the facility. A qualified person shall be defined as either a registered or licensed practical nurse or an individual who has completed the state-approved certified medication aide course which meets guidelines adopted by the department and other appropriate agencies. (II)

a. Unit dose medication shall remain in the identifiable unit dose package until given to the resident. (II)

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b. Medications that are not contained in unit dose packaging shall be set up, identified by resident name and medication name, and administered by the same person. The medications shall be administered within one hour of preparation. (II)

c. The person administering medications must observe and check to make sure the resident swallows oral medications and must record the date, time, amount and name of each medication given. (II)

d. Injectable medications shall not be administered by anyone other than a prescriber or licensed nurse except when residents have been certified by a physician as capable of taking their insulin. When a resident has been certified as capable of taking insulin, the resident may prepare and inject the insulin. (II)

e. Current and accurate records must be kept on the receipt and disposition of all Schedule II drugs. (II, III)

65.17(2) For each resident who is taking medication with or without supervision, there shall be documentation on the individual's record to include:

- a. Name of resident; (II, III)
- b. Name of drug, dose, and schedule; (II, III)
- c. Method of administration; (II, III)
- d. Drug allergies and adverse reactions; (I, II)
- e. Special precautions; (I, II) and
- f. Documentation of resident's continuing ability to administer own medication. (I, II)

65.17(3) Medication counseling shall be provided for all residents in accordance with the IPP on an ongoing basis and as part of discharge planning unless contraindicated in writing by the physician with reasons and pursuant to 65.12(2)"c." (II, III)

Each resident shall be given verbal and written information about all medications they are currently using, including over-the-counter medications. A suggested reference is "USPDI, Advice for the Patient." (II, III)

The information shall include:

- a. Name, reason for, and amount of medication to be taken; (II)
- b. Time medication is to be taken and reason that the schedule was established; (II)
- c. Possible benefits, risks and side effects of each medication, including over-the-counter medications; (II)
- d. The names of people in the community qualified to answer questions about medications; (II, III) and
- e. A list of available resources or agencies which may assist the resident to obtain medication after discharge. (III)

65.17(4) Residents who have been certified in writing by the physician as capable of taking their own medications, may retain these medications in a secure centralized location. Individual locked storage shall be utilized. (II, III)

a. Drug storage for residents who are unable to take their own medications and require supervision shall meet the following requirements:

- (1) Adequate size cabinet with lock which can be used for storage of drugs, solutions, and prescriptions. A locked drug cart may be used. (II, III)
- (2) A bathroom shall not be used for drug storage. (II, III)
- (3) The drug storage cabinet shall be kept locked when not in use. (II, III)
- (4) The drug storage cabinet key shall be in the possession of the employee charged with the responsibility of administering medication. (II, III)

(5) Medications requiring refrigeration which are stored in a common refrigerator shall be kept in a locked box properly labeled, and separated from food and other items. (II, III)

(6) Drugs for external use shall be stored separately from drugs for internal use. External medications are those to be applied to the outside of the body and include, but are not limited to, salves, ointments, gels, pastes, soaps, baths, and lotions. Internal medications are those to be applied inside the body or ingested and include, but are not limited to, oral and injectable medications, eye drops and ointments, ear drops and ointments, and suppositories. Also, eye drops and ear drops shall be separated from each other as well as from other internal and external medications. (II, III)

(7) All potent, poisonous, or caustic materials shall be stored in a separate room from the medications. (II, III)

(8) Inspection of the condition of stored drugs shall be made by the administrator and a licensed pharmacist not less than once every three months. The inspection shall be verified by a report signed by the administrator and the pharmacist and filed with the administrator. The report shall include, but need not be limited to, certifying absence of the following: expired drugs, deteriorated drugs, improper labeling, drugs for which there is no current order, and drugs improperly stored. (III)

(9) Double locked storage of Schedule II drugs shall not be required under single unit package drug distribution systems in which the quantity stored does not exceed a seven-day supply and a missing dose can be readily detected but must be kept in a locked medication cabinet. Quantities in excess of a seven-day supply must be double locked. (II)

b. Bulk supplies of prescription drugs shall not be kept. (III)

65.17(5) All labels on medications must be legible. If labels are not legible, the medication shall be sent back to the dispenser as defined in Iowa Code section 147.107 for relabeling. (II, III)

a. The medication for each resident shall be kept or stored in the original dispensed containers. (II, III)

b. The facility shall adopt policies and procedures to destroy unused prescription drugs for residents who die. The policies and procedures shall include, but not be limited to, the following:

(1) Drugs shall be destroyed by the person in charge in the presence of the administrator or the administrator's designee; (III)

(2) Notation of the destruction shall be made in the resident's chart, with signatures of the persons involved in the destruction; (III)

(3) The manner in which the drugs are disposed of shall be identified (i.e., incinerator, sewer, landfill). (II, III)

d. The facility shall also adopt policies and procedures for the disposal of controlled substances, as defined by the Iowa board of pharmacy, dispensed to residents whose administration has been discontinued by the prescriber. These policies and procedures shall include, but not be limited to, the following:

(1) Procedures for obtaining a release from the resident; (II, III)

(2) The manner in which the drugs were destroyed and by whom, including witnesses to the destruction; (II, III)

(3) Mechanisms for recording the destruction; (II, III)

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(4) Procedures to be used when the resident or the conservator or guardian refuses to grant permission for destruction. (II, III)

e. The facility shall adopt policies and procedures for the disposal of unused, discontinued medication. The procedures shall include, but not be limited to:

(1) A specified time after which medication must be destroyed, sent back to the dispenser or placed in long-term storage; (II, III)

(2) Procedures for obtaining permission of the resident, or the conservator or guardian; (II, III)

(3) Procedures to be used when the resident, conservator or guardian refuses to grant permission for disposal; (II, III)

(4) Unused, discontinued medication shall be locked and shall be separate from current medication. (II, III)

f. All medication orders which do not specifically indicate the number of doses to be administered or the length of time the drug is to be administered shall be stopped automatically after a given time period. The automatic stop order may vary for different types of drugs. The facility, in consultation with a physician or pharmacist serving the home, shall institute policies and provide procedures. These shall be provided to all prescribers and pharmacists serving the facility and conveniently located for personnel administering medications. (II, III)

g. Residents shall not keep any prescription or over-the-counter medication in their possession unless the resident has been determined to be capable of self-administration of medications. (I, II, III)

h. No prescription drugs shall be administered to a resident without a written order signed by a person qualified to prescribe the medication and renewed quarterly. (II)

i. Prescription drugs shall be reordered only with the permission of the attending prescriber. (II, III)

j. No medications prescribed for one resident may be administered to or allowed in the possession of another resident. (II)

65.17(6) Each facility shall establish policies and procedures to govern the administration of prescribed medications to residents on leave from the facility. (III)

a. Medication may be issued to residents who will be on leave from a facility for less than 24 hours. Non-child-resistant containers may be used. Each container may hold only one medication. A label on each container shall indicate the date, the resident's name, the facility, the medication, its strength, dose, and time of administration. (II, III)

b. Medication for residents on leave from a facility longer than 24 hours shall be obtained in accordance with requirements established by the Iowa board of pharmacy examiners. (II, III)

c. Medication distributed as described in this subrule may be issued only by facility personnel responsible for administering medication. (II, III)

65.17(7) Each ICF/PMI that administers controlled substances shall annually obtain a registration from the Iowa board of pharmacy examiners pursuant to Iowa Code section 204.302(1). (III)

This rule is intended to implement Iowa Code section 135C.14.

481-65.18(135C) Resident property and personal affairs. The admission of a resident does not give the facility or any employee of the facility the right to man-

age, use, or dispose of any property of the resident except with the written authorization of the resident or the resident's legal guardian. (II, III)

65.18(1) The admission of a resident shall not grant the ICF/PMI the authority or responsibility to manage the personal affairs of the resident except as may be necessary for the resident's safety and for safe and orderly management of the facility as required by these rules and in accordance with the IPP. (II)

65.18(2) An ICF/PMI shall provide for the safekeeping of personal effects, funds, and other property of its residents. The facility may require that items of exceptional value or which would convey unreasonable responsibilities to the licensee be removed from the premises of the facility for safekeeping. (III)

65.18(3) Residents' funds held by the ICF/PMI shall be in a trust account and kept separate from funds of the facility. (III)

65.18(4) No administrator, employee or their representative shall act as guardian, trustee, or conservator for any resident or the resident's property, unless the resident is related to the person acting as guardian within the third degree of consanguinity. (III)

65.18(5) If a facility is a county care facility, upon the verified petition of the county board of supervisors the district court may appoint, without fee, the administrator of a county care facility as conservator or guardian, or both, of a resident of such a county care facility. The administrator may establish either separate or common bank accounts for cash funds of these residents. (III)

This rule is intended to implement Iowa Code section 135C.24.

481-65.19(135C) Financial affairs. Residents who have not been assigned a guardian or conservator by the court may manage their personal financial affairs, and to the extent, under written authorization by the residents that the facility assists in management, the management shall be carried out in accordance with Iowa Code section 135C.24. (II)

65.19(1) Written account of resident funds. The facility shall maintain a written account of all residents' funds received by or deposited with the facility. (II)

a. An employee shall be designated in writing to be responsible for resident accounts. (II)

b. The facility shall keep on deposit personal funds over which the resident has control when requested by the resident. (II)

c. If the resident requests these funds, they shall be given to the resident with a receipt maintained by the facility and a copy to the resident. If a conservator or guardian has been appointed for the resident, the conservator or guardian shall designate the method of disbursing the resident's funds. (II)

d. If the facility makes a financial transaction on a resident's behalf, the resident or the resident's legal guardian or conservator must receive or acknowledge having seen an itemized accounting of disbursements and current balances at least quarterly. A copy of this statement shall be maintained in the resident's financial or business record. (II)

65.19(2) Contracts. There shall be a written contract between the facility and each resident which meets the following requirements:

a. States the base rate or scale per day or per month, the services included, and the method of payment; (III)

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b. Contains a complete schedule of all offered services for which a fee may be charged in addition to the base rate; (III)

c. Stipulates that no further additional fees shall be charged for items not contained in complete schedule of services listed in this subrule; (III)

d. States the method of payment of additional charges; (III)

e. Contains an explanation of the method of assessment of additional charges and an explanation of the method of periodic reassessment, if any, resulting in changing such additional charges; (III)

f. States that additional fees may be charged to the resident for nonprescription drugs, other personal supplies, and services by a barber, beautician, etc.; (III)

g. Contains an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to the resident's current condition, based on the program assessment at the time of admission, which is determined in consultation with the administrator; (III)

h. Includes the total fee to be charged initially to the specific resident; (III)

i. States the conditions whereby the facility may make adjustments to its overall fees for residential care as a result of changing costs. (III) Furthermore, the contract shall provide that the facility shall give:

(1) Written notification to the resident and responsible party, when appropriate, of changes in the overall rates of both base and additional charges at least 30 days prior to the effective date of changes; (III)

(2) Notification to the resident and payer, when appropriate, of changes in additional charges based on a change in the resident's condition. Notification must occur prior to the date the revised additional charges begin. If notification is given orally, subsequent written notification must be also given within a reasonable time, not to exceed one week, listing specifically the adjustments made; (III) and

(3) The terms of agreement in regard to refund of all advance payments, in the event of transfer, death, or voluntary or involuntary discharge; (III)

j. States the terms of agreement concerning holding and charging for a bed in the event of temporary absence of the resident, which terms shall include, at a minimum, the following provisions:

(1) If a resident has a temporary absence from a facility for medical treatment, the facility shall hold the bed open and shall receive payment for the absent period in accordance with provisions of the contract between the resident or the legal guardian and the facility. (II)

(2) If a resident has a temporary absence from a facility in accordance with the IPP, the facility shall ask the resident and payer if they wish the bed held open. This shall be documented in the resident's record including the response. The bed shall be held open and the facility shall receive payment for the absent periods in accordance with the provisions of the contract between the resident or the legal guardian and the facility. (II)

k. States the conditions under which the involuntary discharge or transfer of a resident would be affected; (III)

l. States the conditions of voluntary discharge or transfer; (III) and

m. Sets forth any other matters deemed appropriate by the parties to the contract. No contract or any provision shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed

upon it by this chapter or any standards or rules in force pursuant to this chapter. (III)

65.19(3) Contract—copy to party. Each party shall receive a copy of the signed contract. (III)

This rule is intended to implement Iowa Code sections 135C.23(1) and 135C.24.

481—65.20(135C) Records.

65.20(1) Resident record. The licensee shall keep a permanent record about each resident with all entries current, dated, and signed. (II) The record shall include:

a. Name and previous address of resident; (III)

b. Birthdate, sex, and marital status of resident; (III)

c. Church affiliation; (III)

d. Physician's name, telephone number, and address;

(III)

e. Dentist's name, telephone number, and address;

(III)

f. Name, address and telephone number of next of kin or legal representative; (III)

g. Name, address and telephone number of the person to be notified in case of emergency; (III)

h. Funeral director, telephone number, and address;

(III)

i. Pharmacy name, telephone number, and address;

(III)

j. Results of evaluation pursuant to rule 481—65.11(135C); (III)

k. Certification by the physician that the resident requires no higher level of care than the facility is licensed to provide; (III)

l. Physician's orders for medication and treatments in writing, signed by the physician quarterly and diet orders renewed yearly; (III)

m. A notation of yearly or other visits to physician or other professionals, all consultation reports and progress notes; (III)

n. Any change in the resident's condition; (II, III)

o. A notation describing the resident's condition on admission, transfer, and discharge; (III)

p. In the event of the death of a resident, a death record shall be completed, including the physician's signature and disposition of the body. A notation shall be made on the resident's record of the notification of the family; (III)

q. A copy of instructions given to the resident, legal representative, or facility in the event of discharge or transfer; (III)

r. Disposition of personal property; (III)

s. Copy of IPP pursuant to subrule 65.12(1); (III) and

t. Progress notes pursuant to subrules 65.12(4) and 65.12(5). (III)

65.20(2) Confidentiality of resident records. The facility shall have policies and procedures providing that each resident shall be ensured confidential treatment of all information, including information contained in an automatic data bank. The resident's or the resident's legal guardian's written informed consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

A release of information form shall be used which includes to whom the information shall be released, the reason for the information being released, how the information is to be used, and the period of time for which the release is in effect. A third party, not requesting the release, shall witness the signing of the release of information form. (II)

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a. The facility shall limit access to any resident records to staff and consultants providing professional service to the resident. Information shall be made available to staff only to the extent that the information is relevant to the staff person's responsibilities and duties. (II)

Only those personnel concerned with financial affairs of the residents may have access to the financial information. This is not meant to preclude access by representatives of state or federal regulatory agencies. (II)

b. The resident, or the resident's legal guardian, shall be entitled to examine all information and shall have the right to secure full copies of the record at reasonable cost upon request, unless the physician or QMHP determines the disclosure of the record or section is contraindicated in which case this information will be deleted prior to making the record available to the resident. This determination and the reasons for it must be documented in the resident's record by the physician or qualified mental health professional in collaboration with the resident's interdisciplinary team. (II)

65.20(3) Incident records. Each ICF/PMI shall maintain an incident record report and shall have available incident report forms. (II, III)

a. The report of every incident shall be in detail on a printed incident report form. (II, III)

b. The person in charge at the time of the incident shall oversee the preparation and sign the report. (III)

c. A copy of the incident report shall be kept on file in the facility available for review and a part of administrative records. (III)

65.20(4) Retention of records. Records shall be retained in the facility for five years following termination of services to the resident even when there is a change of ownership. (III)

When the facility ceases to operate, the resident's record shall be released to the facility to which the resident is transferred. If no transfer occurs, the record shall be released to the individual's physician. (III)

This rule is intended to implement Iowa Code section 135C.24.

481-65.21(135C) Health and safety.

65.21(1) Physician. Each resident shall have a designated licensed physician who may be called when needed. (III)

65.21(2) Emergency care. Each facility shall have written policies and procedures for emergency medical or psychiatric care to include:

a. A written agreement with a hospital or psychiatric facility or documentation of attempt to obtain a written agreement for the timely admission of a resident who, in the opinion of the attending physician, requires inpatient services; (II, III)

b. Provisions consistent with Iowa Code chapter 229; (II, III) and

c. Immediate notification by the person in charge to the physician or QMHP, as appropriate, of any accident, injury or adverse change in the resident's condition. (I, II)

65.21(3) First-aid kit. A first-aid emergency kit shall be available on each floor in every facility. (II, III)

65.21(4) Infection control. Each facility shall have a written and implemented infection control program addressing the following:

a. Techniques for hand washing consistent with 1985 Center for Disease Control (CDC) Guidelines; (I, II, III)

b. Techniques for handling of blood, body fluids, and body wastes consistent with 1987 C.D.C. Guidelines; (I, II, III)

Body fluids which require using universal precautions include blood, semen, vaginal secretions, cerebrospinal fluid (CSF), synovial fluid, peritoneal fluid, pericardial fluid, and amniotic fluid. Body fluids and wastes which do not require using universal precautions include feces, nasal secretions, sputum, sweat, tears, urine, and vomitus, unless they contain visible blood;

c. Decubitus care; (I, II, III)

d. Infection identification; (I, II, III)

e. Resident care procedures consistent with 1987 C.D.C. Guidelines to be used when there is an infection present; (I, II, III)

f. Sanitation techniques for resident care equipment; (I, II, III)

g. Techniques for sanitary use and reuse of enteral feeding bags, feeding syringes and urine collection bags; (I, II, III)

h. Techniques for use and disposal of needles, syringes, and other sharp instruments consistent with 1987 C.D.C. Guidelines and requirements set forth in environmental protection commission rules 567-100.3(2) and 567-102.14(455B); (I, II, III) and

i. Aseptic techniques when using:

(1) Intravenous or central line catheter, (I, II, III)

(2) Urinary catheter, (I, II, III)

(3) Respiratory suction, oxygen or humidification, (I, II, III)

(4) Dressings, soaks, or packs, (I, II, III)

(5) Tracheostomy, (I, II, III)

(6) Nasogastric or gastrostomy tubes. (I, II, III)

C.D.C. Guidelines may be obtained at cost from the Department of Inspections and Appeals, Health Facilities Division, Lucas State Office Building, Des Moines, Iowa 50319-0083 or by calling (515)281-4081.

65.21(5) Disposable items. There shall be disposable or one-time use items available with provisions for proper disposal to prevent reuse except as allowed by 65.21(4)"g."

65.21(6) Infection control committee. Each facility shall establish an infection control committee of representative professional staff responsible for overall infection control in the facility. (III)

a. The committee shall annually review and revise the infection control policies and procedures to monitor effectiveness and suggest improvement. (III)

b. The committee shall meet at least quarterly, submit reports to the administrator, and maintain minutes in sufficient detail to document its proceedings and actions. (III)

c. The committee shall monitor the health aspect and the environment of the facility. (III)

These rules are intended to implement Iowa Code sections 135C.14(3), 135C.14(5) and 135C.14(8).

65.21(7) Dental services. Personnel shall assist residents to obtain regular and emergency dental services and provide necessary transportation. Dental services shall be performed only on the request of the resident or legal guardian. The resident's physician shall be advised of the resident's dental problems. (III)

65.21(8) Safe environment. The licensee of an ICF/PMI is responsible for the provision and maintenance of a safe environment for residents and personnel. (I, II) The ICF/PMI may have locked exit doors and shall meet

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the fire and safety rules and regulations as promulgated by the state fire marshal. (I, II)

65.21(9) Disaster. The licensee shall have a written emergency plan to be followed in the event of fire, tornado, explosion, or other emergency. (II, III)

a. The plan shall be posted. (II, III)

b. Training shall be provided to ensure that all employees and residents are knowledgeable of the emergency plan. The training shall be documented. (II, III)

c. Residents shall be permitted to smoke only in posted areas where proper facilities are provided. Smoking by residents considered to be careless shall be prohibited except under direct supervision and in accordance with the IPP. (II, III)

65.21(10) Safety precautions. The facility shall take reasonable measures to ensure the safety of residents and shall involve the residents in learning the safe handling of household supplies and equipment in accordance with the policies and procedures established by the facility. (II)

All potent, poisonous, or caustic materials shall be plainly labeled and stored in a specific locked, well-illuminated cabinet, closet, or storeroom and made accessible only to authorized persons. (I, II)

65.21(11) Hazards. Entrances, exits, steps, and outside steps and walkways shall be kept free from ice, snow, and other hazards. (II, III)

65.21(12) Laundry. All soiled linens shall be collected in and transported to the laundry room in closed, leakproof laundry bags or covered, impermeable containers. (III)

a. Except for related activities, the laundry room shall not be used for other purposes. (III)

b. Personal laundry shall be marked with an identification unless the residents are responsible for doing their own laundry as indicated in the individual program plans. (III)

c. There shall be an adequate supply of clean, stain-free linens so that each resident shall have at least three washcloths, hand towels, and bath towels per week. (III)

d. Each bed shall be provided with clean, stain-free washable bedspreads and sufficient lightweight serviceable blankets. A complete change of bed linens shall be available for each bed. Linens on beds shall be clean, stain-free and in good repair at all times. (III)

65.21(13) Supplies, equipment, and storage. Each facility shall provide a variety of supplies and equipment of a nature calculated to fit the needs and interests of the residents. These may include: books (standard and large print), magazines, newspapers, radio, television, bulletin boards, board games, game equipment, songbooks, cards, craft supplies, record player, movie projector, piano, and outdoor equipment. Supplies and equipment shall be appropriate to the chronological age of the residents. (III)

Storage shall be provided for recreational equipment and supplies. (III)

This rule is intended to implement Iowa Code section 135C.14(1).

481-65.22(135C) Nutrition. There shall be policies and procedures written and implemented for dietary staffing.

1. The person responsible for planning menus and monitoring the kitchens in each facility shall have completed training, approved by the department, in sanitation and food preparation. (III)

2. In facilities licensed for over 15 beds, food service personnel shall be on duty during a 12-hour span extend-

ing from the preparation of breakfast through supper. (III)

3. There shall be written work schedules and time schedules covering each type of job in the food service department for facilities over 15 beds. These work and time schedules shall be posted or kept in a notebook which is available for use in the food service area. (III)

65.22(1) Nutrition and menu planning. Residents shall be encouraged to the maximum extent possible to participate in meal planning, shopping, and in preparing and serving the meal and cleaning up. The facility shall be responsible for helping residents become knowledgeable of what constitutes a nutritionally adequate diet. (III)

a. Menus shall be planned and served to meet nutritional needs of residents in accordance with the physician's diet orders which shall be renewed yearly. Menus shall be planned and served to include foods and amounts necessary to meet the recommended daily dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences. Other foods shall be included to meet energy requirements (calories) to add to the total nutrients and variety of meals. (II, III)

b. At least three meals or their equivalent shall be made available to each resident daily, consistent with those times normally existing in the community. (II, III)

(1) There shall be no more than a 14-hour span between the substantial evening meal and breakfast. (III)

(2) To the extent medically possible, bedtime nourishments, containing a protein source, shall be offered routinely to all residents. Special nourishments shall be available when ordered by the physician. (II, III)

c. Menus shall include a variety of foods prepared in various ways. The same menus shall not be repeated on the same day of the following week. (III)

d. If modified diets are ordered by the physician, the person responsible for writing the menus shall have completed department-approved training in simple therapeutic diets. A copy of a modified diet manual approved by the department and written within the past five years shall be available in the facility. (II, III)

e. Therapeutic diets shall be served accurately. (II, III)

f. Menus shall be written at least one week in advance. The current menu shall be located in an accessible place in the dietetic service department for easy use by persons purchasing, preparing, and serving food. (III)

g. Records of menus as served shall be filed and maintained for 30 days and shall be available for review by departmental personnel. When substitutions are necessary, they shall be of similar nutritive value and recorded on the menu or in a notebook. (III)

h. A file of tested recipes adjusted to the number of people to be fed in the facility shall be maintained. (III)

65.22(2) Dietary storage, food preparation, service. In each stage, food shall be handled with maximum care for safety and good health.

a. The use of foods from salvaged, damaged, or unlabeled containers is prohibited. (II, III)

b. No perishable food shall be allowed to stand at room temperature any longer than is required to prepare and serve. (II, III)

c. Canning food is prohibited. The facility may freeze fruits, vegetables, and meats provided strict sanitary procedures are followed and in accordance with recommendations in the "Food Service Sanitation Manual" revised

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1976, U.S. Department of Health, Education, and Welfare, Public Health Service, U.S. Government Printing Office, Washington, D.C. (II)

d. Supplies of staple foods for a minimum of a one-week period and of perishable foods for a minimum of a three-day period shall be maintained on the premises. (III)

e. If family style service is used, all leftover prepared food that has been on the table shall be safely handled. (III)

f. Poisonous compounds shall not be kept in food storage or preparation areas except for a sanitizing agent which shall be kept in a locked cabinet. (II, III)

65.22(3) Sanitation in food preparation area. The facility shall develop and implement policies and procedures to address sanitation, meal preparation and service in accordance with recommendations in the "Food Service Sanitation Manual" reference in 65.22(2)"c," which shall be used as the established, nationally recognized reference for establishing and determining satisfactory compliance with the department's food service and sanitation rules. (III)

a. In facilities of 15 beds or fewer, residents may be allowed in the food preparation area in accordance with their IPP. (III)

b. In facilities licensed for over 15 beds, the kitchen shall not be used for serving meals to residents, food service personnel, or other staff. (III)

c. All appliances and work areas shall be kept clean and sanitary. (III)

d. There shall be written procedures established for cleaning all work and serving areas in facilities over 15 beds and a schedule of duties to be performed daily shall be posted in each food area. (III)

e. The food service area shall be located so it will not be used as a passageway by residents, guests, or nonfood service staff in facilities over 15 beds. (III)

f. Dirty linen shall not be carried through the food service area unless it is in sealed, leakproof containers. (III)

g. Mops, scrub pails, and other cleaning equipment used in the resident areas shall not be stored or used in the dietary area. (III)

65.22(4) Hygiene of food service personnel. If food service employees are assigned duties outside the dietetic service, these duties shall not interfere with sanitation, safety, or time required for dietetic work assignments. (II, III)

a. Employees shall wear clean, washable uniforms that are not used for duties outside the food service area in facilities over 15 beds. (III)

b. Hair nets shall be worn by all food service personnel and residents who do work in the kitchen in facilities over 15 beds and effective hair restraints in facilities less than 15 beds. (III)

c. People who handle food shall use correct hand-washing and food handling techniques as identified in the "Food Service Sanitation Manual". People who handle dirty dishes shall not handle clean dishes without washing their hands. (III)

This rule is intended to implement Iowa Code section 135C.14.

481-65.23(135C) Physical facilities and maintenance.

65.23(1) Housekeeping. The facility shall have written procedures for daily and weekly cleaning (III) which include, but need not be limited to:

a. All rooms including furnishings, all corridors, storage areas, linen closets, attics, and basements shall be kept in a clean, orderly condition, free of unserviceable furniture and equipment or accumulations of refuse. (III)

b. All resident bedrooms, including furnishings, shall be cleaned and sanitized before use by another resident. (III)

c. Polishes used on floors shall provide a slip-resistant finish. (III)

65.23(2) Equipment. Housekeeping and maintenance personnel shall be provided with well constructed and properly maintained equipment appropriate to the function for which it is to be used. (III)

a. All facilities shall be provided with clean and sanitary storage for cleaning equipment, supplies, and utensils. In facilities over 15 beds, a janitor's closet shall be provided. It shall be equipped with water for filling scrub pails and a janitor's sink for emptying scrub pails. A hallway or corridor shall not be used for storage of equipment. (III)

b. Sufficient numbers of noncombustible trash containers, which have covers, shall be available. (III)

c. All containers for trash shall be watertight, rodent proof, and have tight-fitting covers and shall be thoroughly cleaned each time a container is emptied. (III)

d. All wastes shall be properly disposed of in compliance with the local ordinances and state codes. (III)

65.23(3) Bedrooms. Each resident shall be provided with a bed, substantially constructed and in good repair. (III)

a. Rollaway beds, metal cots, or folding beds are not acceptable. (III)

b. Each bed shall be equipped with the following: casters or glides; clean springs in good repair; a clean, comfortable, well-constructed mattress approximately five inches thick and standard in size for the bed; and clean, comfortable pillows of average bed size. (III)

c. There shall be a comfortable chair, either a rocking chair or arm chair, per resident bed. The resident's personal wishes shall be considered and documented. (III)

d. There shall be drawer space for each resident's clothing. In a multiple bedroom, drawer space shall be assigned each resident. (III)

e. There shall be a bedside table with a drawer and a reading lamp for each resident. (III)

f. All furnishings and equipment shall be durable, cleanable, and appropriate to its function. (III)

g. All resident areas shall be decorated, painted, and furnished to provide a homelike atmosphere and in a manner which is age and culture appropriate. (III)

h. Upholstery materials shall be moisture and soil resistant, except on furniture which is provided and owned by the resident. (III)

i. Beds and other furnishings shall not obstruct free passage to and through doorways. (III)

j. Beds shall not be placed with the side of the bed against a radiator or in close proximity to it unless the radiator is covered to protect the resident from contact with it or from excessive heat. (III)

65.23(4) Bath and toilet facilities. All lavatories shall have nonreusable towels or an air dryer and an available supply of soap. (III)

65.23(5) Dining and living rooms. Dining rooms and living rooms shall be available for use by residents at appropriate times to allow social, diversional, individual, and group activities. (III)

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a. Every facility shall have a dining room and a living room easily accessible to all residents which are never used as bedrooms. (III)

b. A combination dining room and living room may be permitted if the space requirements of a multipurpose room as provided in 481-61.6(2) are met. (III)

c. Living rooms shall be suitably furnished and maintained for the use of residents and their visitors and may be used for recreational activities. (III)

d. Dining rooms shall be furnished with dining tables and chairs appropriate to the size and function of the facility. These rooms and furnishings shall be kept clean and sanitary. (III)

65.23(6) Family and employee accommodations. Resident bedrooms shall not be occupied by employees, family members of employees, or family members of the licensee. (III)

a. In facilities where the total occupancy of family, employees, and residents is five or less, one toilet and one tub or shower is the minimum requirement. (III)

b. In all health care facilities, if the family or employees live within the facility, living quarters shall be required for the family or employees separate from areas provided for residents. (III)

65.23(7) Pets-policies. Any facility in which a pet is living shall implement written policies and procedures addressing the following:

a. Vaccination schedule; (III)

b. Veterinary visit schedule; (III)

c. Housing or sleeping quarters; (III) and

d. Assignment of responsibility for feeding, bathing and cleanup. (III)

65.23(8) Maintenance. Each facility shall establish a program to ensure continued maintenance of the facility, to promote good housekeeping procedures, and to ensure sanitary practices throughout. In facilities over 15 beds, this program shall be in writing and be available for review by the department. (III)

a. The buildings, furnishings and grounds shall be maintained in a clean, orderly condition and be in good repair. (III)

b. The buildings and grounds shall be kept free of flies, other insects, rodents, and their breeding areas. (III)

65.23(9) Buildings, furnishings, and equipment.

a. Battery operated, portable emergency lights in good working condition shall be available at all times, at a ratio of one light per employee on duty from 6 p.m. to 6 a.m. (III)

b. All windows shall be supplied with curtains and shades or drapes which are kept in good repair. (III)

c. Wherever glass sliding doors or transparent panels are used, they shall be marked conspicuously and decoratively. (III)

65.23(10) Water supply. Every facility shall have an adequate water supply from an approved source. A municipal source of water shall be considered as meeting this requirement. Private sources of water to a facility shall be tested annually and the report submitted with the annual application for license. (III)

a. A bacterially unsafe source of water shall be grounds for denial, suspension, or revocation of license. (III)

b. The department may require testing of private sources of water to a facility at its discretion in addition to the annual test. The facility shall supply reports of tests as directed by the department. (III)

This rule is intended to implement Iowa Code section 135C.14.

481-65.24(135C) Care review committee. Each facility shall have a care review committee in accordance with Iowa Code section 135C.25, which shall operate within the scope of the rules for care review committees promulgated by the department of elder affairs. (III)

65.24(1) Role of committee in complaint investigations.

a. The department shall notify the facility's care review committee of a complaint from the public. The department shall not disclose the name of a complainant.

b. The department may refer complaints to the care review committee for initial evaluation or investigation by the committee pursuant to rules promulgated by the department of elder affairs. Within ten days of completion of the investigation, the committee shall report to the department in writing the results of the evaluation of the investigation.

c. When the department investigates a complaint, upon conclusion of its investigation, it shall notify the care review committee and the department of elder affairs of its findings, including any citations and fines issued.

d. Results of all complaint investigations addressed by the care review committee shall be forwarded to the department within ten days of completion of the investigation.

65.24(2) Complaints monitored. The care review committee shall, upon department request, be responsible for monitoring correction of substantiated complaints.

65.24(3) Family member information. When requested, names, addresses and telephone numbers of family members shall be given to the care review committee, unless the family refuses. The facility shall provide a form on which a family member may refuse to have their name, address or telephone number given to the care review committee.

This rule is intended to implement Iowa Code section 135C.25.

481-65.25(135C) Residents' rights in general. Each facility shall ensure that policies and procedures are written and implemented which include at least provisions in subrules 65.25(1) to 65.25(21). These shall govern all services provided to staff, residents, their families or legal representatives. The policies and procedures shall be available to the public and shall be reviewed annually. (II)

65.25(1) Grievances. Written policies and procedures shall include a method for submitting grievances and recommendations by residents or their legal representatives and for ensuring a response and disposition by the facility. The written procedure shall ensure protection of the resident from any form of reprisal or intimidation and shall include:

a. An employee or an alternate designated to be responsible for handling grievances and recommendations; (II)

b. Methods to investigate and assess the validity of a grievance or recommendation; (II) and

c. Methods to resolve grievances and take action. (II)

65.25(2) Informed of rights. Policies and procedures shall include a provision that residents be fully informed of their rights and responsibilities as residents and of all rules governing resident conduct and responsibilities. This information must be provided upon admission, or when the facility adopts or amends residents' rights poli-

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cies. It shall be posted in locations accessible to all residents. (II)

a. The facility shall make known to residents what they may expect from the facility and its staff, and what is expected from residents. The facility shall communicate these expectations during a period not more than two weeks before or later than five days after admission. The communication shall be in writing in a separate handout or brochure describing the facility. It shall be interpreted verbally, as part of a preadmission interview, resident counseling, or in individual or group orientation sessions after admission. (II)

b. Residents' rights and responsibilities shall be presented in language understandable to residents. If the facility serves residents who do not speak English or are deaf, steps shall be taken to translate the information into a foreign or sign language. Blind residents shall be provided either braille or a recording. Residents shall be encouraged to ask questions about their rights and responsibilities. Their questions shall be answered. (II)

c. A statement shall be signed by the resident and legal guardian, if applicable, to indicate the resident understands these rights and responsibilities. The statement shall be maintained in the record. The statement shall be signed no later than five days after admission. A copy of the signed statement shall be given to the resident or legal guardian. (II)

d. All residents, next of kin, or legal guardian shall be advised within 30 days of changes made in the statement of residents' rights and responsibilities. Appropriate means shall be used to inform non-English speaking, deaf or blind residents of changes. (II)

65.25(3) Reserved.

65.25(4) Informed of health condition. Each resident or legal guardian shall be fully informed by a physician of the health and medical condition of the resident unless a physician documents reasons not to in the resident's record. (II)

65.25(5) Research. The resident or legal guardian shall decide whether a resident participates in experimental research. Participation shall occur only when the resident or guardian is fully informed and signs a consent form. (II, III)

Any clinical investigation involving residents must be sponsored by an institution with a human subjects review board functioning in accordance with the requirement of Public Law 93-348, as implemented by part 46 of Title 45 of the Code of Federal Regulations, as amended December 1, 1981 (45CFR 46). (II)

65.25(6) Resident work. Services performed by the resident for the facility shall be in accordance with the IPP. (II)

a. Residents shall not be used to provide a source of labor for the facility against the resident's will. Physician's approval is required for all work programs and must be renewed yearly. (II, III)

b. If the individual program plan requires activities for therapeutic or training reasons, the plan for these activities must be professionally developed and implemented. Therapeutic or training goals must be clearly stated and measurable and the plan shall be time limited and reviewed at least quarterly. (II, III)

c. A resident engaged in work programs in the ICF/PMI shall be paid wages commensurate with wage and hour regulations for comparable work and productivity. (II)

d. The resident shall have the right to employment options commensurate with training and skills. (II)

e. Residents performing work shall not be used to replace paid employees to fulfill staff requirements. (II)

65.25(7) Encouragement to exercise rights. Residents shall be encouraged and assisted throughout their period of stay to exercise resident and citizen rights. Residents may voice grievances and recommend changes in policies and services to administrative staff or to an outside representative of their choice free from interference, coercion, discrimination, or reprisal. (II)

65.25(8) Posting names. The facility shall post the name, telephone number, and address of the:

a. Long-term care resident's advocate/ombudsman; (II)

b. Survey agency; (II)

c. Local law enforcement agency; (II)

d. Care review committee members; (II)

e. Administrator; (II)

f. Members of the board of directors; (II)

g. Corporate headquarters; (II)

h. Iowa Protection and Advocacy Services, Inc. (II)

The text of Iowa Code section 135C.46 shall also be available to provide residents another course of redress. These items shall be posted in an area where residents and visitors can read them. (II)

65.25(9) Dignity preserved. Residents shall be treated with consideration, respect, and full recognition of their dignity and individuality, including privacy in treatment and in care of personal needs. (II)

a. Staff shall display respect for residents when speaking with, caring for, or talking about them as constant affirmation of the individuality and dignity of human beings. (II)

b. Schedules of daily activities shall allow maximum flexibility for residents to exercise choice about what they will do and when they will do it. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, entertainment, sleeping, eating, and times to retire at night and arise in the morning shall be elicited and considered by the facility. The facility shall make every effort to match nonsmokers with other nonsmokers. (II)

c. Residents shall not have their personal lives regulated beyond reasonable adherence to meal schedules, bedtime hours, and other written policies which may be necessary for the orderly management of the facility and as required by these rules; however, residents shall be encouraged to participate in recreational programs. (II)

d. Residents shall be examined and treated in a manner that maintains the privacy of their bodies. A closed door shall shield the resident from passers-by. People not involved in the care of a resident shall not be present without the resident's consent during examination or treatment. (II)

e. Privacy for each person shall be maintained when residents are being taken to the toilet or being bathed and while they are being helped with other types of personal hygiene, except as needed for resident safety or assistance. (II)

f. Staff shall knock and be acknowledged before entering a resident's room unless the resident is not capable of response. This does not apply under emergency conditions. (II)

65.25(10) Communications. Each resident may communicate, associate, and meet privately with persons of

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the resident's choice, unless to do so would infringe upon the rights of other residents. Each resident may send and receive personal mail unopened unless prohibited in the IPP which has explicit approval of the resident or legal guardian. Telephones consistent with ANSI standards 42CFR 405.1134(c) (10-1-86) shall be available and accessible for residents to make and receive calls with privacy. Residents who need help shall be assisted in using the telephone. (II)

Arrangements shall be made to provide assistance to residents who require help in reading or sending mail. (II)

65.25(11) Visiting policies and procedures. Subject to reasonable scheduling restrictions, visiting policies and procedures shall permit residents to receive visits from anyone they wish. Visiting hours shall be posted. (II)

a. Reasonable, regular visiting hours shall not be less than 12 hours per day and shall take into consideration the special circumstances of each visitor. A particular visitor(s) may be restricted by the facility for one of the following reasons:

- (1) The resident refuses to see the visitor(s). (II)
- (2) The visit would not be in accordance with the IPP. (II)

(3) The visitor's behavior is unreasonably disruptive to the functioning of the facility. (II)

Reasons for denial of visitation shall be documented in resident records. (II)

b. Decisions to restrict a visitor shall be reevaluated at least quarterly by the QMHP or at the resident's request. (II)

c. Space shall be provided for residents to receive visitors in comfort and privacy. (II)

65.25(12) Resident activities. Each resident may participate in activities of social, religious, and community groups as desired unless contraindicated for reasons documented by the attending physician or qualified mental health professional, as appropriate, in the resident's record. (II)

Residents who wish to meet with or participate in activities of social, religious or community groups in or outside the facility shall be informed, encouraged, and assisted to do so. (II)

Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, QMHP, or facility administrator for refusing permission. (II)

65.25(13) Resident property. Each resident may retain and use personal clothing and possessions as space permits and provided use is not otherwise prohibited in these rules. (II)

a. Residents shall be permitted to keep reasonable amounts of personal clothing and possessions for their use while in the facility. The personal property shall be kept in a secure location which is convenient to the resident. (II)

b. Residents shall be advised, prior to or at the time of admission, of the kinds and amounts of clothing and possessions permitted for personal use, and whether the facility will accept responsibility for maintaining these items, e.g., cleaning and laundry. (II)

c. Any personal clothing or possession retained by the facility for the resident shall be identified and recorded on admission and the record placed on the resident's chart. The facility shall be responsible for secure storage of

items. They shall be returned to the resident promptly upon request or upon discharge from the facility. (II)

65.25(14) Sharing rooms. Residents, including spouses staying in the same facility, shall be permitted to share a room, if available, if requested by both parties, unless reasons to the contrary are in the IPP. Reasons for denial shall be documented in the resident's record. (II)

65.25(15) Choice of physician and pharmacy. Each resident shall be permitted free choice of a physician and a pharmacy. The facility may require the pharmacy selected to use a drug distribution system compatible with the system currently used by the facility. (II)

481-65.26(135C) Incompetent residents. Each facility shall provide that all rights and responsibilities of incompetent residents devolve to the legal guardian when a hearing has been held and the resident is judged incompetent in accordance with state law. (II)

A facility is not absolved from advising incompetent residents of their rights to the extent the resident is able to understand them. The facility shall also advise the legal guardian, if any, and acquire a statement indicating an understanding of resident's rights. (II)

This rule is intended to implement Iowa Code sections 135C.14(8) and 135C.24.

481-65.27(135C) County care facilities. In addition to these rules, county care facilities licensed as intermediate care facilities for persons with mental illness must also comply with department of human services rules, 441-Chapter 37. Violation of any standard established by the department of human services is a Class II violation pursuant to Iowa Administrative Code 481-56.2(135C).

This rule is intended to implement Iowa Code section 227.4.

481-65.28(135C) Violations. Classification of violations is I, II and III, determined by the division using the provisions in Chapter 56, "Fining and Citations" to enforce a fine to cite a facility.

These rules are intended to implement Iowa Code sections 135C.4, 135C.6(2), 135C.6(3), 135C.7, 135C.8, 135C.14, 135C.14(2), 135C.14(8), 135C.16(2), 135C.23, 135C.24, 135C.25, 135C.31, and 227.4.

ARC 2195A

JOB SERVICE DIVISION[345]

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 96.11, the Commissioner of the Division of Job Service hereby gives Notice of Intended Action to amend Chapter 3, "Employer's Contribution and Charges," Chapter 4, "Claims and Benefits," and Chapter 5, "Benefit Payment Control," Iowa Administrative Code.

