State of Iowa

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IOWA DEPARTMENTAL RULES

JANUARY

1975

SUPPLEMENT

Containing

The permanent rules of general application promulgated by the state departments from July 1, 1974 to January 1, 1975

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NOTICE

The statutes provide that the Code Editor may publish cumulative, semi-annual supplements to the Iowa Departmental Rules. Inquiry should be made each six months of the Superintendent of Printing for distribution of these supplements.

PREFACE

This volume is published in compliance with section 14.6(5), Code 1973. The rules of the various boards and departments are arranged in alphabetical order, using the names of the departments in general use.

Not all of the rules promulgated by the state departments have been included. The Act specifies "permanent" rules of "general application." Where rules have been omitted by the editor there is a notation indicating where such rules may be obtained.

THE EDITORS

January 1975

PUBLICATION OF DEPARTMENTAL RULES

Section 14.6(5), Code 1973, as amended by 65 G.A., chapter 122, §2, requires the Code editor to:

"Prepare the manuscript copy, and cause to be printed by the state superintendent of printing in each year in which a Code is published, a volume which shall contain the permanent rules and regulations of general application, promulgated by each state board, commission, bureau, division or department, other than a court, having statewide jurisdiction and authority to make such rules. The Code editor may omit from said volume all rules and regulations applying to professional and regulatory examining and licensing provisions and any rules and regulations of limited application and temporary rules. The Code editor may make reference in the volume as to where said omitted rules and regulations may be procured.

"This volume shall be known as the Iowa Department Rules and any rule printed therein may be cited as . . . . . I.D.R. . . . . giving the year of publication and the page where the particular rule, by number, may be found.

"The volume of rules and regulations published by the Code editor shall be sold and distributed by the superintendent of printing in the same manner as Codes and session laws.

"The Code editor may provide cumulative, semiannual supplements for insertion in the latest published volume."

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Pursuant to the authority of section 159.5(10), 181.10 and 185.2 of the Code, Acts of the 1973 Session of the 65th General Assembly, chapter 172; 1974 Session of the 65th General Assembly, chapter 1153, section 7, the following new chapter is adopted.

[Filed August 2, 1974]

CHAPTER 2

ADMINISTRATIVE RULES—REFERENDUM

2.1(159) Purpose. In order to conduct uniform referendums it is the policy of the Iowa department of agriculture to enumerate the following rules to be followed by the election judges and the department to achieve that end.

2.2(159) Definitions.

2.2(1) *"Secretary"* means the secretary of the Iowa department of agriculture.

2.2(2) *"Department"* means the Iowa department of agriculture.

2.2(3) *"Producer"* shall mean the following as it relates to the particular statutory authority in each referendum conducted by the department.

a. The word *"producer"* as in a referendum conducted under chapter 179, as amended by the 65th General Assembly, chapter 1153, shall mean "each person who produces milk or cream from cows and thereafter sells the same as milk, cream, or other dairy products".

b. "Producer" in a referendum conducted under chapter 181 of the Code as amended by the 65th General Assembly, chapter 1154, means every person who raises cattle or veal calves for slaughter or who feeds cattle or veal calves for slaughter or both.

c. "Producer" in a referendum conducted under chapter 185 of the Code means any individual, firm, corporation, partnership or association engaged in this state in the business of producing and marketing in their name at least two hundred fifty bushels of soybeans in the previous marketing year.

d. "Producer" in a referendum under Acts of the 65th General Assembly, chapter 172, means any person who owns, or contracts for the care of, five hundred or more layer-type chickens, the eggs of which are sold in this state through commercial channels, including, but not limited to, eggs for hatching, which have been produced by the producer's own flock.

2.2(4) *"Statement"* means a statement, certification, affidavit or other document printed by the department stating in detail the qualifications required before a person can vote on a referendum question.

2.2(5) *"Election judge"* means that person or persons selected by the director of the Iowa state university co-operative extension service, or his designee.

2.2(6) *"Marketing year"* means the previous three hundred and sixty-five days from the date of the referendum. However, for those referendums conducted under chapter 185 of the Code the marketing year shall be the dates as set forth under section 185.1(7) of the Code.