Subrule 3.40(3), paragraph "a," provides for the imposition of an unemployment insurance administrative contribution surcharge through calendar year 1994 at a

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percentage, rounded to the next highest one-hundredth of one percent, of the state taxable wage base which is equal in amount to one-tenth of one percent of the federal taxable wage base.

Subrule 3.60(2) provides for computing the amount of a penalty when an employer fails to file or files an insufficient unemployment insurance report.

Rule 4.58(96) defines the administrative areas of the voluntary shared work program. Specifically, the introductory paragraph defines the program and indicates that the employer administers the program. Subrule 4.58(1) defines the maximum 26-week length of the program. Subrule 4.58(2) defines seasonal employment which is ineligible for shared work. Subrule 4.58(3) establishes the criteria for modification of an approved plan. The criteria for denial or revocation of an approved plan is defined in subrule 4.58(4). The appeal rights of the employer are indicated in subrule 4.58(5).

Subrule 4.60(3), paragraph "b," subparagraph (4), is rescinded because 1991 Iowa Acts, House File 459, section 4, affirmed that Section 203(a)(7) of the federal Immigration and Nationality Act, which dealt with conditional entrant refugee aliens and their eligibility for unemployment insurance, is no longer applicable.

Subrule 5.7(6), paragraph "f," provides for the charging of an overpayment of unemployment benefits to an employer account. Specifically, the paragraph states that an employer's account is relieved of benefit charges attributable to an overpayment; however, a reimbursable employer's account is only relieved when the overpayment is recovered except when an overpayment of benefits is attributable to division error. An adjudication reversal, however, is not a division error.

Interested persons, governmental agencies, and associations may present written comments or statements on the proposed amendments not later than 4:30 p.m., August 28, 1991, to William J. Yost, Department of Employment Services, Division of Job Service, 1000 East Grand Avenue, Des Moines, Iowa 50319.

A public hearing will be held at 9:30 a.m. on August 28, 1991, at the above address. The proposed amendments are subject to revision after the Department considers all written and oral presentations. Persons who want to convey their views orally should contact Mr. William J. Yost at (515)281-4986 or at the above address.

These rules are intended to implement Iowa Code sections 96.5(10) as amended by 1991 Iowa Acts, House File 459, section 4; 96.7(12), paragraph "c"; 96.8(5) as amended by 1991 Iowa Acts, House File 459, section 6; 96.14(2) as amended by 1991 Iowa Acts, House File 459, section 11; and 96.36 as amended by 1991 Iowa Acts, House File 589.

ITEM 1. Amend subrule 3.40(3), paragraph "a," to read as follows:

a. For calendar years 1988 through 1994, each employer except a governmental entity and a nonprofit organization will have an administrative contribution surcharge added to the contribution rate. The administrative contribution surcharge shall be a percentage, rounded to the nearest next highest one-hundredth of one percent (.01%), of the taxable wage base in effect for the rate year following the computation date, which is equal to one-tenth of one percent (.1%) of the Federal Unemployment Tax Act (FUTA) taxable wage base in effect on the computation date.

ITEM 2. Amend subrule 3.60(2) to read as follows:

3.60(2) The amount of the penalty for a delinquent and or insufficient reports report shall be based on the total wages paid by the employer in the period for which the report was due, except that no the penalty shall not be less than \$10 for each the first delinquent report or each the first insufficient report not made sufficient within 30 days of a request to do so. The penalty shall not be less than \$25 for the second delinquent or insufficient report, and not less than \$50 for each subsequent delinquent or insufficient report, until four consecutive calendar quarters of reports are timely and sufficiently filed.

ITEM 3. Add rule 4.58(96) to read as follows:

345-4.58(96) Voluntary shared work. The voluntary shared work program provides that employers facing a temporary shortfall may reduce the work hours of employees in an affected unit and those employees will receive a portion of their regular job insurance benefits. The program is designed to reduce unemployment and stabilize the work force by allowing certain employees to collect job insurance benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding reducing in wages. Additional information may be obtained by contacting the voluntary shared work coordinator. The employer may apply to participate in the program by completing a shared work plan application which must be approved by the division. The employer shall submit the plan to the division 30 days prior to the proposed implementation date. The employer will administer the program in cooperation with the division. Participating employees will complete the employee information form and biweekly claim cards and return them to the employer who will submit them to the division. Administrative penalties in force during the duration of the plan will make an employee ineligible for the program. Child support obligations will be deducted and job insurance overpayments will be offset as they are for regular job insurance benefits.

4.58(1) A shared work plan will last no longer than 26 weeks from the date on which the plan is first effective. The minimum length of a plan is four weeks. An employing unit is eligible for only one plan during a 24-month period.

4.58(2) Employment is considered seasonal if the production or service provided by the employment is curtailed by at least 45 percent or ceases for a four-month or longer period on an annual basis due to climatic conditions.

4.58(3) A plan which has been approved may be modified at the discretion of the division. An employer seeking modification of an approved plan must demonstrate good cause as to why the modification is necessary and must demonstrate that the factors necessitating the modification were not foreseeable at the time the plan was submitted.

4.58(4) Approval of a plan may be denied or approval of a plan may be revoked at the discretion of the division if the plan and its actual operation do not meet all the requirements stated in Iowa Code section 96.36 including, but not limited to, the providing of false or misleading information to the division, unequal treatment of any employee in the affected unit, a reduction in fringe benefits resulting from participation in the program, or failure by the employer to monitor and administer the program.

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4.58(5) The employer may file in writing an appeal of a denial of approval of a plan or revocation of approval by the division within 30 days from the date the decision is issued. The employer's appeal will be forwarded to the appeals section so that a hearing may be scheduled before an administrative law judge.

ITEM 4. Rescind subrule **4.60(3)**, paragraph "b," subparagraph (4).

ITEM 5. Amend subrule **5.7(6)**, paragraph "f," to read as follows:

f. An overpayment to the claimant will cause the employer to be relieved of charges except when an employer who is required by law or by election to reimburse the ~~trust~~ *unemployment compensation* fund shall be charged with the benefits paid. The reimbursable employer shall receive credit only upon recovery of the overpayment from the claimant *except for those benefit charges which are determined to be incorrect because of an error by an individual engaged in the administration of Iowa Code chapter 96. Division of job service error shall be determined on the basis of the facts that caused the error; however, an adjudication reversing an allowance of benefits to a denial of benefits shall not be deemed a division of job service error. If a division error is determined, the reimbursable employer shall be relieved of all charges attributable to the error.*

ARC 2211A**LABOR SERVICES DIVISION[347]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 90A.7(3) and 17A.3(1), the Labor Commissioner hereby gives Notice of Intended Action to adopt a new Chapter 94, "Operations of Advisory Board," and Chapter 95, "Grant Applications and Awards," relating to operation of the Athletic Commissioner Amateur Boxing Grant Advisory Board and grant applications and awards.

The rules establish procedures for the conduct of meetings of the board and the procedures to be followed in an application for a grant award.

If requested by August 27, 1991, a public hearing will be held on August 30, 1991, at 9 a.m. in the office of the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa. Any interested person will be given the opportunity to make oral or written submissions concerning the proposed rules. Written data or arguments to be considered in adoption may be submitted by interested persons no later than August 20, 1991, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209.

The agency has determined that this Notice of Intended Action may have an impact on small business. The agency

has considered the factors listed in Iowa Code section 17A.31. The agency will issue a regulatory flexibility analysis as provided by Iowa Code section 17A.31 if a written request is filed by delivery or by mailing post-marked no later than August 27, 1991, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under the Act, or an organization of small businesses representing at least 25 persons which is registered with the Division of Labor Services under the Act.

These rules are intended to implement Iowa Code section 90A.7.

Adopt new Chapters 94 and 95 to read as follows:

CHAPTER 94**OPERATIONS OF ADVISORY BOARD**

347-94.1(90A) Scope. This chapter governs the conduct of business by the Iowa athletic commissioner amateur boxing grant advisory board (board). The board shall advise the athletic commissioner (commissioner) regarding the award of grants to organizations promoting amateur boxing in this state.

347-94.2(90A) Membership. The board is composed of six voting members; three from the Iowa chapter of the golden gloves association of America, appointed by the association, and three from the Iowa chapter of the United States amateur boxing federation, appointed by the federation.

347-94.3(90A) Time of meetings. The board shall meet at least semiannually. The commissioner shall establish the date of all meetings, and provide notice of all meeting dates, locations, and agenda. The commissioner shall schedule a meeting upon the receipt of a written request from a majority of the members of the board. The request shall state the reason for the meeting and the proposed agenda.

347-94.4(90A) Notification of meetings. Notice of meetings is given by posting and distributing the agenda. The agenda for each meeting will be posted at the office of the commissioner.

347-94.5(90A) Attendance and participation by the public. All meetings are open to the public. Persons who wish to address the board on a matter on the agenda should notify the commissioner at least three days before the meeting. Iowa Code section 21.4 requires a commission to give notice of its proposed agenda. Therefore, the commissioner discourages persons from raising matters not on the agenda. Persons who wish to address the board on a matter not on the agenda should file a request with the chairperson to place the matter on the agenda of a subsequent meeting.

347-94.6(90A) Quorum and voting requirements.

94.6(1) Quorum. Four members constitute a quorum.

94.6(2) Majority voting. All votes shall be determined by a majority of the board.

94.6(3) Voting procedures. The commissioner shall rule as to whether the vote will be by voice vote or roll call. A roll call vote shall be taken at the request of any member of the board.

LABOR SERVICES DIVISION[347](cont'd)

347--94.7(90A) Minutes, transcripts and recording of meetings.

94.7(1) Recordings. The commissioner shall record by mechanized means each meeting and shall retain the recording for at least one year. Recordings of closed sessions shall be sealed and retained at least one year.

94.7(2) Transcripts. Transcripts of meetings will not routinely be prepared. The commissioner will have transcripts prepared upon receipt of a request for a transcript and payment of a fee to cover its cost.

94.7(3) Minutes. The commissioner shall keep minutes of each meeting. Minutes shall be reviewed and approved by the board and maintained for at least five years. The approved minutes shall be signed by the commissioner.

CHAPTER 95

GRANT APPLICATIONS AND AWARDS

347--95.1(90A) Scope. This chapter establishes rules of the athletic commissioner (commissioner) for the distribution of revenues collected pursuant to Iowa Code section 90A.7(1), in excess of the amount expected to be needed to administer chapter 90A.

347--95.2(90A) Application process.

95.2(1) The commissioner shall announce the opening of the application process by public notice.

95.2(2) All amateur boxing organizations seeking grant funds must submit an application to the commissioner on forms provided by the commissioner.

95.2(3) Contents. Each application shall contain:

a. The name and address of the applicant and the telephone number of a contact person.

b. A plan of action which details how the awarded funds will be spent and what results and benefits are expected. The action plan shall include:

1. Grant goals, objectives, timeliness, responsible individuals, and evaluation. The grant results shall be quantifiable and measurable.

2. Establish an end result which is beneficial to the sport of amateur boxing.

3. Number of projected amateur boxing matches to be promoted by the applicant.

c. A budget detailing how the grant funds will be expended.

d. Assurances the applicant will comply with the conditions and procedures for grant administration.

e. A plan for evaluation.

f. Assurances the applicant will comply with the conditions for financial management.

95.2(4) Applications not containing the specified information or not received by the specified date may not be considered. All applications shall be submitted in accordance with instructions in the requests for proposals. The proposals shall be submitted to the commissioner.

347--95.3(90A) Grant process.

95.3(1) All applications will be reviewed by the board. The board will recommend and advise the commissioner who shall have the final discretion to award funds.

95.3(2) The commissioner shall notify successful applicants and shall provide to each of them a contract for signature. This contract shall be signed by an official with authority to bind the applicant and shall be returned to the commissioner prior to the award of any funds under this program.

95.3(3) If the applicant and the commissioner are unable to successfully negotiate a contract, the commissioner may withdraw the award offer.

95.3(4) Applications shall be received by May 1 of each calendar year for an award the following fiscal year. Payment will be processed within 60 days of a grant award by the commissioner.

95.3(5) Grants shall be awarded for a 12-month period and may be renewed for a second year.

347--95.4(90A) Evaluation. The grantee shall cooperate with the commissioner and periodically provide requested information to determine how the goals and objectives of the project are being met.

347--95.5(90A) Termination.

95.5(1) Cause. The contract may be terminated in whole or in part at any time before the date of completion, whenever it is determined by the commissioner that the grantee has failed to comply substantially with the conditions of the contract. The grantee shall be notified in writing by the commissioner of the reasons for the termination and the effective date. The grantee shall not incur new obligations for the terminated portion after the effective date of termination and shall cancel as many outstanding obligations as possible.

95.5(2) Responsibility of grantee at termination. Within 45 days of the termination, the grantee shall supply the commissioner with a financial statement detailing all costs up to the effective date of the termination. If the grantee expends money for other than specified budget items approved by the commissioner, the grantee shall return moneys for unapproved expenditures.

95.5(3) Appeals. Any grantee aggrieved by a final decision regarding a grant award may appeal the decision by notifying the commissioner in writing within ten days of the date of the decision. The commissioner shall issue a decision on the appeal within a reasonable time.

95.5(4) Refusal to issue ruling. The commissioner may refuse to issue a ruling or decision upon an appeal for good cause. Good cause includes, but is not limited to, the following reasons:

1. The appeal is untimely;

2. The appellant lacks standing to appeal;

3. The appeal is not in the required form or is based upon frivolous grounds;

4. The appeal is moot because the issues raised in the notice of appeal or at the hearing have been settled by the parties;

5. The termination of the grant was beyond the control of the department because it was due to lack of funds available for the contract.

347--95.6(90A) Financial management.

95.6(1) Financial documents. The grantee shall follow standards for financial records and procedures established by the commissioner.

95.6(2) Financial reporting. Within 90 days of the expiration or termination of a grant, the recipient shall submit to the commissioner:

a. A full disclosure of the status of grant expenditures compared to budgeted amounts on a line item basis.

b. Expenditures shall be reported on a line item basis and any expenditure exceeding 5 percent of the line item will require the grantee to submit an amended application to the commissioner for approval. This approval must accompany the close-out report to justify any positive 5 percent deviation.

95.6(3) Retention of records. All financial and programmatic records, supporting documents, statistical records, and other records of the grantee which are rele-

LABOR SERVICES DIVISION[347](cont'd)

vant to this rule shall be maintained for three years from the starting date of the grant agreement. This time period is extended if any litigation, claim, negotiation, audit, investigation, or other action involving the records has been started before the expiration of the three-year period. The extension is for one year past the completion of all actions and resolution of all issues which resulted in the extension of the period.

95.6(4) Access to records. The records required by this rule shall be accessible to the commissioner, the auditor of state, or their designees for the time required in subrule 95.5(3).

347--95.7(90A) Adjustments and collections.

95.7(1) Disallowances and adjustments. The closeout of a grant does not affect the commissioner's right to disallow costs and recover funds on the basis of an audit or other postgrant period review or the grantee's obligation to return any funds due as a result of unexpended funds, refunds, corrections or other transactions.

95.7(2) Collection. Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be due under the terms of the award constitute a debt to the state of Iowa. Amounts are due within 30 days of demand.

ARC 2201A**LABOR SERVICES DIVISION[347]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 91.6 and 17A.3(1), the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 130, "Community Right to Know," and Chapter 140, "Public Safety/Emergency Response Right to Know," Iowa Administrative Code.

The new rules clarify the relationship between a state and federal law.

If requested by August 27, 1991, a public hearing will be held on August 30, 1991, at 9 a.m. in the office of the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa. Any interested person will be given the opportunity to make oral or written submissions concerning the proposed rules. Written data or arguments to be considered in adoption may be submitted by interested persons no later than August 30, 1991, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.

The agency has determined that this Notice of Intended Action may have an impact on small business. The agency has considered the factors listed in Iowa Code section 17A.31. The agency will issue a regulatory flexibility analysis as provided in Iowa Code section 17A.31 if a written request is filed by delivery or by mailing post-marked no later than August 28, 1991, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under the Act, or an organization of small businesses representing at least 25 persons which is registered with the Division of Labor Services under the Act.

These rules will not necessitate additional annual expenditures exceeding \$100,000 by any political subdivision or agency or any contractor providing services to political subdivisions or agencies.

These rules are intended to implement Iowa Code section 30.7.

ITEM 1. Adopt rule 347--130.12(30,89B) to read as follows:

347--130.12(30,89B) Relationship to Emergency Planning and Community Right to know Act. The requirements of this chapter are in addition to those of the Iowa emergency response commission at *607--104.3(30). Information and forms required to be submitted pursuant to Sections 311 and 312 of the Emergency Planning and Community Right to know Act, 42 U.S.C. 11021 and 11022, shall be sent to the Emergency Response Commission, Division of Labor, 1000 East Grand Avenue, Des Moines, Iowa 50319. The federal Tier Two form is a mandatory reporting form under Section 312 (42 U.S.C. 11022).

ITEM 2. Adopt rule 347--130.13(30,89B) to read as follows:

347--130.13(30,89B) Information to county libraries. The commissioner will provide annually to the main library in the county seat city in each county a list of facilities and prevalent chemicals reported to the commissioner under Section 312 of the Emergency Planning and Community Right to know Act, 42 U.S.C. 11022. The information will include the facilities reporting the top 25 extremely hazardous chemicals, as determined on a state-wide basis. The report will be distributed by November 1 annually for the previous year's chemical inventories.

ITEM 3. Adopt rule 347--140.10(30,89B) to read as follows:

347--140.10(30,89B) Relationship to Emergency Planning and Community Right-to-know Act. The requirements of this chapter are in addition to those of the Iowa emergency response commission at *607--104.3(30). Information and forms required to be submitted pursuant to Sections 311 and 312 of the Emergency Planning and Community Right to know Act; 42 U.S.C. 11021 and 11022, shall be sent to the Emergency Response Commission, Division of Labor, 1000 East Grand Avenue, Des Moines, Iowa 50319. The federal Tier Two form is a mandatory reporting form under Section 312 (42, U.S.C. 11022).

*Noticed in ARC 2202A herein.

ARC 2224A

**LAW ENFORCEMENT
ACADEMY[501]**

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 80B.11, the Iowa Law Enforcement Academy gives Notice of Intended Action to amend Chapter 3, "Certification of Law Enforcement Officers," Iowa Administrative Code.

These rules are proposed to upgrade the "short course" curriculum to better meet the needs of the law enforcement officers who are eligible to attend the "short course" school. The upgrading of the short course curriculum will be beneficial to law enforcement and to the public.

Any interested person may make written comments or suggestions on these proposed amendments prior to August 27, 1991. Such written materials should be sent to the Director of the Iowa Law Enforcement Academy, P.O. Box 130, Camp Dodge, Johnston, Iowa 50131. Persons who wish to convey their views orally should contact the Iowa Law Enforcement Academy at (515)242-5357.

There will be a public hearing on these proposed amendments August 27, 1991, at 9:30 a.m. in the Conference Room at the Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

These rules are intended to implement Iowa Code section 80B.11.

The following amendments are proposed:

ITEM 1. Amend 501--3.3(80B)"2" to read as follows:

2. The short course, consisting of ~~200~~ 326 hours to be completed within a ~~10~~ 16-week period.

ITEM 2. Rescind rule 501--3.6(80B) and insert in lieu thereof the following:

501--3.6(80B) Curriculum for short course.

3.6(1) Skills--Traffic and patrol 64 hours

- a. Vehicle operations.
- b. Accident investigation.
- c. Radar.
- d. Traffic direction.
- e. Hazardous materials.
- f. Vehicle stops. (of which 2 hours must be night vehicle stops.)
- g. OWI enforcement.
- (1) Implied consent.
- (2) Chemical testing.
- (3) Intoxilyzer certification.
- h. Felony calls.

3.6(2) Skills--Investigative 16 hours

- a. Crime scene search and recording.
- b. Fingerprinting.

- c. Interviewing and interrogations.
- d. Photography.
- 3.6(3) Skills--General 140 hours**
 - a. Firearms/use of force (of which 6 hours must be night fire).
 - b. Defensive tactics.
 - c. First responder.
 - d. Physical fitness.
- 3.6(4) Legal and investigative 66 hours**
 - a. Criminal law.
 - b. Search and seizure.
 - c. Law of arrest.
 - d. Rules of evidence.
 - e. Confessions and admissions.
 - f. Motor vehicle law.
 - g. Juvenile law.
 - h. OWI (legal).
 - i. Narcotics law.
 - j. Death investigation.
 - k. Narcotics investigation.
 - l. Vice investigation.
 - m. Sexual abuse investigation.
- 3.6(5) Human relations and communications 24 hours**
 - a. Report writing.
 - b. Crisis intervention (including domestic abuse).
 - c. Minority relations.
 - d. Mandatory reporting (dependent adult and child).
 - e. AIDS.
 - f. Testifying in court.
- 3.6(6) Program administration 16 hours**
 - a. Registration and orientation.
 - b. Testing.
 - c. Graduation.
 - d. Miscellaneous.

TOTAL HOURS: 326

ARC 2229A

**NATURAL RESOURCE
COMMISSION[571]**

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 38, "Boating Registration and Numbering," Iowa Administrative Code.

This amendment would provide that vessels classed as authentically constructed native American style craft, historically styled craft, and vessels having valid U.S. Coast Guard documents as described in Iowa Code section 106.6A are exempted from displaying the required boat registration decals, registration number and passenger capacity number, as otherwise required in Iowa Code section 106.5.

NATURAL RESOURCE COMMISSION[571](cont'd)

Any interested person may make written suggestions or comments on the proposed amendment prior to August 28, 1991. Such written materials should be directed to the Law Enforcement Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034, or FAX (515)281-8895. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-4515 or at the enforcement offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on August 28, 1991, at 10 a.m. in the Fifth Floor East Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This rule is intended to implement the provisions of Iowa Code section 106.6A.

The following amendment is proposed.

Amend rule 571--38.1(106) by rescinding the last unnumbered paragraph and inserting in lieu thereof the following:

Authentically constructed native American style craft, historically styled craft, and vessels having valid U.S. Coast Guard documents as described in Iowa Code section 106.6A are exempted from displaying the required boat registration decals, registration number and passenger capacity number, as otherwise required in Iowa Code section 106.5.

ARC 2228A**NATURAL RESOURCE
COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 45, "Boat Motor Regulations," Iowa Administrative Code.

The amendment to paragraph 45.4(2)"b" removes Hawthorn Lake and Lake Miami from the list of artificial lakes over 100 acres which are exempted from the 10 horsepower motor limitation. These two artificial lakes will continue to be "unlimited horsepower - no wake speed" under Iowa Code section 106.31.

Any interested person may make written suggestions or comments on the proposed amendment prior to August 27, 1991. Such written materials should be directed to the Law Enforcement Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034, or FAX (515)281-8895. Persons who wish to convey their views orally should contact the Law En-

forcement Bureau at (515)281-4515 or at the enforcement offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on August 27, 1991, at 11 a.m. in the Fourth Floor West Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

This rule is intended to implement the provisions of Iowa Code section 106.31.

The following amendment is proposed.

Amend subrule 45.4(2), paragraph "b," by deleting subparagraphs (3) and (4) and renumbering the remaining subparagraphs accordingly.

ARC 2225A**NATURAL RESOURCE
COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 51, "Game Management Areas"; Chapter 52, "Wildlife Refuges"; Chapter 61, "State Parks and Recreation Areas"; and to create a new Chapter 105, "Deer Population Management Areas," Iowa Administrative Code.

The proposed amendments make the following changes and additions in the Iowa Administrative Code:

1. Establish the area known previously as Lake Darling State Park as Lake Darling State Recreation Area.
2. Change the area of Lake Darling State Park that is classified as a wildlife refuge.
3. Add Lake Darling State Recreation Area to those game management areas where special restrictions on hunting, trapping and weapon use are imposed.
4. Establish a new category of area management by creating special deer population management areas and providing for controlled hunting of deer.

Any interested person may make written suggestions or comments on the proposed amendments and rule making prior to August 28, 1991. Such written material should be directed to the Parks, Recreation and Preserves Division, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; FAX (515)281-8895; TTD (515)242-5967. Persons who wish to convey their views orally should contact the Division at (515)281-5918 or at the division office on the fourth floor of the Wallace State Office Building.

NATURAL RESOURCE COMMISSION[571](cont'd)

There will be a public hearing on August 28, 1991, at 7 p.m. in City Hall, Brighton, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

These rules are intended to implement Iowa Code sections 109.5, 109.6, 109.7, 109.39, 109.48, 111.3, and 455A.4 as amended by 1991 Iowa Acts, House File 577.

The following amendments and new chapter are proposed:

ITEM 1. Amend subrule 51.3(1) by adding a new paragraph:

e. Lake Darling recreation area. Hunting, trapping and use of weapons of any kind, except for the use of bow and arrow to take rough fish and except as provided in 571--61.6(3) and 571--Chapter 105, is prohibited.

ITEM 2. Amend subrule 52.1(1) by inserting after "Lake Darling, Washington County" the following:

1. That portion of the recreation area south and west of the main entrance road from Highway 1 and 78 to the south end of the modern campground.

2. That portion south of the east recreation area road from its intersection with the main entrance road to Honey Creek.

3. That area between the main entrance road and the south shore of Lake Darling starting at 7/8 mile from the intersection with Highway 1 and 78 and ending at the south end of the modern campground.

ITEM 3. Amend rule 571--61.2(111), definition of "Recreation areas", by adding in alphabetical order: "Lake Darling, Washington County";.

ITEM 4. Amend rule 571--61.6(111) by adding the following subrule:

61.6(3) Lake Darling Recreation Area, Washington County. Except for use of firearms for the taking of deer as provided in 571--Chapter 105, all conditions and limitations on use, hours, and prohibited acts set forth in Iowa Code chapter 111 and elsewhere in this chapter shall apply to Lake Darling Recreation Area. During the dates of deer hunting provided for in 105.4(1)"c," only persons engaged in deer hunting shall use the area.

ITEM 5. Create a new Chapter 105 as follows:

CHAPTER 105

DEER POPULATION MANAGEMENT AREAS

571--105.1(109) Purpose. The purpose of this chapter is to establish special deer population management areas on selected properties managed by the department to ensure the harvest of a specific number of deer to reduce economic and biological damage caused by high deer populations.

571--105.2(109) Definitions.

"Area" means recreation areas as designated in 571--61.2(111).

"Department" means department of natural resources.

571--105.3(109) Designated areas.

105.3(1) Lake Darling Recreation Area.

105.3(2) Reserved.

571--105.4(109) Conditions. The hunting of deer only shall be permitted subject to the following conditions, limitations and procedures.

105.4(1) At Lake Darling Recreation Area:

a. A harvest of 100 antlerless deer shall be the objective for 1991.

b. Every hunter must have in possession a 1991 paid deer gun hunting special antlerless deer only license valid only for Lake Darling Recreation Area.

c. The 75 special antlerless deer only licenses valid only for Lake Darling Recreation Area shall be issued for each deer gun season of December 7 through 11 and December 14 through 22 and shall be valid only for the season specified.

d. The 75 special licenses issued for each season will be issued on a first-come, first-served basis at the Lake Darling district office beginning at 8 a.m., October 7, 1991.

e. The special antlerless deer only licenses for Lake Darling Recreation Area shall cost \$25, shall be limited to one per person, and shall be issued to Iowa residents only.

f. Hunters holding a valid any-sex regular paid gun deer license for the December 14 through 22 season may convert that license to an antlerless only license valid only for the Lake Darling Recreation Area if the 75 special licenses have not been issued by December 2, 1991. Such conversion must be made by department personnel at the Lake Darling district office.

g. Only 10-, 12-, 16- or 20-gauge shotguns, shooting single slugs only, and flintlock and percussion cap lock muzzleloaded rifles or muskets of not less than .44 caliber nor larger than .775 caliber, shooting single projectiles only, will be permitted.

h. All licensees shall attend a special meeting prior to hunting in Lake Darling Recreation Area to become familiar with boundaries, location of private lands, safety areas around buildings, access points, objectives of the hunt and other aspects of hunting on a special deer population management area.

i. All licensees who are successful during the hunt must check their deer at the designated headquarters prior to leaving the area.

105.4(2) Reserved.

These rules are intended to implement Iowa Code sections 109.6 and 109.39.

ARC 2231A

NATURAL RESOURCE
COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455A.5(6)"a," the Natural Resource Commission hereby gives Notice of Intended Action to adopt a new Chapter 65, "Fireworks Displays--State Parks and Recreation Areas," Iowa Administrative Code.

NATURAL RESOURCE COMMISSION[571](cont'd)

The new chapter establishes a fireworks permit system to authorize the issuance of permits to use or display fireworks in state parks and recreation areas.

Any interested person may make written suggestions or comments on the proposed new chapter prior to August 27, 1991. Such written materials should be directed to the Park Management Bureau, attention Nancy Exline, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; FAX(515)281-8895. Persons who wish to convey their views orally should contact the Park Management Bureau at (515)281-6158; TDD (515)242-5967 or at the Park Management Bureau Offices on the Fourth Floor of the Wallace State Office Building.

Also, there will be a public hearing on August 27, 1991, at 10 a.m. in the Fifth Floor East Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

These rules are intended to implement Iowa Code section 111.42 as amended by 1991 Iowa Acts, Senate File 134.

The following new chapter is proposed:

CHAPTER 65

FIREWORKS DISPLAYS--
STATE PARKS AND RECREATION AREAS

571--65.1(111) Entities eligible for permits. Permits shall be issued only to qualified entities such as political subdivisions of the state of Iowa; community or civic organizations such as Chambers of Commerce; Junior Chambers of Commerce (Jaycees); Rotary Clubs; Elks Lodge, and similar fraternal benefit associations or societies. Permits will not be issued to individuals. Permits are not transferable to another entity and do not relieve the sponsoring entity from obtaining any other permits required by the state or its political subdivisions.

571--65.2(111) Application procedure.

65.2(1) At least 30 days prior to the scheduled fireworks display the sponsoring entity shall submit an application to the park management bureau of the department of natural resources (DNR). Application forms shall be furnished by the DNR. Submission of an application does not guarantee issuance of a permit by the DNR.

65.2(2) The application shall be accompanied by a bond or certificate of insurance naming the applicant and the DNR as insured in the sum of not less than \$1,000,000. The department of natural resources may, at its discretion, require a greater amount. The bond or insurance shall insure to the use and benefit of the DNR or any person who suffers damage either to person or property by reason of the display of fireworks covered by the permit.

65.2(3) The sponsoring entity shall certify in the application that the fireworks display will be conducted by a competent operator. The location of the display shall be determined by the department of natural resources representative in charge of the area.

571--65.3(111) Fireworks display procedures.

65.3(1) The sponsoring entity must take adequate safety precautions to ensure that persons not actively involved in conducting the display remain a safe distance from the firing area and any areas containing set pieces.

65.3(2) The DNR representative in charge of the area in which the display is being conducted or any state peace officer may halt any display when the character, location, weather or firing of the display makes it hazardous to property or dangerous to any person or persons.

65.3(3) Any fireworks that remain unfired after the display is concluded shall be immediately disposed of by the operator or the sponsoring entity in a way safe for the particular type of fireworks remaining.

65.3(4) The sponsoring entity shall make arrangements for fire fighting equipment and emergency medical services to be on the scene at all times during the firing of the display.

65.3(5) The sponsoring entity is totally responsible for cleanup of the fireworks display site at the conclusion of the display.

These rules are intended to implement Iowa Code section 111.42 as amended by 1991 Iowa Acts, Senate File 134.

ARC 2222A

PROFESSIONAL LICENSURE
DIVISION[645]

BOARD OF OPTOMETRY EXAMINERS

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 258A.3, the Board of Optometry Examiners hereby gives Notice of Intended Action to amend Chapter 180, "Board of Optometry Examiners," and adopt Chapter 186, "Agency Procedure for Rule Making," Chapter 187, "Declaratory Rulings," and Chapter 188, "Petitions for Rule Making," Iowa Administration Code.

The proposed rules add new definitions, amend subrule 180.5(5) to comply with 1991 Iowa Acts, Senate File 188; delete fees for branch offices; require CPR training for continuing education, clarify procedures for informal settlement of statement of charges; and adopt the uniform rules of agency procedure for rule making, declaratory rulings and petitions for rule making.

Any interested person may make written comments on the proposed amendments no later than August 27, 1991, addressed to Barbara Charls, Professional Licensure, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The proposed amendments are intended to implement Iowa Code sections 154.1, 258A.2, and 258A.5 and Iowa Code chapter 17A.

The following amendments are proposed.

ITEM 1. Add new definitions to rule 645--180.1(154) as follows:

"Therapeutically certified optometrist" means an optometrist who is licensed to practice optometry in Iowa and who is certified by the board of optometry examiners

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

to use eye-related topical pharmaceutical agents, oral antimicrobial agents, oral antihistamines, oral antiglaucoma agents, oral analgesic agents, and may remove superficial foreign bodies from the human eye and adnexa.

"Diagnostically certified optometrist" means an optometrist who is licensed to practice optometry in Iowa and who is certified by the board of optometry examiners to use cycloplegics, mydriatics and topical anesthetics as diagnostic agents topically applied to determine the condition of the human eye for proper optometric practice or referral for treatment to a person licensed under chapter 148 or 150A.

ITEM 2. Rescind and reserve rule 645--180.4(154).

ITEM 3. Amend subrule 180.5(5), paragraph "c," first sentence, as follows:

c. The board also requires that all therapeutically certified optometrists, prior to the utilization of ~~topical and oral antiglaucoma agents, oral and antimicrobial agents and oral analgesic agents, pharmaceutical agents authorized by Iowa Code chapter 154,~~ shall complete an additional 44 hours of education with emphasis on treatment and management of glaucoma and use of oral pharmaceutical agents for treatment and management of ocular diseases, provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation of the United States Department of Education, and approved by the board of optometry examiners.

ITEM 4. Rescind subrule 180.10(7) in its entirety.

ITEM 5. Rescind and reserve rule 645--180.11(17A).

ITEM 6. Amend subrule 180.12(1) by adding new paragraph "c" as follows:

c. Effective May 1, 1992, at least four hours of continuing education per biennium shall be obtained by diagnostically and therapeutically certified optometrists in cardiopulmonary resuscitation (CPR). A licensee who has current certification in CPR by the American Red Cross (Community CPR), the American Heart Association (Module C for health care providers) or an equivalent organization shall be deemed to meet this requirement.

ITEM 7. Rescind rule 645--180.104(258A) in its entirety and insert the following in lieu thereof:

645--180.104(154) Alternative procedure and settlements.

180.104(1) A disciplinary hearing before the licensing board is an alternative to the procedure provided in Iowa Code sections 147.58 to 147.71.

180.104(2) Informal settlement--parties.

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

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

180.104(3) Informal settlement--waiver of notice and opportunity to be heard. Consent to negotiation by the respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during informal settlement negotiation. Thereafter, the prosecut-

ing attorney is authorized to discuss informal settlement with the board's designee.

180.104(4) Informal settlement--board approval. All informal settlements are subject to approval of a majority of the full board. No informal settlement shall be presented to the board for approval except in the final, written form executed by the respondent. If the board fails to approve the informal settlement, it shall be of no force or effect to either party.

180.105(5) Informal settlement--disqualification of designee. A board member who is designated to act in negotiation of an informal settlement is not disqualified from participating in the adjudication of the contested case.

ITEM 8. The following new chapters are proposed:

CHAPTER 186

AGENCY PROCEDURE FOR RULE MAKING

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

645--186.3(17A) Public rule-making docket.

186.3(2) Anticipated rule making. In lieu of the words "(commission, board, council, director)", insert "Board of Optometry Examiners".

645--186.4(17A) Notice of proposed rule making.

186.4(3) Notices mailed. In lieu of words "(specify time period)", insert "one year".

645--186.5(17A) Public participation.

186.5(1) Written comments. In lieu of the words "(identify office and address)", insert "Board of Optometry Examiners, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

645--186.6(17A) Regulatory flexibility analysis.

186.6(3) Mailing list. In lieu of the words "(designate office)", insert "Board of Optometry Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

645--186.10(17A) Exemptions from public rule-making procedures.

186.10(2) Categories exempt. In lieu of the words "(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them)", insert the following:

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

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

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

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

645--186.11(17A) Concise statement of reasons.

186.11(1) General. In lieu of the words "(specify the office and address)", insert "Board of Optometry Examiners, Professional Licensure, Iowa Department of Public

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

645--186.13(17A) Agency rule-making record.**186.13(2) Contents.**

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

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

**CHAPTER 187
DECLARATORY RULINGS**

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

645--187.1(17A) Petition for declaratory ruling. In lieu of the words "(designate office)", insert "Board of Optometry Examiners, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

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

**BEFORE THE
BOARD OF OPTOMETRY EXAMINERS**

645--187.3(17A) Inquiries. In lieu of the words "(designate official by full title and address)", insert "the Optometry Board Administrator, Professional Licensure, Lucas State Office Building, Des Moines, Iowa 50319-0075".

**CHAPTER 188
PETITIONS FOR RULE MAKING**

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

645--188.1(17A) Petition for rule making. In lieu of the words "(designate office)", insert "Board of Optometry Examiners, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

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

**BEFORE THE
BOARD OF OPTOMETRY EXAMINERS**

645--188.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Optometry Board Administrator, Professional Licensure, Lucas State Office Building, Des Moines, Iowa 50319-0075.

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

ARC 2212A

**PROFESSIONAL LICENSURE
DIVISION[645]**

BOARD OF PODIATRY EXAMINERS

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Podiatry Examiners hereby gives Notice of Intended Action to amend Chapter 220, "Podiatry Examiners," and adopt Chapter 227, "Petitions for Rule Making," and Chapter 228, "Agency Procedure for Rule Making," Iowa Administrative Code.

The proposed amendments are to clarify settlement procedures and to adopt uniform rules on petitions for rule making and procedures for rule making.

Any interested person may make comments on the proposed amendments not later than August 27, 1991, addressed to Marilyn Ubaldo, Professional Licensure, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The proposed amendments are intended to implement Iowa Code sections 17A.10, 17A.3(1)"b" and 17A.7.

ITEM 1. Rescind rule 220.204(258A) and insert the following in lieu thereof:

645--220.204(17A,258A) Alternative procedure and settlement.

220.204(1) A disciplinary hearing before the licensing board is an alternative to the procedure provided in Iowa Code sections 147.58 to 147.71.

220.204(2) Informal settlement--parties.

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

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

220.204(3) Informal settlement--waiver of notice and opportunity to be heard. Consent to negotiation by the respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 during informal settlement negotiation. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board's designee.

220.204(4) Informal settlement--board approval. All informal settlements are subject to approval of a majority of the full board. No informal settlement shall be presented to the board for approval except in final, written form executed by the respondent. If the board fails to approve the informal settlement, it shall be of no force or effect to either party.

220.204(5) Informal settlement--disqualification of designee. A board member who is designated to act in

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

negotiation of an informal settlement is not disqualified from participating in the adjudication of the contested case.

This rule is intended to implement Iowa Code section 17A.10 and chapter 258A.

ITEM 2. Adopt a new 645--Chapter 227 as follows:

CHAPTER 227

PETITIONS FOR RULE MAKING

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

645--227.1(17A) Petition for rule making. In lieu of the words "(Designate office)", insert "Board of Podiatry Examiners, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075."

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

BEFORE THE
BOARD OF PODIATRY EXAMINERS

645--227.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Podiatry Board Administrator, Professional Licensure, Lucas State Office Building, Des Moines, Iowa 50319-0075.

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

ITEM 3. Adopt a new 645--Chapter 228 as follows:

CHAPTER 228

AGENCY PROCEDURE FOR RULE MAKING

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

645--228.3(17A) Public rule-making docket.

228.3(2) Anticipated rule making. In lieu of the words "(commission, board, council, director)", insert "Board of Podiatry Examiners".

645--228.4(17A) Notice of proposed rule making.

228.4(3) Notices mailed. In lieu of the words "(specify time period)", insert "one year".

645--228.5(17A) Public participation.

228.5(1) Written comments. In lieu of the words "(identify office and address)", insert "Board of Podiatry Examiners, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075".

645--228.10(17A) Exemptions from public rule-making procedures.

228.10(2) Categories exempt. In lieu of the words "(List here narrowly drawn classes of rules where such an exemption is justified and a brief statement of the reasons for exempting each of them)", insert the following:

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

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

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

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

645--228.11(17A) Concise statement of reasons.

228.11(1) General. In lieu of the words "(specify the office and address)", insert "Board of Podiatry Examiners, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075."

645--228.13(17A) Agency rule-making record.

228.13(2) Contents.

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

These rules are intended to implement Iowa Code sections 17A.3 to 17A.5.

ARC 2204A

PROFESSIONAL LICENSURE
DIVISION[645]

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 135F.6, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 260, "Respiratory Care Practitioners," Iowa Administrative Code.

These amendments set a limit on the length of time applications which do not meet the minimum criteria must be kept on file; clarify continuing education procedures; add provisions for reinstatement of a lapsed license; post-approval of continuing education programs and self-study credit for program presenters.

Any interested person may make written comments on the proposed amendments on or before August 27, 1991. Comments should be addressed to Harriett L. Miller, Professional Licensure, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rules are intended to implement Iowa Code chapter 135F.

The following amendments are proposed:

ITEM 1. Amend rule 645--260.5 by adding the following new subrule:

260.5(4) Applications for license which do not meet the minimum criteria for licensure shall be retained by the bureau of professional licensure for a maximum of five years from the date the application was received. Persons whose application for license is more than five years old shall submit a new application and fee(s).

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Applicants who by January 31 each year submit a written request to the board to keep the application current will not need to reapply.

ITEM 2. Amend subrule 260.7(4) as follows:

260.7(4) If the renewal fees are not received by the respiratory care office before March 1, an application for reinstatement must be filed with the respiratory care office with reinstatement fee, renewal fee, penalty fee; and submit evidence of one of the following:

a. The full-time practice of respiratory care in another state of the United States or District of Columbia and completion of continuing education for each year of inactive status substantially equivalent as determined by department to that required under these rules; or

b. Completion of a total number of hours of accredited continuing education computed by multiplying 15 by the number of years the inactive status has been in effect for such applicant, not to exceed 75 hours; or

c. Successful completion of the approved entry level examination conducted within one year prior to filing of the application for reinstatement; or

d. Successful completion of a minimum 75-hour refresher course from a school accredited by the joint review committee for respiratory care education within one year prior to filing of the application for reinstatement.

ITEM 3. Amend rule 645--260.10 by adding the following new subrule:

260.10(8) Program presenters will not receive continuing education credit for programs presented. Presenters may request independent study credit for preparation.

ITEM 4. Amend subrule 260.13(2) as follows:

260.13(2) Inactive practitioners who make application within 30 days after the certificate for inactive status expires, for whom a waiver has been granted and who wish to reinstate the license, will be required to pay the current renewal fee and reinstatement fee when applying for reinstatement of an inactive license. Continuing education requirements for the period of time of an inactive license are not waived.

ITEM 5. Add new subrules 260.15(3) and 260.15(6) and renumber 260.15(3) and 260.15(4) as follows:

260.15(3) Postapproval of activities. A licensee seeking credit for attendance and participation in an educational activity which was not conducted by an accredited sponsor nor otherwise approved shall submit to the board, within 30 days after completion of such activity, a request for credit. This shall include a brief resumé of the activity, its dates, subjects, instructors and their qualifications, and the number of credit hours requested therefor. Within 180 days after receipt of such application the committee shall advise the licensee in writing by ordinary mail whether the activity is approved and the number of hours allowed therefor. A licensee not complying with the requirements of this subrule may be denied credit for such activity.