2.3(159) Voter eligibility.

2.3(1) *Age.* Only those persons who are eighteen years of age on the date of the referendum are qualified to vote on the referendum question.

2.3(2) *Nonresidency.* The person voting need not be a resident of Iowa if the commodity he sells is produced within the state of Iowa, except for soybeans covered under chapter 185 of the Code and eggs covered under 65th General Assembly, chapter 172.

2.3(3) *Corporations.* Only an officer of a corporation may cast one vote for the corporation, which is a producer.

2.3(4) *Partnership and joint ventures.* If the ownership of the commodity is held in the partnership name only one partner may cast one vote. It is the responsibility of the partnership to determine which partner shall vote for the partnership. If the commodity is held in joint ownership the partnership rule shall apply.

If each partner meets the definition of producer in his own name and holds title to a commodity in sufficient amount as required by the definition of a producer and also is a partner in a partnership wherein the partnership meets the definition of a producer, each partner can vote in the referendum as an individual, but only one partner can vote as the designated agent of the partnership.

2.3(5) *Associations.* Only the president, chairman of the board, or chief elected official of an association can cast one vote for the association which is a producer.

2.3(6) *Universities, colleges and foundations.* Only an officer of the university or college, or chairman of the board of a foundation may cast one vote for the same.

2.3(7) *Co-operatives.* Only an officer designated by the board may cast one vote for the co-operative which is a producer.

2.3(8) *Landlord and tenant.* Any person who markets a commodity can cast one vote. If the commodity is held in joint ownership or partnership, 2.3(4) applies.

2.3(9) *Fiduciaries.* Only the court appointed legal representative of an estate, trust, conservatorship, guardianship, or any other fiduciary relationship may cast one vote for the business operation being held in trust.

2.3(10) *Husband and wife.* Only that spouse who holds legal title to the commodity can vote in the referendum. If the commodity is jointly held or held in legal partnership, rule 2.3(4) applies.

2.3(11) *Multiple operations in various counties.* The producer who holds legal title to a commodity in two or more counties can only vote once in the referendum.

2.3(12) *Proxies and absentee ballots.* No producer may vote by proxy or absentee ballot.

2.3(13) *Producer within previous marketing year.* The producer must have sold that type and amount of commodity as stated in the definition of a producer stated within the respective commodity within the previous marketing year.

2.4(159) Voting.

2.4(1) *Date and time.* The polling place will be open from 8:00 a.m. to 5:00 p.m. on the date of the referendum. The date on which the referendum will be held will be set by the secretary. Official notification as set by the regulations of each respective commodity's statutory authority will be made by the secretary.

2.4(2) *Place of voting.* The county extension offices in each and every county will be the official voting place to vote on the referendum question.

Since the referendum is statewide a person may vote in any county.

EXCEPTION: Those producers voting on a referendum under chapter 185 of the Code may vote only in a county within the crop reporting district in which they reside.

The counties within the crop reporting districts are as follows:

CROP REPORTING DISTRICT #1

Buena Vista	O'Brien
Cherokee	Osceola
Clay	Palo Alto
Dickinson	Plymouth
Emmet	Pocahontas
Lyon	Sioux

CROP REPORTING DISTRICT #2

Butler
Cerro Gordo
Floyd
Franklin
Hancock
Humboldt
Kossuth
Mitchell
Winnebago
Worth
Wright

CROP REPORTING DISTRICT #3

Allamakee
Black Hawk
Bremer
Buchanan
Chickasaw
Clayton
Delaware
Dubuque
Fayette
Howard
Winneshiek

CROP REPORTING DISTRICT #4

Audubon
Calhoun
Carroll
Crawford
Greene
Guthrie
Harrison
Ida
Monona
Sac
Shelby
Woodbury

CROP REPORTING DISTRICT #5

Boone
Dallas
Grundy
Hamilton
Hardin
Jasper
Marshall
Polk
Poweshiek
Story
Tama
Webster