260.15(3)(4) Report of sponsors and retention of records. Each sponsor of an approved continuing education program shall submit a list of the names attendees, license numbers of the attending licensed respiratory care practitioners and the number of continuing education hours earned within 30 days after the program is completed to the respiratory care office. The licensee shall maintain a record of verification for attendance for at least four years from the date of completion of the continuing education program.

260.15(4)(5) Accreditation of sponsors. An educational institution, i.e., merged area school, university, or hospital or organization, not previously accredited by the department, which desires accreditation as a sponsor of courses, programs, or other continuing education activities shall apply for accreditation to the department stating its education history relating to respiratory care for the preceding two years, including approximate dates, subjects offered, total hours of instruction presented and the names of instructors. All accredited sponsors shall report to the department in writing the education programs conducted during the preceding calendar year.

260.15(6) Report of licensee. Each licensee shall file, if requested, a certificate of attendance form signed by the educational institution or organization sponsoring the continuing education. The report shall be sent to the Respiratory Care Advisory Committee, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ARC 2221A

**PUBLIC HEALTH
DEPARTMENT[641]**

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 136A.5, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 4, "Birth Defects Institute," Iowa Administrative Code.

The following changes are proposed:

1. Add congenital adrenal hyperplasia (CAH) to the newborn screening tests.

2. Amend the rules governing budget and program review, fees, and billing.

A public hearing will be held on August 27, 1991, from 3 p.m. until 5 p.m. in the Third Floor Conference Room of the Lucas State Office Building. Any person interested in submitting written comments may do so on or before August 27, 1991, addressed to David Fries, Iowa Department of Public Health, 321 East 12th Street, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code section 136A.5.

ITEM 1. Amend 641-4.1(136A) as follows:

641-4.1(136A) Newborn screening policy. It shall be the policy of the state of Iowa that all newborns shall be tested for hypothyroidism, phenylketonuria (PKU), galactosemia, branched chain ketoacidemia (MSUD), and hemoglobinopathies, and congenital adrenal hyperplasia (CAH).

ITEM 2. Amend subrule 4.5(2) as follows:

4.5(2) Reports of presumptive positive abnormal results are made immediately by telephone to the attending consulting physician who then notifies the attending phy-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

sician, and the metabolic screening program of the birth defects institute. The report is to be followed within 24 hours by ~~confirmatory letters a written report~~ to the attending physician, and birthing facility, ~~and a copy to the birth defects institute.~~

ITEM 3. Amend subrule 4.5(4) as follows:

4.5(4) The central laboratory shall submit required reports to the birth defects institute. Those reports shall include:

a. Monthly activity report.

(1) Number of infants tested by hospital or birthing facility.

(2) Number of repeat tests by hospital or birthing facility.

(3) Number of presumptive positive results by test.

(4) Number of confirmed positive results by test.

b. Quarterly fiscal report identifying all expenditures and revenues.

c. Annual report detailing screening activity, fiscal accounting and educational activity.

Sixty days prior to the end of the fiscal year ~~the central laboratory all activities associated with this program~~ (central laboratory, consulting physician, and fiscal agent) shall submit a combined program proposal and budget to the Iowa department of public health for the birth defects institute for the coming year.

d. The Iowa department of public health shall annually review and determine the fee to be charged for all activities associated with this program (central laboratory, consulting, physician, and fiscal agent). The review and fee determination will be completed at least one month prior to the beginning of the fiscal year.

ITEM 4. Amend 641-4.6(136A) as follows:

641-4.6(136A) **Expanded MSAFP testing program.** Expanded Maternal Serum Alpha-Fetoprotein screening will be available on a voluntary basis. If patients desire this screening test, specimens shall be submitted by their physicians to the central laboratory of the birth defects institute. A serum or clotted blood specimen shall be collected during 15 to 18 weeks of pregnancy, accompanied by a standard test request form, all contained in a prepaid specimen kit approved for the program by the birth defects institute and submitted to the central screening laboratory.

4.6(1) The central laboratory shall test specimens within five working days of receipt.

~~Reports Results of elevated abnormal expanded MSAFP are made immediately by telephone to the attending physician and to the consulting physician, to be, who then notifies the attending physician. This is followed within 24 hours by a confirmatory letter written report to the attending physician. with a copy also going to the birth defects institute.~~

The central laboratory shall submit required reports to the birth defects institute. These reports shall include:

a. Monthly activity report.

(1) Number of initial tests.

(2) Number of repeat tests.

(3) Number of positive results.

b. Quarterly fiscal report identifying all expenditures and revenues.

c. Annual report detailing screening activity, fiscal accounting and educational activity.

4.6(2) Sixty days prior to the end of the fiscal year ~~the central laboratory all activities associated with this pro-~~

~~gram (central laboratory, consulting physician, and fiscal agent), in cooperation with the consulting physician, shall submit the laboratory portion of a combined program proposal and budget to the Iowa department of public health for the birth defects institute for the coming year. This proposal will detail analytical, technical, administrative and educational aspects of the program. The proposal shall also include a budget and a cost based per patient fee. The central laboratory shall have available for review a written quality assurance program covering all aspects of its expanded MSAFP screening activity.~~

The Iowa department of public health shall annually review and determine the fee to be charged for services provided by the birth defects institute. The review and fee determination will be completed at least one month prior to the beginning of the fiscal year.

The central laboratory shall act as fiscal agent for program charges. The charges will encompass analytical, technical, administrative, educational and follow-up costs for the screening program.

4.6(3) A consulting physician shall be designated by the birth defects institute in collaboration with the central laboratory.

The consulting physician shall be available to provide interpretation of test results and consultation to attending physicians.

The consulting physician shall submit a required report to the birth defects institute. That report shall be submitted semiannually and shall include:

a. Number and type of outcomes of presumptive positive abnormal expanded MSAFP.

b. Consultative activity.

c. Educational activity.

d. Fiscal report identifying expenditures.

The consulting physician will develop and provide professional educational presentations as necessary.

Sixty days prior to the end of the fiscal year ~~all activities associated with this program (central laboratory, consulting physician, and fiscal agent) the consulting physician, in cooperation with the central laboratory, shall submit the consulting portion of a combined program proposal and budget to the Iowa department of public health for the birth defects institute for the coming year. which will detail consultative, follow up and administrative aspects of the program.~~

The Iowa department of public health shall annually review and determine the fee to be charged for services provided by the birth defects institute. The review and fee determination will be completed at least one month prior to the beginning of the fiscal year.

ITEM 5. Amend 641-4.7(136A) as follows:

641-4.7(136A) **Regional genetic consultation service patient fees.** A ~~uniform fee sliding fee scale~~ shall be established for patients attending genetic counseling clinics. Fees charged at regional genetic consultation service (R.G.C.S.) clinics are based upon hourly wages of professional (medical geneticists, regional consultations, support) and clerical staff, travel and supply costs associated with clinic service.

ITEM 6. Rescind rules 641-4.9(136A) and 4.10(136A) and insert the following:

641-4.9(136A) **Billable services.** Families/clients seen in the regional genetic consultation service clinics will have bills submitted to third-party payers where applicable. Families/clients who do not have third-party cov-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

erage will be billed on a sliding fee scale. The sliding fee scale will be established using the federal government (Community Service Administration) poverty guidelines. The birth defects advisory committee will approve the sliding fee guidelines on an annual basis. Billing will be done by the Iowa department of public health staff or its designee. Payments received from receipts of service based on the sliding fee scale or from third-party payers shall be used to support the birth defects institute.

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

ARC 2208A

PUBLIC HEALTH
DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 135.11(16), the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 79, "Public Health Nursing," Iowa Administrative Code.

The following changes are proposed:

1. Allow the agency an additional month for completion of the agency evaluation.
2. Reimburse agencies at the charge or cost of services, whichever is lower.
3. Nursing services will not be provided if there is potential physical danger to the nurse.

A public hearing will be held on August 27, 1991, from 3 p.m. until 5 p.m. in the Third Floor Conference Room of the Lucas State Office Building. Any person interested in submitting written comments may do so on or before August 27, 1991, addressed to David Fries, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement Iowa Code section 135.11(15).

The following amendments are proposed.

Amend 641--Chapter 79 as follows:

Amend subrule 79.4(2), paragraph "a," as follows:

a. The local board shall evaluate or be responsible to ensure that agencies evaluate the public health nursing programs according to written objectives. This portion is to be completed within ~~three~~ *four* months of the end of the agency's fiscal year.

Amend subrule 79.4(5), paragraph "b," as follows:

b. That every agency receiving public health nursing appropriations will have completed an annual cost analysis according to the Health Care Financing Administration Cost Report or an alternative cost report approved by the department. A full fee and a sliding fee scale shall be established and used for those persons able to pay all or a part of the ~~cost~~ *charge* of service. Income and resources shall be considered in the application of the sliding fee scale. Income generated by resources shall be considered

income not resources. Such sliding fee scales shall be used as guidelines with exceptional circumstances defined in agency policy and implemented in a consistent manner with the patient or client.

Amend rule 641--79.6(135) as follows:

641--79.6(135) Services billable to state grant funds. The state grant funds shall be billed for nursing services at the *charge or cost of disease and disability services, whichever is lower*, as determined by the current Health Care Financing Administration Cost Report or an *alternative cost report approved by the department*. ~~not~~ *The state grant funds will not* reimbursed by third-party payers ~~or~~ *nor* pay the portion not paid by the recipient on the sliding fee scale. ~~Third party payers shall be billed first.~~ *The state grant funds may also be filled at the cost for health promotion services as determined by the Health Care Financing Administration Cost Report or an alternative cost report approved by the department.* Cost information or charge fees may be submitted to the public health nursing bureau on a quarterly basis to request a revision in the contract. State grant funds may be used for public health nursing health promotion activities described in the Iowa Code and the Iowa Administrative Code. The specific process for expenditure and vouchering of state funds will be defined in the administrative contract. For agencies not using the Health Care Financing Administration Cost Report, no more than 5 percent of state funds received can be used for administrative expense.

Amend rule 641--79.8(135), introductory paragraph, as follows:

641--79.8(135) Right to appeal. Whenever an agency denies, reduces or terminates nursing service against the wishes of the client or patient, the agency shall notify the individual of the action, the reason for the action, and of their right to appeal. *Services shall not be provided during the appeal process if there is potential physical danger to the nurse.*

ARC 2207A

PUBLIC HEALTH
DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 135.11(16) and 17A.4, the Department of Public Health gives Notice of Intended Action to adopt a new Chapter 174, "Agency Procedure for Rule Making," Iowa Administrative Code.

This chapter will comply with Iowa Code section 17A.4 and the agency procedure for rule making segment of the Uniform Administrative Rules which is printed in the first volume of the Iowa Administrative Code.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

No public hearing will be held. Interested persons may make written comment by August 27, 1991, to Carolyn S. Adams, Iowa Department of Public Health, Fourth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0083.

These rules are intended to implement Iowa Code chapter 135 and section 17A.4.

The following new chapter is proposed:

**CHAPTER 174
AGENCY PROCEDURE FOR RULE MAKING**

The department of public health proposes to adopt the agency procedure for rule making segment of the Uniform Administrative Rules which is printed in the first volume of the Iowa Administrative Code with the following amendments:

641--174.3(17A) Public rule-making docket.

174.3(2) Anticipated rule making. In lieu of the words "(commission, board, council, director)" insert "director".

641--174.4(17A) Notice of proposed rule making.

174.4(3) Notices mailed. In lieu of the words ("specify time period)" insert "one calendar year".

641--174.5(17A) Public participation.

174.5(1) Written comments. Strike the words "(identify office and address) or".

641--174.6(17A) Regulatory flexibility analysis.

174.6(3) Mailing list. In lieu of the words "(designate office)" insert, "Director's Office, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319".

641--174.11(17A) Concise statement of reasons.

174.11(1) General. In lieu of the words "(specify the office and address)" insert "Director's Office, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319".

641--174.13(17A) Agency rule-making record.

174.13(2) Contents. Amend paragraph "c" by inserting "director" in lieu of "(agency head)".

ARC 2220A

**PUBLIC HEALTH
DEPARTMENT[641]**

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 135.11(13) and 135.72, the Iowa Department of Public Health hereby gives Notice of Intended Action to rescind Chapter 202 and to adopt in lieu thereof a new Chapter 202, "Certificate of Need Program," Iowa Administrative Code.

This new chapter is consistent with Iowa Code chapter 135 as amended by 1991 Iowa Acts, House File 668.

General changes made to Chapter 202 include the following:

References to health system agencies, which no longer exist, have been deleted; and portions of the chapter that had sunset provisions which have expired were also deleted.

A definition for organ transplantation service has been added.

Mobile health services are now reviewable and an explanation of the elements that determine review has been added in subrule 202.3(4).

A public hearing on the Notice of Intended Action will be held on August 27, 1991, at 10 a.m. in the Lucas State Office Building, Fourth Floor Conference Room, Des Moines, Iowa.

Any persons may submit written comments on or before August 27, 1991, addressed to Leona Ringgenberg, Office of Health Planning, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The proposed rules are intended to implement Iowa Code chapter 135 as amended by 1991 Iowa Acts, House File 668.

Rescind existing 641--Chapter 202 and insert the following in lieu thereof:

**CHAPTER 202
CERTIFICATE OF NEED PROGRAM**

641--202.1(135) Definitions.

202.1(1) "Any expenditure in excess of three hundred thousand dollars" as defined in Iowa Code section 135.61(18) "e" means new capital expenditures and new personnel necessary to operate the service for a year.

202.1(2) "Appropriate geographic service area" as the term applies to defining affected persons in Iowa Code section 135.61(1)"c" shall be defined as follows:

a. For applications regarding hospitals, hospitals located in the same county and in Iowa counties contiguous to the county wherein the applicant hospital's proposed project will be located.

b. For applications regarding nursing facilities, other nursing facilities located within the county the applicant will be serving.

c. For applications regarding long-term care facilities serving mentally retarded, developmentally disabled clients, other providers of long-term care to the mentally retarded, developmentally disabled located within the same district. These districts are designated by the department.

d. For applications sponsored by other than the above mentioned hospitals or health facilities, notice shall be sent to those providers within the same county who offer similar service or might logically be viewed as potential providers of such service.

e. For applications regarding the University of Iowa Hospitals and Clinics, the entire state of Iowa shall be the appropriate geographic service area.

Publication of acceptance of an application from the University of Iowa Hospitals and Clinics in the paid notice section of the Des Moines Register shall constitute sufficient notification for purposes of Iowa Code section 135.66(2).

202.1(3) "Bed capacity" means:

a. Designed bed capacity means the number of beds the facility was originally designed for in architectural plans.

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b. Usable bed capacity means the number of beds available for patient care excluding that portion of the "designed capacity" which cannot be used as an inpatient bed area by adding staff or movable equipment. For purposes of Iowa Code section 135.61(18)"d," usable beds will be the bed capacity against which a permanent change is measured. Determination of the usable beds shall be made by the department as a result of the facility's submitting a number to the department in its annual report for hospitals and related facilities. Usable beds will be categorized in the following ways:

Acute	Long-Term
Medical/surgical	Nursing care (NF)
ICU	Intermediate care/mental
CCU	retardation (ICF/MR)
Pediatric	Residential care (RCF)
Obstetric	Residential care/mental
Psychiatric	retardation (RCF/MR)
Rehabilitation	
Neonatal intensive care	
Substance abuse	

c. Long-term care bed capacity is defined as a facility's licensed bed capacity.

202.1(4) "Consumer" as defined in Iowa Code section 135.61(4) shall be applicable to members of the individual's household.

202.1(5) "Consumers served by a new institutional health service" means those consumers residing in the service area as determined by the department.

202.1(6) "Organized outpatient health facility" as defined in Iowa Code section 135.61(20) shall include, but not be limited to, the following types of facilities:

- Family planning clinics.
- Neighborhood health centers.
- Community mental health centers.
- Drug abuse or alcoholism treatment centers.
- Rehabilitation facilities.

202.1(7) "Organ transplantation service" as the term applies to new or changed institutional health service in Iowa Code section 135.61(18)"m"(3) means each type of organ transplant shall be considered separately.

202.1(8) "Permanent change in bed capacity" of an institutional health facility means a change which is intended to be effective for one year or more and which redistributes the beds among the categories listed in the definition of "Bed capacity."

641--202.2(135) Letter of intent.

202.2(1) Before applying for a certificate of need the sponsor of a proposed new institutional health service or changed institutional health service shall submit a letter of intent to the department.

The letter of intent shall contain the following:

- A brief description of the proposal;
- Project's location;
- Its estimated cost (site costs, land improvements, facility costs, movable equipment and financing costs); and
- An explanation of how the project will be financed.

202.2(2) The letter shall be submitted as soon as possible after the initiation of the applicant's planning process and in any case not less than 60 calendar days before applying for a certificate of need and before substantial expenditures are made.

a. This 60-day waiting period shall begin upon the department's receipt of the applicant's letter of intent.

b. Substantial expenditures shall be deemed to have been made when \$150,000 or 5 percent of the established project cost, whichever is less, is expended or incurred. This shall include any expenditure by or on behalf of an institutional health facility or health maintenance organization made in preparation for the offering of a new or changed institutional health service and any arrangement or commitment made for financing the offering of a new or changed institutional health service.

202.2(3) Upon receipt of a written request from the sponsor of the proposal to the department, the department shall make a preliminary review of the letter of intent for the purpose of informing the sponsor of the project of any factors which may appear likely to result in denial of a certificate of need based on the criteria for evaluation in Iowa Code section 135.64.

a. The department shall provide to the sponsor written comment within 30 calendar days of receipt of such request for preliminary review.

b. A comment made pursuant to this subrule by the department shall not constitute a final decision.

202.2(4) A letter of intent received by the department shall be valid for a period of one year from the date of receipt by the department. The sponsor may renew the validity of a letter of intent by providing written notification to the department prior to the one-year expiration date.

641--202.3(135) Reviewability determination.

202.3(1) The department shall determine if a proposed project is subject to review under Iowa Code sections 135.61 to 135.83.

202.3(2) The determination of reviewability, when possible, shall be based upon the content of the letter of intent. Additional information necessary to make the determination of reviewability may also be requested from the applicant by the department.

202.3(3) Written notification of the department's reviewability decision shall be sent to the applicant within 14 calendar days.

202.3(4) Mobile health service.

a. When a mobile health service is provided, the party providing the equipment shall be the applicant regardless of location of that party.

b. All reviews of mobile health services will be site-specific. A mobile health service wishing to add a new service location shall submit an amended application for review. A mobile health service wishing to delete a service location shall notify the department by letter of the deleted location.

c. In determining the value of a mobile health service, for the purposes of reviewability, the value of all equipment used to provide the service, including the trailer, shall be included.

202.3(5) In the case of new construction of a nursing facility (NF), if a portion of the beds built to nursing facility standards are to be designated as residential care facility (RCF) beds, the total project, including the cost of the RCF portion of the project, will be considered in the review process.

641--202.4(135) Certificate of need review process.

202.4(1) The department shall make available to each applicant any and all criteria and standards which are pertinent to a particular application. This shall be done within 15 calendar days of receipt of a letter of intent or upon request.

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202.4(2) Application form. The statement of information required by the department for purposes of review shall be the information requested on the department's application form. All information requested in the application form will be required in the absence of advice to the contrary in writing by the department.

202.4(3) Application fee.

a. The application shall be accompanied by a fee equivalent to two-tenths of one percent of the anticipated cost of the project.

b. The fee shall be based on the total cost of the project which shall include site costs, land improvements, facility costs, movable equipment and financing costs. Fee for leased or donated new institutional health services would be calculated in the same manner as if the new institutional health services were purchased. Financing costs shall not be applicable on leases or cash purchases.

c. The fee shall be remitted by check or money order made payable to the Treasurer, State of Iowa and addressed to Iowa Department of Public Health--Certificate of Need, Lucas State Office Building, Des Moines, Iowa 50319-0075.

d. The application fee will be refunded by the department for any application which is voluntarily withdrawn from the review process in the following amounts:

(1) If an application is voluntarily withdrawn within 30 calendar days after submission, 75 percent of the fee shall be refunded;

(2) If an application is voluntarily withdrawn more than 30 but within 60 calendar days after submission, 50 percent of the fee shall be refunded;

(3) If an application is withdrawn voluntarily more than 60 calendar days after submission, 25 percent of the application fee shall be refunded.

e. The department shall refund the proper amount within 30 calendar days of the applicant's voluntary withdrawal.

f. An applicant for a new or changed institutional health service offered or developed by an intermediate care facility for the mentally retarded or the mentally ill is exempt from payment of the application fee.

202.4(4) Submission of applications. An original application and six copies thereof shall be sent to the Certificate of Need Program, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

202.4(5) Determination of completeness.

a. An application shall not be accepted by the department unless accompanied by the appropriate fee as defined in 202.4(3)"a."

b. The department shall send written notice to the applicant within 15 business days of receipt of the application if that application has been accepted as complete or otherwise state in said notice what information is needed to make the application complete. The applicant shall then have the right to resubmit said application and to again receive the written notice from the department as above required.

c. An "accepted application" is one which has been determined complete by the department.

202.4(6) Formal review.

a. The department shall provide a written analysis consisting of an evaluation of the application against all applicable criteria specified in Iowa Code section 135.64.

b. All written analyses shall be mailed to council members and applicant at least ten calendar days prior to the health facilities council meetings.

641--202.5(135) Summary review. Pursuant to Iowa Code section 135.67, an applicant requesting a summary review shall abide by the following procedures:

202.5(1) If an applicant desires to request a summary review of its application for a certificate of need it shall submit a written request for summary review, an original application and six copies thereof to the Certificate of Need Program, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. The applicant is not required to submit a letter of intent pursuant to Iowa Code section 135.65 prior to submitting a written request for a summary review.

202.5(2) An application for certificate of need is eligible for summary review if it meets any one of the following criteria:

a. A project which is limited to repair or replacement of a facility or equipment damaged or destroyed by a disaster, and which will not expand the facility or increase the services provided beyond the level existing prior to the disaster.

b. A project necessary to enable the facility or service to achieve or maintain compliance with federal, state or other appropriate licensing, certification or safety requirements.

c. A project which will not change the existing bed capacity of the applicant's facility or service, as determined by the department, by more than 10 percent or ten beds, whichever is less, over a two-year period.

d. A project the total cost of which will not exceed \$150,000.

e. Any other project for which the applicant proposes and the council agrees to summary review.

202.5(3) The eligibility of an application for summary review pursuant to subrule 202.5(2) shall not mandate or require such review. The decision as to whether an application will be reviewed in the summary review process is the department's.

202.5(4) Upon receipt of a written request for summary review and an application, the department shall notify the applicant in writing within 15 calendar days if the application is complete and if a summary review will be granted.

202.5(5) If an application is deemed incomplete, the department shall state specifically in writing what information is needed to make the application complete. The applicant shall then have the opportunity to resubmit the application with the additional information and again receive written notice from the department.

202.5(6) If the department notifies the applicant that a summary review will not be performed, this decision is binding on the applicant and the application will be entered into the formal review process on the date of written notice that such application will not be reviewed summarily.

202.5(7) A summary review of an application for a certificate of need shall be completed within 60 calendar days of the acceptance of an application by the department.

202.5(8) At any time during the summary review process, an application may be withdrawn without prejudice from the process. The applicant may then submit the application for a formal 90-day review.

202.5(9) Emergency waiver of review. In the case of an emergency, such as a breakdown of equipment necessary for immediate operation, i.e., boiler, electrical systems, etc., the department may determine to waive the normal review process due to the urgency of the situation.

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Such waiver of review permits the facility to proceed with a capital expenditure without risk of sanction.

a. An applicant shall notify the department of a situation requiring an emergency waiver of review and supply such documentation as the department shall request.

b. An applicant shall be notified of the department's decision whether or not to grant a waiver of review within 48 hours after receipt by the department of documentation necessary to make such a determination.

641-202.6(135) Extension of review time.

202.6(1) A formal review of an application for a certificate of need pursuant to Iowa Code section 135.66 may be extended by the department on the basis of any of the following criteria:

a. In order to review competing applications during the same review cycle;

b. In the case of technologically innovative equipment, to obtain additional information necessary to evaluate the proposal. The department shall specify in writing such additional information as necessary;

c. At the request of the applicant for any length of time with approval of the department.

d. At the request of at least two members of the state health facilities council in order to allow additional time for deliberation on all evidence present. The council shall specify the time of the delay and the date on which their final decision will be rendered.

202.6(2) An extension by the department made pursuant to subrule 202.6(1) shall in no case be more than 60 calendar days beyond the time a decision is required under Iowa Code section 135.69, unless the applicant and department agree.

202.6(3) Where none of the provisions of 202.6(1) are applicable and where an application will be automatically denied because of the expiration of time required by Iowa Code section 135.69 for the issuance of a written decision by the council, the department shall notify the applicant of the likelihood of an automatic denial and shall ask the applicant to request in writing an extension of the review time. Where an extension is so requested, the application shall be heard at the next regularly scheduled meeting of the council or at any time agreeable to the applicant and the department.

641-202.7(135) Changes or amendments to application while in review process.

202.7(1) If the sponsor proposing a new or changed institutional health service or HMO desires to make any substantive change in the application as it was initially determined complete for review, the department may require the applicant to delay review of the application and submit subsequent revisions. The department shall decide whether or not a proposed change is substantive in nature.

202.7(2) A substantive change shall be defined as:

a. A change in the financial or utilization projections, or

b. A change in project cost estimates, or

c. A change in the method of financing or sources of funds, or

d. A change in the number of beds or capacity of services proposed, or

e. A change in the number of personnel required to adequately staff the project, or

f. A change in the general design of the contemplated construction.

202.7(3) The decision by the department that a proposed change is substantive in nature shall be binding upon the applicant.

641-202.8(135) Standards.

202.8(1) All standards shall be promulgated in rules in accordance with Iowa Code chapter 17A prior to utilization by the health facilities council.

202.8(2) The department may initiate rule making for standards in response to a request for adoption of standards.

202.8(3) Challenge of standards. The correctness, appropriateness, or adequacy of standards or criteria may not be challenged before the health facilities council or on appeal of its decision. Such challenges may only be found in the normal participation opportunities for challenge of rules made available under Iowa Code chapter 17A.

202.8(4) For standards used during review under the certificate of need program, see 641-Chapter 203.

641-202.9(135) Operating procedures for the state health facilities council. The following operating procedures shall be used by the state health facilities council in the conduct of its business.

202.9(1) The regular monthly meeting of the council shall be held on the second Thursday of the month. If the second Thursday of the month is a legal holiday, the meeting shall be held the following Thursday. Additional meetings may be held if necessary to enable the council to expeditiously discharge its duties.

202.9(2) Meeting dates shall be set upon adjournment or by call of the chairperson upon ten days' notice to the council members.

202.9(3) Public notice of each meeting shall be given as required by Iowa Code section 21.4.

202.9(4) A notice of the meeting, agenda and department comments shall be deposited in the mail no less than ten calendar days prior to such meeting, addressed to each council member and each application sponsor.

202.9(5) The governor shall designate one of the council members as a chairperson.

202.9(6) The council shall, at their July meeting of each odd-numbered year, elect a vice-chairperson, who shall perform the duties of the chairperson in the absence of the chairperson, when the chairperson has a conflict of interest, or when the chairperson so directs.

202.9(7) "Conflict of interest" shall exist whenever a council member has cause to believe that a matter to be voted upon would involve the member in a conflict of interest. The member shall announce the conflict of interest and abstain from voting on such matter. Any other person may raise the question of a conflict of interest with respect to a council member present at a meeting. A question so raised shall be decided by a majority vote of the council members present, excluding the member with the possible conflict.

202.9(8) The meetings of the state health facilities council shall be conducted in conformance with Iowa Code chapter 21A, "official meetings open to the public" and Iowa Code chapter 17A, "administrative procedure Act."

202.9(9) The presence of four members of the council shall constitute a quorum.

202.9(10) The chairperson and all other council members present shall cast votes or abstain, as the case may be, on all council action. No proxy votes shall be al-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

lowed. The minutes of all meetings shall show the results of each vote taken and the vote of each member present, in accord with Iowa Code section 21.3.

202.9(11) A vote of a majority of those present shall be necessary to take action on any motion before the council. A tie vote shall mean no action on the motion.

202.9(12) Technical consultants. The council may designate technical consultants or experts to assist in its activities as defined by the council. Such individuals shall provide only information and assistance and not furnish a recommendation as to whether or not a certificate of need should be granted.

202.9(13) The council shall use the following meeting format:

- a. Announcement of application under review.
- b. Conflict of interest declarations.
- c. Department report.
- d. Applicant presentation.
- e. Affected persons' presentation.
- f. Applicant's rebuttal.
- g. Council discussion, motion and final decision.

202.9(14) Participant's roles.

a. Affected parties. Affected parties may submit written statements concerning a particular application to the department. If these comments are received by the department at least ten calendar days prior to the meeting of the council, the comments will be reproduced and enclosed with the other material mailed to the council. If these comments are received within ten calendar days prior to the meeting of the council, the comments will be reproduced and distributed to council members at the meeting. Any affected party may make an oral presentation to the council.

b. Applicant. The applicant or its appointed representative shall be given an opportunity to make a presentation to the council. The purpose of this presentation shall be to respond to the findings and recommendation of the certificate of need staff, the testimony of any affected party, and the questions of the council.

c. Certificate of need staff. The certificate of need staff shall develop written analysis which shall be mailed to the council at least ten calendar days prior to the meeting at which a particular application is being considered. The certificate of need staff shall be available at the council meeting to answer any questions concerning their analysis and to update the council on any activities concerning a particular application which took place subsequent to the mailing.

In addition the staff shall:

(1) Provide the technical assistance and advice to the health care facility applicants in interpreting the certificate of need review process.

(2) Establish and maintain files on each health care facility application.

(3) Maintain an effective follow-up program to ensure that applicants make timely progress on each approved application.

(4) Review all certificate of need applications for the purpose of determining their completeness.

(5) Review all certificate of need applications and develop information pertinent to each of the review criteria.

(6) Provide information and assistance to members of the council.

(7) Make recommendations on a particular application when requested by the council.

(8) Retain minutes and tape recordings of prior meetings.

(9) Assist the council in preparation of written findings.

(10) Make suggestions for revising and updating the operating procedures contained in this chapter.

641-202.10(135) Rehearing of certificate of need decision.

202.10(1) Any dissatisfied party who is an affected person with respect to an application and who has participated or sought unsuccessfully to participate in the formal review procedure prescribed in Iowa Code section 135.66 may, for good cause shown, file an application for rehearing in writing with the department stating the specific grounds therefor and the relief sought, within 20 calendar days after the date of the issuance of the council's written findings on an application for certificate of need.

202.10(2) A copy of such application for rehearing shall be timely mailed by the department to all affected persons not joining therein and to the applicant, if not joining therein.

202.10(3) For purposes of this subrule an application for rehearing shall be deemed to have shown good cause if the application:

a. Presents new significant, relevant information which was unavailable at the date of the hearing.

b. Demonstrates that there have been significant changes in factors or circumstances relied upon by the council in reaching its decision; or

c. Demonstrates that the council has materially failed to follow its adopted procedures in reaching its decision; or

d. Provides such other bases as the council determines constitutes good cause.

202.10(4) Such an application for rehearing shall be deemed to have been denied unless the council grants the application in writing within 20 calendar days after its filing.

202.10(5) If the application for rehearing is granted, the rehearing shall be conducted at the next monthly meeting.

202.10(6) Notification of such a rehearing shall be sent to the following by the department ten business days prior to the rehearing:

a. Person requesting the rehearing; and

b. Applicant; and

c. Any other person upon request.

202.10(7) The council shall issue the final decision on rehearing, which states the basis for its decision within 30 calendar days after the conclusion of such rehearing.

202.10(8) If a rehearing is not requested or an affected party remains dissatisfied after the request for rehearing, an appeal may be taken in the manner provided by Iowa Code chapter 17A. A request for rehearing is not required prior to appeal under Iowa Code section 17A.19.

641-202.11(135) Notification of project progress. Progress reports of all approved projects shall be submitted to the department six months after approval. Progress reports shall fully identify the project and indicate the current status of the project in descriptive terms. The reports shall also reflect an amended project schedule if necessary.

641-202.12(135) Request for extension of certificate.

202.12(1) Requests for extension of a certificate of need must be filed in letter form to the department from the applicant no later than 45 days prior to the expiration of the certification.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

202.12(2) Request for extension shall fully identify the project and indicate the current status of the project in descriptive terms.

202.12(3) The department shall use the news media to notify the public and affected parties of the council meeting agenda, including extension requests. The news media shall be notified at least ten days before the council meeting.

Any affected persons shall have the right to submit to the department in writing, or orally at the council meeting at which the extension request is considered, information which may be relevant to the question of granting an extension.

202.12(4) When an extension has been requested, the council shall approve or deny the request at the twelfth monthly meeting of the council following the original approval of the project.

202.12(5) Grounds for denial of an extension of a certificate by the council may be one of the following:

- a. Time frames as described in application are not met;
- b. Obligations are not incurred;
- c. Conditions are not fulfilled.

202.12(6) If the extension is denied, the applicant shall have the right to appeal under the provisions of Iowa Code section 135.70.

641--202.13(135) Application changes after approval.

202.13(1) Once a project has been approved by the council, no changes that vary from or alter the terms of the original accepted application shall be made unless requested by the applicant and approved by the department. Requests shall be made in writing to the department.

202.13(2) An increase in the actual cost of the project over and above that originally approved shall automatically generate a rereview if the increase exceeds the originally approved amount by:

- a. Fifteen percent for projects up to \$999,999.99;
- b. Twelve percent for projects from \$1,000,000.00 to \$4,999,999.99;
- c. Eight percent for projects \$5,000,000.00 and over.

202.13(3) Failure to notify and receive permission of the department to change the project as originally approved may result in the imposition of sanctions provided in Iowa Code section 135.73.

641--202.14(135) Sanctions. Upon notification of any violation of Iowa Code sections 135.61 to 135.83, the department shall make a determination within 30 calendar days of the validity of that allegation. If the department determines that allegation to be valid, the department shall request the attorney general's office to initiate appropriate legal action in accordance with Iowa Code section 135.73.

These rules are intended to implement Iowa Code chapter 135 as amended by 1991 Iowa Acts, House File 668.

ARC 2217A

**PUBLIC SAFETY
DEPARTMENT[661]**

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 321.4, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 6, "Vehicle Impoundment," Iowa Administrative Code.

During recent rule making regarding this chapter, concerns were expressed to the Department concerning the clarity of the time frame involved in impoundment and subsequent towing of vehicles. These amendments are intended to clarify the time sequence and to articulate as clearly as possible the procedures and requirements to be followed by officers of the Department of Public Safety in processing impounded vehicles.

A public hearing on these proposed rules will be held on September 13, 1991, at 1:30 p.m., in the Third Floor Conference Room (East) of the Wallace State Office Building. Persons may present their views orally or in writing at this public hearing. Persons who wish to make oral presentations at the public hearing should contact the Plans, Training, and Research Bureau, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa, 50319; or by telephone at (515)281-5524 at least one day prior to the public hearing. Any written material or oral comments may be directed to the Plans, Training, and Research Bureau at the above address or telephone number.

These rules are intended to implement Iowa Code sections 80.9(2)"a" and 321.89.

The following amendments are adopted:

Rescind rule 661-6.4(17A,321) and insert in lieu thereof the following:

661-6.4(17A,321) Impoundment procedure.

6.4(1) Prior to towing an impounded vehicle, the officer shall:

- a. Request that a tow truck be dispatched to remove the vehicle.
- b. Complete a vehicle tow-in and recovery report which includes the following information:
 - (1) Reason for towing;
 - (2) The license number and description of the vehicle including its condition at the time of impoundment;
 - (3) Vehicle identification number and registration information, when readily accessible.
- c. Instruct the towing service to tow the vehicle to a designated location, which in the case of an abandoned vehicle shall be the towing service's storage area.

6.4(2) Within 24 hours of towing an impounded vehicle, the officer shall:

- a. Complete an inventory of all property in the vehicle and a notation of any parts of the vehicle which appear to be missing or damaged. The inventory shall include a list of the contents of each container in the vehicle unless the

PUBLIC SAFETY DEPARTMENT[661](cont'd)

contents of a particular container are evident from its exterior. If keys, a locksmith, or other means of access are not reasonably available to the officer, the officer is authorized to break locks to gain access to the vehicle and its locked compartments. The inventory is a record which is intended for use in ensuring the safe return of the lawful possessor's property, and resolving questions regarding the condition or contents of the vehicle.

b. Add to the vehicle tow-in and recovery report information indicating the circumstances of recovery of the vehicle and notification of the owner, if the vehicle is believed to be stolen or operated without the consent of the owner.

ARC 2234A**REVENUE AND FINANCE
DEPARTMENT[701]****Notice of Intended Action**

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

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.5(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 423.23, the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 33, "Receipts Subject to Use Tax Depending On Method of Transaction," Iowa Administrative Code.

Mobile home dealers often sell a mobile home with other property and certain taxable services, one "lump sum" or package price being charged for the mobile home, property and services. From this simple practice flow a number of tax consequences. The nature of those consequences is complex and affects a large enough number of people that the Department has decided to explain those consequences in a rule. Also explained in the rule is what occurs when this property and services are sold separately from a mobile home.

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

The Department has determined that this proposed rule may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than August 27, 1991, to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on this proposed amendment on or before September 6, 1991. Such written comments should be directed to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

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

Requests for a public hearing must be received by August 30, 1991.

The amendment is intended to implement 1991 Iowa Code sections 423.1(3), 423.2 and 423.4(12).

The following new rule is proposed.

ITEM 1. Amend 701--Chapter 33 by adding the following new rule:

701--33.9(423) Sales of mobile homes and related property and services.

33.9(1) Sales of mobile homes and related property and services for one package price.

The following rule is applicable only to mobile homes sold as tangible personal property rather than in the form of real property. If, at the time of the sale, a mobile home is real property, this rule is not applicable to it. If a mobile home dealer buys a mobile home, incorporates that mobile home into real estate in the manner required by and described in Iowa Code section 135D.26, and then sells the mobile home to a consumer, the sale of that mobile home, the sale of any services used to transform the mobile home from tangible personal property to real property, and the sale of any tangible personal property with the mobile home (such as furniture) are governed by Chapter 19 of these rules which deals with building contracts and building contractors.

When a customer purchases a mobile home from a dealer it is usually the customer's wish that the dealer prepare the mobile home so that it is ready for the customer to move into it. To render a mobile home "ready to move into" a dealer will sell, with the mobile home, certain tangible personal property and will also perform or arrange for other parties to perform various services.

With respect to any one particular mobile home which a dealer may sell, a dealer is usually willing to provide any combination of the following services or provide the following services and sell the below-listed property to any person purchasing the mobile home:

1. Connect the electricity.
2. Connect the water.
3. Connect sewer system lines.
4. Sell and install skirting. Skirting is used to fill the space between the bottom of the mobile home and the ground. It gives the mobile home an appearance more like a conventional home because it covers up this space.
5. Build and install steps for a door.
6. Build a deck.
7. Do minor repair.
8. Install and sell a foundation upon which to place the mobile home.
9. Sell furniture or appliances (e.g., air conditioners, refrigerators, and stoves) for use in the mobile home. Install the appliance (e.g., an air conditioner) if necessary.

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

A dealer selling a mobile home on a "ready-to-move-into" basis usually sells that mobile home and the services and additional property necessary to render it livable for one "package price." The dealer and customer do not bargain separately for the sale of the various articles of tangible personal property (e.g., the trailer and appliances) or the services (e.g., electrical installation) which are part of this package price; nor is the dealer's package price broken down to indicate any of the expenses which are components of the package price either in the dealer's sales contract or on any sales invoice.

The package price of any one particular mobile home will vary depending upon how many services the dealer will provide, or how much tangible personal property the dealer will sell in addition to the mobile home. In most cases, a dealer will contract with a third party to perform the services promised in the dealer's contract to a customer. For example, the dealer will contract with a third party to hook up the mobile home purchaser's electricity, install window air conditioning or will contract with a third party to build a deck or perform minor repairs on the mobile home.

In the situation described above, the "purchase price" of a mobile home is the entire package price charged for the mobile home, additional personal property for use in and around the mobile home, and services performed to render the mobile home livable. The entire amount of the package price (reduced by 40 per cent as explained in rule 32.3) is used to calculate the amount of use tax due resulting from the sale of the mobile home. No part of the package price is subject to Iowa sales tax; rather it is subject to Iowa use tax.

33.9(2) Sales of property and rendition of service under separate contract. If the personal property and services listed in subrule 33.9(1) are purchased under separate contract and not as part of one package price with a mobile home either from a mobile home dealer or from another party, the price paid for those items of property or services will not be a part of the purchase price of the mobile home. Because the price of the property or services is not part of the "purchase price" of a mobile home, that price will not be reduced by 40 percent, as required under rule 32.3 in computing the use tax due upon the sale of a mobile home. Also, if sold in Iowa, the property would be subject to Iowa sales tax. The same is true of services rendered in Iowa.

If separately contracted for, the gross receipts from the following services sold are subject to Iowa sales tax under Iowa Code subsection 422.43(11):

- a. Electrical hookup and air conditioning installation (electrical installation).
- b. Water and sewer system hookup (plumbing).
- c. Skirting installation and building and installation of steps and decks (carpentry).
- d. Nearly all "minor repairs" would be taxable.

The sale, under separate contract, of skirting, steps, decks, furniture, appliances, and other tangible personal property to customers purchasing mobile homes would be sales of tangible personal property, the gross receipts of which are subject to Iowa sales rather than use tax.

The installation of a concrete slab on which to place the mobile home would not be a service taxable to the mobile home owner since this installation involves "new construction" and the service performed upon this new construction is thus exempt from tax. The person installing the concrete slab would be treated as a construction

contractor and would pay sales tax upon any tangible personal property purchased and used in the construction of the slab.

33.9(3) Dealer purchases of tangible personal property and services for resale. Regardless of whether the tangible personal property and services connected with the purchase of a mobile home have been purchased as part of a package price or whether their purchase has been separately contracted for, a dealer's or other retailer's purchase of the tangible personal property or service for subsequent resale to a mobile home purchaser is a purchase "for resale" and thus exempt from Iowa sales or use tax.

This rule is intended to implement Iowa Code sections 423.1(3), 423.2, and 423.4(12).

ARC 2236A

REVENUE AND FINANCE
DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 43, "Assessments and Refunds," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Chapter 55, "Assessments, Refunds, Appeals," Chapter 59, "Determination of Net Income," and Chapter 60, "Assessments, Refunds, Appeals," Iowa Administrative Code.

The amendments to subrules 43.3(8), 55.3(5) and 60.3(5) are to implement 1991 Iowa Acts, Senate File 536, which removes the requirement that the taxpayer notify the Department of a matter between the Internal Revenue Service and the taxpayer within three years of the due date of the return in order to receive a refund upon the finalization of a federal matter after the expiration of the normal statute of limitations for refund.

The amendment to subrule 52.1(5) implements 1991 Iowa Acts, Senate File 356, which changes the due date of the income tax return reporting the tax on the unrelated business income of a nonprofit corporation to coincide with the federal due date.

The amendment to rule 701--59.5(422) is to implement 1991 Iowa Acts, Senate File 350, which requires the inclusion of interest received after July 1, 1991, from bonds issued by the governments of Puerto Rico, Guam, and the Virgin Islands in the income base for the computation of the Iowa franchise tax.

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

The Department has determined that this proposed rule may have an impact on small business. The Department

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

has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than August 27, 1991, to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on this proposed amendment on or before September 6, 1991. Such written comments should be directed to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

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

Requests for a public hearing must be received by August 30, 1991.

These amendments are intended to implement 1991 Iowa Acts, Senate Files 350, 356, and 536.

The following amendments are proposed.

ITEM 1. Amend subrule 43.3(8) by adding the following new paragraph and relettering existing paragraph "c" as paragraph "d":

c. For federal audits finalized on or after July 1, 1991, the taxpayer must claim a refund or credit within six months of final disposition of any federal income tax matter with respect to the particular tax year regardless when the tax year ended. It is not necessary for the taxpayer to have previously notified the department within the period of limitations specified in subparagraph 43.3(8)"a"(1) of a matter between the taxpayer and the Internal Revenue Service in order to receive a refund or credit. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits. The refund or credit is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987).

ITEM 2. Amend the implementation clause of rule 701-43.3(422) to read as follows:

This rule is intended to implement Iowa Code sections 422.16 and 422.73 as amended by 1989 1991 Iowa Acts, Senate File 486 536, and 421.17.

ITEM 3. Amend subrule 52.1(5), the third unlettered paragraph of paragraph "e," to read as follows:

The tax return is due the last day of the fourth month following the last day of the tax year and may be extended for six months by filing Form IA 7004 prior to the due date. *For tax years beginning on or after January 1, 1991, the tax return is due on the fifteenth day of the fifth month following close of the tax year and may be ex-*

tended six months by filing Form IA 7004 prior to the due date.

ITEM 4. Amend the implementation clause of rule 701-52.1(422) to read as follows:

This rule is intended to implement Iowa Code sections 422.21 as amended by 1991 Iowa Acts, Senate File 356, 422.32 and 422.33 as amended by 1989 Iowa Acts, chapter 251, 422.34 and 422.36.

ITEM 5. Amend subrule 55.3(5) by adding the following new paragraph and relettering existing paragraph "c" as paragraph "d":

c. For federal audits finalized on or after July 1, 1991, the taxpayer must claim a refund or credit within six months of final disposition of any federal income tax matter with respect to the particular tax year regardless when the tax year ended. It is not necessary for the taxpayer to have previously notified the department within the period of limitations specified in subparagraph 55.3(5)"a"(1) of a matter between the taxpayer and the Internal Revenue Service in order to receive a refund or credit. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits. The refund or credit is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987).

ITEM 6. Amend the implementation clause of rule 701-55.3(422) to read as follows:

This rule is intended to implement Iowa Code section 422.73 as amended by 1991 Iowa Acts, Senate File 536.

ITEM 7. Amend rule 701-59.5(422) to read as follows:

701-59.5(422) Interest and dividends from federal securities. For franchise tax purposes, dividends received from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies and instrumentalities become a part of the taxable income. Examples of these types of obligations are bonds issued by the governments of Puerto Rico, Washington D.C., Guam and the Virgin Islands. *Interest received after July 1, 1991, from bonds purchased after January 1, 1991, issued by the governments of Puerto Rico, Guam and the Virgin Islands is subject to tax.*

Gains or losses from the sale or other disposition of any bonds shall be taxable for state franchise tax purposes.

Interest received on federal tax refunds is taxable for Iowa franchise tax purposes.

This rule is intended to implement Iowa Code section 422.61 as amended by 1991 Iowa Acts, Senate File 350.

ITEM 8. Amend subrule 60.3(5) by adding the following new paragraph and relettering existing paragraph "c" as paragraph "d":

c. For federal audits finalized on or after July 1, 1991, the taxpayer must claim a refund or credit within six months of final disposition of any federal income tax matter with respect to the particular tax year regardless when the tax year ended. It is not necessary for the taxpayer to have previously notified the department within the period of limitations specified in subparagraph 60.3(5)"a"(1) of a matter between the taxpayer and the

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

Internal Revenue Service in order to receive a refund or credit. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits. The refund or credit is limited to those matters between the taxpayer and the Internal Revenue Service which affect Iowa taxable income. *Kelly-Springfield Tire Co. v. Iowa State Board of Tax Review*, 414 N.W.2d 113 (Iowa 1987).

ITEM 9. Amend the implementation clause of rule 701-60.3(422) to read as follows:

This rule is intended to implement Iowa Code sections 422.66 and 422.73 as amended by 1991 Iowa Acts, Senate File 536.

ARC 2235A

REVENUE AND FINANCE
DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 421.14, the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 63, "Administration," and Chapter 64, "Motor Fuel," Iowa Administrative Code.

This amendment is being made to implement 1991 Iowa Acts, House File 657, which changes all references from "gasohol" to "ethanol blended gasoline" in the Iowa Code.

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

The Department has determined that this proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than August 27, 1991, to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on this proposed amendment on or before September 6, 1991. Such written comments should be directed to the Policy Section, Technical Services Division, Iowa Department of Revenue and Finance, Hoover State

Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

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

Requests for a public hearing must be received by August 30, 1991.

This amendment is intended to implement Iowa Code chapter 324.

The following amendment is proposed.

Amend the following rules by striking the word "gasohol" wherever it appears and inserting in lieu thereof the words "ethanol blended gasoline":

63.3(5) - 2 places

64.1(3)

64.4 - heading

64.4(1)"a" - 3 places

64.4(1)"d"

64.4(1)"e"

64.4(2)"a"

64.4(2) - last paragraph

64.4(3) - heading

64.4(3)"a" - 5 places

64.4(3)"b" - 5 places

64.4(3)"c" - 3 places

64.4(4) - first paragraph - 2 places

64.4(4)"a"

64.4(4)"b" - first paragraph

64.4(4)"b"(1)

64.4(4)"c" - formula - 5 places

64.4(4)"c" - factors - 2 places

64.4(4)"c" - Example 1 - 3 places

64.4(4)"c" - Example 3

64.5(a)

64.5(b) - 2 places

64.8 - first paragraph - 2 places

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, Deputy Superintendent of Banking Steven C. Moser, and Auditor of State Richard D. Johnson have established today the following rates of interest for public obligations and special assessments. The usury rate for August is 10.25%.

INTEREST RATES FOR PUBLIC
OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants Maximum 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.

TREASURER OF STATE—INTEREST RATE(*cont'd*)

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 July 31, 1991, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7 - 31 days	Minimum 4.90%
32 - 89 days	Minimum 5.10%
90 - 179 days	Minimum 5.40%
180 - 364 days	Minimum 5.50%
One year	Minimum 5.80%
Two years or more	Minimum 6.80%

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

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

ARC 2197A

UTILITIES DIVISION[199]

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.

The Iowa Utilities Board (Board) hereby gives notice that on July 15, 1991, the Board issued an order in Docket No. RMU- 91-10, In Re: Payment Agreements, "Order Commencing Rule Making," pursuant to Iowa Code sections 476.1, 476.2, 476.8, and 17A.4, to consider amendments to 199 IAC 19.2(4)"c"(21), 19.4(10), 19.4(16)"h," 20.2(4)"z," 20.4(11), and 20.4(16)"h."

This rule making clarifies the distinction between the account of the "disconnected residential customer" protected by 199 IAC 19.4(16) and 20.4(16) and the "customer's past due account" on which a utility may, under Iowa Code section 476.20(5)"b," require payment prior to reinstatement of service. In the past, the Board has attempted to reconcile the rule with the statute by consistently interpreting subrules 19.4(16) and 20.4(16) to mean

that payment agreements must be offered to former customers requesting service at the same premises, but need not be offered when the former customer requests service at a new location.

The proposed amendments would incorporate the practice that has been followed by the Board's staff requiring a utility to offer a payment agreement to a disconnected residential customer still at the same premises, but not to a disconnected residential customer applying for service at a new residence. The amendments would also require the utility to consider offering a payment agreement to any applicant for residential service who has a delinquent bill for service with that utility. However, the utility would not be required to offer a payment agreement in any instance if the customer has previously defaulted on a payment agreement. Requiring a utility to offer a payment agreement under the circumstances mentioned in the rules does not conflict with Iowa Code section 476.20(5)"b," which states that "[t]his subsection does not prohibit a public utility from requiring payment of a customer's past due account with the utility prior to reinstatement of service" because that section requires "payment" and not "full payment."

Under Iowa Code section 17A.4(1)"a" and "b," all interested persons may file written comments on the proposed rules no later than August 27, 1991, by filing an original and ten copies of the comments substantially complying with the form prescribed in 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

An oral presentation is scheduled in this docket for 10 a.m. on September 26, 1991, in the Utilities Board's First Floor Hearing Room, Lucas State Office Building, Des Moines, Iowa. Pursuant to 199 IAC 3.7 (17A,474), all interested persons may participate in this oral presentation.

These rules are intended to implement Iowa Code sections 476.1 and 476.2.

ITEM 1. Amend subrule 19.2(4), paragraph "c," subparagraph (21), to read as follows:

(21) Rules on how a customer or applicant for residential service may negotiate for a payment agreement ~~installment payments~~ on amount due, determination of ~~installment even payment amount amounts~~, and time allowed for payments.

ITEM 2. Amend subrule 19.4(10) to read as follows:

~~19.4(10) Customer disconnected payment agreement Payment agreements. A utility must give a residential customer disconnected or about to be disconnected who is unable to pay a delinquent bill in full~~

a. ~~Availability--customer. When a residential customer cannot pay in full a delinquent bill for utility service incurred at the customer's current premises and is or will be disconnected, a utility shall offer the customer an opportunity to enter into a reasonable agreement to pay that bill unless the customer is in default upon an on a payment agreement.~~

b. ~~Availability--applicant. When an applicant for residential service has an outstanding debt to the utility for utility service, cannot pay the debt in full, and is not in default on a payment agreement, then the utility must consider the applicant's request for a payment agreement.~~

UTILITIES DIVISION[199](cont'd)

The utility may require the customer to provide confirmation of financial difficulty such as an acknowledgement from the department of human services or another agency.

c. Reasonableness. Whether a payment agreement is reasonable will be determined by considering the customer's or applicant's current household income, of the customer, the customer's ability to pay, the size of the bill, the customer's payment history including prior defaults on similar agreements, the size of the bill, the amount of time and the reasons why the bill has been outstanding, and any special circumstances creating extreme hardships within the household. The utility may require the customer or applicant to confirm financial difficulty with acknowledgment from the department of human services or another agency.

d. Terms. The agreement may require the customer to bring the account to a current status by paying specific amounts at scheduled times. The utility shall offer customers the option of spreading payments evenly over at least a ~~twelve (12)~~ 12 months month period. Payments for applicant agreements may be spread evenly over six months.

However, if a customer has retained service from November 1 through April 1 pursuant to 19.4(15), but is has been in default of a payment agreement, the utility may offer the customer a second payment agreement that will divide the past-due amount into equal monthly payments with the final payment due by the fifteenth day of the next October.

The agreement shall also include provision for payment of the current account. The utility may also require the customer to enter into a level payment plan to pay the current bill, and may provide for payment of the current account pursuant to the terms of a level payment plan. The utility may consider prior defaults on similar agreements in determining the reasonableness of a payment agreement.

The customer who has been in default of a payment agreement from November 1 to April 1 may be required to pay current bills based on a budget estimate of the customer's actual usage, weather-normalized, during the prior 12-month period or based on projected usage if historical use data is not available.

The agreement negotiations and periodic payment terms shall comply with tariff provisions which are consistent with these rules. A signed copy of the agreement shall be provided to the customer.

e. Refusal by utility. If the utility intends to refuse a payment agreement offered by a customer, it must provide a written refusal explanation to the customer. That refusal must be made within ~~thirty (30)~~ 30 days of mailing of the initial disconnect notice. A customer may protest the utility's refusal of the offered agreement by making payment as provided for therein and by filing a written complaint, including a copy of the utility's refusal, with the board within ten (10) days after written refusal of the agreement by the utility. If the utility intends to refuse a payment agreement to a qualified applicant, it must provide a written refusal to the applicant within ten days of the application.

The customer who has been in default of a payment arrangement from November 1 to April 1 may be required to pay current bills based on a budget estimate of the customer's actual usage, weather-normalized, during the prior ~~twelve (12)~~ month period or based on projected usage if historical usage data is not available.

~~The agreement negotiations and periodic payment terms shall comply with tariff provisions which are consistent with these rules.~~

ITEM 3. Amend subrule 19.4(16), paragraph "h," to read as follows:

h. Failure of a disconnected residential customer to pay the full amount due for past service if ~~financial difficulty is confirmed and the residential customer has confirmation of financial difficulty, has not obtained service fraudulently, has not defaulted on a prior agreement, has not moved from the premises where service was supplied and is willing to enter into a reasonable agreement to pay the delinquent amount as required by 19.4(10).~~

ITEM 4. Amend subrule 20.2(4), paragraph "z," to read as follows:

z. Rules on how a customer or applicant for residential service may negotiate for a payment agreement ~~installment payments~~ on amount due, determination of ~~installment even payment amount amounts~~, and time allowed for payments.

ITEM 5. Amend subrule 20.4(11) to read as follows:

20.4(11) Payment agreements. ~~A utility must give a residential customer disconnected or about to be disconnected who is unable to pay a delinquent bill in full~~

a. Availability—customer. When a residential customer cannot pay in full a delinquent bill for utility service incurred at the customer's current premises and is or will be disconnected, a utility shall offer the customer an opportunity to enter into a reasonable agreement to pay that bill unless the customer is in default ~~upon an~~ on a payment agreement.

b. Availability—applicant. When an applicant for residential service has an outstanding debt to the utility for utility service, cannot pay the debt in full, and is not in default on a payment agreement, the utility must consider the applicant's request for a payment agreement. The utility may require the customer to provide confirmation of financial difficulty such as an acknowledgment from the department of human services or another agency.

c. Reasonableness. Whether a payment agreement is reasonable will be determined by considering the customer's or applicant's current household income, of the customer, the customer's ability to pay, the size of the bill, the customer's payment history including prior defaults on similar agreements, the size of the bill, the amount of time and the reasons why the bill has been outstanding, and any special circumstances creating extreme hardships within the household. The utility may require the customer or applicant to confirm financial difficulty with an acknowledgment from the department of human services or another agency.

d. Terms. The agreement may require the customer to bring the account to a current status by paying specific amounts at scheduled times. The utility shall offer customers the option of spreading payments evenly over at least a ~~twelve (12)~~ 12 months month period. Payments for the applicant agreements may be spread evenly over six months.

However, if a customer has retained service from November 1 through April 1 pursuant to 20.4(15), but is has been in default of a payment agreement, the utility may offer the customer a second payment agreement that will divide the past-due amount into equal monthly payments with the final payment due by the fifteenth day of the next October.

UTILITIES DIVISION[199](cont'd)

The agreement shall also include provision for payment of the current account. ~~The utility may also require the customer to enter into a level payment plan to pay the current bill. and may provide for payment of the current account pursuant to the terms of a level payment plan. The utility may consider prior defaults on similar agreements in determining the reasonableness of a payment agreement.~~

~~The customer who has been in default of a payment agreement from November 1 to April 1 may be required to pay current bills based on a budget estimate of the customer's actual usage, weather-normalized, during the prior 12-month period or based on projected usage if historical use data is not available.~~

~~The agreement negotiations and periodic payment terms shall comply with tariff provisions which are consistent with these rules. A signed copy of the agreement shall be provided to the customer.~~

~~e. Refusal by utility. If the utility intends to refuse a payment agreement offered by a customer, it must provide a written refusal explanation to the customer. That refusal must be made within thirty (30) 30 days of mailing of the initial disconnect notice. A customer may protest the utility's refusal of the offered agreement by making payment as provided for therein and by filing a written complaint, including a copy of the utility's refusal, with the board within ten (10) days after receipt of the written refusal of the agreement by the utility. If the utility intends to refuse a payment agreement to a qualified applicant, it must provide a written refusal to the applicant within ten days of the application.~~

~~The customer who has been in default of a payment arrangement from November 1 to April 1 may be required to pay current bills based on a budget estimate of the customer's actual usage, weather normalized during the prior twelve (12) month period, or based on projected usage if historical usage data is not available.~~

~~The agreement negotiations and periodic payment terms shall comply with tariff provisions which are consistent with these rules. A signed copy of the agreement shall be provided to the customer.~~

ITEM 6. Amend subrule 20.4(16), paragraph "h," to read as follows:

h. Failure of a disconnected residential customer to pay the full amount due for past service if ~~financial difficulty is confirmed and the residential customer has confirmation of financial difficulty, has not obtained service fraudulently, has not defaulted on a prior agreement, has not moved from the premises where service was supplied~~ and is willing to enter into a reasonable agreement to pay the delinquent amount as required by 20.4(11).

UTILITIES DIVISION[199]

Notice of Inquiry

Pursuant to Iowa Code sections 476.1 and 476.2 (1991), the Iowa Utilities Board (Board) gives notice that on July 15, 1991, the Board issued an order in Docket No. NOI-91-1, Clean Air Act Amendments of 1990

(CAAA), initiating an inquiry to address the multitude of issues resulting from the November 1990 passage of Title 4 of the CAAA. The purpose of this docket is to permit Utilities Division staff, the Consumer Advocate Division of the Department of Justice (Consumer Advocate), rate regulated electric utilities, and other interested persons to engage, without direct Board oversight, in a fact finding process to generate policy recommendations for future Board action. The recommendations may result in Board or inquiry group comments to the Environmental Protection Agency (EPA) and the Federal Energy Regulatory Commission (FERC), Board recommendations for state legislation, and may support a rule making to establish procedures for compliance cost recovery and to oversee the new emission allowance trading program created by the CAAA.

The inquiry will be directed by Lisa Chalstrom, Supervisor, Economics and Finance Section, Bureau of Rate and Safety Evaluation, who will serve as inquiry manager. All correspondence regarding the inquiry may be directed to:

Lisa Chalstrom
Utilities Division
Lucas State Office Building
Des Moines, Iowa 50319

The procedural steps in the inquiry will be as follows:

Step 1. The initiating order and this notice will be mailed to all rate regulated electric utilities, the Consumer Advocate, the Iowa Department of Natural Resources, the Iowa Utility Association, the Iowa Association of Electric Cooperatives and the Iowa Municipal Utilities Association. In addition, this notice will be published in the Iowa Administrative Bulletin.

Step 2. Persons intending to participate in the inquiry should notify the inquiry manager in writing of that intent within 14 days of publication of this notice in the Iowa Administrative Bulletin. Participation in the inquiry by persons failing to meet the deadline will be permitted by the Board upon good cause shown.

Step 3. Within seven days after the deadline for filing notices of intent to participate, the inquiry manager will compile and distribute a service list based on the responses to the notice of inquiry.

Step 4. The inquiry manager will schedule work sessions for the participants to exchange ideas, share technical information, and express concerns. The inquiry manager will prepare and mail to each participant on the service list, an agenda and discussion ideas for each work session.

Step 5. After each work session, division staff will prepare for the Board's consideration a staff report summarizing the input from the other participants and making specific recommendations. The report and recommendations may address EPA proposed rule makings, FERC proposed rule makings, required state legislation, or proposed Board rule makings. The staff reports will be mailed to each inquiry participant on the service list.

Step 6. Within 14 days after the mailing of the staff reports, any participant or group of participants may file a dissenting report making different recommendations.

It is anticipated that this process will continue for the next 12 to 15 months.

ARC 2196A

ADMINISTRATIVE RULES
REVIEW COMMITTEE

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 17A.8(4), the Administrative Rules Review Committee hereby amends Chapter 1, "Rules of Procedure," published in the Iowa Administrative Code, first Volume, under the General Information tab.

The Committee finds that, pursuant to Iowa Code section 17A.4(2), notice and public participation are unnecessary since the amendments merely reflect statutory change which increased the Committee from six to ten members.

The Committee also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of the amendments should be waived and the amendments be made effective on July 24, 1991.

The amendments are intended to implement Iowa Code section 17A.8 as amended by 1991 Iowa Acts, House File 709, section 21.

The following amendments are adopted:

Amend subrules 1.1(1) and 1.1(3) to read as follows:

1.1(1) Membership. The administrative rules review committee consists of ~~six ten~~ members, ~~three five~~ from the house of representatives and ~~three five~~ from the senate.

1.1(3) Quorum. A quorum of the committee consists of ~~four seven~~ members. Except as specifically provided by law, a majority vote of the entire committee is required to take any action.

[Filed Emergency 7/24/91, effective 7/24/91]

[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2215A

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 adopts amendments to Chapter 61, "Iowa Export Trade Assistance Program," Iowa Administrative Code.

These amendments allow those companies whose corporate offices are not located within the state, but who employ at least 75 percent of their employees within the state, to qualify for the program. The amendments also reduce the maximum amount of reimbursement per event from \$5000 to \$4000.

In accordance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary, impracticable, and contrary to the public interest. The amendments need to be adopted immediately as new contracts were written July 1, 1991, and all contracts must reflect the reduced maximum amount available under the program.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of

the amendments, 35 days after publication, should be waived and the amendments be made effective on July 19, 1991, upon filing with the Administrative Rules Coordinator. The Department finds that the rules confer a benefit by allowing every contract written during FY '92 to reflect the reduced maximum amount. Also, reducing the maximum amount of each contract to \$4000 will result in funds not being committed as quickly, and it will be possible for at least 16 additional contracts to be written.

These amendments are also published herein under Notice of Intended Action as ARC 2214A.

The IDED Board adopted these amendments on July 18, 1991; and these amendments became effective on July 19, 1991.

These rules are intended to implement 1991 Iowa Acts, House File 479, section 301, subsection 4, paragraph "e."

The following amendments are adopted.

ITEM 1. Amend 261-61.3(72GA, ch 1273), paragraph "1," as follows:

1. Be an ~~Iowa resident or an entity with corporate offices located in the state of Iowa~~, employing fewer than 500 individuals, ~~75 percent or more of whom are employed within the state of Iowa~~.

ITEM 2. Amend 261-61.4 (72 GA, ch 1273), introductory paragraph, as follows:

261-61.4(72GA, ch 1273) Eligible reimbursements. The department's reimbursement to approved applicants for assistance shall not exceed 75 percent of the expenses directly attributed to the applicant's cost of participation in a trade show or trade mission. Total reimbursement shall not exceed ~~\$5000~~ \$4000 per event. Payments will be made by the department on a reimbursement basis upon submission of proper documentation and approval by the department of paid receipts to the bureau. Reimbursement is limited to the following types of expenses:

ITEM 3. Amend 261-Chapter 61 by striking "(72GA, ch 1273)" and inserting "(74GA, HF479)" in the rule numbers and by striking the implementation clause at the end of the chapter and inserting in lieu thereof the following:

These rules are intended to implement 1991 Iowa Acts, House File 479, section 301, subsection 4, paragraph "e."

[Filed Emergency 7/19/91, effective 7/19/91]

[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2219A

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 (IDED) adopts and implements a new Chapter 68, "Rural Community Leadership Development Program," Iowa Administrative Code.

This chapter provides guidelines for the operation of the Rural Community Leadership Development Program

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

which is to be administered by the IDED. The purposes of this program are to develop individual leadership skills, develop team building skills, and encourage multi-community development initiatives and cooperation. Cooperative partners in delivery of this program include Iowa's independent colleges and universities, merged area schools, and Iowa State University Extension.

In accordance with Iowa Code section 17A.4(2), the Department finds that normal notice and public participation are unnecessary, impracticable, and contrary to the public interest. The new chapter provides guidelines for operation of the Rural Community Leadership Development Program. Emergency adoption and implementation are necessary given the length of the program (ten months) and participant availability. The educational component of this program involves community participant involvement over a ten-month period. In order to complete the program within the '92 fiscal year, educational sessions need to start in October. Prior to that, community groups must work with the local educational provider to develop a proposal. Educational institutions and community groups need at least six weeks to develop their proposals (mid-July through August). Thus, it is necessary to adopt and implement emergency rules by mid-July to meet these program timelines.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of the amendment, 35 days after publication, should be waived and the amendment made effective on July 19, 1991, upon filing with the Administrative Rules Coordinator. The Department finds that the rules confer a benefit by allowing the communities and educational service providers adequate time to prepare proposals. The other main benefit for communities entails a timely beginning of the program in October when participant availability is greater; running the program into the summer months conflicts with participants' schedules.

These rules are also published herein under Notice of Intended Action as ARC 2223A.

The new chapter became effective on July 19, 1991.

These rules are intended to implement 1991 Iowa Acts, House File 479, section 301, subsection 1, paragraph "b."

The following new chapter is adopted:

**CHAPTER 68
RURAL COMMUNITY LEADERSHIP
DEVELOPMENT PROGRAM**

261-68.1(15) Purpose. The purpose of this program is to provide grants to conduct a rural community leadership development program (RCLDP). Goals of the leadership program are to develop individual leadership skills, develop team building skills; and encourage multicomunity development initiatives and cooperation. Guidelines for the project encourage: the cooperation of institutions of higher education in providing local community leadership development education; the development of rural multi-community development initiatives and organizations; and the promotion of cooperation among rural communities for the purpose of economic development through innovative adult and educational programs.

261-68.2(15) Program eligibility. Eligible applicants include merged area schools, Iowa State University Extension (ISUE) field offices, and institutions of higher education that are current members of the Iowa Association of Independent Colleges and Universities. Each

awardee shall work with the community resource development (CRD) program of ISUE to deliver the program. The CRD program will provide training, materials, and overall coordination for the RCLDP. Applicants shall provide documentation, as specified in 68.5(1), that the local communities named in the application agree to participate in: (a) Program A, which follows the Tomorrow's Leaders Today (TLT) curriculum, or (b) Program B, a modified TLT curriculum.

68.2(1) Geographic proximity. Any community within an applicant group should be no farther than 50 miles from another community.

68.2(2) Population guideline. This leadership program shall target specific rural population areas including, but not limited to:

a. Groups of communities where each community is 5,000 or less in population.

b. Groups of communities where communities of 5,000 or less are joined with a community of 15,000 or less.

68.2(3) Program alternatives. Two types of programs will be available to communities.

a. Program A. Program A will follow the TLT curriculum developed by ISUE. The TLT curriculum promotes experiential learning in community leadership development. Program A shall not exceed 12 months. Responsibilities of the applicant will include, but not be limited to: (1) assisting in the recruitment of participants; (2) arranging meeting sites, meeting dates, and local meeting facilities; (3) planning specific agendas for each meeting; and (4) providing follow-up services to local communities after completion of the program. Each selected site will follow the curriculum as identified in this paragraph. The first five sessions will be standard for each class. Sessions 6 to 11 will be customized to reflect local issues and needs as identified by class participants and the local instructors in consultation with ISUE staff. With the exception of the fifth and eleventh sessions, all other sessions will be conducted within the geographic area of the grouping of communities. ISUE will provide technical and teaching assistance to each awardee group and conduct a statewide retreat. Curriculum for Program A includes the following topics:

1. Commitment. To acquaint participants with the program and each other. Staff presents an overview of community development through clustering.

2. Personality types and leadership. To gain insight into one's identity and affirm one's self-concept; and to understand how personality types relate to leadership styles and individual leadership strengths and limitations.

3. Community identity. To build understanding of why groups are important and how to make them work for us and to develop community identity as a foundation for cooperation.

4. Creating your future. To develop a future perspective and shared vision for clusters.

5. Sharing (two-day retreat). To promote intercluster networking and to identify potential cluster projects. Participants share results of informal needs assessment, use brainstorming to generate project ideas, and share their ideas with other clusters.

6. Project. To begin work on cluster projects.

7. Developing strategies. Participants will continue work on projects and a Cluster Action Plan, developing strategies based on information gathered from existing community leaders.

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8. Implementing action. Participants will involve other community leaders in their project planning.

9. Future options. To explore options for continued cluster organization.

10. Program closure. To introduce newly trained leaders to the community, to mark the official end of the course, and to motivate for continued action.

11. Follow-up. Cluster transformation team convenes session to determine the future of the cluster.

b. Program B. Program B involves a modification of the TLT curriculum. Applicants will develop a proposal under Program B which matches their local needs. It is assumed that Program B will be shorter in duration and include less program content due to local needs and wishes. Applicants are encouraged to use the TLT curriculum as a guideline in developing the modified curriculum. A proposed curriculum will be part of the application under Program B.

261--68.3(15) Match requirements of communities.

68.3(1) Program A. Individuals participating in Program A will provide a fee of \$75 to cover meal expenses, meeting room costs, and other expenses related to conducting sessions in the local area. The costs of session five (two-day retreat) are covered by the general program budget. Contributions from utilities, businesses, government, etc., can augment individual fees.

68.3(2) Program B. Individuals participating in Program B will provide a fee not to exceed \$50. Contributions from utilities, businesses, government, etc., can augment individual fees.

261--68.4(15) Project awards.

68.4(1) Maximum awards. An applicant may receive funds for an individual project subject to the following limitations:

a. The maximum award for Program A is \$8,000 per project.

b. The maximum award for Program B is \$4,000 per project.

68.4(2) Eligible expenses. Expenses eligible for reimbursement may include, but are not limited to, the following:

a. Staff and meeting expenses.

b. Local coordinating staff to assist in the organization of the program.

c. Educational/training materials associated with the delivery of Program A or Program B.

d. Administrative costs of the applicant, but not to exceed 5 percent of the applicant's total request.

e. Faculty or staff time for teaching or organizing the educational sessions, but not to exceed 33 percent of the applicant's total request.

f. Honorarium and travel of guest speakers and instructors.

68.4(3) Ineligible expenses. Expenses ineligible for reimbursement include, but are not limited to, the following:

a. Travel and meal expenses of program participants.

b. Office equipment or office rental.

261--68.5(15) General guidelines for applications.

68.5(1) Applications shall include letters of endorsement from: (a) a representative of the applicant merged area school, independent college or university, or ISUE field office; (b) area extension director which services the communities named in the application; (c) mayors or city

councils of each participating community; and (d) any other public or private institution which has agreed to provide financial or staff assistance to the program.

68.5(2) Timetables and curriculum.

a. Applicants to the Program A option shall follow the curriculum and timetable as outlined in 68.2(3)"a."

b. Applicants to the Program B option shall specify a timetable and a curriculum in their application. Modified project timetables shall include at least four educational sessions over a period of time not to exceed six months from the initial session. The modified curriculum shall allow for total contact time with participants of at least 14 hours.

68.5(3) The department shall disseminate a request for proposal to appropriate entities.

68.5(4) Application submission. Applications shall be submitted to the Rural Development Coordinator, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. Application forms and instructions are available at this address or by telephone (515)242-4840.

68.5(5) Application contents. Required contents of the application include:

a. A brief description of recent economic, community and leadership development programs in the area.

b. A narrative giving evidence of past interaction and cooperation among the communities involved for the purpose of community and economic development.

c. A brief statement of existing needs and issues in the area that (1) create a potential for future community development projects and (2) require more local leadership capabilities.

d. An explanation of how program participants will be integrated into the respective communities' leadership structures, and how newly trained community leaders would be used to foster multicommunity development and other multicommunity activities.

e. A summary sheet containing (1) an estimate of the population of the affected area, (2) a description of the geographic region from which individual participants will be drawn, (3) the name of a contact person from each community involved, and (4) existing community and economic development committees and organizations.

f. A description of the human and in-kind fiscal resources the applicant will bring to the program.

g. Curriculum and timetable for the program.

h. Letters of endorsement as specified in 68.5(1).

261--68.6(15) Review and award process.

68.6(1) Review committee. Each eligible application shall be reviewed by a committee made up of the following: two representatives of the department; one representative appointed by the ISUE; and the designated representative of the Iowa Association of Independent Colleges and Universities and the designated representative of the Iowa Association of Community College Presidents who serve as ex-officio members of the Iowa Economic Development Board. Applicants that score fewer than 300 points under subrule 68.6(3) shall not be eligible for funding. Applicants may be interviewed further to gain additional information about the proposal or to negotiate the proposed plan of work. Recommendations of the committee will be forwarded to the director of the department for final decisions.

68.6(2) Ranking. The committee will rank the applications based upon the following criteria:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

a. Appropriateness and effectiveness of the leadership development project in addressing the stated issues or problems within the area.

b. Need for the project in the area (low population density, remoteness, difficulty in filling elected and appointed government positions, historical community rivalries, out migration of past leaders, etc.).

c. The level of involvement of local organizations and governments in the organization and delivery of the program.

d. The level of commitment and collaboration among eligible applicants in the delivery of the program.

e. The degree of existing networking and cooperation for joint community development among the communities involved.

f. The commitment of the area's leaders to utilize trained participants in leadership roles.

68.6(3) Scoring. The scoring system has a maximum of 500 points.

a. Appropriateness of project to local needs	75 points possible
b. Need for the project	100 points possible
c. Local involvement in project	75 points possible
d. Commitment and collaboration among eligible agencies	75 points possible
e. The existing multicomunity cooperation	75 points possible
f. Commitment to use trained participants	100 points possible

261-68.7(15) Program management.

68.7(1) Record keeping. Financial records, supporting documents, statistical records and all other records pertinent to the project shall be retained by the recipient of funds.

68.7(2) Contract. A contract will be negotiated with the successful applicants to define the terms for disbursement of funds and responsibilities.

68.7(3) Access to records. Representatives of the department and state auditors shall have access to all books, accounts and documents belonging to or in use by the recipient pertaining to the receipt of assistance under this program.

68.7(4) Audit and monitoring. All contracts under this program are subject to audit. Any costs determined by the department to be unallowable expenses shall be repaid to the department.

261-68.8(15) Performance reviews. Applicants will be required to submit a quarterly progress report to the department. The report will assess progress toward the goals of the program and the activities taking place during each session. The department and the CRD program of the ISUE may perform field visits as deemed necessary.

These rules are intended to implement 1991 Iowa Acts, House File 479, section 301, subsection 1, paragraph "b."

[Filed Emergency 7/19/91, effective 7/19/91]

[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2213A

HISTORICAL DIVISION[223]

TERRACE HILL COMMISSION

Adopted and Filed Emergency

Pursuant to Iowa Code sections 303.1A and 303.17(4), the Terrace Hill Commission of the Department of Cultural Affairs hereby rescinds Chapter 55, and adopts a new Chapter 55, "Organization and Operation of Terrace Hill," Iowa Administrative Code.

The rules set out the duties, membership, and responsibilities of the Terrace Hill Commission, and address issues of facility management including fees.

Pursuant to Iowa Code subsection 17A.4(2), the Commission finds that notice and public participation are impracticable due to the immediate need to supplement revenues to allow the facility to remain open to the public.

The Commission also finds, pursuant to Iowa Code subparagraph 17A.5(2)"b"(2), that the normal effective date of these rules, 35 days after publication, should be waived and these rules should become effective immediately upon filing with the Administrative Rules Coordinator. The rules convey an important benefit as they outline fees necessary to maintain the hours of the facility and allow it to retain its use as a public facility. With the exception of the fees, only editorial changes and clarifications are present in the rules.

Rescind 223--Chapter 55 and insert the following in lieu thereof:

CHAPTER 55

ORGANIZATION AND OPERATION OF TERRACE HILL

223-55.1(303) Definitions. The definitions listed in Iowa Code section 17A.2 shall apply for terms as used throughout this chapter. In addition, the following definitions shall apply:

"Administrator" means the administrator of Terrace Hill.

"Commission" means the Terrace Hill Commission as established by Iowa Code section 303.17.

"Facility" means the Terrace Hill mansion, carriage house, grounds, and all related property.

"Foundation" means the Terrace Hill Foundation, a nonprofit corporation which solicits contributions and raises funds for the renovation and improvement of the facility.

"Society" means the Terrace Hill Society, an unofficial organization which raises funds and provides volunteers for restoration and landscape projects of Terrace Hill.

223-55.2(303) Mission statement. The Terrace Hill commission exists in accordance with Iowa Code section 303.17 to preserve, maintain, renovate, landscape, and administer the Terrace Hill facility. The commission has authority to approve the ongoing expenditures for preservation, renovation, and landscaping of Terrace Hill and seeks necessary funds for these activities. Terrace Hill is maintained as the official residence for the governor of Iowa and serves as a facility for public and private functions.

HISTORICAL DIVISION[223](cont'd)

223--55.3(303) Terrace Hill commission.

55.3(1) Function. The Terrace Hill commission exists to establish policy and procedures for the renovation, interpretation, operation and fiscal management of the facility.

55.3(2) Composition. The commission consists of nine members appointed by the governor in accordance with Iowa Code section 303.17.

55.3(3) Meetings. The commission shall meet at the call of the chair. Six members present and voting constitutes a quorum and an affirmative vote of five members is required for approval of an item.

All meetings are open to the public under Iowa Code chapter 21, and in accordance with Robert's Rules of Order, Revised Edition. Public notice of all meetings shall be distributed to the news media. The tentative agenda for meetings shall be posted in the governor's office at the state capitol at least 24 hours prior to the commencement of any meeting in accordance with Iowa Code chapter 21.

55.3(4) Committees--appointment. Committees of the commission may be appointed on an ad hoc basis by the chairperson of the board. Nonboard members may be appointed to committees as nonvoting members.

223--55.4(303) Gifts, bequests, endowments. The commission, acting on behalf of the society and the foundation, may accept private gifts, bequests, and endowments with such gifts credited to the account of the society. Accepted gifts, bequests, and endowments shall be used in accordance with the desire of the donor as expressed at the time of the donation. Undesignated funds shall be credited to the general fund of the society and used for projects and activities of the commission or society.

223--55.5(303) Public and private grants and donations. The commission, society, or foundation may apply for and receive funds from public or private sources. Receipts from these grants shall be credited to the appropriate account and shall be used in accordance with all stipulations of the grant contract.

223--55.6(303) Sale of mementos. The commission may sell mementos or other items relating to Iowa and its culture at its facilities.

55.6(1) Operator of gift shop. The commission may enter into an agreement with the society for operation of the gift shop including both facilities, merchandise, and promotion. The commission shall require an accounting of all receipts and expenditures of the gift shop.

55.6(2) Income. All receipts shall be deposited in the account of the society. The society shall provide a quarterly financial statement to the commission.

223--55.7(303) Facilities management.

55.7(1) Address. Terrace Hill is located at 2300 Grand Avenue, Des Moines, Iowa 50312. Telephone number (515)281-3604.

55.7(2) Hours of operation. Terrace Hill is open to the public a minimum of 20 hours per week and is closed the months of January and February. Specific hours and days shall be posted at the facility. The hours shall be approved by the commission. Changes in the hours shall be effective upon 30 days' notice as posted.

55.7(3) Fees. Fees may be charged and collected by the commission and shall be administered according to Iowa Code section 303.9. Fees may be charged for, but are not limited to, admission, special events, use of

images, and technical services. All fees charged shall be approved by the commission and shall become effective upon 30 days' notice. This notice shall be a public posting in the facility. All fees shall be permanently posted.

55.7(4) Smoking. Smoking shall be prohibited in all designated areas of the facility. Smoking areas shall be approved by the commission.

55.7(5) Food and drink. Consumption of food and beverages shall be prohibited in the facility except in specific areas as designated by the commission.

55.7(6) Use of alcoholic beverages. Alcoholic beverages may be served at functions at the facility only with the use of an approved caterer. Interested caterers shall contact the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

55.7(7) All individuals and groups renting the facility for any use shall agree in writing to abide by the "hold harmless" clause specified in the letter of agreement.

All individuals or groups renting the facility shall be liable for any or all damages to the facility. The renter shall be billed for the cost of the repairs, extraordinary cleaning and, if necessary, the collection costs.

55.7(8) Public functions may be held at the facility when the governor has an immediate interest or the function meets the special events criteria established by the commission. The criteria require that the event be in accordance with the mission of the facility. Weddings and wedding receptions are strictly prohibited, except in the case of the immediate family of the current governor. Inquiries shall be directed to the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

223--55.8(303) Tours.

55.8(1) Group tours. Reservations shall be required for tour groups of ten or more. Requests for reservations shall be directed to the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

55.8(2) Fees. An admission fee is charged at Terrace Hill. There shall be no charge for school groups. The fee schedule shall be permanently posted at the site. Inquiries concerning fees shall be directed to the Administrator, Terrace Hill, 2300 Grand Avenue, Des Moines, Iowa 50312.

55.8(3) Parking. Designated parking has been established by the commission. Vehicles are not permitted in the east driveway.

55.8(4) Pets. Pets are not permitted at the facility with exception of those belonging to the governor, or those assisting the hearing or visually impaired.

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

[Filed Emergency 7/19/91, effective 7/19/91]

[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2192A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

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.

The Council on Human Services adopted these amendments July 9, 1991. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on May 15, 1991, as ARC 1953A.

These amendments increase the standard utility and telephone allowances for food stamp households responsible for heating or air-conditioning costs. These amendments also provide for a new standard utility for households responsible for utility costs that do not include heating or air-conditioning costs. Households not entitled to the standard or choosing to use actual utility expenses will have actual costs used in the calculation, except for the telephone costs. These amendments also establish that future revisions to the standard allowances be made annually effective October 1 using the percent increase for fuels and other utilities, electricity and telephone from the Consumer Price Index Periodical for January for the average percent increase for the year for all urban consumers United States city average.

Households with utility expenses (except for phone only) separate from their rent or mortgage expense may choose to use actual verified expenses or the appropriate standard utility allowance to calculate their food stamp eligibility and benefits. The current utility standard for households with heating or air-conditioning expense is \$151. This amount has not been updated since July of 1986. The new amount is \$202. Households choosing actual verified expenses with expenses for telephone service receive a standard amount for telephone service. The current phone standard, which was also last updated in July of 1986, is \$16. The new standard is \$18.

Information regarding utility expense and need from "The Standard of Need for the State of Iowa" completed in January 1991 was reviewed to arrive at the new standards. A survey was also made of other states' policies and methodologies. While surveying other states, it was discovered that some states have developed a standard utility allowance for households that have utility expenses which do not include heat or air-conditioning expenses. Iowa has no current standard for households without heat or air-conditioning expenses. Information gathered in this review and survey was used to calculate the revised standard for households with heating or air-conditioning expense and the new standard for households without heating or air-conditioning expense. The proposal to annually adjust the standards to reflect increases in the Consumer Price Index is also due to information discovered while surveying other states.

The chart below shows how the standard utility allowance of \$202 was calculated. The average utility percent used in the chart was also obtained from "The Standard of Need for the State of Iowa" completed in January 1991.

CALCULATION FOR HOUSEHOLDS WITH HEATING OR AIR-CONDITIONING EXPENSES

	Household Size								
	1	2	3	4	5	6	7	8	9
Level II Standard of Need Urban/Rural Aver.	585	674	869	998	1213	1343	1487	1598	1776
Average Utility %	12.5	15.5	16.5	14	17	15	16	15	14.5
Utility Amount	73.13	104.47	143.39	139.72	206.21	201.45	237.92	239.70	257.52
The utility amount total for all household sizes is \$1603.51. The average for all household sizes is \$178.17 (\$1603.51 ÷ 9). The \$178.17 plus 3.5% CPI (\$6.23) = \$184.40 plus the \$18 phone expense is \$202 rounded down.									