CROP REPORTING DISTRICT #6

Benton
Cedar
Clinton
Iowa
Jackson
Johnson
Jones
Linn
Muscatine
Scott

CROP REPORTING DISTRICT #7

Adair
Adams
Cass
Fremont
Mills
Montgomery
Page
Pottawattamie
Taylor

CROP REPORTING DISTRICT #8

Appanoose
Clarke
Decatur
Lucas
Madison
Marion
Monroe
Ringgold
Union
Warren
Wayne

CROP REPORTING DISTRICT #9

Davis
Des Moines
Henry
Jefferson
Keokuk
Lee
Louisa
Mahaska
Van Buren
Wapello
Washington

2.4(3) *Ballots and statements.*

a. The secret ballot shall be used.

b. A statement must be signed by every person seeking to vote before the election judge will distribute a ballot to the producer.

2.4(4) *Ballot box.* The election judge in the local county extension office is responsible for procuring a container in which the ballot can be deposited. The election judge should contact the county auditor and request a voting ballot box for the period of the referendum. If a voting ballot box is not available some appropriate container shall be used by the judge. The ballot box shall remain sealed during the hours the polling place is open. See 2.4(1).

2.5(159) Election judge responsibilities.

2.5(1) *Statutes and rules.* It is the responsibility of the election judge to be familiar with the rules and the specific statutes involved in each referendum procedure.

2.5(2) *Tabulation.* After the close of the polling place a tentative tabulation of the vote shall be made and the results forwarded by telephone, calling collect to the office of the secretary. The election judge shall give the county name and the tentative tabulation to the person answering the phone. The phone call shall be made on completion of the tabulation of votes on the day of the referendum. An official tabulation will be made upon receipt of the forms mailed to the department.

2.5(3) *Mailing of forms.* The election judge is responsible for placing the ballots along with the producer statements, the original summary of voters and the judge's oath in the addressed envelope provided for by the department and mailing it to the secretary. All ballots not used shall be destroyed by the election judge.

2.5(4) *Summary of voters.* The election judge is responsible for the recording of all persons seeking to vote in the referendum whether or not the producer is eligible and

cannot sign the statement and receive a ballot. A summary of voters in triplicate will be provided for this purpose.

The original copy of the summary of voters shall be returned as set forth under 2.5(3). The first copy of the summary of voters shall be posted in a conspicuous place in the local county extension office for a period of fifteen days after the referendum. The second copy of the summary of voters shall be retained by the election judge.

2.5(5) *Extra ballots and statements.* In the event an insufficient number of ballots and statements has been forwarded to the county extension office the election judge is hereby authorized to make copies of the same.

2.6(159) Contesting votes. If any person feels that another is an unqualified person to vote, that person should, within thirty days after the referendum, file written objection with the secretary setting forth both the name of the person making objection and his address, and the name of the person whom he feels is unqualified and his address, and the reasons for the objection. Upon receipt of any written objection, the secretary shall cause a hearing to be held by a duly authorized agent of the department to determine whether there are reasonable grounds for the disqualification of a voter and his ballot.

2.7(159) The responsibility for seeing that the proper forms are printed and available to the election judges will rest with the office of the secretary.

[Effective August 2, 1974]

AGRICULTURE DEPARTMENT

(continued)

Pursuant to the authority of sections 159.5(10), 181.10 and 185.2 of the Code, Acts of the 1973 Session of the 65th General Assembly, chapter 172; 1974 Session of the 65th General Assembly, chapter 1153, section 7, the rules relating to administrative rules on referendum, filed with the Secretary of State August 2, 1974, are amended as follows:

[Filed September 24, 1974]

ITEM 1. 2.3(159) is amended by striking all of 2.3(1) and renumbering the following subrules.

ITEM 2. Strike 2.3(13) and insert in lieu thereof the following:

2.3(13) The producer must have been a producer as defined in 2.2(3), paragraphs *"a"* to *"d"* in the previous marketing year.

[Effective September 24, 1974]

AGRICULTURE DEPARTMENT

(continued)

Pursuant to the authority of chapter 1156, by the 1974 Session, 65th General Assembly, the rules appearing in 1973 IDR, chapter 11, pages 41-43, relating to commercial feed are rescinded and the following adopted in lieu thereof.

[Filed November 8, 1974]

CHAPTER 6

COMMERCIAL FEED

6.1(65GA, Ch1156) Definitions and terms.