The standard for households with utility expenses other than only phone and not including heating or air-conditioning costs was computed using the average utility costs for electricity, water, sewer and trash collection in nine cities in Iowa for a household of four as found in "The Standard of Need for the State of Iowa" prepared in January 1991. This amount was then increased using the CPI annual percentage increase for 1990. The standard phone expense of \$18 was also added to this amount to obtain the final amount of \$103. The phone standard of \$18 was also obtained from "The Standard of Need for the State of Iowa" and is the average phone expense of nine Iowa cities.

Revisions to subrule 65.22(1), paragraph "e," were added to the amendments published under Notice of Intended Action to clarify verification will need to be provided regarding the utility expense which makes them eligible for either standard.

These rules are intended to implement Iowa Code section 234.12.

These rules became effective August 1, 1991.

The following amendments are adopted:

ITEM 1. Amend rule 441-65.8(234) as follows:

Rescind subrules 65.8(1) and 65.8(3) and insert the following in lieu thereof:

65.8(1) Standard allowance for households with heating or air-conditioning expenses. The standard allowance for utilities which include heating or air-conditioning costs is a single utility standard. This standard is \$202 effective August 1, 1991. Beginning October 1, 1992, this allowance shall change annually effective each October 1 using the percent increase reported in the Consumer Price Index Monthly Periodical for January for fuels and other utilities for the average percent increases for the prior year for all urban consumers United States city average. Any numeral after the second digit following the decimal point will be dropped in this calculation. Any decimal amount of .49 or under will be rounded down. Any decimal of .50 or more will be rounded up to the nearest dollar. The cent amount will be included when calculating the next year's increase.

65.8(3) Telephone standard. When a household is receiving telephone service for which it is required to pay and the household is not entitled or chooses not to receive a single standard allowance, a standard allowance shall be allowed. This standard shall be \$18 effective August 1, 1991. Beginning October 1, 1992, this allowance shall change annually effective each October 1 using the percent increase reported in the Consumer Price Index Monthly Periodical for January for telephone service for the average percent increases for the prior year for all

HUMAN SERVICES DEPARTMENT[441](cont'd)

urban consumers United States city average. Any numeral after the second digit following the decimal point will be dropped in this calculation. Any decimal amount of .49 or under will be rounded down. Any decimal of .50 or more will be rounded up to the nearest dollar. The cent amount will be included when calculating the next year's increase.

Further amend rule 441-65.8(234) by adding the following new subrule:

65.8(5) Standard allowance for households without heating or air-conditioning expenses. This standard allowance is for households with some utility expenses. These utility expenses cannot include heating or air-conditioning expenses and cannot be solely for phone. This standard is \$103 effective August 1, 1991. Beginning October 1, 1992, this allowance shall change annually effective each October 1 using the percent increase reported in the Consumer Price Index Monthly Periodical for January for electric service for the average percent increases for the prior year for all urban consumers United States city average. Any numeral after the second digit following the decimal point will be dropped in this calculation. Any decimal amount of .49 or under will be rounded down. Any decimal of .50 or more will be rounded up to the nearest dollar. The cent amount will be included when calculating the next year's increase.

ITEM 2. Amend subrule 65.22(1), paragraph "e," as follows:

e. Utilities. Actual utilities (for households required or choosing to use actual utility expenses) shall be verified at time of application and recertification, when reported in the monthly reporting system and whenever a change is reported (~~when the household is not in the monthly reporting system~~) by the household.

Households choosing the *a* utility standard shall verify responsibility for ~~heating or air-conditioning expenses~~ the utility expense that makes them eligible for that standard when not previously verified, whenever the household has moved or a change in responsibility for ~~heating or air-conditioning utility~~ expenses is reported.

[Filed Emergency After Notice 7/10/91, effective 8/1/91]
[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2198A**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 135C.14, the Department of Inspections and Appeals hereby amends Chapter 58, "Intermediate Care Facilities," Iowa Administrative Code.

This amendment removes a requirement that nurses employed by an intermediate care facility on a full-time basis not be employed in another full-time job. It was determined that restricting nurses from full-time employment outside a facility was inconsistent with rules for other types of health care facilities.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are

unnecessary and contrary to the public interest because the Department is merely correcting an inconsistency in this subrule.

The Department finds that this amendment confers a benefit on nurses employed by an intermediate care facility by removing a restriction on work activities outside the facility. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2) and shall become effective July 19, 1991.

This amendment was approved for adoption by the Board of Health on July 10, 1991.

These rules are intended to implement Iowa Code section 135C.14(2).

The following amendment is adopted:

Amend subrule 58.11(2) by rescinding paragraph "a" in its entirety.

[Filed Emergency 7/17/91, effective 7/19/91]
[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2205A**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 135.11 and 1991 Iowa Acts, Senate File 529, section 305, the Department of Public Health hereby amends Chapter 111, "Financial Assistance to Eligible End-Stage Renal Disease Patients," Iowa Administrative Code.

This amendment implements the following change in services available to renal patients due to funds available for the current fiscal year. This amendment adds the following to the list of services that are eligible for reimbursement: medical expense, hospital expenses, home hemodialysis supplies, lodging expense, and home hemodialysis assistants.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation would be contrary to the public interest in that it would create a significant delay in the reimbursement of services for which a substantial need exists.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this rule, 35 days after publication, should be waived and the rule be made effective upon filing with the Administrative Rules Coordinator on July 17, 1991, as it confers a benefit upon the public by allowing continuation of payment for services.

This amendment was adopted by the Board of Health on July 10, 1991, and became effective on July 17, 1991.

This rule is intended to implement Iowa Code section 135.11.

Rescind subrule 111.6(2) and Appendix 1 and Appendix 2 and insert in lieu thereof the following:

111.6(2) Financial assistance for the financial status categories listed in Appendix 1 and services listed with percent of coverage as amended in Appendix 2 shall be reimbursed at a rate of 85 percent of services covered for eligible claims received by this program on or after July 1, 1991.

APPENDIX 1

1988 Poverty Guidelines for All States

CHRONIC RENAL DISEASE PROGRAM FINANCIAL STATUS CATEGORIES

Number In Family	(A) Medical Assistance	(1) To 150% of Base	(2) To 200% of Base	(3) To 250% of Base	(4) To 300% of Base
1	Persons receiving	\$0 - \$ 8,654	\$8,655 - \$11,539	\$11,540 - \$14,424	\$14,425 - \$17,310
2	Medical Assistance	\$0 - \$11,594	\$11,595 - \$15,459	\$15,460 - \$19,324	\$19,325 - \$23,190
3	(Title XIX)	\$0 - \$14,534	\$14,535 - \$19,379	\$19,380 - \$24,224	\$24,225 - \$29,070
4		\$0 - \$17,474	\$17,475 - \$23,299	\$23,300 - \$29,124	\$29,125 - \$34,950
5		\$0 - \$20,414	\$20,415 - \$27,219	\$27,220 - \$34,024	\$34,025 - \$40,830
6		\$0 - \$23,354	\$23,355 - \$31,139	\$31,140 - \$38,924	\$38,925 - \$46,710
7		\$0 - \$26,934	\$26,935 - \$35,059	\$35,060 - \$43,824	\$43,825 - \$52,590
8		\$0 - \$29,234	\$29,235 - \$38,979	\$38,980 - \$48,724	\$48,725 - \$58,470

BASE-POVERTY INCOME GUIDELINES

<u>Number in Family</u>	<u>Amount</u>
1	\$5,770
2	\$7,730
3	\$9,690
4	\$11,650
5	\$13,610
6	\$15,570
7	\$17,530
8	\$19,490

For family units with more than 8 members,
add \$1,960 for each additional member.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

APPENDIX 2

TYPES OF FINANCIAL ASSISTANCE AVAILABLE

TYPES OF ASSISTANCE	(A) MEDICAL ASSISTANCE	(1) TO 150% OF BASE	(2) TO 200% OF BASE	(3) TO 250% OF BASE	(4) TO 300% OF BASE
Hospital and independent facility charges	NA	AP	AP	AP at 50%	AP at 50%
Medical Charges	NA	AP	AP	AP at 50%	AP at 50%
Home Dialysis Supply Charges	NA	AP	AP	AP at 50%	AP at 50%
Home Hemodialysis Assistants	NA	AP	AP	AP at 50%	AP at 50%
Pharmaceuticals	Nonlegend and Coinsurance	AP	AP	AP at 150%	NA
Travel for outpatient dialysis home dialysis, transplantation and three months post-transplant period only	In-city only	AP	AP	AP at 150%	NA
Lodging for home dialysis training, transportation and three months post-transplant period only	NA	AP	AP	AP at 50%	NA
Health Insurance and Medicare	AP (excluding Medicare)	AP	AP	AP	NA

NA = No Assistance AP = Assistance Provided BASE = Poverty Income Guidelines
(See Appendix 1)

All reimbursement for assistance will be paid at 85%

For example:

A hospital claim for \$100 to a category 3 recipient would be reimbursed as follows:

Step 1: $\$100 \times 50\% = \50

Step 2: $\$50 \times 85\% = \42.50

\$42.50 would be the total reimbursement for that claim.

[Filed Emergency 7/17/91, effective 7/17/91]
[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2188A**SECRETARY OF STATE[721]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 47.1, the Secretary of State adopts amendments to Chapter 4, "Forms," Iowa Administrative Code.

The purpose of the amendments is to comply with the provisions of 1991 Iowa Acts, Senate File 476, which makes changes in the campaign finance disclosure reporting threshold for candidates for school and city elections. This reporting threshold is included in the affidavit by candidate, a form prescribed by the Secretary of State. The new reporting threshold is different for school and city election candidates than it is for other nonpartisan candidates, which makes it necessary for the Secretary of State to prescribe a new form.

The Act also makes changes in the language regarding the reporting threshold for other candidates; these changes are reflected in modifications to Forms 2-A, 2-B, 2-C and 2-D.

In compliance with Iowa Code section 17A.4(2), the Agency finds that notice and public participation are unnecessary at this time because of the benefit conferred upon the public by having the new forms available immediately. Candidates for office in the 1991 school and city elections will need to use the affidavit form immediately. Other forms will be needed by candidates seeking office in 1992. The Secretary of State has already received requests for these forms. The new forms merely incorporate statutory changes, therefore public comment is unnecessary.

In compliance with Iowa Code section 17A.5(2)"b"(2), the Agency finds that these amendments should become effective on July 10, 1991, upon filing with the Administrative Rules Coordinator. This will enable timely production of the forms for distribution to candidates and county commissioners of elections.

The Secretary of State adopted these amendments on July 10, 1991.

This rule became effective July 10, 1991.

These amendments are intended to implement Iowa Code sections 43.18, 43.67, 44.3(2), 45.3(2), 277.4, 376.4 and 56.2(4) as amended by 1991 Iowa Acts, Senate File 476, section 1.

The following amendments are adopted:

ITEM 1. Amend rule 721-4.3(17A), Section 2, "Nomination documents and forms," as follows:

- Section 2. Nomination documents and forms
- 2-A(Rev.-7/91) Affidavit by Candidate--Primary Election
 - 2-B(Rev.-7/91) Affidavit by Candidate--Nominations by Political Parties
 - 2-C(Rev.-7/91) Affidavit by Candidate--Nominations by Nonparty Political Organizations
 - 2-D(Rev.-7/91) Affidavit by Candidate--Nonpartisan Nominations
 - 2-E(Rev.-91) Nomination Paper--For U.S. Senator, U.S. Representative & Statewide Offices
 - 2-F(Rev.-91) Nomination Paper--For State Senator
 - 2-G(Rev.-91) Nomination Paper--For State Representative

2-H(Rev.-90)

2-I(Rev.-90)

2-J(Rev.-91)

2-K(Rev.-91)

2-L(Rev.-91)

2-M(91)

Nomination Paper--For Nonpartisan Nominations and Nonparty Political Organizations

Certificate of Nomination

Nomination Petition for the Offices of Electors for President and Vice President of the United States

Nomination Paper for County Office Certificate of Nomination--Chapter 43

Affidavit by Candidate--School and City Elections

ITEM 2. Rescind the implementation clause following rule 721-4.3(17A) and insert in lieu thereof the following:

This rule is intended to implement Iowa Code sections 43.13; 43.14 as amended by 1991 Iowa Acts, House File 420, section 1; 43.18 as amended by 1991 Iowa Acts, House File 420, section 2; 43.42 as amended by 1991 Iowa Acts, House File 420, section 5; 43.43; 43.67 as amended by 1991 Iowa Acts, House File 420, section 6; 43.88; 44.3(1); 44.3(2) as amended by 1991 Iowa Acts, House File 420, section 7; 44.45; 45.3 as amended by 1991 Iowa Acts, House File 420, section 9; 48.17; 49.104(6); 49.65; 49.77; 49.81; 49.81(4); 49.90; 50.10; 50.24; 53.2; 53.13; 53.19; 53.25; 53.46(2); 56.2(4) as amended by 1991 Iowa Acts, Senate File 476, section 1; 68B.11(4); 277.4; and 376.4.

[Filed Emergency 7/10/91, effective 7/10/91]

[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2194A**UTILITIES DIVISION [199]****Adopted and Filed Emergency After Notice**

Pursuant to Iowa Code sections 17A.4, 476.2 and 1990 Iowa Acts, chapter 1103, the Utilities Board (Board) gives notice that on July 15, 1991, the Board issued an order in Docket No. RMU-91-6, In Re: Zero Balancing of Automatic Adjustments, "Order Adopting and Filing Rules on an Emergency Basis."

On May 23, 1991, the Board issued an order in this docket commencing a rule making to consider rescinding subrule 19.10(4) in response to the Legislature's repeal of unnumbered paragraph 2 of Iowa Code section 476.6(11). Prior to the repeal of that paragraph, utilities were required to bring the balance of automatic adjustments to zero in rates. The Board adopted 199 IAC 19.10(4) which required gas utilities to reduce their purchased gas adjustments to zero in filings made August 1 of each year. Since the statute requiring automatic adjustments to be reduced to zero was repealed, the Board determined it was no longer necessary to require gas utilities to reduce purchased gas adjustments to zero and proposed the rescission of 199 IAC 19.10(4). The proposed rule making was published in the Iowa Administrative Bulletin on June 12, 1991, as ARC 2057A.

UTILITIES DIVISION[199](cont'd)

The Board adopts the rescission of this subrule on an emergency basis pursuant to Iowa Code section 17A.5(2)"b"(2). The rescission is pursuant to a statutory change and will confer a benefit on the public because it implements the intent of the Legislature. The rescission also removes a restriction on Iowa's gas utilities and will alleviate the need for unnecessary filings on August 1 of this year.

Four commenters submitted written comments in support of the rescission and no one requested an oral proceeding as provided for in the Notice of Intended Action. Commenters included the Consumer Advocate Division of the Department of Justice, Midwest Gas, a Division of Iowa Public Service Company, Iowa-Illinois Gas and Electric Company, and Iowa Southern Utilities Company.

The rescission of the subrule shall become effective on July 16, 1991, pursuant to Iowa Code section 17A.5, immediately upon filing with the Administrative Rules Coordinator. See Iowa Code section 17A.5(2)"b"(2).

This rescission is intended to implement 1990 Iowa Acts, chapter 1103.

The Board adopts the following:

Rescind and reserve subrule 19.10(4).

[Filed Emergency After Notice 7/16/91, effective 7/16/91]

[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2233A
ENVIRONMENTAL PROTECTION
COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission of the Department of Natural Resources amends Chapter 61, "Water Quality Standards," Iowa Administrative Code.

The recent revisions which amended the numerical and narrative criteria of the water quality standards, published as ARC 821A [IAB 4/18/90] and effective May 23, 1990, included publishing requirements of the protected flows established for designated streams and the new aquatic use protection designations for Iowa's various water bodies.

These final rules propose to add, as Item 1, a new rule-referenced document which specifically lists the protected flows which have been recommended for various designated streams or streams proposed to be designated as a part of this round of use designation. The protected flows are established in lieu of the natural seven-day, ten-year low flows. Subrule 61.2(5) provides for the establishment of a protected flow, higher in magnitude than the 7Q10, when the designated uses may not be present during the 7Q10 conditions, but the uses are present during the protected flow conditions.

It is anticipated that approximately three years of field activities will be required to properly determine and assign the appropriate use designations to all individual rivers, streams and lakes. The determination and adoption of use designations are required prior to implementation of the amended water quality standards in establishing individual effluent limits for wastewater treatment facilities. These final rules contain the third group of waters for which the new use designations are warranted.

This list of rivers and streams, noted in Item 2, represents water bodies which: (1) were previously Class B (warm water) segments that are proposed to be designated as Class B(WW) Significant Resource warm water, (2) were previously Class B (warm water) segments that are proposed to be designated as Class B(LR) Limited Resource warm water, or (3) were previously General Classified streams that are proposed to be designated as Class B(LR) Limited Resource warm water. The review of these segments has been prompted to facilitate needed wastewater treatment facility planning activities. The specific use designations are noted in subrule 61.3(5)"e."

This list of stream segments is to be inserted into subrule 61.3(5)"e" according to each segment's relationship in the drainage basin. The list does not include all of the

stream segments in the state, but only the additional segments recommended to be adopted in the rules at this time.

A Notice of Intended Action was published on February 20, 1991, as ARC 1729A. Public hearings were held on March 12, 13, 14, and 15, 1991. An Economic Impact Statement was published in the Iowa Administrative Bulletin on March 20, 1991.

The amendments, to include the use designations and the protected flow document, were adopted on July 17, 1991. Three modifications to the proposed rules, as published under Notice of Intended Action, have been made. Two of these modifications are to the use designation for Big Creek in Henry County (Skunk River basin). A portion of the upper segment of Big Creek is modified from a Class B(WW) Significant Resource to a Class B(LR) Limited Resource designation. In addition, a Class A Primary Contact use designation was added to a major portion of the lower portions of Big Creek. The third modification was to delete the segment of the South Skunk River from the confluence with Indian Creek (Jasper Co.) to Ames Water Works Dam (S36, T84N, R24W, Story Co.) from consideration at this time. Rule making concerning this stream segment was terminated by the Environmental Protection Commission on July 17, 1991, due to indecision as to the appropriate designation for this stream segment. These modifications are a result of comments received during the comment period. Nine written and oral comments were received. These comments have been addressed in a responsiveness summary available from the Department. This summary is on file with the Administrative Rules Coordinator. An economic assessment was prepared for the third phase of the use designations. This assessment is available from the Department and is on file with the Administrative Rules Coordinator.

These rules are intended to implement Iowa Code chapter 455B, division III, part 1.

These rules will become effective September 11, 1991.

ITEM 1. Amend subrule 61.2(5), first unnumbered paragraph, as follows:

All minimum flows established under the provisions of this rule will be published annually by the department. *The minimum flows, commonly termed protected flows, are presented in "Iowa Water Quality Standards: Protected Flows For Selected Stream Segments," dated December 12, 1990. A copy of this document is available upon request from the department. A copy is also on file with the Iowa administrative rules coordinator.*

ITEM 2. Amend 61.3(5)"e" by inserting in their natural sequence or hydrological order the following designations:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Iowa Water Quality Standards
Water Use Designations

WESTERN IOWA RIVER BASINS

Western Iowa River Basins (Missouri, Big Sioux, and Little Sioux Rivers)

The streams or stream segments named below in alphabetical order are referenced within the Water Use Designations for Western Iowa River Basins. Reference numbers provided in the alphabetical list correspond to numbered stream segments in the Water Use Designations.

- | | | |
|-----------------------------|-------------------------|-----------------------------------|
| Dry Run - 21 | Lost Island Outlet - 16 | Otter Creek - 12 |
| Dugout Creek - 24 | Milford Creek - 22 | Pickereel Run - 17 |
| Floyd River - 4 | Mink Creek - 6 | Rock River - 8, 9 |
| Kanaranzi Creek - 13 | Moser Creek - 3 | Stony Creek - 19 |
| Little Floyd River - 7 | Mosquito Creek - 1, 2 | West Branch Floyd River - 5 |
| Little Ocheyedan River - 20 | Mud Creek - 10 | West Fork Little Sioux River - 23 |
| Little Rock River - 11 | Ocheyedan River - 18 | |
| | Odebolt Creek - 15 | |

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
<u>Mosquito Cr.</u>								
1. Mouth (Pottawattamie Co.) to confluence with Little Mosquito Cr. (S29, T75N, R43W, Pottawattamie Co.)		X						
2. Confluence with Little Mosquito Cr.(Pottawattamie Co.) to confluence with Moser Cr. (S12, T80N, R40W, Shelby Co.)			X					
<u>Moser Cr.</u>								
3. Mouth (Shelby Co.) to confluence with an unnamed tributary (S30, T81N, R39W, Shelby Co.)			X					
<u>Floyd R.</u>								
4. Confluence with W. Br. Floyd R. (Plymouth Co.) to confluence with North Fork (S9, T97N, R41W, O'Brien Co.)			X					
<u>West Branch Floyd R.</u>								
5. Mouth (Plymouth Co.) to confluence with an unnamed tributary (NE 1/4, S18, T96N, R44W, Sioux Co.)			X					
<u>Mink Cr.</u>								
6. Mouth to confluence with an unnamed tributary (NE 1/4, S21, T93N, R46W, Plymouth Co.)			X					
<u>Little Floyd R.</u>								
7. Mouth (Sioux Co.) to confluence with Lamkin Cr. (S8, T96N, R42W, O'Brien Co.)			X					
<u>Rock R.</u>								
8. Mouth (Sioux Co.) to confluence with Kanaranzi Cr. (S28, T100N, R45W, Lyon Co.)		X						

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

WESTERN IOWA RIVER BASINS

Water Uses

	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
9. Confluence with Kanaranzi Cr. (Lyon Co.) to the Iowa-Minnesota state line			X					
<u>Mud Cr.</u>								
10. Mouth (Lyon Co.) to the Iowa-Minnesota state line			X					
<u>Little Rock R.</u>								
11. Mouth (Lyon Co.) to the Iowa-Minnesota state line			X					
<u>Otter Cr.</u>								
12. Mouth (Lyon Co.) to confluence with an unnamed tributary (S14, T99N, R42W, Osceola Co.)			X					
<u>Kanaranzi Cr.</u>								
13. Mouth (Lyon Co.) to the Iowa-Minnesota state line			X					
LITTLE SIOUX RIVER SUBBASIN								
<u>Little Sioux R.</u>								
14. Confluence with W Fork Little Sioux R. (S7, T99N, R37W, Dickinson Co.) to the Iowa-Minnesota state line			X					
<u>Odebolt Cr.</u>								
15. Mouth (Ida Co.) to confluence with an unnamed tributary (S24, T87N, R39W, Ida Co.)			X					
<u>Lost Island Outlet</u>								
16. Mouth (Clay Co.) to confluence with Pickerel Run S17, T96N, R36W, Clay Co.)			X					
<u>Pickerel Run</u>								
17. Mouth (Clay Co.) to confluence with an unnamed tributary (S31, T97N, R35W, Clay Co.)			X					
<u>Ochevedan R.</u>								
18. Mouth (Clay Co.) to the Iowa-Minnesota state line			X					
<u>Stony Cr.</u>								
19. Mouth (Clay Co.) to confluence with an unnamed tributary (S27, T98N, R38W, Dickinson Co.)			X					
<u>Little Ochevedan R.</u>								
20. Mouth (Osceola Co.) to confluence with an unnamed tributary (NW 1/4, S4, T98N, R40W, Osceola Co.)			X					
<u>Dry Run</u>								
21. Mouth (Osceola Co.) to confluence with an unnamed tributary (S17, T99N, R39W, Osceola Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

WESTERN IOWA RIVER BASINS

LITTLE SIOUX RIVER SUBBASIN

		Water Uses							
		A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
<u>Milford Cr.</u>									
22.	Mouth (Dickinson Co.) to confluence with an unnamed tributary S18, T98N, R36W, Dickinson Co.			X					
<u>West Fork Little Sioux R.</u>									
23.	Mouth (Dickinson Co.) to the Iowa-Minnesota state line			X					
<u>Dugout Cr.</u>									
24.	Mouth (Dickinson Co.) to confluence with the first upstream unnamed tributary (S15, T99N, R38W, Dickinson Co.)			X					

SOUTHERN IOWA RIVER BASINS

The streams or stream segments named below in alphabetical order are referenced within the Water Use Designations for Southern Iowa River Basins. Reference numbers provided in the alphabetical list correspond to numbered stream segments in the Water Use Designations.

- | | | |
|-----------------------------------|-------------------------------|-------------------------------------|
| Brushy Creek - 20 | Little Walnut Creek - 6 | Tarkio River - 28 |
| Cooper Creek - 4 | Middle Branch 102 River - 25 | Turkey Creek - 14 |
| Crooked Creek - 11 | Middle Fork 102 River - 19 | Walnut Creek - 5 |
| E. Fork 102 River - 18 | Middle Fork Grand River - 8 | Walnut Creek - 10 |
| Elk Creek - 32 | Middle Nodaway River - 26, 27 | W. Branch 102 River - 23, 24 |
| Fox River - 1 | North Fox Creek - 2 | W. Fork 102 River - 21, 22 |
| Gard Branch - 15 | Platte Branch - 16 | W. Fork West Nishnabotna River - 30 |
| Grand River (aka Thompson R.) - 7 | Plum Creek - 13 | W. Nishnabotna River - 29 |
| Grand River - 9 | Rose Branch - 22(a) | Willow Creek - 31 |
| Honey Creek - 17 | South Fox Creek - 3 | |
| | Squaw Creek - 12 | |

		Water Uses							
		A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
<u>Fox R.</u>									
1.	Iowa-Missouri state line to confluence with an unnamed tributary (S29, T69N, R15W, Davis Co.)			X					
<u>North Fox Cr.</u>									
2.	Mouth (Davis Co.) to confluence with an unnamed tributary (S2, T69N, R16W, Appanoose Co.)			X					
<u>South Fox Cr.</u>									
3.	Mouth (SE 1/4 S28, T69N, R15W, Davis Co.) to confluence with an unnamed tributary (S5, T68N, R15W, Davis Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

SOUTHERN IOWA RIVER BASINS

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
<u>Cooper Cr.</u>								
4. Mouth (Appanoose Co.) to confluence with an unnamed tributary (S9, T68N, R19W, Appanoose Co.)			X					
<u>Walnut Cr.</u>								
5. Mouth (Appanoose Co.) to confluence with an unnamed tributary (S31, T69N, R19W, Appanoose Co.)			X					
<u>Little Walnut Cr.</u>								
6. Mouth (Appanoose Co.) to confluence with Wolf Branch (S12, T69N, R19W, Appanoose Co.)			X					
<u>Grand R. (aka Thompson R.)</u>								
7. Confluence with Ninemile Cr. (Adair Co.) to confluence with Marvel Cr. (S8, T75N, R30W, Adair Co.)			X					
<u>Middle Fork Grand R.</u>								
8. Iowa-Missouri state line (Ringgold Co.) to confluence with an unnamed tributary (S13, T68N, R30W, Ringgold Co.)			X					
<u>Grand R.</u>								
9. Iowa-Missouri state line (Ringgold Co.) to bridge crossing (S25/36, T71N, R30W, Union Co.)			X					
<u>Walnut Cr.</u>								
10. Mouth (Ringgold Co.) to confluence with an unnamed tributary (NE 1/4, S36, T69N, R30W, Ringgold Co.)			X					
<u>Crooked Cr.</u>								
11. Mouth (Ringgold Co.) to confluence with Brush Cr. (S28, T69N, R30W, Ringgold Co.)			X					
<u>Squaw Cr.</u>								
12. Mouth (Ringgold Co.) to confluence with an unnamed tributary (S27, T70N, R30W, Ringgold Co.)			X					
<u>Plum Cr.</u>								
13. Mouth (Ringgold Co.) to confluence with West Plum Cr. (S18, T70N, R30W, Ringgold Co.)			X					
<u>Turkey Cr.</u>								
14. Mouth (Ringgold Co.) to confluence with an unnamed tributary (NE 1/4, S29, T31W, R69N, Ringgold Co.)			X					
<u>Gard Branch</u>								
15. Mouth (Ringgold Co.) to confluence with an unnamed tributary (SE 1/4, S20, T70N, R31W, Ringgold Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

SOUTHERN IOWA RIVER BASINS

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
<u>Platte Branch</u>								
16. Iowa-Missouri state line to bridge crossing (S16/17, T68N, R32W, Taylor Co.)			X					
<u>Honey Cr.</u>								
17. Iowa-Missouri state line to confluence with an unnamed tributary (S14, T69N, R32W, Taylor Co.)			X					
<u>East Fork 102 R.</u>								
18. Iowa-Missouri state line to bridge crossing (Center, S8, T68N, R33W, Taylor Co.)		X						
<u>Middle Fork 102 R.</u>								
19. Iowa-Missouri state line to Hwy 149 bridge crossing (S22/23, T69N, R34W, Taylor Co.)			X					
<u>Brushy Cr.</u>								
20. Mouth (Taylor Co.) to confluence with an unnamed tributary (S24, T68N, R35W, Taylor Co.)			X					
<u>West Fork 102 R.</u>								
21. Iowa-Missouri state line to confluence with the West Branch 102 R. (S10, T68N, R35W, Taylor Co.)		X						
22. Confluence with West Branch 102 R. (S10, T68N, R35W, Taylor Co.) to confluence with an unnamed tributary (S6, T70N, R34W, Taylor Co.)			X					
<u>Rose Branch</u>								
22(a) Mouth (Taylor Co.) to confluence with an unnamed tributary (S34, T71N, R34W, Adams Co.)			X					
<u>West Branch 102 R.</u>								
23. Mouth (Taylor Co.) to confluence with Middle Branch 102 R. (S6, T69N, R34W, Taylor Co.)		X						
24. Confluence with Middle Branch 102 R. (S6, T69N, R34W, Taylor Co.) to confluence with Willow Cr. (S29, T71N, R33W, Adams Co.)			X					
<u>Middle Branch 102 R.</u>								
25. Mouth (Taylor Co.) to bridge crossing at (S16/21, T70N, R33W, Taylor Co.)			X					
<u>Middle Nodaway R.</u>								
26. Mouth (Montgomery Co.) to confluence with West Fork Middle Nodaway (S33, T74N, R33W, Adair Co.)		X						
27. Confluence with West Fork Middle Nodaway (Adair Co.) to confluence with an unnamed tributary (S1, T75N, R32W, Adair Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

SOUTHERN IOWA RIVER BASINS

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
<u>Tarkio R.</u>								
28. Confluence with East Tarkio Cr. (S9, T68N, R38W, Page Co.) to confluence with East Tarkio Cr. (S4, T72N, R37W, Montgomery Co.)			X					
<u>West Nishnabotna R.</u>								
29. Confluence with West Fork West Nishnabotna R. to confluence with Elk Cr. (S36, T81N, R38W, Shelby Co.)			X					
<u>West Fork West Nishnabotna R.</u>								
30. Mouth (Shelby Co.) to confluence with Maloney Branch (S29, T83N, R37W, Crawford Co.)			X					
<u>Willow Cr.</u>								
31. Mouth (Shelby Co.) to confluence with an unnamed tributary (S3, T81N, R39W, Shelby Co.)			X					
<u>Elk Cr.</u>								
32. Mouth (Shelby Co.) to confluence with an unnamed tributary (NW 1/4, S28, T82N, R37W, Crawford Co.)			X					

DES MOINES RIVER BASIN

The streams or stream segments named below in alphabetical order are referenced within the Water Use Designations for the Des Moines River Basins. Reference numbers provided in the alphabetical list correspond to numbered stream segments in the Water Use Designations.

- | | | |
|-------------------------|--------------------------------|----------------------------|
| Badger Creek - 20 | Honey Creek - 29 | North River - 17, 18 |
| Big Creek - 28 | Jim Creek - 23 | Otter Creek - 31 |
| Brush Creek - 7 | Jones Creek - 13 | Outlet Creek - 33 |
| Calhoun Creek - 8 | Little Fourmile Creek - 27 | Plunger Creek - 24 |
| Camp Creek - 9 | Little White Breast Creek - 6 | S. Fork Clanton Creek - 15 |
| Cavitt Creek - 11 | Middle Branch Boone River - 32 | Spring Branch - 38 |
| Clanton Creek - 12 | Middle Creek - 19 | Sugar Creek - 1 |
| Coal Creek - 10 | Middle Raccoon River - 34, 35 | Tom Creek - 22 |
| Competine Creek - 4 | Muchakinock Creek - 2 | White Breast Creek - 5 |
| D.D. 94 - 30 | Mud Creek - 16 | Willey Branch - 37 |
| English Creek - 3 | N. Branch North River - 21 | Willow Creek - 36 |
| Fourmile Creek - 25, 26 | N. Fork Clanton Creek - 14 | |

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

DES MOINES RIVER BASIN
LOWER DES MOINES RIVER SUBBASIN

(Des Moines R. Tributaries)

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
<u>Sugar Cr.</u>								
1. Mouth (Lee Co.) to bridge crossing (S8, T67N, R6W, Lee Co.)			X					
<u>Muchakinock Cr.</u>								
2. Confluence with Little Muchakinock Cr. (S34, T75N, R16W, Mahaska Co.) to confluence with an unnamed tributary (NW 1/4 of SW1/4, S27, T76N, R17W, Mahaska Co.)			X					
<u>English Cr.</u>								
3. Mouth (Marion Co.) to confluence with Long Branch (S16, T74N, R20W, Marion Co.)			X					
<u>Competine Cr.</u>								
4. Mouth (Marion Co.) to confluence with an unnamed tributary (S5, T75N, R19W, Marion Co.)			X					
<u>White Breast Cr.</u>								
5. Confluence with Little White Breast Cr. (Lucas Co.) to confluence with an unnamed tributary (S4, T71N, R24W, Clarke Co.)			X					
<u>Little White Breast Cr.</u>								
6. Mouth (Lucas Co.) to Ellis Lake (S27, T72N, R21W, Lucas Co.)			X					
<u>Brush Cr.</u>								
7. Mouth (Lucas Co.) to confluence with an unnamed tributary (W 1/2, S21, T72N, R23W, Lucas Co.)			X					
<u>Calhoun Cr.</u>								
8. Mouth (Marion Co.) to confluence with Union Valley Cr. (S33, T78N, R20W, Jasper Co.)			X					
<u>Camp Cr.</u>								
9. Mouth (Jasper Co.) to confluence with an unnamed tributary (S14, T79N, R22W, Polk Co.)			X					
<u>Coal Cr.</u>								
10. Mouth (Warren Co.) to confluence with Coon Cr. (S29, T76N, R21W, Marion Co.)			X					
<u>Cavitt Cr.</u>								
11. Mouth (Warren Co.) to confluence with an unnamed tributary (S13, T76N, R24W, Warren Co.)			X					
<u>Clanton Cr.</u>								
12. Confluence with Jones Cr. (Madison Co.) to the confluence with the North Fork and South Fork Clanton Cr. (SW 1/4, S10, T74N, R27W, Madison Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

DES MOINES RIVER BASIN
LOWER DES MOINES RIVER SUBBASIN

(Des Moines R. Tributaries, Continued)

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
<u>Jones Cr.</u>								
13.			X					
<u>North Fork Clanton Cr.</u>								
14.			X					
<u>South Fork Clanton Cr.</u>								
15.			X					
<u>Mud Cr.</u>								
16.			X					
<u>North R.</u>								
17.	X							
18.			X					
<u>Middle Cr.</u>								
19.			X					
<u>Badger Cr.</u>								
20.			X					
<u>North Branch North R.</u>								
21.			X					
<u>Tom Cr.</u>								
22.			X					
<u>Jim Cr.</u>								
23.			X					
<u>Plunger Cr.</u>								
24.			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

DES MOINES RIVER BASIN
 LOWER DES MOINES RIVER SUBBASIN

(Des Moines R. Tributaries, Continued)

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
<u>Fourmile Cr.</u>								
25. Mouth (Polk Co.) to Co. Rd. bridge (S18, T80N, R23W, Polk Co.)	X		X					
26. Co. Rd. bridge (S18, T80N, R23W, Polk Co.) to bridge crossing (N line of S22, T81N, R24W, Polk Co.)			X					
<u>Little Fourmile Cr.</u>								
27. Mouth (Polk Co.) to confluence with unnamed an tributary (S35, T79N, R23W, Polk Co.)			X					
UPPER DES MOINES RIVER SUBBASIN								
<u>Big Creek (aka Big Cr. Lake Outlet)</u>								
28. Mouth (Polk Co.) to Big Creek Lake Dam (SW 1/4, S26, T81N, R25W, Polk Co.)			X					
<u>Honey Cr.</u>								
29. Mouth (Boone Co.) to bridge crossing at (NW 1/4, S33, T84N, R26W, Boone Co.)			X					
<u>D.D. 94</u>								
30. Mouth (Wright Co.) to West line of S3, T90N, R26W, Wright Co.			X					
<u>Otter Cr.</u>								
31. Mouth (Wright Co.) to confluence with West Otter Cr. (S31, T93N, R25W, Wright Co.)			X					
<u>Middle Branch Boone R.</u>								
32. Mouth (Hancock Co.) to confluence with an unnamed tributary (S31, T95N, R25W, Hancock Co.)			X					
RACCOON RIVER SUBBASIN								
<u>Outlet Cr.</u>								
33. Mouth (Buena Vista Co.) to bridge crossing at (S26/27, T90N, R36W, Buena Vista Co.)			X					
<u>Middle Raccoon R.</u>								
34. Guthrie-Carroll Co. line to confluence with Willey Branch (S26, T83N, R34W, Carroll Co.)		X						
35. Confluence with Willey Branch (Carroll Co.) to confluence with an unnamed tributary (S8, T84N, R35W, Carroll Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

DES MOINES RIVER BASIN
RACCOON RIVER SUBBASIN

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
<u>Willow Cr.</u>								
36. Mouth (Guthrie Co.) to confluence with an unnamed tributary (SE 1/4, S30, T83N, R32W, Green Co.)			X					
<u>Willey Branch</u>								
37. Mouth (Carroll Co.) to confluence with an unnamed tributary (S29, T83N, R34W, Carroll Co.)			X					
<u>Spring Branch</u>								
38. Mouth (Carroll Co.) to confluence with an unnamed tributary (S16, T83N, R34W, Carroll Co.)			X					

SKUNK RIVER BASIN

The streams or stream segments named below in alphabetical order are referenced within the Water Use Designations for the Skunk River Basins. Reference numbers provided in the alphabetical list correspond to numbered stream segments in the Water Use Designations.

Ballard Creek - 16	E. Branch Indian Creek - 14
Benjamin Creek - 13	Long Creek - 1
Big Creek - 2, <u>2a</u> , 3	Lynn Creek - 5
Brush Creek - 4	Rock Creek -
Cedar Creek - 6, 7	S. Skunk River - 11
Cherry Creek - 12	Sugar Creek - 17
Competine Creek - 10	W. Branch Indian Creek - 15
Crow Creek - 9	

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
<u>Long Cr.</u>								
1. Mouth (Des Moines Co.) to confluence with an unnamed tributary (S3, T69N, R4W, Des Moines Co.)			X					
<u>Big Cr.</u>								
2. Mouth (Henry Co.) to confluence with N-Branch-Big Cr. <u>Saunders Br. (S1736, T712N, R6W, Henry Co.)</u>	X	X						
<u>2a. Confluence with Saunders Br. (S17, T71N, R6W, Henry Co.) to the confluence with Brandywine Cr. (S20, T72N, R6W, Henry Co.)</u>	X		X					
3. Confluence with N-Branch-Big-Cr. <u>Brandywine Cr. (S2036, T72N, R6W, Henry Co.)</u> to confluence with Lawrence Cr. (S5, T71N, R5W, Henry Co.)			X					
<u>Brush Cr.</u>								
4. Mouth (Henry Co.) to confluence with an unnamed tributary (S32, T71N, R5W, Henry Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

SKUNK RIVER BASIN

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HO	HOR
<u>Lynn Cr.</u>								
5. Mouth (Henry Co.) to confluence with an unnamed tributary (S7, T72N, R6W, Henry Co.) -			X					
<u>Cedar Cr.</u>								
6. Mouth (Henry Co.) to confluence with Little Cedar Cr. (S17, T70N, R7W, Henry Co.)		X						
7. Confluence with Little Cedar Cr. (Sec. 17, T70N, R7W, Henry Co.) to confluence with Little Cedar Cr. (S26, T73N, R13W, Wapello Co.)			X					
<u>Rock Cr.</u>								
8. Mouth (Jefferson Co.) to confluence with Jones Br. (Sec. 29, T71N, R8W, Jefferson Co.)			X					
<u>Crow Cr.</u>								
9. Mouth (Jefferson Co.) to confluence with an unnamed tributary (NW 1/4 of SW 1/4, S31, T72N, R9W, Jefferson Co.)			X					
<u>Competine Cr.</u>								
10. Mouth (Jefferson Co.) to confluence with an unnamed tributary (S15, T73N, R12W, Wapello Co.)			X					
<u>S Skunk R.</u>								
11. Confluence with Indian Cr. (Jasper Co.) to Ames Water Works Dam (S36, T84N, R24W, Story Co.)				RESERVED				
<u>Cherry Cr.</u>								
12. Mouth (Jasper Co.) to confluence with Benjamin Cr. (S20, T80N, R19W, Jasper Co.)			X					
<u>Benjamin Cr.</u>								
13. Mouth (Jasper Co.) to confluence with an unnamed tributary (NE 1/4, S21, T80N, R19W, Jasper Co.)			X					
<u>E. Branch Indian Cr.</u>								
14. Mouth (S16, T82N, R22W, Story Co.) to confluence with an unnamed tributary (S34, T85N, R22W, Story Co.)			X					
<u>W. Branch Indian Cr.</u>								
15. Mouth (S16, T82N, R22W, Story Co.) to confluence with an unnamed tributary (S1, T83N, R23W, Story Co.)			X					
<u>Ballard Cr.</u>								
16. Mouth (Story Co.) to confluence with an unnamed tributary (S15, T82N, R24W, Story Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

SKUNK RIVER BASIN

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
(N Skunk R. Tributaries)								
<u>Sugar Cr.</u>								
17. Mouth (Poweshiek Co.) to Interstate 80 bridge crossing (Jasper Co.)			X					

IOWA-CEDAR RIVER BASIN

The streams or stream segments named below in alphabetical order are referenced within the Water Use Designations for the Iowa-Cedar River Basins. Reference numbers provided in the alphabetical list correspond to numbered stream segments in the Water Use Designations.

Bailey Creek - 27	English River - 6	Spring Creek - 26
Beaverdam Creek - 29	Flint Creek - 3	Squaw Creek - 25
Big Hollow Creek - 5	Holland Creek - 23	Timber Creek - 11
Black Hawk Creek - 22	Knotty Creek - 4	Wapsinoc Creek - 16, 17
Brush Creek - 2	Mill Creek - 8	W. Branch Beaverdam Creek - 31
Brush Creek - 13	Mud Creek - 21	W. Branch Wapsinoc Creek - 18
Clear Creek - 7	N. Timber Creek - 14	W. Fork Cedar River - 24
D.D. 70 - 28	Otter Creek - 10	
E. Branch Beaverdam Creek - 30	Pike Run - 19, 20	
E. Branch Iowa River - 15	S. Timber Creek - 12	
E. Branch Salt Creek - 9	Spring Creek - 1	

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
(Mississippi R. Tributaries)								
<u>Spring Cr.</u>								
1. Mouth (Des Moines Co.) to confluence with an unnamed tributary (SE 1/4, S3, T69N, R3W, Des Moines Co.)			X					
<u>Brush Cr.</u>								
2. Mouth (Des Moines Co.) to road crossing (S8, T69N, R3W, Des Moines Co.)			X					
<u>Flint Cr.</u>								
3. Mouth (Des Moines Co.) to the confluence with an unnamed tributary (NW 1/4, S21, T71N, R4W, Des Moines Co.)			X					
<u>Knotty Cr.</u>								
4. Mouth (Des Moines Co.) to confluence with an unnamed tributary (NE 1/4, S1, T70N, R3W, Des Moines Co.)			X					
<u>Big Hollow Cr.</u>								
5. Mouth (Des Moines Co.) to confluence with an unnamed tributary (NW 1/4, S30, T71N, R3W, Des Moines Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

IOWA-CEDAR RIVER BASIN

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
IOWA RIVER SUBBASIN								
<u>English R.</u>								
6. Mouth (Washington Co.) to confluence with Ramsey Cr. (S14, T77N, R8W, Washington Co.)		X						
<u>Clear Cr.</u>								
7. Mouth (Johnson Co.) to confluence with an unnamed tributary (S22, T80N, R9W, Iowa Co.)			X					
<u>Mill Cr.</u>								
8. Mouth (Johnson Co.) to confluence with an unnamed tributary (S23, T81N, R6W, Johnson Co.)		X						
<u>E. Branch Salt Cr.</u>								
9. Confluence with Stein Cr. (S26, T84N, R13W, Tama Co.) to bridge crossing at (N line of S3, T84N, R13W, Tama Co.)			X					
<u>Otter Cr.</u>								
10. Mouth (Tama Co.) to the water control structure for Otter Creek Marsh (S12, T82N, R14W, Tama Co.)			X					
<u>Timber Cr.</u>								
11. Mouth (Marshall Co.) to confluence with N Timber Cr. (S24, T83N, R18W, Marshall Co.)			X					
<u>S. Timber Cr.</u>								
12. Mouth (S17, T83N, R17W, Marshall Co.) to confluence with an unnamed tributary (S10, T82N, R18W, Marshall Co.)			X					
<u>Brush Cr.</u>								
13. Mouth (Marshall Co.) to confluence with an unnamed tributary (S16, T82N, R17W, Marshall Co.)			X					
<u>N. Timber Cr.</u>								
14. Mouth (S24, T83N, R18W, Marshall Co.) to confluence with an unnamed tributary (S23, T83N, R19W, Marshall Co.)			X					
<u>E. Branch Iowa R.</u>								
15. Confluence with Galls Creek (Hancock Co.) to confluence with an unnamed tributary (N line, S34, T97N, R24W, Hancock Co.)			X					
CEDAR RIVER SUBBASIN								
<u>Wapsinoc Cr.</u>								
16. Mouth (Muscatine Co.) to confluence with Big Slough (S2, T77N, R4W, Muscatine Co.)		X						

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

IOWA-CEDAR RIVER BASIN

CEDAR RIVER SUBBASIN

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
17. Confluence with Big Slough (Muscatine Co.) to confluence with the East Branch and Middle Branch Wapsinonoc Cr. (S6, T78N, R3W, Muscatine Co.)			X					
<u>W. Branch Wapsinonoc Cr.</u>								
18. Mouth (Muscatine Co.) to confluence with an unnamed tributary (S4, T78N, R4W, Muscatine Co.)			X					
<u>Pike Run</u>								
19. Mouth (Muscatine Co.) to confluence with an unnamed tributary (NE 1/4, S8, T77N, R3W, Muscatine Co.)		X						
20. Confluence with an unnamed tributary (NE 1/4, S8, T77N, R3W, Muscatine Co.) to the road crossing at (SW 1/4, S34, T78N, R3W, Muscatine Co.)			X					
<u>Mud Cr.</u>								
21. Mouth (Benton Co.) to confluence with an unnamed tributary (S15, T84N, R11W, Benton Co.)			X					
<u>Black Hawk Cr.</u>								
22. Confluence with Mosquito Cr. (S20, T87N, R15W, Grundy Co.) to confluence with an unnamed tributary (S12, T87N, R18W, Grundy Co.)			X					
<u>Holland Cr.</u>								
23. Mouth (Grundy Co.) to confluence with an unnamed tributary (S29, T88N, R17W, Grundy Co.)			X					
<u>West Fork Cedar R.</u>								
24. Confluence with Bailey Cr. (S19, T93N, R19W, Franklin Co.) to confluence with Beaverdam Cr. and E Branch Beaverdam Cr. (S21, T94N, R20W, Cerro Gordo Co.)			X					
<u>Squaw Cr.</u>								
25. Mouth (Franklin Co.) to confluence with an unnamed tributary (S29, T92N, R20W, Franklin Co.)			X					
<u>Spring Cr.</u>								
26. Mouth (Franklin Co.) to bridge crossing at (S21/22, T92N, R21W, Franklin Co.), [excluding Beeds L.]			X					
<u>Bailey Cr.</u>								
27. Mouth (Franklin Co.) to confluence with an unnamed tributary (S16, T94N, R22W, Cerro Gordo Co.)			X					
<u>D.D. 70</u>								
28. Mouth (Cerro Gordo Co.) to bridge crossing at (S13/14, T94N, R22W, Cerro Gordo Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

IOWA-CEDAR RIVER BASIN

CEDAR RIVER SUBBASIN

		Water Uses							
		A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
<u>Beaverdam Cr.</u>									
29.	Mouth (Cerro Gordo Co.) to confluence with an unnamed tributary (S12, T95N, R22W, Cerro Gordo Co.)			X					
<u>E Branch Beaverdam Cr.</u>									
30.	Mouth (Cerro Gordo Co.) to confluence with an unnamed tributary (S4, T94N, R20W, Cerro Gordo Co.)			X					
<u>W Branch Beaverdam Cr.</u>									
31.	Mouth (Cerro Gordo Co.) to confluence with an unnamed tributary (S9, T94N, R21W, Cerro Gordo Co.)			X					

NORTHEASTERN IOWA RIVER BASINS

Northeastern Iowa River Basins (Wapsipinicon River, Maquoketa River, North Fork Maquoketa River, Turkey River, Volga River, Yellow River, and Upper Iowa River Subbasins).

The streams or stream segments named below in alphabetical order are referenced within the Water Use Designations for Northeastern Iowa River Basins. Reference numbers provided in the alphabetical list correspond to numbered stream segments in the Water Use Designations.

- | | |
|------------------------------|--|
| Beaver Creek - 22 | Middle Fk. Little Maquoketa R. - 15 |
| Catfish Creek - 7, 8 | Minor Creek - 20 |
| Cloie Branch - 13 | North Fk. Catfish Cr. - 11 |
| Elk Creek - 3 | North Fk. Little Maquoketa R. - 14 |
| Granger Creek - 9 | Roberts Creek - 18 |
| Hogans Branch - 17 | Silver Creek - 1 |
| Lux Creek - 6 | Silver Creek - 19 |
| Middle Fork Catfish Cr. - 10 | South Fk. Catfish Cr. - 12 |
| | Spring Br. - 2 |
| | Tete des Morts Cr. - 4, 5 |
| | Unnamed Creek (near Lime Springs) - 21 |
| | Unnamed Creek (aka Haberkorn Cr.) - 16 |

WAPSIPINICON RIVER BASIN

(Wapsipinicon R. Tributaries)

		Water Uses							
		A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
<u>Silver Cr.</u>									
1.	Confluence with Crystal Cr. (aka Clear Cr.) (Clinton Co.) to confluence with Nigger Cr. (aka Negro Cr.) (S27, T82, R3E, Clinton Co.)			X					

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

NORTHEASTERN IOWA RIVER BASINS
WAPSIPINICON RIVER BASIN

(Wapsipinicon R. Tributaries, Continued)

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
<u>Spring Br.</u>								
2.			X					
Mouth (S3, T94N, R13W, Chickasaw Co.) to N line of Sec. 35, T95N, R13W, Chickasaw Co.)								
<u>Elk Cr.</u>								
3.			X					
Mouth (Sec. 1, T96N, R14W, Chickasaw Co.) to confluence with an unnamed tributary (SW1/4, Sec. 20, T97N, R13W, Chickasaw Co.)								
TURKEY RIVER SUBBASIN								
(Mississippi R. Tributaries)								
<u>Tete des Morts Cr. (aka Tete des Morts R.)</u>								
4.		X						
Mouth (Dubuque Co.) to confluence with Lux Creek (Section 7, T87N, R4E, Jackson Co.)								
5.			X					
Confluence with Lux Creek (Section 7, T87N, R4E, Jackson Co.) to confluence with an unnamed tributary (SW1/4, NE1/4, S32, T88N, R3E, Dubuque Co.)								
<u>Lux Cr.</u>								
6.			X					
Mouth (S7, T87N, R4E, Jackson Co.) to confluence with an unnamed tributary (S35, T88N, R3E, Dubuque Co.)								
<u>Catfish Cr.</u>								
7.		X						
Confluence with Middle Fk. Catfish Cr. (Dubuque Co.) to confluence with South Fk. Catfish Cr. (Dubuque Co.)								
8.			X					
Confluence with South Fk. Catfish Cr. (Dubuque Co.) to South line Section 9, T88N, R2E, Dubuque Co.)								
<u>Granger Cr.</u>								
9.			X					
Mouth (Dubuque Co.) to county road bridge crossing (S24, T88N, R2E, Dubuque Co.)								
<u>Middle Fk. Catfish Cr. (aka N. Fk. Catfish Cr.)</u>								
10.			X					
Mouth (Section 1, T88N, R2E, Dubuque Co.) to west line of Section 30, T89N, R2E, Dubuque Co.								
<u>North Fk. Catfish Cr.</u>								
11.			X					
Mouth (Section 35, T89N, R2E, Dubuque Co.) to Hwy 20 bridge crossing (S27, T89N, R2E, Dubuque Co.)								
<u>South Fk. Catfish Cr.</u>								
12.			X					
Mouth (Section 2, T88N, R2E, Dubuque Co.) to confluence with an unnamed tributary (SW 1/4 S3, T88N, R1E, Dubuque Co.)								

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

NORTHEASTERN IOWA RIVER BASINS
WAPSIPANICON RIVER BASIN
UPPER IOWA RIVER SUBBASIN

(Upper Iowa R. Tributaries, Continued)

	Water Uses							
	A	B(WW)	B(LR)	B(LW)	B(CW)	C	HQ	HQR
<u>Beaver Cr.</u>								
22. South line of Section 29, T100N, R13W, Howard Co. to confluence with an unnamed tributary in NE1/4, S32, T100N, R13W, Howard Co.			X					

[Filed 7/19/91, effective 9/11/91]
[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2227A**ENVIRONMENTAL PROTECTION COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.245, the Environmental Protection Commission adopts amendments to 567--Chapter 91, "Criteria for Award of Grants," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 15, 1991, as **ARC 1976A**.

Public hearings were held on June 5, 6, and 7, 1991, and no written or oral comments on the amendments were received.

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

These rules will become effective on September 11, 1991.

These rules are intended to implement Iowa Code sections 455B.105 and 455B.245.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to ch 91] is being omitted. These rules are identical to those published under Notice as **ARC 1976A**, IAB 5/15/91.

[Filed 7/19/91, effective 9/11/91]
[Published 8/7/91]

[For replacement pages for IAC, see IAC Supplement, 8/7/91.]

ARC 2226A**ENVIRONMENTAL PROTECTION COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.299, the Environmental Protection Commission adopts amendments to Chapter 92, "State

Revolving Fund Loans for Wastewater Treatment," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin, May 15, 1991, as **ARC 1975A**.

Public hearings were held on June 5, 6, and 7, 1991, and no written or oral comments on the amendments were received.

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

These rules will become effective on September 11, 1991.

These rules are intended to implement Iowa Code sections 455B.105 and 455B.299.

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 [92.3, 92.5, 92.8, 92.9] is being omitted. These rules are identical to those published under Notice as **ARC 1975A**, IAB 5/15/91.

[Filed 7/19/91, effective 9/11/91]
[Published 8/7/91]

[For replacement pages for IAC, see IAC Supplement, 8/7/91.]

ARC 2190A**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 40, "Application for Aid," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments July 9, 1991. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on May 29, 1991, as **ARC 2036A**.

These amendments allow the Department to refer questionable Aid to Dependent Children (ADC) cases to the Department of Inspections and Appeals (DIA) for further investigation and remove reference to a unit at DIA which no longer exists.

The Department already refers questionable food stamp cases to DIA for investigation and 95 percent of ADC

HUMAN SERVICES DEPARTMENT[441](cont'd)

cases receive food stamps. The Department of Inspections and Appeals now has the resources to investigate questionable ADC cases.

This change will help eliminate overpayments caused by client misrepresentation. Income maintenance workers do not always have the expertise or the time to investigate questionable situations.

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

These rules are intended to implement Iowa Code section 239.5.

These rules shall become effective October 1, 1991.

The following amendments are adopted:

ITEM 1. Amend rule 441-40.7(239) as follows:

Amend subrule 40.7(2) by rescinding and reserving paragraph "c."

Amend subrule 40.7(4), paragraph "d," as follows:

d. The recipient or applicant shall cooperate with the department when the recipient's or applicant's case is selected by quality control for verification of eligibility. The recipient or applicant shall also cooperate with the ~~food stamp investigation section of front end investigations conducted by the department of inspections and appeals for verification of eligibility to determine whether information supplied to the department by the client is complete and correct regarding pertinent public assistance information unless the investigation revolves solely~~ around circumstances of a person whose income and resources do not affect aid to dependent children eligibility. (See department of inspections and appeals rules 481-Chapter 72.) Failure to cooperate shall serve as a basis for cancellation or denial of the family's assistance. Once denied or canceled for failure to cooperate, the family may reapply but shall not be ~~determined eligible considered for approval~~ until cooperation occurs.

ITEM 2. Amend 441-Chapter 40 by adding the following new rule:

441-40.8(239) Referral for investigation. The local office may refer questionable cases to the department of inspections and appeals for further investigation. Referrals shall be made using Form 427-0328, Referral For Front End Investigation.

This rule is intended to implement Iowa Code section 239.5.

[Filed 7/10/91, effective 10/1/91]
[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2189A**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 amendment July 9, 1991. Notice of Intended Action regarding this amendment was published in the Iowa Administrative Bulletin on May 29, 1991, as ARC 2035A.

This amendment provides that major disaster and emergency assistance payments and certain restitution payments will be exempted from income and resources for purposes of Aid to Dependent Children (ADC) and ADC-related Medicaid. Restitution payments to United States citizens and permanent resident aliens of Japanese ancestry interned during World War II and restitution payments to Aleutians who, as civilians, were relocated from their homes during World War II by United States authority will be exempted.

These changes are required by the Disaster Relief and Emergency Assistance Amendments of 1988, Public Law 100-707, the Civil Liberties Act of 1988, Title I of Public Law 100-383, and the Aleutian and Pribilof Islands Restitution Act, Title II of Public Law 100-383. The Department has received Action Transmittals from the Department of Health and Human Services requiring that these changes be implemented. Federal regulations have not yet been received.

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

This rule is intended to implement Iowa Code section 239.5.

This rule shall become effective October 1, 1991.

The following amendment is adopted:

Amend subrule 41.7(6) by adding the following new paragraphs "y" and "z":

y. Payments for major disaster and emergency assistance provided under the Disaster Relief Act of 1974 as amended by Public Law 100-707, the Disaster Relief and Emergency Assistance Amendments of 1988.

z. Payments made to certain United States citizens of Japanese ancestry and resident Japanese aliens under Section 105 of Public Law 100-383, and payments made to certain eligible Aleuts under Section 206 of Public Law 100-383, entitled "Wartime Relocation of Civilians."

[Filed 7/10/91, effective 10/1/91]
[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2191A**HUMAN SERVICES
DEPARTMENT[441]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 75, "Conditions of Eligibility"; Chapter 76, "Application and Investigation"; Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care"; Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services"; Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care"; Chapter 81, "Nursing Facilities"; Chapter 82,

HUMAN SERVICES DEPARTMENT[441](cont'd)

"Intermediate Care Facilities for the Mentally Retarded"; Chapter 85, "Inpatient Psychiatric Services for Individuals Age 65 and Over and Under Age 21"; Chapter 86, "Medically Needy"; and Chapter 88, "Managed Health Care Providers," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments July 9, 1991. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on May 29, 1991, as ARC 2037A.

These amendments correct terminology changed due to nursing home reform legislation and rule references and implementation clauses.

Subrule 76.12(5) was revised to clarify the term "mental health institute."

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

These rules shall become effective October 1, 1991.

The following amendments are adopted:

ITEM 1. Amend rule 441--75.1(249A) as follows:

Amend subrules 75.1(3), 75.1(5), and 75.1(6) as follows:

75.1(3) Persons who are ineligible for Supplemental Security Income (SSI) because of requirements that do not apply under Title XIX of the Social Security Act. ~~Medical assistance Medicaid~~ shall be available to persons who would be eligible for SSI ~~except~~ *except* for an eligibility requirement used in that program which is specifically prohibited under Title XIX.

75.1(5) Persons receiving care in a medical institution who were eligible for ~~medical assistance Medicaid~~ as of December 31, 1973. ~~Medical assistance will Medicaid~~ shall be available to all persons receiving care in a ~~hospital, skilled nursing facility or intermediate care facility~~ *medical institution* who were recipients of ~~medical assistance Medicaid~~ as of December 31, 1973. Eligibility of these persons will continue as long as they continue to meet the eligibility requirements for the applicable assistance programs (old-age assistance, aid to the blind or aid to the disabled) in effect on December 31, 1973.

75.1(6) Persons who would be eligible for cash assistance except for their institutional status. ~~Medical assistance Medicaid~~ shall be available to ~~individuals~~ *persons* receiving care in a ~~hospital, skilled nursing facility, intermediate care facility, or intermediate care facility for the mentally retarded medical institution~~ who would be eligible for aid to dependent children, supplemental security income, or state supplementary assistance if they were not institutionalized.

Amend the implementation clause at the end of rule 441--75.1(249A) to read as follows:

This rule is intended to implement Iowa Code sections 249A.3, 249A.4, and 249A.6, ~~and 1989 Iowa Acts, chapter 304, sections 202, 203, and 1115 and chapter 318, sections 1, 2, and 30.~~

ITEM 2. Amend the implementation clause at the end of rule 441--75.2(249A) to read as follows:

This rule is intended to implement Iowa Code sections 249A.4, 249A.5, and 249A.6, ~~and 1983 Iowa Acts, chapter 153.~~

ITEM 3. Amend the implementation clause at the end of rule 441--75.5(249A) as follows:

This rule is intended to implement Iowa Code sections 249A.3(2)"a," 249A.3 and 249A.4 ~~and Iowa Code Supplement section 249A.3 as amended by 1990 Iowa Acts, Senate File 2365, section 6.~~

ITEM 4. Amend rule 441--75.25(249A), definitions of "Institutionalized person" and "Nursing facility services," as follows:

"Institutionalized person" shall mean a person who is an inpatient in a nursing facility *or a Medicare-certified skilled nursing facility*, who is an inpatient in a medical institution and for whom payment is made based on a level of care provided in a nursing facility, or who is a person described in 75.1(18) for the purposes of rules 441--75.5(249A) and 441--75.15(249A).

"Nursing facility services" shall mean the level of care provided in a medical institution licensed for ~~intermediate care facility, nursing services or skilled nursing facility services, or intermediate care facility for the mentally retarded~~ for the purposes of rule 441--75.15(249A).

ITEM 5. Amend the implementation clause at the end of 441--Chapter 75 to read as follows:

These rules are intended to implement Iowa Code sections 249A.3 and 249A.4, ~~1988 Iowa Acts, chapter 1276, section 3, subsection 5, and 1989 Iowa Acts, Senate File 117, sections 3 and 4, Senate File 538, sections 202, 203, and 1115 and Senate File 541, sections 1, 2, and 30.~~

ITEM 6. Amend subrule 76.12(5) as follows:

76.12(5) Repayment. The repayment of incorrectly expended Medicaid funds shall be made to the department.

However, repayment of funds incorrectly paid to a ~~skilled nursing facility, a Medicare-certified skilled nursing facility, a psychiatric medical institution for children, an intermediate care facility for the mentally retarded, or mental health institute enrolled as an inpatient psychiatric facility~~ may be made by the client to the facility. The department shall then recover the funds from the facility through a vendor adjustment.

ITEM 7. Amend the implementation clause at the end of rule 441--77.23(249A) to read as follows:

This rule is intended to implement Iowa Code section 249A.4 ~~and 1988 Iowa Acts, House File 2447, section 3, subsection 8.~~

ITEM 8. Amend the implementation clause at the end of rule 441--77.27(249A) to read as follows:

This rule is intended to implement Iowa Code section 249A.4 ~~and 1987 Iowa Acts, House File 671, section 203, subsection 2.~~

ITEM 9. Amend the implementation clause at the end of rule 441--77.28(249A) to read as follows:

This rule is intended to implement ~~1988 Iowa Acts, Senate File 2296, section 2~~ *Iowa Code section 249A.4.*

ITEM 10. Amend the implementation clause at the end of rule 441--78.14(249A) to read as follows:

This rule is intended to implement Iowa Code sections 249A.2(6), *section 249A.4,* ~~and 1983 Iowa Acts, chapter 201, section 5, subsection 1.~~

ITEM 11. Amend the implementation clause at the end of rule 441--78.18(249A) to read as follows:

This rule is intended to implement Iowa Code section 249A.4 ~~and 1989 Iowa Acts, Chapter 304, section 204.~~

ITEM 12. Amend the implementation clause at the end of rule 441--78.25(249A) to read as follows:

This rule is intended to implement Iowa Code section 249A.4 ~~and 1988 Iowa Acts, House File 2447, section 3, subsection 8.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 13. Amend the implementation clause at the end of rule 441-78.26(249A) to read as follows:

This rule is intended to implement ~~1985 Iowa Acts, chapter 259, section 3 Iowa Code section 249A.4.~~

ITEM 14. Amend the implementation clause at the end of rule 441-78.30(249A) to read as follows:

This rule is intended to implement Iowa Code section 249A.4 and ~~1987 Iowa Acts, House File 671, section 203, subsection 2.~~

ITEM 15. Amend the implementation clause at the end of rule 441-78.32(249A) to read as follows:

This rule is intended to implement ~~1988 Iowa Acts, Senate File 2296, section 2 Iowa Code section 249A.4.~~

ITEM 16. Amend the implementation clause at the end of rule 441-79.10(249A) to read as follows:

This rule is intended to implement Iowa Code section 249A.4 and ~~1989 Iowa Acts, chapter 318, section 2, subsection 11.~~

ITEM 17. Amend the implementation clause at the end of rule 441-79.11(249A) to read as follows:

This rule is intended to implement Iowa Code section 249A.4 and ~~1989 Iowa Acts, chapter 318, section 2, subsection 11.~~

ITEM 18. Amend rule 441-81.13(249A) as follows:

Amend subrule 81.13(13), paragraph "c," subparagraph (3), as follows:

(3) Except as provided in subparagraph (5 4) below, all required physician visits shall be made by the physician personally.

Amend the implementation clause at the end of rule 441-81.13(249A) to read as follows:

This rule is intended to implement Iowa Code sections 249A.2, 249A.3(2)"a," and 249A.4 and ~~1989 Iowa Acts, chapter 304, section 903.~~

ITEM 19. Amend the implementation clause at the end of rule 441-82.2(249A) to read as follows:

This rule is intended to implement Iowa Code chapter 249A and ~~1984 Iowa Acts, Senate File 2351, section 3.~~

ITEM 20. Amend rule 441-85.1(249A) as follows:

Amend subrule 85.1(1) as follows:

85.1(1) With respect to ~~individuals~~ persons aged 65 and over, an inpatient psychiatric facility is an establishment that is licensed pursuant to ~~public health department rule 470-51.33(135B) department of inspections and appeals rule 481-51.33(135B)~~ in Iowa or another state to provide inpatient psychiatric care and is certified to participate in the Medicare program.

Amend subrule 85.1(2), paragraph "a," as follows:

a. A psychiatric facility licensed pursuant to ~~public health department rule 470-51.5(135B) department of inspections and appeals rule 481-51.33(135B)~~ or an inpatient program in such a psychiatric facility, either of which is accredited by the joint commission on the accreditation of health care organizations.

ITEM 21. Amend the implementation clause at the end of rule 441-86.2(249A) to read as follows:

This rule is intended to implement Iowa Code section 249A.4 and ~~1985 Iowa Acts, chapter 239, section 7.~~

ITEM 22. Amend the implementation clause at the end of rule 441-86.5(249A) to read as follows:

This rule is intended to implement Iowa Code section 249A.4 and ~~1984 Iowa Acts, chapter 1310, section 3.~~

ITEM 23. Amend the implementation clause at the end of rule 441-86.6(249A) to read as follows:

This rule is intended to implement Iowa Code section 249A.4 and ~~1985 Iowa Acts, chapter 239, section 7.~~

ITEM 24. Amend the implementation clause at the end of rule 441-86.7(249A) to read as follows:

This rule is intended to implement Iowa Code section 249A.4 and ~~1984 Iowa Acts, chapter 1310, section 3.~~

ITEM 25. Amend the implementation clause at the end of rule 441-86.9(249A) to read as follows:

This rule is intended to implement Iowa Code section 249A.4 and ~~1984 Iowa Acts, chapter 1310, section 3.~~

ITEM 26. Amend the implementation clause at the end of rule 441-86.10(249A) to read as follows:

This rule is intended to implement Iowa Code sections 239.5 and 249A.4, ~~1985 Iowa Acts, chapter 239, section 7, 1989 Iowa Acts, Senate File 538, sections 202, 203, and 1115 and Senate File 541, sections 1, 2, and 30, and 1990 Iowa Acts, Senate File 2365, section 2, and Senate File 2435, section 1, subsection 4.~~

ITEM 27. Amend the implementation clause at the end of rule 441-86.11(249A) to read as follows:

This rule is intended to implement Iowa Code section 249A.4 and ~~1984 Iowa Acts, chapter 1310, section 3.~~

ITEM 28. Amend the implementation clause at the end of rule 441-86.12(249A) to read as follows:

This rule is intended to implement Iowa Code sections 239.5, 249A.3 and 249A.4, ~~1985 Iowa Acts, chapter 239, section 7, and 1989 Iowa Acts, chapter 304, section 1115, and chapter 318, sections 1, 2, and 30 and 1990 Iowa Acts, Senate File 2435, section 1, subsection 4.~~

ITEM 29. Amend the implementation clause at the end of rule 441-86.13(249A) to read as follows:

This rule is intended to implement Iowa Code section 249A.4 and ~~1984 Iowa Acts, chapter 1310, section 3.~~

ITEM 30. Amend rule 441-86.15(249A) as follows:

Amend subrules 86.15(1) and 86.15(3) as follows:

86.15(1) Care in ~~an intermediate care a nursing facility~~ or an intermediate care facility for the mentally retarded.

86.15(3) Care in a ~~Medicare-certified~~ skilled nursing facility.

Amend the implementation clause at the end of rule 441-86.15(249A) to read as follows:

This rule is intended to implement Iowa Code section 249A.4 and ~~1985 Iowa Acts, chapter 239, section 7.~~

ITEM 31. Amend the implementation clause at the end of rule 441-86.16(249A) to read as follows:

This rule is intended to implement Iowa Code section 249A.4 and ~~1984 Iowa Acts, chapter 1310, section 3.~~

ITEM 32. Amend the implementation clause at the end of 441-Chapter 88 to read as follows:

These rules are intended to implement Iowa Code section 249A.4 and ~~1989 Iowa Acts, chapter 318, section 2, subsection 11.~~

[Filed 7/10/91, effective 10/1/91]

[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2193A**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 107, "Certification of Adoption Investigators," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments July 9, 1991. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on February 20, 1991, as ARC 1722A.

These amendments make the following changes in policy regarding certification of adoption investigators based upon input from a committee consisting of the licensors from the Department of Inspections and Appeals, two certified adoption investigators, a representative from the Iowa Coalition for Children and Family Services, and field and Central Office staff from the Department of Human Services:

1. The services which certified adoption investigators may provide are expanded to include postplacement supervision. In the initial development of the rules, supervision was omitted. However, in order to write a post-placement report, the investigator must make home visits, observe the interaction between the family and child and generally supervise the placement and be available for problem solving.

2. The definition of adoption work experience is revised to include supervised employment in more than just direct provision of services. Time spent in developing adoption policies, conducting training related to adoption services, oversight and review of adoption documents and activities, and direct supervision of adoption workers is added as qualifying experience. This change was made based on input from former supervisors from private agencies who felt the experience was relevant to the responsibilities of the investigators.

3. The definition of "independent placer" is rescinded as the term is not used in the rest of the rules and is irrelevant.

4. Policy was revised to provide that employees of licensed child placing agencies, as well as employees of the Department, will not be certified when their current job duties include investigative duties, immediate supervision of employees engaged in investigative duties, certification of adoption investigators, placement of children for adoption, and development of adoption policies used in administration of the program. Public and private agency staff may not become certified as adoption investigators while they are employed in positions relating to adoption services because it appears to be a conflict of interest for the employee who works for an agency which places children in adoptive homes.

5. The residency requirement is revised to provide that the applicant must retain an office in Iowa where all Iowa adoption reports and records of fees are maintained and are available for inspection. Current policy provides that the investigator be a resident of Iowa or maintain a principal place of business within 25 miles of Iowa. It was felt that this was unfair, especially for investigators from border states, but that Iowa records should be kept in Iowa at all times for availability and efficiency of all parties involved.

6. The education and experience requirements for newly certified investigators are revised to require a bachelor's degree in social work, psychology, counseling, family therapy, family living or other family-oriented program from an accredited college or university and three years of full-time postgraduation adoption work experience or a master's degree in social work, psychology, counseling, family therapy, family living, or other family-oriented program from an accredited college or university and postgraduation adoption work experience equivalent to one year of full-time experience.

Persons with graduate education in a Master of Social Work, Psychology, Counseling, Family Therapy, Family Living, or other family-related program from an accredited college or university may substitute 30 semester hours for one year of full-time adoption work experience, for up to two of the three years of required work experience.

Persons currently certified will be grandfathered in.

7. Applicants are required to provide a certified transcript of college credits. Requiring a certified copy will prevent persons from making revisions to grades, etc.

8. Policy is revised to provide that all new applicants and those applying for recertification shall have record checks to determine if a founded child abuse or a criminal conviction record exists. Previously applicants were checked only for child abuse reports, and persons applying for recertification were checked only if there was reason to believe that child abuse had occurred. Unlike persons working for agencies, investigators are self-employed and the licensors from the Department of Inspections and Appeals would have no way of knowing if there was child abuse or if the person was convicted of a crime in Iowa unless record checks are completed both at application and recertification.

9. The list of reasons for denial or revocation of certification was revised to include: (a) the applicant having a founded child abuse or criminal record conviction unless an evaluation of the founded abuse or criminal conviction is conducted by the Department of Inspections and Appeals (DIA) and DIA concludes that the abuse or crime does not merit prohibition of certification; and (b) the investigator aiding or participating in an illegal placement or violating the statutes of Iowa Code chapter 600. Provision is made that the investigator must be warned in writing by the licensor of failure to provide complete or adequate information or accurate information before denial or revocation of the license.

The changes regarding record checks as a reason for denial and revocation were made in order to be consistent with what is currently required of adoptive and foster parents. The committee felt that an investigator who assisted in any illegal activity regarding placement of a child, or in violating the statutes of the Iowa Code should not be certified to work with families who may be transporting children into Iowa from another state or country for adoption. An investigator who provides inadequate or inaccurate information should be in danger of having certification revoked.

10. Policy is added to provide that if recertification is denied or revoked for reasons of record checks, assisting in an illegal activity regarding placement of a child or violating the statutes of the Iowa Code, the applicant is not eligible to reapply for certification for one year.

11. The number of investigator's records which shall be reviewed at the time of recertification is increased from at least 10 percent or no fewer than three (unless three

HUMAN SERVICES DEPARTMENT[441](cont'd)

constitutes 100 percent) to 20 percent or no fewer than four records. The licensors and investigators on the committee felt that 10 percent could be too few records to review for the investigator who does fewer than ten investigations a year. A larger number gives a better check on record keeping and will allow a licensor to catch a deficiency sooner.

12. The required contents of the written assessment of the adoptive family is revised. At least three references, income information, disciplinary practices, history of abuse by family members and treatment, assessment of commitment to and capacity to maintain other significant relationships, and substance use or abuse by family members and treatment are added to the required contents. The written assessment must include the date the study was completed, be signed by the investigator, and the signature must be notarized.

These revisions were made to include the same areas and requirements that private agencies and the Department must include in their written assessments for consistency.

13. Policy is revised to indicate the child abuse registry and criminal records checks shall be used to determine if a violation exists under Iowa law only. The adoption investigator, rather than the Department, is given the responsibility for evaluating any criminal violation. When a family has a history of a crime or child abuse, it is fairer to require the investigator who has already had contact with the family to evaluate the seriousness of the abuse or crime. The Department was making decisions based primarily on the evaluation form completed by the applicant, whereas the investigator can talk with the family and others in the community.

14. The number of visits to the adoptive parents' home for the postplacement investigation is increased from at least two to three visits. Requirements are added for postplacement reports and supervision, including the required number of home visits. This revision was made for consistency with requirements for private agencies and the Department.

Rule 441-107.2(600), definition of "Certified adoption investigator," was revised to clarify that the certified adoption investigator is authorized to provide background reports on birth parents.

Subrule 107.4(2) was revised in response to concerns of the Council on Human Services to require that a certified adoption investigator have a bachelor's degree in social work, psychology, counseling, family therapy, family living, or other family-oriented program and three years of full-time adoptive work experience or a master's degree in social work, psychology, counseling, family therapy, family living, or other family-oriented program and one year of full-time experience. Graduate education in a masters of social work, psychology, counseling, family therapy, family living, or other family-oriented program may be substituted for the required experience on the basis of 30 semester hours for one year of experience for up to two years of the required three years of experience. Persons currently certified will be grandfathered in.

Subrule 107.5(2), paragraph "a," subparagraph (5) was revised to require that the investigator be warned in writing only once, rather than twice, of provision of incomplete or inadequate information or inaccurate information prior to revocation of certification.

Subrule 107.6(2) was revised to remove the possibility of provisional certification at the recommendation of the Council on Human Services.

Subrule 107.7(2) was revised to include the requirement for a written statement including a plan of correction signed by the investigator when deficiencies are noted at the time of recertification. The requirement for a written statement was previously included in the noticed rules under the provisional license. The investigator will be given 7 to 30 days to come into compliance with the standards.

Subrule 107.8(1), paragraph "b," was revised to remove the first use of the word "adoptive" which was redundant. The words "physical health" were also removed in subparagraph (4) as they were redundant.

Subrule 107.8(2) was revised to clarify when a certified adoption investigator would complete background information on the child and birth parents.

Subrule 107.8(3), paragraph "d," was revised to correct wording.

Rule 441-107.9(600) was revised by adding back provisions for accessing investigator's records for recertification and changing rule references.

These rules are intended to implement Iowa Code chapter 600.

These rules shall become effective October 1, 1991.

The following amendments are adopted:

ITEM 1. Amend rule 441-107.1(600) as follows:

441-107.1(600) Introduction. Persons with *academic qualifications and adoption work experience* ~~are~~ *may be* certified by the department to provide adoption ~~placement~~ *preplacement* investigations, *postplacement supervision*, and reports to the court.

ITEM 2. Amend rule 441-107.2(600) by amending the definitions of "Adoption work experience" and "Certified adoption investigator" as follows and rescinding the definition of "Independent placer."

"Adoption work experience" means *supervised* employment in adoption services. *Included is direct provision of adoption services, developing adoption policies, conducting training related to adoption services, oversight and review of adoption documents and activities, and direct supervision of adoption workers.* For employment, of which only a portion of time was spent on adoptions, only the percent of time related to ~~direct~~ *direct* provision of adoption services shall be included as adoption work experience.

"Certified adoption investigator" means a person authorized by the department to provide *background reports on birth parents*, adoption ~~placement~~ *preplacement* investigations, *postplacement supervision*, and reports to the court *within the state of Iowa.*

ITEM 3. Amend subrule 107.3(1) and the introductory paragraph to subrule 107.3(2) as follows:

107.3(1) Application form. Application for certification as an adoption investigator shall be made on Form SS-6105-0, Application for Certification of Adoption Investigator. This form may be obtained from the ~~Licensing Section, Bureau~~ *Division* of Adult, Children, and Family Services, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114.

107.3(2) Employees of licensed child placing agencies and the department of human services. Persons employed as social workers in licensed child placing agencies or the department of human services who meet the requirements for certification in rule 441-107.4(600) are eligible to apply for certification as adoption investigators for services provided outside of their current job duties; ~~unless Employees of the department of human services will not~~

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be certified when their current job duties include any of the following:

Further amend subrule 107.3(2) by adding the following new paragraph "e":

e. Development of adoption policies used in administration of the adoption program.

ITEM 4. Amend rule 441--107.4(600) as follows:

Amend subrule 107.4(1) as follows:

107.4(1) Residency Office location. The applicant shall be a resident of Iowa or the applicant's principal place of business shall be within twenty five (25) miles of Iowa shall retain an office in Iowa where all Iowa adoption reports and records of fees are maintained and are available for inspection.

Amend subrule 107.4(2) as follows:

107.4(2) Education and experience. The

a. If the applicant was initially certified as an adoption investigator before October 1, 1991, the applicant shall have one of the following combinations of education and experience:

a- (1) Graduation from an accredited four (4)-year college or university and adoption work experience equivalent to a total of three (3) years, full-time experience.

b- (2) A bachelor's degree in social work from an accredited four (4)-year college or university in a program accredited by the council on social work education and adoption work experience equivalent to a total of two (2) years, full-time experience.

c- (3) A master's degree in social work from an accredited college or university in a program accredited by the council on social work education and adoption work experience equivalent to a total of (4) year, full-time experience.

b. If the applicant is initially certified as an adoption investigator on or after October 1, 1991, the applicant shall have one of the following combinations of education and experience:

(1) Graduation from an accredited four-year college or university with a bachelor's degree in social work, psychology, counseling, family therapy, family living, or other family-oriented degree and postgraduation adoption work experience equivalent to a total of three years, full-time experience.

(2) Graduate education in a master's program in social work, psychology, counseling, family therapy, family living, or other family-oriented program from an accredited four-year college or university may be substituted for required adoption work experience on the basis of 30 semester hours for one year of full-time experience, for up to two full years of the required three years of adoption work experience.

(3) A master's degree in social work, psychology, counseling, family therapy, family living, or other family-oriented degree from an accredited college or university and postgraduation adoption work experience equivalent to a total of one year, full-time experience.

Amend subrule 107.4(3), paragraph "a," as follows:

a. The applicant shall provide a certified transcript of college credits, and

Amend subrule 107.4(5) as follows:

107.4(5) Record checks.

a- For all new applicants and those applying for recertification, there shall be a check record checks to determine if a founded child abuse report or a criminal conviction record exists.

b- Adoption investigators applying for renewal of certification may be subject to the same check as new applicants when there is reason to believe that verified abuse has occurred.

ITEM 5. Amend subrule 107.5(2) as follows:

Amend paragraph "a," subparagraphs (1), (4), and (5), as follows:

(1) The applicant does not meet comply with the requirements listed in subrules 107.4(1), 107.4(2), and 107.4(4), and rules 441--107.9(600) and 441--107.10(600).

(4) When information about the certified investigator is received and verified by the department of inspections and appeals such as, but not limited to, failure to carry out the activities and duties as stated in this chapter, charging fees in excess of those specified in subrule 107.8(5) and breeches breaches of confidentiality, and the effect of the investigator's actions would be unreasonably detrimental to any of the parties to the adoption. Complaints involving the reasonable exercise of professional judgment in the denial or approval of a preplacement investigation are not grounds for decertification.

(5) The investigator, after being warned in writing by the licenser, provided incomplete or inadequate information or misrepresented inaccurate information in required reports as described in rule 441--107.8(600).

Further amend subrule 107.5(2), paragraph "a," by rescinding subparagraph (6) and adding the following new subparagraphs (6) and (7).

(6) The applicant has a founded child abuse or criminal record conviction unless an evaluation of the founded abuse or criminal conviction is conducted by the department of inspections and appeals which concludes that the abuse or crime does not merit prohibition of certification.

(7) The investigator aids or participates in an illegal placement or violates the statutes of Iowa Code chapter 600.

Further amend subrule 107.5(2) by rescinding paragraph "b" and inserting the following in lieu thereof:

b. If an applicant is denied certification based on an inability to meet the requirements of subrule 107.4(1), 107.4(2), 107.4(3), 107.4(4) or 107.4(5), the applicant may reapply when the requirements for certification have been met.

Further amend subrule 107.5(2) by adding the following new paragraph "c":

c. If recertification is denied or revoked based on subrule 107.4(5), 107.4(6), or 107.4(7), the applicant shall not be eligible to reapply for certification for a period of one year.

ITEM 6. Amend rule 441--107.6(600) as follows:

Amend subrules 107.6(1) and 107.6(2) as follows:

107.6(1) Contents. Form SS-1204-0, Certificate of Adoption Investigator, shall contain the name of the investigator and the expiration date of the certificate and be signed by a person designated by the commissioner director of the department.

107.6(2) Time limit. The investigator shall be certified for two (2) years. Certification shall expire at the end of two (2) years unless the investigator has made timely application for recertification. No provisional certificates shall be issued.

Amend subrule 107.6(3), paragraph "b," as follows:

b. The department shall keep an alphabetical list of certified adoption investigators; by department districts;

HUMAN SERVICES DEPARTMENT[441](cont'd)

which and shall be updated update the list at least semi-annually. Lists of certified adoption investigators shall be furnished to all district offices of the department and to any person who requests a list.

ITEM 7. Amend subrules 107.7(2) and 107.7(3) as follows:

107.7(2) Evaluation of investigator. Upon timely receipt of the request for recertification, the department shall evaluate the investigator investigator's records shall be reviewed and evaluated by the licenser to determine whether the requirements of these rules have been met. This evaluation shall include the review of at least 10 20 percent, but or no fewer than three (unless fewer than three constitutes 100 percent) four, of the adoption records opened since the last review for certification and the fees assessed clients. Reports of investigations shall be available to the licenser during the review for recertification, or at any other time upon request by the licenser.

When deficiencies are noted at the time of review, the investigator shall be given 7 to 30 days to meet the standards set forth in 441--Chapter 107. The deficiencies shall be noted in writing and the investigator shall sign a statement that includes agreement to the following:

a. The deficiencies noted by the licenser, including the areas of 441--Chapter 107 which are not met.

b. A plan for correcting the deficiencies.

c. The date by which the deficiencies will be corrected.