6.1(1) The names and definitions for commercial feeds shall be the official definition of feed ingredients adopted by the Association of American Feed Control Officials, except as the secretary designates otherwise in specific cases.

6.1(2) The terms used in reference to commercial feeds shall be the official feed terms adopted by the AAFCO, except as the secretary designates otherwise in specific cases.

6.1(3) The following commodities are hereby declared exempt from the definition of commercial feed, under the provisions of chapter 1156, section 3, subsection 4, 1974 Session of the 65th General Assembly: Raw

meat; and hay, straw, stover, silages, cobs, husks, and hulls when unground and when not mixed or intermixed with other materials: Provided that these commodities are not adulterated within the meaning of section 7, subsection 1 of the Act.

6.2(65GA, Ch1156) Label format. Commercial feeds shall be labeled with the information prescribed in this rule on the principal display panel of the product and in the following general format:

6.2(1) Net weight.

6.2(2) Product name and brand name, if any.

6.2(3) If drugs are used:

a. The word "medicated" shall appear directly following and below the product name in type size no smaller than one half the type size of the product name.

b. The purpose of medication (claim statement).

c. The required direction for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statement required by 6.6 and 6.7 appear elsewhere on the label.

d. An active drug ingredient statement listing the active drug ingredients by their established name and the amounts in accordance with 6.4(4).

6.2(4) The guarantee analysis of the feed as required under the provisions of section 5(1), "c" of the Act include the following items, unless exempted in paragraph "h" of this subrule, and in the order listed:

a. Minimum percentage of crude protein.

b. Maximum or minimum percentage of equivalent protein from nonprotein nitrogen as required in 6.4(5).

c. Minimum percentage of crude fat.

d. Maximum percentage of crude fiber.

e. Minerals to include, in the following order:

(1) Minimum and maximum percentages of calcium (Ca),

(2) Minimum percentages of phosphorus (P),

(3) Minimum and maximum percentages of salt (NaCl),

(4) Other minerals.

f. Vitamins in such terms as specified in rule 6.4(3).

g. Total sugars as invert on dried molasses products or products being sold primarily for their molasses content.

h. Exemptions.

(1) Guarantees for minerals are not required when there are no specific label claims and when the commercial feed contains less than 6½% of mineral elements.

(2) Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement.

(3) Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses.

6.2(5) Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of section 5(1)(d) of the Act.

a. The name of each ingredient as defined in the official definitions of feed ingredients published in the official publication of the Association of American Feed Control Officials, common or usual name, or one approved by the secretary.

b. Collective terms for the grouping of feed ingredients as defined in the official definitions of feed ingredients published in the official publication of the Association of American Feed Control Officials in lieu of the individual ingredients; Provided that:

(1) When a collective term for a group of ingredients is used on the label individual ingredients within that group shall not be listed on the label.

(2) The manufacturer shall provide the feed control official, upon request, with a listing of individual ingredients, within a defined group, that are or have been used at manufacturing facilities distributing in or into the state.

c. The registrant may affix the statement, "Ingredients as registered with the state" in lieu of the ingredient list on the label. The list of ingredients must be on file with the secretary. This list shall be made available to the feed purchaser upon request.

6.2(6) Name and principal mailing address of the manufacturer or person responsible for distributing the feed. The principal mailing address shall include the street address, city, state and zip code; however, the street address may be omitted if it is shown in the current city directory or telephone directory.

6.2(7) The information required in section 5(1), "a" to "e" of the Act must appear in its entirety on one side of the label or on one side of the container. The information required by section 5(1), "f", "g" of the Act shall be displayed in a prominent place on the label or container but not necessarily on the same side as the above information. When the information required by section 5(1), "f", "g", is placed on a different side of the label or container it must be referenced on the front side with a statement such as "see back of label for directions for use." None of the information required by section 5 of the Act shall be subordinated or obscured by other statements or designs.

6.2(8) Customer formula and liquid feeds shall be sold by net weight.

6.3(65GA, Ch1156) Brand and product names.

6.3(1) The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A mixture labeled "Dairy Feed," for example, must be suitable for that purpose.