When the deficiencies are corrected within the time frame granted, the certificate will be renewed. Deficiencies not corrected within the allowed time frame are grounds for revocation of the investigator's certificate.

107.7(3) Notification. The department shall notify the investigator of the decision on regarding the initial application, and any applications for recertification, within 60 days of receipt of the application. When the request for recertification is not received prior to the date of expiration, the department shall inform notify the investigator that the certification has expired.

ITEM 8. Amend rule 441--107.8(600) as follows:

107.8(1) Preplacement investigations. When an adoption investigator provides a preplacement investigation of a proposed prospective adoptive family, the investigation shall meet the requirements of Iowa Code section 600.8(1)"a," and include including an assessment of the family's ability to parent a child.

a. The preplacement investigation shall include at least a minimum two contacts, one face-to-face interview with the applicants and each member of the household and at least one home visit.

b. The investigator shall have on file a written assessment of the adoptive home family which shall be used to approve or deny a prospective adoptive family. The written assessment (home study) shall include the date the home study was completed, shall be signed by the investigator and the signature notarized. The assessment shall include the following:

(1) Motivation for adoption and whether the family has biological, adopted, or foster children;

(2) Family and extended family's attitude toward accepting an adoptive adopted child, and plan plans for discussing adoption with the child;

(3) The attitude towards adoption of significant other people involved with the family;

(4) Emotional stability, marital history and assessment of marital relationship, including verification of marriages and divorces, physical health, and compatibility of adoptive parent(s);

(5) Ability to cope with problems, stress, frustrations, crises, separation, and loss;

(6) Medical or health conditions which would affect the applicant's ability to parent a child;

(7) Ability to provide for the child's physical and emotional needs;

(8) Adjustment of own biological children and previously adopted children, if any, including school reports their attitudes towards adoption, adjustments in the family and in school;

(9) Feelings about parenting a child not their own;

(10) (9) Capacity to give and receive affection;

(11) Types of children desired and kinds of handicaps acceptable;

(12) (10) Statements from at least three references provided by the family and other unsolicited references;

(13) (11) Attitudes of the adoptive applicants towards the birth parent(s) and the birth parent's(s) reason(s) for placing the child is available for adoption; and

(12) Income information;

(13) Disciplinary practices that will be used;

(14) History of abuse by family members and treatment;

(15) Assessment of commitment to and capacity to maintain other significant relationships;

(16) Substance use or abuse by family members and treatment; and

(14) (17) Recommendations for type of child, number, age, sex, characteristics, and special needs of or for children best served by this family.

c. The evaluation of the adoptive family shall include a child abuse registry check using Form SS-1606-0, "Request for Child Abuse Information," to determine if a founded abuse report exists and a criminal records check by the department of public safety using Form SS-2203, "Criminal Records Check," to determine if a conviction or violation under a Iowa law in any state exists.

An adoptive applicant with a record of founded child abuse or a criminal violation shall not be approved for an adoptive placement unless evaluation of the founded abuse or crime indicates that the placement should be approved. Form 470-2310, "Record Check Evaluation," completed by the applicant, may shall be used to assist in the evaluation.

The adoption investigator shall evaluate the founded abuse and the department shall evaluate the criminal violation. The adoption investigator evaluates the nature and seriousness of the founded abuse or crimes, the time elapsed since the commission of the founded abuse or crimes, the circumstances under which the founded abuse or crimes was were committed, the degree of rehabilitation, and the number of founded abuses or crimes committed by the person. The department shall evaluate the criminal convictions using the same criteria used in evaluating abuse reports. The department investigator shall notify the certified adoption investigator family in writing whether or not the investigator can approve the family is approved, giving reasons for denial if the family is not approved.

107.8(2) Background information investigation. When an adoption investigator completes a background informa-

HUMAN SERVICES DEPARTMENT[441](cont'd)

tion investigation on the child to be adopted *at the request of the placer*, the investigation shall include a complete family medical and mental health history and developmental history of the child to be adopted. A personal interview with ~~both parents~~ *each parent of the child, or at least one birth parent if the identity or whereabouts of the other is unknown, must be made to obtain information for this report must be completed unless a parent's identity or whereabouts is unknown.*

107.8(3) Postplacement investigation. When an adoption investigator completes a postplacement investigation supervision, at least ~~two three~~ visits to the adoptive parent's ~~(s-)~~ family's home and personal observation of the child are required.

a. *Postplacement reports are to be written after each postplacement visit and copies kept in the permanent family file retained by the investigator.*

b. *Postplacement supervision should assess the placement in the following areas:*

(1) *Integration and interaction of the child with the family.*

(2) *Changes in the family functioning which may be due to the child's placement.*

(3) *Social, emotional and school adjustment of the child.*

(4) *Changes that have occurred in the family since placement of the child.*

(5) *The family's method of dealing with testing behaviors and discipline.*

c. *Home visits shall be completed at a minimum as follows:*

(1) *One no later than 30 days after placement.*

(2) *One no later than 90 days after placement.*

(3) *A final visit prior to requesting a consent to adopt. Home visits shall be completed as often as necessary if the adoptive family is experiencing problems.*

d. *A report based on the postplacement visits with recommendations regarding the finalization of the adoption shall be submitted to the court.*

107.8(4) Reports of investigations. The adoption investigator is authorized to provide reports to the courts concerning the above investigations and reports to the ~~independent placer guardian or custodian of the child and the attorney for the adoptive family about these investigations.~~

107.8(5) Fees for services. Certified investigators may charge a fee for the services described in subrules 107.8(1), 107.8(2), and 107.8(3). ~~The department licensor shall, by December 31 of each year, be informed by the investigator of review the total amount of fees for services charged any family during the calendar year to families at the time that the investigator's records are reviewed for recertification. The report of fees for services shall be accompanied by an itemized statement of charges. Information shall also be given for any retained regarding fees charged to a family by another party and collected by the investigator. Information on fees shall be addressed to the Licensing Section, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319.~~

ITEM 9. Amend rule 441-107.9(600) as follows:

~~441-107.9(600) Adoption records.~~

107.9(1) Retention of adoption records. The adoption investigator shall maintain a record of each family or child when one or more of the required reports have been completed. The record shall contain copies of all com-

pleted reports and a statement of fees charged by the investigator.

a. 107.9(1) Access to records. The provisions regarding sealing of and access to adoption records in Iowa Code section 600.16 shall be followed, except that access under subrule 107.9(2) 107.9(3) for recertification is permitted.

b. 107.9(2) Disposition of records. Upon revocation, denial of renewal, or expiration of certification, all sealed records held by investigators shall be ~~given forwarded to the department for permanent retention.~~

107.9(3) 107.9(3) Access for recertification. Authorized representatives of the department shall have access to all records of reports completed within a two-year period prior to recertification for purposes of recertification. Authorized representatives shall respect the confidential nature of these records.

ITEM 10. Amend rule 441-107.10(600) as follows:

441-107.10(600) Reporting of violations. All violations or suspected violations under Iowa Code chapter 600 or 600A which come to the attention of the investigator shall be reported in writing to the district court having jurisdiction of the matter and to the department of human services. *The investigator shall maintain copies of these written reports to the court and the department.*

[Filed 7/10/91, effective 10/1/91]

[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2232A

NATURAL RESOURCE
COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 30, "Water Recreation Access Cost-Share Program," Iowa Administrative Code.

The proposed amendments make the following changes in the chapter:

1. Ease the eligibility requirements for development projects and add survey and engineering services as eligible items.

2. Prohibit cost-sharing for commercial facilities, but make provisions for commercial use of nonfunded portions of funded projects.

3. Eliminate requirements for priority lists.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on May 29, 1991, as ARC 2017A. In addition, the Notice of Intended Action was sent to the executive secretaries of the Iowa Parks and Recreation Association and of the Iowa Association of County Conservation Boards.

A public hearing was held on June 19, 1991, in Des Moines. No public comments were received at the hearing, and no verbal or written comments were received prior to the hearing.

NATURAL RESOURCE COMMISSION[571](cont'd)

No changes were made from the Notice of Intended Action.

These amendments were adopted by the Natural Resource Commission on July 11, 1991. They will become effective September 11, 1991.

These rules are intended to implement Iowa Code section 324.79.

The following amendments are adopted.

ITEM 1. Amend rule 571-30.1(324) as follows:

571-30.1(324) Purpose. The purpose of this rule is to define procedures for cost-sharing between state and local public agencies to provide for the acquisition or development of public recreational boating accesses to Iowa waters.

ITEM 2. Amend rule 571-30.2(324) as follows:

571-30.2(324) Availability of funds. Moneys derived from the excise tax on the sale of motor fuel used in watercraft under Iowa Code section 324.79 are deposited in the as a "marine fuel tax fund" and are subject to appropriation by the general assembly to the department of natural resources.

ITEM 3. Amend rule 571-30.3(324) as follows:

571-30.3(324) Eligibility of development projects. Development projects may include, but are not necessarily limited to, the following:

1. Construction of boat ramps or other conveyances by which recreational boaters are provided a means of placing boats in the water and removing them.
2. Docks as necessary to provide loading and off-loading of equipment and passengers.
3. Boat slips or other on-water boat storage facilities when available to the general public.
4. Parking lots for vehicles and trailers of boaters utilizing public ramps.
5. Roads to provide access to ramp(s) and parking.
6. Rest room rooms designed and located so as to primarily serve needs of recreational boaters.
7. Localized dredging required to provide boat access to boatable waters.
8. Shoreline protection measures judged necessary to provide for safety and longevity of boating waters.
9. Signs and markers as needed to direct recreational boaters on use and regulations of access areas. (when incorporated as part of an initial development project).
10. Fencing as needed to establish boundaries, prevent encroachments and control trespass. (when incorporated as part of an initial development project).
11. Lights to provide for safe utilization of ramps and parking areas. (when incorporated as part of an initial development project).
12. Support facilities such as sidewalks, utilities, landscaping, etc., which are necessary for safe and appropriate public use. (when incorporated as part of an initial development project).
13. Canoe/small boat access sites/parking.

14. Maintenance Renovation projects when they meet all other criteria as specified in this rule.

15. Contractual services for survey and engineering necessary for the design and construction of access facilities.

ITEM 4. Amend rule 571-30.5(324) as follows:

571-30.5(324) Projects not eligible. The following types of projects are not eligible for assistance from the water access fund:

1. Acquisition of land when the principal use of the land will be for something other than recreational boating access.
2. Any type of development which will not provide for improved or increased public access to or safety and longevity of boating waters.
3. The cost of land in excess of the approved appraised valuation.
4. Donated labor, materials, and equipment use, except as specified in rule 571-30.409(324).
5. Force account labor and equipment use (sponsor's own labor and equipment), except as specified in 30.409(324).
6. Any portion of a facility, as determined by area or time of usage, that is of a commercial nature and does not provide a direct service to recreational boaters.
- 6- 7. Projects with a total cost grant request of less than \$1,000.
- 7- 8. Any project or project costs incurred prior to notification of the sponsoring agency by the director that a grant has been approved. The only exception to this is when a waiver of retroactivity has been granted on a land acquisition project under 30.6(324).

ITEM 5. Amend rule 571-30.7(324) as follows:

571-30.7(324) Establishing project priorities. The director shall appoint a six-member water access committee representing a cross section of department responsibilities for the purposes purpose of reviewing and establishing priorities for cost-sharing. The committee shall maintain a list of high priority water access projects. Twice annually (February and August), district fisheries supervisors will be responsible for making recommendations to update project priority lists for their respective districts. Primary field contact personnel are the district fishery supervisors whose addresses are as follows:

1. Spirit Lake Hatchery (Northwest District), P.O. Box 7722, Spirit Lake, Iowa 51360, 712/336-1840.
2. Manchester Fish Hatchery (Northeast District), Rural Route 2, Box 269A, Manchester, Iowa 52057, 319/927-3276.
3. Lake Darling Station (Southeast District), Rural Route 1, Brighton, Iowa 52540, 319/694-2430.
4. Cold Springs State Park (Southwest District), Southwest District Office, Lewis, Iowa 51544, 712/769-2587.

Proposed priorities for each district shall be forwarded to the water access committee which shall establish priorities on a state basis. Proposed projects shall be ranked in two categories.

1. New access areas.
2. Improvements to existing areas.

ITEM 6. Amend rule 571-30.9(324) as follows:

571-30.9(324) Cost-sharing rates. All projects approved for assistance will normally be cost-shared at a 75 percent state/25 percent local ratio, except as provided in exceptions listed below. Those ranked as high priority (five new access areas and five improvement projects in each of the four districts) will be eligible for engineering

NATURAL RESOURCE COMMISSION[571](cont'd)

~~assistance from the department's construction services bureau. At the department's option, necessary engineering services for high priority projects may be contracted, with marine fuel tax revenues used to pay 100 percent of approved engineering costs. For all other projects, engineering services will be cost shared at the standard 75 percent state/25 percent local ratio.~~

Exceptions to the normal funding formula may occur under the following conditions:

1. Where a local public agency agrees under terms of a long-term agreement to assume maintenance and operation of a department of natural resources water access facility, the approved development or improvements needed on that facility will be funded at 100 percent.

2. Where feasible and practical, the department will provide funds to cover 100 percent of materials needed for a development project if the local subdivision agrees to provide 100 percent of the labor and equipment to complete that development.

3. *Where joint use will be made of a project by commercial interests as well as by recreational boaters, only that portion of a project attributable to the use by recreational boaters will be cost-shared through this program.*

3. 4. When, at the discretion of the director, some alternate funding level is deemed appropriate.

ITEM 7. Amend subrule 30.12(2) as follows:

30.12(2) Cooperative agreements between the department and the local project sponsor may be amended to increase or decrease project scope or to increase or decrease project costs and fund assistance. Any increase in fund assistance will be subject to the availability of funds. Amendments to increase scope or fund assistance must be approved by the director before work is commenced or additional costs incurred. *A project sponsor may request amendment of the agreement for a previously completed project to allow commercial use under the conditions specified in rule 30.9(324), paragraph "3." The director shall have the authority to approve such amendments.*

ITEM 8. Amend subrule 30.12(3) as follows:

30.12(3) All approved projects, *except those in which the project is owned by the state and managed by a local entity, existing having a grant request in excess of \$25,000 will be presented to the natural resource commission members for their information prior to project initiation. The commissioners may act to disapprove or modify projects.*

ITEM 9. Amend the introductory paragraph of rule 571--30.13(324) as follows:

571--30.13(324) Reimbursement procedures. Financial assistance from the water access fund will typically be in the form of reimbursement grants which will be made on the basis of ~~seventy-five the approved percent percentage~~ of all eligible expenditures up to the amount of the approved grant.

These rules are intended to implement Iowa Code section 324.79.

[Filed 7/19/91, effective 9/11/91]
[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2230A

NATURAL RESOURCE
COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby adopts the following amendments to Chapter 33, "Resource Enhancement and Protection Program: County, City, and Private Open Spaces Grant Programs," Iowa Administrative Code.

Notice of Intended Action was approved by the Natural Resource Commission on May 2, 1991, and was published in the Iowa Administrative Bulletin on May 29, 1991 as ARC 2016A.

No changes were made to the Notice of Intended Action. All public comments on the Notice were in support of the proposed language.

These rules will become effective September 11, 1991.

Amend subrule 33.50(2) as follows:

33.50(2) Eligibility to participate. Any trust, foundation, incorporated conservation organization, private individual, corporation or *other nongovernmental* group able to provide funds or interest in land sufficient to equal at least 25 percent of a proposed protection project may submit or cause to have submitted a project for funding consideration. *Except however, a private organization established to benefit a specific governmental entity is not eligible to submit a project. Governmental entities are also not eligible to submit a project.*

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[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2203A

PROFESSIONAL LICENSURE
DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.11(16), the Department of Public Health hereby adopts amendments to Chapter 160, "Ophthalmic Dispensers," Iowa Administrative Code.

These rules set forth provision for inactive practitioners, reinstatement of inactive practitioners and reinstatement of lapsed licensees.

The amendments were published as a Notice of Intended Action, ARC 2034A, in the Iowa Administrative Bulletin on May 29, 1991.

No written comments were received on the proposed amendments, and they are identical to those published under Notice.

The amendments were adopted July 10, 1991, and will become effective September 11, 1991.

The adopted rules are intended to implement Iowa Code chapter 153A.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 1. Renumber rule 645-160.4(153A) as 645-160.7(153A) and insert the following in lieu thereof:

645-160.4(153A) Inactive practitioners. A certified ophthalmic dispenser who is not engaged in the practice in the state of Iowa, residing within or without the state of Iowa, may be granted a waiver of compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of ophthalmic dispensing without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon a form provided by the board.

ITEM 2. Renumber rule 645-160.5(153A) as 645-160.8(153A) and insert the following in lieu thereof:

645-160.5(153A) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with continuing education requirements and obtained a certificate of exemption shall, prior to starting the practice of ophthalmic dispensing in the state of Iowa, satisfy the following requirements for reinstatement.

160.5(1) Submit written application for reinstatement to the department upon forms provided by the department; and

160.5(2) Furnish in the application evidence of the following:

a. Completion of a total number of hours of accredited continuing education computed by multiplying 12 hours by the number of years, with a maximum of four years, a certificate of exemption shall have been in effect for the applicant.

b. Payment of past renewal fees to a maximum of four years.

ITEM 3. Renumber rule 645-160.6(153A) as 645-160.9(153A) and insert the following in lieu thereof:

645-160.6(153A) Reinstatement of lapsed certified ophthalmic dispensers.

160.6(1) Certification as an ophthalmic dispenser shall be considered lapsed if not renewed within 30 days of the renewal date.

160.6(2) Those persons who have failed to renew a certification to practice issued by the department and have not previously received a certificate of exemption shall pay past due renewal and penalty fees in addition to completion of all past due continuing education to a maximum of four years. Application shall be made on a form provided by the board.

[Filed 7/17/91, effective 9/11/91]

[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2206A

**PUBLIC HEALTH
DEPARTMENT[641]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 68B.4 and 135.11, the Iowa Department of Public Health adopts a new Chapter 190, "Consent for the Sale of Goods and Services," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 17, 1991, as ARC 1883A. A public hearing was not held. No written comments were received. The Iowa Board of Health adopted these rules on July 10, 1991.

The new rules specify the method by which the Department will grant consent to protect the interest of the state and persons, associations, corporations regulated by the Department.

No changes have been made to the rules published under Notice of Intended Action.

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

These rules will become effective September 11, 1991.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 190] is being omitted. These rules are identical to those published under Notice as ARC 1883A, IAB 4/17/91.

[Filed 7/17/91, effective 9/11/91]

[Published 8/7/91]

[For replacement pages for IAC, see IAC Supplement, 8/7/91.]

ARC 2216A

**PUBLIC SAFETY
DEPARTMENT[661]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 101.2, 101.5, and 101.12, the Department of Public Safety hereby amends Chapter 5, "Fire Marshal," Iowa Administrative Code.

Iowa Code section 101.12 specifies that rules promulgated by the State Fire Marshal regulating storage of flammable liquids are to allow for installation of above-ground petroleum storage tanks for retail motor vehicle fuel outlets. In addition to meeting fire safety rules, installation of these tanks is subject to approval of the city or county government.

In 1990, legislation was passed requiring that rules of the fire marshal for aboveground tanks use rule 30A of the National Fire Protection Association (NFPA). It was then anticipated that changes which had been proposed in rule 30A would be adopted by NFPA. The NFPA has now done so. The amendments to the administrative rules adopted here incorporate the changes to rule 30A recently adopted by the NFPA.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

These amendments were previously adopted through emergency procedures. The emergency rules were published in the Iowa Administrative Bulletin of June 12, 1991 (ARC 2044A). The emergency rules are hereby rescinded on the date on which these rules become effective [9/15/91].

A Notice of Intended Action to promulgate these rules was published in the Iowa Administrative Bulletin of June 12, 1991 (ARC 2053A). The text of these rules is identical to the text published in the Notice of Intended Action and to the emergency rule. A public hearing regarding these rules was held July 3, 1991. No adverse comments were received at the hearing, although one written comment was received requesting that distance factors be reduced for installations in towns with less than 1,000 population. There appears to be no statutory authority for the sort of variation in distance factors suggested.

These rules are intended to implement Iowa Code section 101.12. They shall become effective September 15, 1991.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to ch 5] is being omitted. These rules are identical to those published under Notice as ARC 2053A, IAB 6/12/91.

[Filed 7/19/91, effective 9/15/91]
[Published 8/7/91]

[For replacement pages for IAC, see IAC Supplement, 8/7/91.]

A Notice of Intended Action containing the text of these amendments was published in the Iowa Administrative Bulletin on May 15, 1991, as ARC 1940A. The final text of these amendments is identical to the text published in the Notice of Intended Action. A public hearing on these proposed rules was held on June 6, 1991. No comments were received.

These amendments are intended to implement Iowa Code section 321J.11. They become effective on September 15, 1991.

The following amendments are adopted:

Amend rule 661-7.3(321J) as follows:

Amend subrule 7.3(1) as follows:

7.3(1) As soon as practicable after arrest, the subjects ~~subject~~ should provide the sample by being required to empty their bladder to obtain the sample urinate into a bottle, cup, or other suitable container which is clean, dry, and free from any visible contamination.

Rescind subrule 7.3(2) and insert in lieu thereof the following:

7.3(2) It is not necessary that the bladder be completely emptied. Later samples may be taken if desired, but are not necessary.

Rescind subrule 7.3(3).

Amend subrule 7.3(4) as follows:

7.3(4) The collection shall be made in the presence of a peace officer or other reliable person *under the supervision of a peace officer. The peace officer or other person in the presence of the subject shall be of the same sex gender as the subject.*

Rescind subrules 7.3(6) and 7.3(7).

[Filed 7/19/91, effective 9/15/91]
[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/7/91.

ARC 2218A

PUBLIC SAFETY
DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code section 321J.11, the Department of Public Safety hereby amends Chapter 7, "Devices and Methods to Test Body Fluids for Alcohol or Drug Content," Iowa Administrative Code.

These amendments clarify requirements for collection of urine samples by peace officers for testing of alcohol or drug content. A recent Iowa District Court decision (Woodin v. Iowa Department of Transportation, Bremer County Case No. CV47-0490 (12/28/90) suggested some confusion in the current wording of the rules regarding the amount of urine to be collected and whether or not a subject failing to "empty their bladder" would void the use of tests of the resulting sample for alcohol and drug content. These amendments remove requirements that a subject's bladder be emptied and for specific minimum amounts of urine to be collected. Neither requirement is needed to ensure that tests conducted on the resulting urine samples are scientifically valid.

ARC 2209A

TRANSPORTATION
DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code section 307.12, the Department of Transportation on July 15, 1991, 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 May 1, 1991, Iowa Administrative Bulletin as ARC 1906A.

Item 1 adopts the 1990 form for manufacturers' certificates of origin, as approved by the American Association of Motor Vehicle Administrators.

Item 2 eliminates the possibility of someone claiming to be the personal representative of an estate and falsely assigning a certificate of title.

TRANSPORTATION DEPARTMENT[761](cont'd)

Item 3 deletes a reference to the obsolete credit copy of a registration receipt.

These amendments are identical to the ones published under Notice, except for added words in subrule 400.14(4) that clarify the document required.

These amendments are intended to implement Iowa Code chapter 321.

These amendments will become effective September 11, 1991.

The following amendments are adopted.

ITEM 1. Amend subrule 400.1(8), paragraph "c," as follows:

c. For ~~1988~~ 1992 and subsequent model year vehicles, the form used for manufacturers' certificates ~~of~~ of origin shall be the universal form adopted in ~~1979~~ 1990 by the American Association of Motor Vehicle Administrators (AAMVA). This requirement does not apply to trailer-type vehicles. A copy of this universal form is on file in the office of vehicle registration at the address in subrule 400.6(1).

ITEM 2. Amend subrules 400.14(3), 400.14(4) and 400.14(5) as follows:

400.14(3) Organizational ownership. When a vehicle is owned by a partnership, corporation, association, governmental unit, or private organization, the name of the owner and the signature *and title* of its authorized representative shall be required.

400.14(4) Death with a will. When ownership is transferred according to a decedent's will, ~~the signature of the~~

~~personal representative, as defined in Iowa Code section 450.1, followed by the district court probate number and the decedent's name a certified copy of the court order or the letter of appointment appointing the person assigning the title as executor of the will shall be required.~~

400.14(5) Death without a will. When ownership is transferred from a decedent without a will *and there is no administration of the estate*, a certificate of death intestate form signed by the clerk of court ~~or the court-appointed administrator~~ shall be required. *When ownership is transferred from a decedent without a will but there is an administration of the estate, a copy of the court order appointing the person assigning the title as administrator shall be required.*

ITEM 3. Amend subrule 400.61(2) as follows:

400.61(2) Registration plates may be reassigned when credit is allowed toward a new registration for a vehicle being transferred to the owner's spouse, parent, or child, or to a former spouse pursuant to a dissolution of marriage decree. The owner's ~~credit~~ credit copy of the registration receipt, showing assignment to the transferee, shall be submitted. If the owner is deceased, plates may be transferred under rule 400.14(321).

[Filed 7/17/91, effective 9/11/91]

[Published 8/7/91]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/7/91.


EFFECTIVE DATE DELAY

Pursuant to §17A.4(5)

AGENCY	RULE	EFFECTIVE DATE DELAY
Personnel Department[581]	5.3(3) (IAB 6/12/91 ARC 2056A)	Effective date of July 19, 1991, delayed seventy days by the Administrative Rules Review Committee at its meeting held July 12, 1991.
Natural Resource Commission[571]	52.1(1)[Mines of Spain]; 571-61.2(111) Recreation areas, "Mines of Spain Rec. area, Dubuque County"; 61.6(2); 571-61.7(111) (IAB 6/26/91 ARC 2079A)	Effective date of July 31, 1991, delayed seventy days by the Administrative Rules Review Committee at its meeting held July 12, 1991.

Pursuant to §17A.8(9)

Human Services Department[441]	79.1(13) (IAB 7/10/91, ARC 2091A)	Effective date of September 1, 1991, delayed until adjournment of the 1992 session of the General Assembly by the Administrative Rules Review Committee at its meeting held July 12, 1991.
Natural Resource Commission[571]	23.1(110) (IAB 6/26/91 ARC 2075A)	Effective date of July 31, 1991, delayed until adjournment of the 1992 session of the General Assembly by the Administra- tive Rules Review Committee at its meeting held July 12, 1991.



State of Iowa
Executive Department

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

EXECUTIVE ORDER NUMBER 42

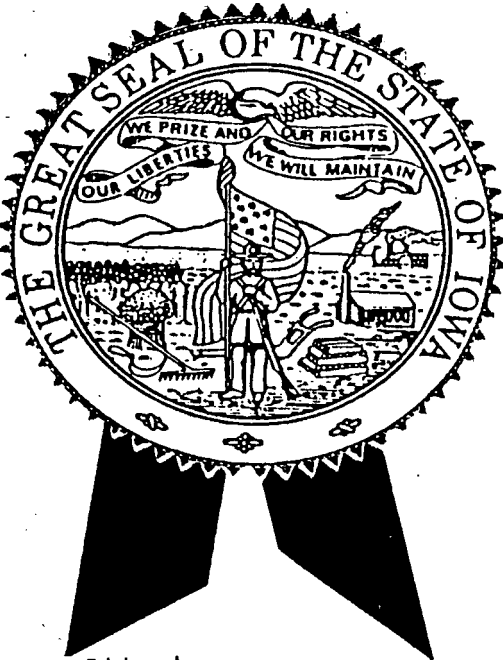
- WHEREAS, Iowa's economy is experiencing the effects of the national recession and will be further affected by weather-related losses in the agricultural sector; and
- WHEREAS, these factors have caused the Revenue Estimating Conference and state lottery officials to revise estimates of state revenues compared to earlier estimates for fiscal year 1992; and
- WHEREAS, the funds appropriated for human services entitlement programs are substantially below the level estimated to be expended under state and federal mandate; and
- WHEREAS, the director of the department of management has concluded that without revisions to the state budget in fiscal year 1992, the shortfall in revenues and the need for supplemental appropriations in human services entitlement programs will result in a general fund deficit on June 30, 1992, of \$92.7 million; and
- WHEREAS, Article VII of the Iowa Constitution prohibits state budget deficits; and
- WHEREAS, Iowa Code Section 8.31 provides a procedure for uniform and prorated reductions of state appropriations by the Governor to avoid overdrafts and deficits; and
- WHEREAS, without implementing these uniform, prorated reductions in state appropriations, the state will face a \$92.7 million deficit in the general fund on June 30, 1992.

NOW THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the power and authority invested in me by the Constitution and the laws of Iowa, do hereby make the following findings and orders:

- 1. I find that the estimated budget resources during fiscal year 1992 are insufficient to pay all appropriations in full as required by Iowa Code Section 8.30, to wit:

General fund balance, June 30, 1991	\$ 0.0 million
Fiscal year 1992 receipts (net)	\$ 3207.1 million
Fiscal year 1992 appropriations and standing estimated appropriations	\$ 3299.8 million
TOTAL DEFICIT	\$ (92.7) million
	=====

- 2. I further find that a 3.25 percent reduction in appropriations subject to Iowa Code Section 8.31 is necessary to prevent an overdraft or deficit in the general fund of the state at the end of this fiscal year.
- 3. I hereby direct the implementation of Iowa Code Section 8.31 requiring the uniform modification of allotment requests filed pursuant to that section for each of the four quarters of the fiscal year to achieve an annual 3.25 percent fiscal year reduction in each respective appropriation unless subsequent projections provide good reason to alter these findings.
- 4. I further direct the director of the department of management to prepare such modified allotments for each quarter of fiscal year 1992, which commences July 1, 1991, with the exception of appropriations excluded by Iowa Code Section 8.2 (5), pertaining to the courts and the legislature.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 1st day of July in the year of our Lord, one-thousand nine hundred and ninety-one.

Tom E. Branstad
GOVERNOR

Attest:

Elaine Baxter
SECRETARY OF STATE

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWAFILED JULY 17, 1991

NOTE: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA, 50319, for a fee of 40 cents per page.

No. 89-1893. TANBERG vs. ACKERMAN INVESTMENT CO.

On review from the Iowa Court of Appeals. **DECISION OF COURT OF APPEALS VACATED; JUDGMENT OF DISTRICT COURT AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Snell and Andreasen, JJ. Opinion by McGiverin, C.J. (9 pages \$3.60)

Tanberg was a guest at the Best Western Starlite Village. On that date, while attempting to exit the whirlpool bathtub located in the bathroom of his motel room to turn off the whirlpool jets, plaintiff fell and injured his back. Tanberg sued Best Western for injuries he allegedly sustained as a result of his fall. Best Western answered plaintiff's petition by denying that it had been negligent and asserting several affirmative defenses, including that plaintiff was at fault in causing the accident and by failing to mitigate his damages by losing weight after the fall. Tanberg weighed 309 pounds. After both sides rested, the court instructed the jury, over plaintiff's objection, concerning Tanberg's duty to exercise ordinary care in following reasonable medical advice to lose weight. The jury found plaintiff 70% at fault for his damages and defendant 30% at fault for plaintiff's damages. The court entered judgment for defendant. On appeal, plaintiff argues that his duty to mitigate damages under section 668.1(1) does not include a requirement that he lose weight after the accident to lessen his back pain. The court of appeals thought plaintiff's failure to lose weight was not such fault. We granted further review. **OPINION HOLDS:** The recent case of Miller v. Eichhorn, 426 N.W.2d 641, 643 (Iowa App. 1988), interpreted section 668.1(1) to provide that unreasonable failure to mitigate damages means fault as used in the statute. Nothing in section 668.1(1) suggests that weight loss should be treated differently than any other opportunity to mitigate damages. We, therefore, hold that unreasonable failure to attempt to lose weight pursuant to medical advice can be assessed as fault if weight loss will mitigate damages. We do not hold that a plaintiff must actually lose weight in order to mitigate damages; there must, however, be a reasonable attempt to do so. Since Tanberg was not "as faithful in following his diets as he should have been," a jury could find he did not reasonably mitigate damages. We do, however, note that before the

No. 89-1893. **TANBERG vs. ACKERMAN INVESTMENT CO.**(continued) mitigation instruction is given, defendant has the burden of showing substantial evidence that plaintiff's weight loss would have mitigated his damages and that requiring plaintiff to lose weight was reasonable under the circumstances.

NO. 90-800. ALLIED MUTUAL INSURANCE CO. v. STATE.

Appeal from the Iowa District Court for Polk County, Richard D. Morr, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by Harris, P.J., and Schultz, Carter, Lavorato, and Neuman, JJ. Opinion by Carter, J. (9 pages \$3.60)

The subrogated liability insurance carrier of one tortfeasor appeals from the denial of its claim for contribution and indemnity from an alleged joint tortfeasor and the joint tortfeasor's employer, the State, arising out of damages from a motor vehicle collision. **OPINION HOLDS:** I. The carrier's contribution claim against the joint tortfeasor, who was a co-employee of the injured party is based on the ground that he was grossly negligent and thus liable for injured party's damages together with carrier's insureds. Because, under the undisputed facts, there was an insufficient showing of the joint tortfeasor's gross negligence, the district court did not err in granting summary judgment on this contribution claim. II. We decline to eliminate or modify the common liability criterion for contribution claims which has now attained statutory recognition in Iowa Code section 668.5(1) (1989). The common liability requirement is not a violation of equal protection of the law under either state or federal constitutions. III. The carrier challenges the dismissal of its indemnity claim against the owner of the vehicle on the basis of the contention that the owners' liability statute, Iowa Code § 321.493 (1989), imposes an independent statutory duty on the State toward the carrier's insureds. We reject the carrier's contention because the duty which the State owed to the carrier's insureds under section 321.493 can rise no higher than joint tortfeasor's duty to those persons. This was only the general duty "not to cause injury to another by one's negligent act." That general duty has never been recognized as giving rise to a right of indemnity. IV. Although our holding in Division III precludes any claim for indemnity as to the settlement to a passenger in the insured's truck who was not a state employee, nothing in the summary judgment motion supported the dismissal of carrier's contribution claims against either the State or its driver-employee based on sums paid to that passenger. This portion of the judgment must be reversed.

No. 90-164. CITY OF DES MOINES v. CITY DEVELOPMENT BOARD.

Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge. **AFFIRMED.** Considered en banc. Opinion by Snell, J. All justices concur except Lavorato, J., who takes no part. (15 pages \$6.00)

The City of Des Moines appeals from an adverse ruling of the district court. The district court affirmed the decision of the City Development Board of the State of Iowa, holding that the board had jurisdiction and authority to act on a West Des Moines petition for voluntary annexation of property located in areas adjoining both the City of West Des Moines and the City of Des Moines; that the West Des Moines petition substantially complied with statutory requirements; that the board did not violate the procedural due process rights of any interested party; and that the decision of the board was not arbitrary, capricious, unreasonable, or without substantial supporting evidence. **OPINION HOLDS:** I. On appeal from the district court's order our review is limited to the sole question of whether the district court correctly applied the law. II. The City of Des Moines contends that because it initiated the annexation process first, it had exclusive jurisdiction over the disputed territory until its annexation proceedings had been completed. Under Iowa Code section 368.11 a municipality seeking to involuntarily annex a given territory, will not enjoy exclusive jurisdiction even though that municipality was the first to initiate such proceedings. III. The requirements of division III of chapter 368 for involuntary annexations with regard to the petition, appointment of the committee, public hearing, approval or disapproval by the committee, and the election are not strictly applicable to voluntary annexations. We are satisfied that the challenged deficiencies in the West Des Moines petition substantially comply with the statutory requirements set out in chapter 368. We are also satisfied that none of the parties, nor the applicant property owners, were misinformed or misled by the minor changes permitted by the board in the legal description of the annexation territory, and that requiring all consenting property owners to sign a new petition for annexation, because a few pieces of property would not be included in the newly described annexation territory, would unduly thwart the voluntary annexation process. The requirement of section 368.7 that all of the owners in a territory adjoining a city may apply for annexation was met which conferred jurisdiction on the board. That jurisdiction was not lost by the attempted later withdrawal of consent by a few owners. IV. Because Des Moines was provided sufficient notice and an opportunity to be heard on the issues in this case, the board did not violate Des Moines' procedural due process rights. Taken together, the sections in division III of Iowa Code chapter 368, although

No. 90-164. CITY OF DES MOINES v. CITY DEVELOPMENT BOARD.

(continued)

not specifically applicable to voluntary annexations, establish general standards sufficient to guide the board in approving or disapproving an application for voluntary annexation. In the present case, the fact findings of the board established that substantial municipal services could be provided by the City of West Des Moines to the annexation territory in question, unannexed parcels and that the West Des Moines annexation proposal is in the public interest and supported by substantial evidence. The board acted within the scope of its statutorily granted authority in approving the voluntary annexation petition of West Des Moines.

NO. 90-740. HOUSELOG V. MILWAUKEE GUARDIAN INSURANCE.

Appeal from the Iowa District Court for Dubuque County, R.J. Curnan, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Carter, Lavorato, Snell, and Andreasen, JJ. Opinion by Snell, J. (10 pages \$4.00)

Defendant, an underinsurance carrier, appeals from the district court's ruling that it is liable for prejudgment interest on a judgment in a case it did not defend. Plaintiffs, the underinsurance policyholders, cross-appeal from the ruling.

Brian Houselog, the minor son of Arthur and Elizabeth Houselog, was struck and injured by an automobile negligently operated by Robert Spechtenhauser. The Houselogs brought a comparative fault action against Spechtenhauser and recovered a judgment for \$103,443 plus interest from December 18, 1985, the date the action was commenced. Spechtenhauser's automobile liability insurance carrier later paid the Houselogs \$102,037.57 (its \$100,000 policy limit plus accrued postjudgment interest) of the \$128,864.38 principal and interest then due on their judgment. The Houselogs therefore brought this action against their own automobile liability insurance carrier, Milwaukee Guardian Insurance, to recover the unpaid portion of the judgment under the underinsured motorist provision of their policy. The district court entered summary judgment against Milwaukee for \$27,011.51 plus daily interest until paid. **OPINION HOLDS:** I. Prejudgment interest on a judgment for damages against a tortfeasor is included in underinsurance coverage for damages "for bodily injury" by policy language and by Iowa Code chapter 516A (offering of underinsurance coverage required). II. The district court was correct in suspending the accrual of interest between June 3, 1988 (the date Spechtenhauser's liability insurance carrier paid its policy limit) and December 15, 1988 (the date the Houselogs commenced this action against Milwaukee). Under Iowa Code 535.3, interest on a judgment accrues from the date of the commencement of the action.

No. 91-277. COMMITTEE ON PROFESSIONAL ETHICS & CONDUCT v.
WILLIAMS.

On review of the report of the Grievance Commission. LICENSE SUSPENDED. Considered by McGiverin, C.J., and Larson, Carter, Snell, and Andreasen, JJ. Opinion by Snell, J. (12 pages \$4.80)

On September 4, 1989, Brian Williams was arrested in Calhoun County, Iowa, and charged with operating a motor vehicle while intoxicated (OWI). The committee alleges that while Williams was being transported by a Calhoun County deputy sheriff (Scott Anderson) to the Sac County jail, he offered the deputy \$2000 (ultimately offering \$5000) to forget about the incident. The complaint further alleges that during the drive to the jail, Williams informed the deputy that he could buy off the judge and the county attorney but this would not be necessary if the deputy would accept the offered money. The commission found that the committee had not shown by a convincing preponderance of the evidence that Williams had violated EC 1-5; DR 1-102(A)(3), (4), or (6); or DR 9-101(C). Although an offer of money was admittedly made by Williams to Deputy Anderson, Williams denied ever claiming he could buy any public official and denied that the money offered was to have the OWI arrest forgotten or the paperwork lost. Further, the commission felt that Anderson acknowledged misstatements and exaggerations in his testimony about related events that made his credibility suspect. The commission did, however, find Williams had offered the deputy money (in increasing amounts) to let him out of the vehicle in an attempt to avoid being placed in a cell until his family could post bond and pick him up. This was held to be prejudicial to the administration of justice and a violation of DR 1-102(A)(5). The commission recommended that Williams receive a public reprimand for his violation of DR 1-102(A)(5). **OPINION HOLDS:** As Williams himself testified, his conduct from start to finish was wrong and was marked by bad judgment. Our review leads us to conclude that respondent Williams not only violated DR 1-102(A)(5), as was found by the commission, but he also violated EC 1-5, DR 1-102(A)(1), and DR 1-102(A)(6), as charged by the committee. Morally reprehensible conduct embraces the concept of "relating to, dealing with or capable of making the distinction between right and wrong in conduct." Williams' conduct in regard to officers of the court which impeded the carrying out of their responsibilities violated this standard. Even with his disability of claustrophobia, he had no right to elevate his desires above the duties of those administering the judicial system, and his duty as a lawyer to cooperate with them. Therefore, we order Brian Williams' license to practice law in this state suspended indefinitely with no possibility of reinstatement for six months.

NO. 90-697. VAN DER MAATEN v. FARMERS COOPERATIVE CO.

Appeal from the Iowa District Court for Sioux County, Michael S. Walsh, Judge. **AFFIRMED AS MODIFIED AND REMANDED.** Considered by McGiverin, C.J., and Larson, Lavorato, Snell, and Andreasen, JJ. Opinion by Larson, J.

(7 pages \$2.80)

In 1987, two northwest Iowa cooperative associations proposed a merger to form a "survivor association," Iowa Code § 499.61(3) (1987), to be called the Farmers Cooperative Company (Farmers). Frank Van Der Maaten, a former member of both cooperatives, objected to the merger and voted against it, see Iowa Code § 499.65 (1987), but the merger was completed. Under Iowa Code section 499.66(3), a newly merged cooperative association must pay off the interest of dissenting members, but it is not clear as to when and how that payment must be made. The district court ruled that it must be paid in a lump sum, when the cooperative declares a dividend or redeems its preferred stock. **OPINION HOLDS:** I. It is agreed by the parties that the "fair value" of Van Der Maaten's share of the merged cooperatives is \$11,193.29. Farmers contends that Van Der Maaten was entitled to receive only a pro rata share of the cooperative's total payments, and it tendered a check to him for \$271.91, which was refused. We agree with the district court that section 499.66(3) requires the new cooperative to pay the full value of the interest of dissenting members at such time as it pays patronage dividends or redeems preferred stock. II. When the district court entered judgment for Van Der Maaten, it awarded interest on the judgment at the rate of ten percent from the date of the filing of the petition. Van Der Maaten contends that he is entitled to five percent interest on the judgment from the date he demanded payment to the date he filed his petition, and he filed a cross-appeal to raise the issue. Section 535.2(1)(b) provides for interest at a rate of five percent per annum after money becomes due. When money is wrongfully withheld, interest begins to run when demand is made for the wrongfully withheld funds. Here, the money became due when Van Der Maaten demanded payment from the association, and he should have been awarded five percent interest from that date until the filing of his petition.

NO. 90-401. STATE v. DUBUQUE COUNTY.

Appeal from the Iowa District Court for Dubuque County, George L. Stigler, Judge. AFFIRMED. Considered by Harris, P.J., and Schultz, Carter, Lavorato, and Neuman, JJ. Opinion by Carter, J. (8 pages \$3.20)

This is a dispute between the State and Dubuque County concerning which of these entities is responsible for the care of Isaac B. at the state mental health institute (MHI) at Independence. The State asserts that Dubuque County is liable for these costs because Isaac B. acquired a legal settlement in that county prior to his institutionalization. The district court found that Isaac B. never acquired a legal settlement in Dubuque County and that the State therefore remained liable for his MHI costs pursuant to Iowa Code section 222.60 (1989). OPINION HOLDS: I. The legal settlement issue in the present case is governed by Iowa Code section 252.16(3) (1989), which provides:

A person who is an inpatient, a resident, or an inmate of or is supported by an institution whether organized for pecuniary profit or not or an institution supported by charitable or public funds in a county in this state does not acquire a settlement in the county unless the person before becoming an inpatient, a resident, or an inmate in the institution or being supported by an institution has a settlement in the county.

Id. (emphasis added). In applying this statute, the State concedes that ARC is an "institution" under subsection 3. The State argues that sometime between 1981 and 1985 Isaac began living independently, and ARC was not providing him with necessities of life. As a result of such independence, the State urges, he was not being "supported by an institution" so as to preclude his acquisition of a legal settlement in Dubuque County. Opinions of the attorney general appear to contradict the State's position on this appeal. We discern an intent underlying these statutes that disabled persons, wherever possible, should remain in normal community settings with appropriate treatment, care, rehabilitation, and education. Saddling Dubuque County with the costs of Isaac's care would, we believe, provide a strong disincentive for the County to carry out that policy. We agree with the County that any independent means which Isaac enjoyed from employment between 1981 and 1985 would not have been available to him absent his continued involvement in the ARC vocational training project. That circumstance, we believe, constitutes "support by an institution" so as to preclude acquisition of a legal settlement in Dubuque County under section 252.16(3).

NO. 90-654. GTE NORTH, INC. v. IOWA STATE UTILITIES BOARD.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Carter, Lavorato, Snell, and Andreasen, JJ. Opinion by Carter, J. (9 pages \$3.60)

A public utility appeals from the district court decision upholding an administrative order for a customer rate refund. The Iowa State Utilities Board required the utility, GTE North, Inc., to refund to its customers a portion of the rates it had collected between July 1, 1987, and December 28, 1987, which was commensurate with the decrease in its corporate income taxes under the federal Tax Reform Act of 1986, effective July 1, 1987. In ordering the refund, the utilities board relied on Iowa Code section 476.8A (1989), a statute enacted in 1987 specifically to cover adjustments to utility rates as a result of the effects of the tax reform act. **OPINION HOLDS:** The purpose of section 476.8A was to permit the utilities board to reduce existing utility rates, effective July 1, 1987, in only three situations: (1) where the utility has voluntarily filed reduced rates based on the effect of the tax reform act; (2) where the utility has failed to file for a general rate change prior to September 30, 1987; or (3) where the utility did file for a general rate change before the latter date and the findings in the rate case revealed that its rates were unreasonably high as a result of the effect of the tax reform act. Section 476.8A does not permit, and thus by implication prohibits, single-factor rate adjustments if it is determined in a general rate proceeding based on the June 30, 1987, test year that the existing rates are not unreasonable in the face of the tax reform act. We conclude that the district court erred in upholding the agency's refund order.

NO. 90-1829. EAVES v. IOWA BOARD OF MEDICAL EXAMINERS.

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge. **AFFIRMED.** Considered by Harris, P.J., and Schultz, Carter, Lavorato, and Neuman, JJ. Per curiam. (5 pages \$2.00)

A physician subject to a pending administrative license suspension proceeding appeals from the district court's refusal to adjudicate the controversy independently of the administrative process. **OPINION HOLDS:** The physician is not entitled to have the district court adjudicate the controversy under Iowa Code section 147.54 independently of the administrative process. To the extent that the current existence of parallel statutory provisions for imposing license suspension or revocation on physicians gives rise to an election of remedies, we believe such election only

NO. 90-1829. EAVES v. IOWA BOARD OF MEDICAL EXAMINERS.

(continued)

exists on behalf of the public agencies charged with enforcement of these laws. A physician charged under one of the statutory alternatives is not afforded the election to have the proceedings go forth instead under the alternative procedure.

NO. 90-1649. BAUGH v. McMAHAN.

Appeal from the Iowa District Court for Scott County, Margaret S. Briles, Judge. **AFFIRMED.** Considered by Harris, P.J., and Schultz, Carter, Lavorato, and Neuman, JJ. Per curiam. (8 pages \$3.20)

Kevin Baugh and LeaAnn McMahan, an unmarried couple, and their two children formerly lived in California. In 1989, they moved to Iowa, where they lived for about ten months. In April 1990, LeaAnn and the children returned to California. Three days later, Kevin filed this action in the Iowa District Court seeking temporary and permanent custody of the children. The Iowa District Court declined to exercise jurisdiction of the dispute under the Uniform Child Custody Jurisdiction Act, Iowa Code ch. 598A; it held that Iowa is an inconvenient forum under section 598A.7. Kevin has appealed. **OPINION HOLDS:** I. Iowa has "home state" jurisdiction under section 598A.3(1)(a) because the children lived in Iowa for ten months immediately preceding the filing of Kevin's petition. II. However, this does not end our inquiry. We must determine whether Iowa should decline to exercise jurisdiction because it is an inconvenient forum under section 598A.7(3). Absent a substantial and relatively fresh familial connection to a state of former residence, the stay-at-home parent's forum should be preferred. The stay-at-home parent's home state advantage is not absolute, however. Under the "significant-connection," "substantial-evidence," and "recent prior home state" criteria contained in section 598A.7(3), the stay-at-home parent's forum may be deemed inconvenient. Our de novo review of the evidence in the present case does not convince us that the district court's conclusion that California was the more appropriate forum was incorrect. The duration of the parties' cohabitation in California greatly exceeded that which took place in this state. The duration of the Iowa familial setting was very brief. When the parties' relationship is viewed in its totality, California does indeed have a significant connection to this child custody dispute and substantial evidence bearing upon that matter is available in that state. Based on these considerations, we affirm the court's deferral to the California courts.

NO. 89-1826. VACATIONLAND, INC. V. OPTIMUS, INCORPORATED.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Larson, Carter, Neuman, and Snell, JJ. Opinion by Larson, J. (12 pages \$4.80)

Betty and Henry Ahls sued Vacationland Cue and Cushion Sales, Inc. (Vacationland) and Optimus, Inc., the seller and a component manufacturer, respectively, of a heater which exploded in the Ahls home. Optimus, a nonresident corporation, was dismissed on the ground that a lack of sufficient contact with Iowa deprived the Iowa court of personal jurisdiction. Optimus was brought back into the suit by Vacationland's cross-petition for contribution or indemnity. The cross-petition was dismissed on the ground that the earlier dismissal for lack of sufficient contacts was "the law of the case." Vacationland appealed. Optimus responded to the appeal by moving to dismiss it on the ground that it was not filed within thirty days of the court's final order as required by Iowa Rule of Appellate Procedure 5(a). We ordered that Optimus's motion to dismiss be submitted with the appeal. **OPINION HOLDS:**

I. The key question is whether there is a final "order, judgment or decree" from which the appeal could be taken. The order of dismissal which Vacationland seeks to appeal was not a final order; it was interlocutory, and Vacationland's application for interlocutory appeal was denied. Optimus contends that, if there was a "final" order for appeal purposes, it was the court's order of October 3, 1989, which recited that the parties had settled the case and assessed the late settlement penalty. The October 3, 1989, order did not dismiss the case, nor did it constitute a final adjudication of the parties' rights or put it beyond the power of the court to return them to their original positions. It was not a final order or judgment for appeal purposes.

II. Vacationland argues that the November 15 filing of the dismissals by the parties was the court's final order. It is obvious, however, that the filing of dismissals by the parties was not a final order by the court. This was not an action by the court at all. The ministerial act of the clerk in filing the dismissals cannot be considered to be an order, judgment, or decree. We hold that the dismissal of all remaining claims by the parties in this case terminated the trial court proceedings and provided the necessary finality to permit an appeal.

III. Vacationland contends that the court erred in ruling that the "law of the case" barred its cross-petition against Optimus. The ruling of December 23, 1987, was not a final judgment and therefore did not become the law of the case. Vacationland, therefore, is not bound by the earlier adjudication that the court lacked personal jurisdiction over Optimus.

No. 90-744. **GRAHEK v. VOLUNTARY HOSPITAL COOPERATIVE ASSOCIATION OF IOWA.**

Appeal from the Iowa District Court for Linn County, William R. Eads, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by McGiverin, C.J., and Larson, Lavorato, Snell, and Andreasen, JJ. Opinion by Andreasen, J. (10 pages \$4.00)

Bernard M. Grahek quit his job as administrative consultant with Mercy Hospital (Mercy) in Cedar Rapids to take a job with Voluntary Hospital Cooperative Association of Iowa (VHI) and St. Luke's Hospital (St. Luke's), also in Cedar Rapids. Grahek's employment in this position was later terminated, allegedly due to his age. The civil rights commission dismissed Grahek's complaint because it was filed beyond the 180-day limitations period of Iowa Code section 601A.15(12) (1987). Grahek then brought this action in district court, alleging several causes of action. However, the district court granted the defendants a summary judgment on the ground Grahek's exclusive remedy was under Iowa Code chapter 601A, the Iowa Civil Rights Act. The court concluded that the suit, regardless of its labels, was an age discrimination action. Grahek has appealed. **OPINION HOLDS:** I. Grahek's contract claim and his civil rights claim are separate and distinct causes of action, and each may be pursued independently. Because we hold that chapter 601A does not preempt Grahek's contract claim under these circumstances where his contract was other than an at-will employment situation, we reverse the district court's grant of summary judgment on this count and remand for further proceedings. II. The tort of breach of implied covenant of good faith and fair dealing has never been recognized in the employment context in Iowa. We need not address the issue of whether such an action may be maintained because we hold that, in this case, any such action would be preempted by the Iowa Civil Rights Act. III. Plaintiff's wrongful termination claim essentially urges that Grahek was discharged because of his age. This claim is indistinguishable from the civil rights claim Grahek filed with the commission. The district court correctly granted summary judgment on this count. IV. Grahek alleges both fraudulent and negligent misrepresentations were made to him by, and on behalf of, the defendants. Thus, under section 601A.16, Grahek is not claiming to be aggrieved by the "unfair or discriminatory practice" of discriminatory discharge, but rather by the prior act of fraudulent or negligent misrepresentation. Therefore, the exclusivity provision of 601A.16 do not apply, and the Iowa Civil Rights Act does not preempt those claims. The district court's grant of summary judgment is reversed as to these counts. V. In the final count of his petition, Grahek alleges that VHA intentionally interfered with the contract between Grahek and defendants VHI, St.

No. 90-744. GRAHEK v. VOLUNTARY HOSPITAL COOPERATIVE
ASSOCIATION OF IOWA.(continued)

Luke's and Wallace. It is not entirely clear from the record whether VHA was a party to the contract. If VHA was not a party to the contract, the tort claim would not be preempted by Iowa Code section 601A. We remand to the district court for further proceedings.

No. 90-171. IN RE ESTATE OF ROGERS.

On review from the Iowa Court of Appeals. On appeal from the Iowa District Court for Johnson County, Thomas L. Koehler, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by McGiverin, C.J., and Larson, Lavorato, Snell, and Andreasen, JJ. Opinion by Andreasen, J. (10 pages \$4.00)

Lawrence and Emma Rogers owned two 40-acre tracts of land as tenants in common. Lawrence died in July 1984. Lawrence's will provided that the residue of his estate, including his interest in the land, were to be devised to a trust. The trust provided that his son, Robert Rogers, could purchase all of his interest in the two tracts of land at \$500 and \$400 per acre respectively. In October 1989, Emma died. Emma's will provided that Robert could purchase her interest in the two tracts at \$500 and \$400 per acre respectively as well. This declaratory judgment action was filed to determine how much Robert had to pay for the land. Robert urges that under options provided in the instruments, he is entitled to purchase two 40-acre tracts for a total of \$36,000. The executor of the will urges that the purchase price under the will is \$36,000 for an undivided half interest in the property and another \$36,000 under the trust for the other undivided half interest. The district court ruled for the executor. Robert appealed. **OPINION HOLDS:** In a tenancy in common, each tenant has a separate, distinct and undivided interest in all of the property so held. No tenant can claim any particular portion of the property as his own, to the exclusion of the other tenants; each is entitled to possession and use of the whole. With this principle in mind, we find that both wills are unambiguous and set a purchase price of \$36,000 for the undivided half interest each controlled. If Robert desires to exercise his options to purchase both half interests in both tracts, the price will be \$72,000.

No. 90-1032. KCOB/KLVN, INC. vs. JASPER COUNTY BOARD OF SUPERVISORS.

Appeal from the Iowa District Court for Jasper County, Darrell J. Goodhue, Judge. **AFFIRMED.** Considered by Harris, P.J., and Schultz, Carter, Lavorato, and Neuman, JJ. Opinion by Schultz, J. (17 pages \$6.80)

KCOB/KLVN, Inc., a radio station, and the Newton Daily News filed an action against the Jasper County Board of Supervisors and its individual members seeking judicial enforcement of the requirements of Iowa's open meetings law, Iowa Code chapter 21. The trial court concluded that plaintiffs had established one of eight alleged violations and had failed to establish the other seven alleged violations. On appeal, plaintiffs contend that the trial court's interpretation and application of Iowa Code chapter 21 to the facts of this case was erroneous. **OPINION HOLDS:** I. Plaintiffs urge that the trial court erroneously concluded that giving advance notice to the public of the content of an announced public meeting is not a purpose of the Iowa open meetings law. Even though notice is an important tool utilized to accomplish openness, it is not the primary purpose of chapter 21. Thus, plaintiffs' characterization of advance notice of the content of a public meeting as a purpose of chapter 21 is an overstatement. A. There was sufficient evidence to substantiate the trial court's ruling that the agenda provided sufficient notice of the meeting on May 23, 1989 regarding the firing of a custodian. B. During the January 31, 1989, meeting of the Board, the Director of the Jasper County Department of Human Services appeared and asked the Board to approve a case management plan dealing with funding of a departmental program. This matter was not on the agenda. Section 21.4 describes the agenda as "tentative" and there is no specific provision prohibiting discussion of an item not on the agenda. Proper construction of the notice provision in section 21.4 allows discussion and action on emergency items that are first ascertained at a meeting for which proper notice was given. No violation occurred by discussing the case management plan because the county would lose money and be unable to provide required services unless immediate action was taken on funding of the departmental program. In addition, proper notice of the regular meeting had been given and it was too late to amend the tentative agenda. Iowa Code section 21.4(2) does not require that the minutes include an explanation of a deviation from the tentative agenda when the twenty-four notice requirement is met. II. Plaintiffs contend that the trial court improperly concluded that plaintiffs must show defendants' intent and design to conceal or misrepresent in order to establish that the Board violated chapter 21 by holding alleged

No. 90-1032. KCOB/KLVN, INC. vs. JASPER COUNTY BOARD OF SUPERVISORS.(continued)

"budget sessions," a closed session on June 16, 1989, and by creating and later abolishing a governmental program. However, the issue of intent becomes relevant only when there is an issue of whether a meeting occurred and in determining the omission of an item from an agenda. A. The trial court did not err in finding that plaintiffs did not establish that policy-making occurred at the budget sessions and that there was no intention that these gatherings be held for the purpose of discussing policy. B. Even though the trial court determined that the Board committed a technical violation at the June 16, 1989, meeting by not publicly announcing the reason for the closed session, the court concluded that the Board substantially complied with the statutory requirements in Iowa Code section 21.5. The Board satisfied the statutory requirements except the deputy auditor, the secretary of the meeting, was excused before the Board voted to close the meeting and could not record the minutes. The Board's actions were consistent with the meaning and purpose of the open meetings law and nothing more than a procedural irregularity occurred. We hold that defendants did not violate chapter 21. C. The trial court also determined that defendants had not violated chapter 21 by the Board's acts of creating and later abolishing a certain governmental program. The trial court found no evidence that the Board chairpersons acted based on private discussions and deliberations with other Board members that violated Iowa Code chapter 21. We are not persuaded that the trial court believed that intent must be shown to establish a violation of chapter 21. The trial court correctly applied the law and committed no legal errors on the governmental program issue. III. A. In its petition, plaintiffs urge that the Board violated chapter 21 by deliberating and taking action on December 16, 1988, to purchase the city-county building from the city of Newton without providing the required prior notice. Our review of the record reveals that plaintiffs did not demonstrate that the Board held a secret meeting. The evidence was insufficient to shift the burden of going forward with the evidence from plaintiffs to defendants under Iowa Code section 21.6(2). B. Plaintiffs essentially make the same claim concerning the previously mentioned governmental program. Plaintiffs had the burden to demonstrate that a majority of the Board met without giving the required notice and discussed the formation and dissolution of the program. Plaintiffs did not present any evidence beyond its own speculation that the Board met in a closed session to discuss this matter. Thus, Plaintiffs did not present evidence sufficient to trigger the effect of section 21.6(2).

No. 89-1256. SHEPHERD COMPONENTS, INC. vs. BRICE PETRIDES
- DONOHUE & ASSOCIATES, INC.

Appeal from the Iowa District Court for Black Hawk County, L.D. Lybbert, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED ON THE APPEAL; AFFIRMED ON THE CROSS-APPEAL.** Considered by Harris, P.J., and Larson, Schultz, Neuman, and Andreasen, JJ. Opinion by Schultz, J.
(18 pages \$7.20)

Shepherd commenced this action after a wall of its cinder block building collapsed during excavation work performed on adjacent property for a city sewer project. Defendant Brice, an engineering firm, prepared the plans and specifications for the project. Codefendant Peterson was the contractor that performed the excavation work for the sewer project. A jury returned special verdicts allocating fault and determining Shepherd's damages. In accordance with the verdicts, the trial court entered a judgment against Brice for thirty percent of the actual damages and a judgment against Peterson for the remaining seventy percent of Shepherd's actual damages and for punitive damages. The court allocated seventy-five percent of the award for punitive damages, less attorney fees, to the civil reparation fund pursuant to Iowa Code section 668.1(2)(b)(1989). Both defendants appeal, and plaintiff cross-appeals. **OPINION HOLDS:** I. Our review of the responsibilities placed upon Brice in the contracts leads to our conclusion that Brice had neither responsibility for, nor control over, the construction procedures that were employed adjacent to plaintiff's building and caused the damages. We conclude that Brice owed plaintiff no duty of care. Consequently, we hold that the trial court erred by not sustaining Brice's motion for a directed verdict. II. A. Peterson contends that a punitive damage award is not appropriate in this case. Based on our review of the record, we conclude that the trial court did not err in submitting the issue of punitive damages to the jury. Peterson knew that the construction work was destroying the wall and depriving plaintiff of use of the building. Despite this knowledge, Peterson continued the construction work which increased plaintiff's problems and culminated in the entire collapse of the wall. B. On appeal, Peterson claims that the trial court erred in instructing the jury that it could award damages for certain overhead expenses. However, Peterson does not provide a citation to the record showing where error was preserved on this claim. Claims unsubstantiated in the record are not allowed on appeal. C. In a posttrial motion, Peterson claimed that no evidence substantiated an award of damages for loss of good will on the ground that plaintiff's business was not profitable. Peterson contends that the trial court erred by denying this motion. We reject Peterson's claim. The trial court defined "good will" as "the value a business has acquired as a consequence of public patronage and

No. 89-1256. SHEPHERD COMPONENTS, INC. vs. BRICE PETRIDES
- DONOHUE & ASSOCIATES, INC. (continued)

encouragement because of its local position or reputation." Even though profitability may be related to "good will," the two do not necessarily depend upon each other. III. Iowa Code section 668A.1(b) requires the jury to answer a special interrogatory indicating whether Peterson's conduct was directed specifically at the claimant. The jury answered this question in the negative. Consequently, the trial court ordered that twenty-five percent of the punitive damage award be paid to plaintiff and the remaining seventy-five percent be paid into the civil reparation trust fund. Iowa Code § 668A.1(2)(b). Plaintiff asks that the trial court's distribution of its punitive damage award be set aside and that it be awarded the entire amount of the punitive damage award. We have stated that punitive damages are not allowed as a matter of right and are discretionary. We have also indicated that punitive damages are not intended to be compensatory and that a plaintiff is a fortuitous beneficiary of a punitive damage award simply because there is no one else to receive it. Under our view of punitive damages, plaintiff did not have a vested right to punitive damages prior to the entry of a judgment. Consequently, we hold that the trial court's distribution of punitive damages does not violate plaintiff's constitutional rights.

No. 90-875. STATE vs. BROOKING.

Appeal from the Iowa District Court for Cerro Gordo County, Carlynn D. Grupp, District Associate Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Schultz, Lavorato, and Neuman, JJ. PER CURIAM. (5 pages \$2.00)

The defendant appeals from his conviction for exercising control over stolen property. He contends that the district court should have suppressed evidence seized pursuant to a warrantless search of a residence where he sometimes stayed. He argues that consent to the search, given by a neighbor, was not binding on him. **OPINION HOLDS:** Under the circumstances of this case, we believe the neighbor's third-party consent to the search was valid and binding on the defendant. The house's full-time tenant had given the neighbor written permission to obtain a key from the landlord and to enter the house for the limited purpose of removing the tenant's furniture. We find that this permission created an implied agency relationship between the tenant and the neighbor, authorizing the neighbor to consent to a search of the house. Additionally, we agree with the trial court's findings that the defendant was at most a casual house guest with no expectation of privacy, and that the tenant had not relinquished her authority over the house.

No. 90-205. HANRAHAN v. KRUIDENIER.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge. **AFFIRMED ON BOTH APPEALS.** Considered by Harris, P.J., and Schultz, Carter, Neuman, and Andreasen, JJ. Opinion by Harris, J. (15 pages \$6.00)

This is a shareholder derivative action, in the guise of a class action, to challenge a number of actions taken by defendant corporate leadership in winding up the Des Moines Register and Tribune Company, a longtime Iowa newspaper publisher. In 1985 the company changed its name to R & T Liquidation, Inc., after its assets had been sold. Plaintiffs, led by George Hanrahan, are shareholders who complain about the way defendants sold and liquidated the company. **OPINION HOLDS:** I. In the months preceding the sale of the newspaper, defendants "donated" approximately \$750,000 to the state historical museum and \$50,000 to Iowa Public Television, an action which plaintiffs vigorously challenge as unauthorized. The use of the term "donation" with regard to the \$800,000 in payments is a misnomer. The \$800,000 in contributions were furnished as consideration to settle tax litigation. We view the settlement to be particularly propitious to all involved, including the corporation. Ample consideration supported the payments. The corporation ended a \$1.7 million tax dispute, saved litigation expenses, and gained the assurance the corporation would not risk an unsuccessful appeal to the United States Supreme Court. The trial court was correct in rejecting plaintiffs' first challenge. II. Defendants donated the company's artwork, valued at approximately \$250,000, to the Des Moines Art Center and similar local institutions. We find the gift well within the ambit of the business judgment rule and agree with the trial court's rejection of plaintiffs' challenge to the gift of the artwork. III. Defendants implemented what they called a management retention program, which diverted \$1,391,531 to officers and other employees while the company was being dissolved. Defendants thought this much in bonuses was necessary to maintain the quality of the paper while offers were being tendered by potential buyers. We emphatically agree with the trial court that the program was fair and reasonable. To be sure, substantial bonuses were paid. But the stakes were also very high; the company assets were eventually sold for about \$340,000,000. The existence of sale negotiations was common knowledge among personnel, as it was indeed to all employees of the corporation. The loss of key personnel would in all likelihood have been a bargaining "chip" for potential buyers. The challenged program was, under all the circumstances, entirely appropriate, and prudent. IV. Plaintiffs sought to prevent the trustees from indemnifying: (1) their own defense; (2) the defense of other officers and directors; and (3) the defense of shareholders who chose to intervene.

No. 90-205. HANRAHAN v. KRUIDENIER.(continued)
as defendants. It would be patently unfair to require the trustees to finance their own defense when in essence they were performing the same duties as officers and directors of the former corporation. Because the responsibility of the trustees was to wind up the affairs of the corporation, it was logical for the trust to finance the defenses of other corporate officers which took place prior to dissolution. Any other result would be inequitable. Defendants are unable to point out why the corporation should pay litigation expenses for the intervenors. There is no showing that intervention did, or was likely to, affect the outcome of the litigation. We agree with the trial court's rejection of indemnification for defense expenses relating to the intervenors. V. We find no abuse of discretion in the trial court's refusal to impose sanctions.

No. 89-1648. KONZ v. UNIVERSITY OF IOWA.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge. **DECISION OF COURT OF APPEALS VACATED; JUDGMENT OF DISTRICT COURT AFFIRMED.** Considered by McGiverin, C.J., and Larson, Lavorato, Snell, and Andreasen, JJ. Per curiam. (6 pages \$2.40)

Kay Konz was employed as a graduate assistant at the University of Iowa. In March 1983, while so employed, she was injured in a traffic accident while traveling as a passenger with coworkers to a work-related symposium. Following the accident, Konz unsuccessfully brought a gross negligence claim against the coworker who was operating the vehicle at the time of the accident. In March 1985, Konz filed an application before the industrial commissioner seeking medical benefits under the Workers' Compensation Act from her employer. In July 1988, a deputy commissioner filed an order requiring Konz to show cause within twenty days why the matter should not be dismissed. This notice was sent to Konz's attorney of record. Later, a different attorney filed his appearance as attorney for Konz. Still, Konz never responded to the show cause order. In September 1988, a deputy commissioner dismissed Konz's case without prejudice for Konz's failure to respond to the show cause order. The deputy's dismissal was affirmed by the industrial commissioner. On Konz's appeal, the district court affirmed the agency and refused to set the dismissal aside. Konz filed an appeal. **OPINION HOLDS:** We find substantial evidence to support the agency's findings of fact and its decision dismissing Konz's claim. Counsel's failure to meet numerous discovery deadlines as well as pretrial hearings clearly warranted dismissal of the action when counsel failed to respond to the July 1988 show cause order.

No. 90-823. CUTLER v. KLASS, WHICHER & MISHNE.

Appeal from the Iowa District Court for Woodbury County, Murray S. Underwood and Tom Hamilton, Judges. **MODIFIED AND AFFIRMED.** Considered by Harris, P.J., and Schultz, Carter, Lavorato, and Neuman, JJ. Opinion by Harris, J. (15 pages \$6.00)

Daniel T. Cutler, a partner in a Sioux City law firm, was hospitalized in March 1985 for treatment of severe depression. The firm placed him on disability status. Upon his release from the hospital on March 29, 1985, Cutler told another partner that he wished to return to work half days in about a week. The firm sent Cutler a letter stating that it was delaying a decision on allowing him to return to work. Shortly thereafter, on April 3, 1985, Cutler committed suicide. Cutler's estate brought this tort action against the firm, ascribing responsibility for the suicide to the manner in which the firm communicated with Cutler. By rulings on a motion to dismiss and a motion for summary judgment the trial court dismissed the claims. The estate has appealed. **OPINION HOLDS:** I. We do not recommend the filing of motions to dismiss in litigation, the viability of which is in any way debatable. Neither do we endorse sustaining such motions, even where the ruling is eventually affirmed. Although the temptation is strong for a defendant to strike a vulnerable petition at the earliest opportunity, vast judicial resources could be saved with the exercise of more professional patience. Dismissals of many of the weakest cases must be reversed on appeal. Two appeals often result where one would have sufficed had the defense moved by way of summary judgment, or even by way of defense at trial. II. The dismissal of count one, a claim for negligent infliction of emotional distress, and for wrongful death on a pure negligence theory, must be affirmed. Traditionally suicide has been considered an intentional or intervening act for which the tortfeasor cannot be held responsible. Occasional exceptions now exist. One, sometimes called duty to prevent, arises where, by reason of physical custody or by reason of a protective status, a person owes a duty to prevent a potential decedent from committing suicide. Another arises where a tortious act results in a mental condition which in turn results in an uncontrollable impulse to commit suicide or which prevents the decedent from realizing the nature of the act. The firm obviously had neither care nor custody of Cutler and thus cannot be said to fall within the first exception. The second exception is not sufficiently alleged because no tortious act is made out in the petition, even under the standards of notice pleading. The firm cannot be faulted for delaying Cutler's return to active practice; indeed the firm was bound to take that position. Under the Iowa Code of Professional Responsibility for Lawyers, the firm had to take steps to ensure that the public was not provided

No. 90-823. **CUTLER v. KLASS, WHICHER & MISHNE.**(continued)
incompetent service. III. Dismissal of count two, a claim for negligent infliction of emotional distress, was proper. The claim rests on Restatement (Second) of Torts sections 312 (emotional distress intended) and 313 (emotional distress unintended) for its allegation that the firm, acting without outrageous conduct, is liable for emotional distress which ultimately resulted in Cutler's death. We have rejected the principle espoused by Restatement section 313. We thus hold it cannot support plaintiff's count two. Section 312 does not apply under the facts alleged. The alleged conduct, for the reasons explained in division II, does not qualify either as outrageous or as unreasonable risk. IV. Plaintiff's claim of intentional infliction of emotional distress (outrageous conduct) under count three was dismissed on the firm's motion for summary judgment. One element of such a recovery is outrageous conduct by the defendant. "In order for conduct to be considered outrageous it must be 'so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" The content of the letter cannot be said to be extremely outrageous under this standard. Under these facts, summary judgment was correctly entered. V. We have considered and find no error in other assignments. They include the trial court's order dismissing (on summary judgment) an amended damage claim for mental anguish and wrongful death on a breach of contract and fiduciary theories. As the trial court noted, the plaintiff acknowledged receipt of all amounts due under the partnership agreement. Because the facts do not support such a claim we do not consider whether wrongful death damages may be recovered in a breach of contract action. The majority rule appears to deny such damages. We do find merit in a challenge to a trial court ruling imposing sanctions against the plaintiff for failure to respond to interrogatories. The trial court judgment is modified to overrule imposition of sanctions.

No. 89-1317. **QUIGLEY v. WILSON.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Decatur County, Darrell J. Goodhue, Judge. **DECISION OF COURT OF APPEALS AFFIRMED; JUDGMENT OF DISTRICT COURT AFFIRMED.** Considered by McGiverin, C.J., and Larson, Lavorato, Snell, and Andreasen, JJ. Per curiam. (2 pages \$.80)

We affirm the decision reached by the court of appeals.

No. 90-643. **SCOTT COUNTY PROPERTY TAXPAYERS ASS'N v. SCOTT COUNTY.**

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge. **AFFIRMED.** Considered by Harris, P.J., and Schultz, Carter, Lavorato, and Neuman, JJ. Opinion by Harris, J. (8 pages \$3.20)

Residents of rural Scott County elected to impose a local one percent tax on sales and services as authorized by Iowa Code chapter 422B (1987) and directed that the revenues generated by the tax were to be allocated entirely for property tax relief. When it received the funds generated by this tax, defendant county responded by placing them into the county's general fund. The effect was to accord property tax relief to the entire county. Plaintiffs, rural taxpayers in the county, brought this action to challenge the allocation. **OPINION HOLDS:** I. Even if we were to accept plaintiffs' challenge to the revenue disbursement as unfair, fundamental rules of statutory construction militate against reversal. The challenged tax scheme is entirely lawful. II. Plaintiffs also mount a constitutional challenge, claiming the scheme denies them equal protection. We cannot find the board's action in providing property tax relief to the entire county had no rational basis. The constitutional challenge is without merit.

No. 90-1011. **ABEL v. IOWA DEPARTMENT OF PERSONNEL.**

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Richard A. Strickler, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by McGiverin, C.J., and Larson, Lavorato, Snell, and Andreasen, JJ. Per curiam. (5 pages \$2.00)

Petitioners, park rangers, appealed from a district court judgment affirming the Iowa Department of Personnel's decision rejecting their request to have their positions as Park Rangers 2 and 3 reclassified as Public Service Executive 1. The court of appeals reversed and remanded, directing that the rangers be classified as Public Service Executive 1. We granted further review. **OPINION HOLDS:** Within our limited framework for review, we believe the record as developed throughout the pendency of this case is sufficient to support the agency's denial of the park rangers' request to reclassify their position. We therefore vacate the court of appeals decision and affirm the judgment of the district court.

No. 89-875. STATE v. WISE.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Scott County, J.L. Burns, Judge. COURT OF APPEALS DECISION VACATED IN PART; DISTRICT COURT JUDGMENT AFFIRMED. Considered by Harris, P.J., and Schultz, Carter, Lavorato, and Neuman, JJ. Per curiam.

(4 pages \$1.60)

The defendant appeals from his conviction for robbery in the second degree. OPINION HOLDS: I. A criminal defendant has a constitutional and statutory right to be personally present at every stage of trial. This right to be personally present extends to conversations between the judge, the attorneys, and the jurors concerning the jurors' ability to be impartial. Prejudice is presumed if a defendant is absent from such a conversation. However, this presumption of prejudice can be rebutted and will not always necessitate a reversal. II. In the present case we believe that the presumption of prejudice has been rebutted. Assuming without deciding that Wise's absence from the conversation was error, any such error was harmless. III. The court of appeals was correct in rejecting the other issues raised in Wise's appeal.

No. 90-1754. IN RE MARRIAGE OF RUDISH.

Appeal from the Iowa District Court for Scott County, Jack L. Burns, Judge. AFFIRMED. Considered by Harris, P.J., and Schultz, Carter, Lavorato, and Neuman, JJ. Per curiam.

(4 pages \$1.60)

The husband appeals from a district court order modifying an earlier dissolution decree. OPINION HOLDS: I. We believe the district court's modification of child support was supported by evidence of changed circumstances. II. We find no merit in Garry's contention that our child support guidelines deny equal protection under the United States and Iowa Constitutions. Garry has failed to demonstrate that the child support guidelines are patently arbitrary and bear no rational relationship to a legitimate state interest.

No. 90-1407. STATE v. EPPS.

Appeal from the Iowa District Court for Black Hawk County, Joseph C. Keefe, Judge. **AFFIRMED AS MODIFIED.** Considered by Harris, P.J., and Larson, Schultz, Neuman, and Andreasen, JJ. Opinion by Neuman, J. (8 pages \$3.20)

The State of Iowa has appealed a district court order that increased a noncustodial parent's child support obligation by less than half the amount called for under our guidelines. Helen and Freddie Epps' marriage was dissolved in 1985. The court placed their only child, Frederick, in Helen's custody. Freddie, then unemployed, was ordered to pay child support of \$80 per month. In October 1989 Helen began receiving ADC and assigned her right to collect child support to the Iowa Department of Human Services. When the department learned that Freddie was regularly employed, it petitioned the court for an increase in support pursuant to Iowa Code chapter 252A (1989). Freddie had remarried and lives with his wife, their newborn child, and his wife's thirteen-year-old son by a prior marriage. Although the court agreed that an increase was in order, it rejected the State's approach and entered an award of only \$100 per month. **OPINION HOLDS:**

I. We note at the outset that the district court's decision was made without benefit of several recent cases interpreting the guidelines in varying contexts. Particularly pertinent is our determination that the court must begin its calculations by selecting the chart that applies to the number of children "who live in the custodial parent's household and can legally claim both parties as parents." Here the correct chart is the chart for one child. Thus it was incorrect for the State to recommend that the court alter the basic calculation by using the chart for two children as its reference point. On our de novo review we apply the most current guidelines. When the obligor's monthly income is subject to fluctuation, we recognize the need to average the income over a reasonable period. II. Applying these rules to the present case, we turn first to the chart for one child. Given the parties' average net monthly incomes the guidelines yield a support obligation of \$271 for one child. To justify a departure from the guidelines, the court must furnish written findings that the scheduled amount would be "unjust or inappropriate" under criteria developed by this court. Freddie's fulfillment of a prior obligation, while commendable, furnishes no basis for a downward adjustment of his ongoing duty of support. The record reveals that Freddie's obligation to his new family was voluntarily undertaken. The record also suggests that his new wife does not contribute financially to the family. No reason appears why she could not do so. Nor does the record reveal whether any effort has been made to

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seek support from the stepson's father. Giving due consideration to these factors, we cannot say that requiring Freddie to pay \$271 per month towards the support of Frederick is inappropriate or unjust. Accordingly, we modify the district court's support order and direct that Freddie's monthly child support award for Frederick be fixed at \$245 from August 7, 1990, to December 30, 1990, and \$271 per month thereafter.

No. 90-1362. CHRISTENSON v. CHRISTENSON.

Appeal from the Iowa District Court for Polk County, Jerrold W. Jordan, Judge. AFFIRMED. Considered by Harris, P.J., and Schultz, Carter, Lavorato, and Neuman, JJ. Per curiam. (4 pages \$1.60)

The defendant appeals from a district court order granting his former wife injunctive relief against him under Iowa Code chapter 236, the Domestic Abuse Act. OPINION HOLDS: We find the evidence sufficient to establish the statutory grounds for injunctive relief under chapter 236. We believe the car chase incident described in the record qualified as an assault under section 708.1, and hence as domestic abuse under section 236.2(2).

No. 90-371. STATE v. ROSENSTIEL.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Kossuth County, W.B. MacDonald, Judge. DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT REVERSED AND REMANDED. Considered by McGiverin, C.J., and Larson, Schultz, Neuman, and Snell, JJ. Opinion by Neuman, J. (7 pages \$2.80)

The State challenges a district court order suppressing evidence obtained pursuant to a Terry stop of a vehicle. OPINION HOLDS: The officer had reasonable cause to justify an investigatory stop of Rosenstiel's vehicle. The motion to suppress evidence derived from this encounter should not have been sustained. Accordingly, we vacate the decision of the court of appeals, reverse the district court and remand for further proceedings.

No. 90-863. WILSON v. MARINE OFFICE OF AMERICA CORP.

Appeal from the Iowa District Court for Scott County, Margaret S. Briles, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Lavorato, Snell, and Andreasen, JJ. Per curiam. (5 pages \$2.00)

Robert Wilson was the sole shareholder of Certified Crane. Harris was attorney for Certified. Marine Office was Certified's casualty insurance carrier. The Clausen law firm was legal counsel for Marine. After payment on a casualty claim, Marine brought suit in the name of Certified against a third party. This lawsuit was settled in September of 1984. In November of 1985, Certified was dissolved by the Secretary of State for failure to file an annual report. On September 1, 1989, Wilson filed an action against defendants Marine, Clausen and Harris. The petition alleged breach of an oral contract, negligence, breach of fiduciary duty and conspiracy, all stemming from the 1984 settlement. The defendants filed motions for summary judgment urging that Wilson's claims derived from Certified and were barred as being filed beyond the two year period of the corporate survival statute, Iowa Code section 496A.102. After the district court granted the motions and dismissed the petition, Wilson timely filed his appeal. **OPINION HOLDS:** We construe the language of Iowa Code section 496A.102 and apply its terms under the circumstances of this case. We find that Wilson's claims are derivative from Certified and were not property that passed to Wilson outside the scope of the corporate survival statute. Both the contract and tort claims urged by Wilson are in the category of corporate claims that the survival statute clearly intended to prohibit after the wind-up period. The district court so held, and we agree.

NO. 90-140. IN RE ESTATE OF WALKER.

Appeal from the Iowa District Court for Lucas County, Ray A. Fenton, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by McGiverin, C.J., and Larson, Lavorato, Snell, and Andreasen, JJ. Opinion by Larson, J. (8 pages \$3.20)

Joe and Roberta Cross borrowed \$58,000 from Roberta's father, Howard Walker. They gave three promissory notes to Howard, two payable to Howard alone, and a third to "Howard Walker or Evelyn Walker." In 1988, Howard wrote Evelyn's name below his on the two notes originally payable to him alone. Later, Howard executed a document entitled "Release of Notes" prepared and notarized by his attorney. This document purported to release and discharge all three notes. Howard executed a will which forgave and released the promissory notes and died the following month. Howard's estate requested a ruling on the validity of his attempted discharge of the three notes which, Evelyn

NO. 90-140. IN RE ESTATE OF WALKER.(continued)
claimed, were ineffective. The district court ruled that the discharge was effective as to the notes payable to Howard alone but not as to the note payable to Howard or Evelyn. Evelyn appealed, and Joe and Roberta cross-appealed. **OPINION HOLDS:** I. We find that Howard had "materially altered" two of the notes by adding Evelyn's name, and therefore, the discharge by Howard alone was effective as to them under Iowa Code section 554.3407(2)(b). II. Under Iowa Code section 554.3116(a), the note payable to "Howard Walker or Evelyn Walker" is a note payable in the alternative and may be discharged or enforced by any of the payees who had possession of the note. We believe that, for purposes of section 554.3116, possession is not limited to physical possession but extends to items under the payee's dominion and control. Under this test, Howard had possession of the note and could discharge it.

No. 90-310. IOWA PUBLIC RECORDS SEARCH, INC. v. SUTHER.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Schultz, Carter, Lavorato, and Neuman, JJ. Per curiam. (3 pages \$1.20)

Plaintiff Iowa Public Records Search, Inc., and defendant Unisys Corporation executed a contract for the purchase and maintenance of computer hardware and the lease of computer software. When the deal went sour, plaintiff sued defendant and one of its salesmen in the Iowa district court on various legal and equitable theories. Defendant moved to dismiss the suit on the ground that the parties' contract contained an arbitration clause, and the state court's jurisdiction was preempted by the Federal Arbitration Act (FAA). See 9 U.S.C. §§ 1-14 (1982). The district court agreed and dismissed the action. **OPINION HOLDS:** It is apparent from the court's ruling that it assumed the parties' contract involved interstate commerce. The limited record, however, is without evidence to support such a conclusion. This record demonstrates an insufficient nexus with interstate commerce to invoke the FAA under any theory advanced by the defendant. The court's dismissal must be reversed and the case remanded to the district court for further proceedings.

NO. 90-815. MARCO DEVELOPMENT CORPORATION v. CITY OF CEDAR FALLS.

Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge. - **AFFIRMED**. Considered by McGiverin, C.J., and Larson, Lavorato, Snell, and Andreasen, JJ. Opinion by Larson, J. (10 pages \$4.00)

In 1979, Marco Development Corporation and the City of Cedar Falls signed an "Agreement for Site Plan Approval" which, Marco claims, obligated the City to widen a street adjacent to Marco's proposed Thunder Ridge Mall. After the execution of the contract, the City elected a new mayor. The City's participation in the Thunder Ridge Mall project, which had been an issue in the mayoral campaign, was terminated. Marco sued the City for breach of contract, but the district court ruled that the contract was ultra vires on the part of the City and granted the City's summary judgment motion. Marco has appealed. **OPINION HOLDS:** I. A city may not contract for the performance of its governmental, as opposed to its proprietary, functions. In this case, the City was not involved in an entrepreneurial activity or joint enterprise which might arguably be a proprietary, or even a hybrid, function. Its proposed street widening was clearly a legislative function, and the City was not free to contract for the furnishing of such services. We conclude that the district court properly found the contract to be ultra vires and void. II. Because Marco's rule 179(b) motion was filed within a reasonable time after the service, rule 82(d) makes the filing date timely. Nevertheless, we believe that the issues raised in the motion fail as a matter of law.

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