6.3(2) Commercial, registered brand or trade names are not permitted in guarantees or ingredient listings.

6.3(3) The name of a commercial feed shall not be derived from one or more ingredients of a mixture to the exclusion of other ingredients and shall not be one representing any components of a mixture unless all components are included in the name: Provided, that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the brand name or product name if the ingredient or combination of ingredients is quantitatively guaranteed in the analysis, and the brand or product name is not otherwise false or misleading.

6.3(4) The word "protein" shall not be permitted in the product name of a feed that contains added nonprotein nitrogen.

6.3(5) When the name carries a percentage value, it shall be understood to signify protein or equivalent protein content only, or both, even though it may not explicitly modify the percentage with the word "protein": Provided, that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice. When a figure is used in the brand name (except in mineral, vitamin, or other products where the protein guarantee is nil or unimportant), it shall be preceded by the word "number" or some other suitable designation.

6.3(6) Single ingredient feeds shall have a product name in accordance with the designated definition of feed ingredients as recognized by the Association of American Feed Control Officials unless the secretary designates otherwise.

6.3(7) The word "vitamin", or a contraction thereof, or any word suggesting vitamin can be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in 6.4(3).

6.3(8) The term "mineralized" shall not be used in the name of a feed, except for "trace mineralized salt". When so used, the product must contain significant amounts of trace minerals which are recognized as essential for animal nutrition.

6.3(9) The terms "meat" and "meat by-products" shall be qualified to designate the animal from which the meat and meat by-products are derived unless the meat and meat by-products are from cattle, swine, sheep and goats.

6.4(65GA, Ch1156) Expression of guarantees.

6.4(1) The guarantees for crude protein, equivalent protein from nonprotein nitrogen, crude fat, crude fiber and mineral guarantees (when required) will be in terms of percentage by weight.

6.4(2) Commercial feeds containing 6½% or more mineral elements shall include in the guaranteed analysis the minimum and maximum percentages of calcium (Ca), the minimum percentage of phosphorus (P), and if salt is added, the minimum and maximum percentage of salt (NaCl). Minerals, except salt (NaCl), shall be guaranteed in terms of percentage of the element. When calcium or salt guarantees, or both, are given in the guaranteed analysis such shall be stated and conform to the following:

a. When the minimum is 5.0% or less, the maximum shall not exceed the minimum by more than one percentage point.

b. When the minimum is above 5.0%, the maximum shall not exceed the minimum by more than 20% and in no case shall the maximum exceed the minimum by more than 5 percentage points.

6.4(3) Guarantees for minimum vitamin content of commercial feeds and feed supplements, when made, shall be stated on the label in milligrams per pound of feed except that:

a. Vitamin A, other than precursors of vitamin A, shall be stated in international or USP units per pound.

b. Vitamin D, in products offered for poultry feeding, shall be stated in international chick units per pound.

c. Vitamin D for other uses shall be stated in international or USP units per pound.

d. Vitamin E shall be stated in international or USP units per pound.

e. Guarantees for vitamin content on the label of a commercial feed shall state the guarantee as true vitamins, not compounds, with the exception of the compounds, pyridoxine hydrochloride, choline chloride, thiamine, and d-pantothenic acid.

f. Oils and premixes containing vitamin A or vitamin D, or both, may be labeled to show vitamin content in terms of units per gram.

6.4(4) Guarantees for drugs shall be stated in terms of percent by weight, except:

a. Antibiotics present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed.

b. Antibiotics present at 2,000 or more grams per ton (total) of commercial feed shall be stated in grams per pound of commercial feed.

c. Labels for commercial feeds containing growth promotions or feed efficiency levels of antibiotics, or both, which are to be fed continuously as the sole ration, are not required to make quantitative guarantees except as specifically noted in the federal food additive regulations for certain antibiotics, wherein, quantitative guarantees are required regardless of the level or purpose of the antibiotic.

d. The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions.

6.4(5) Commercial feeds containing any added nonprotein nitrogen shall be labeled as follows:

a. Complete feeds, supplements, and concentrates containing added nonprotein nitrogen and containing more than 5% protein from natural sources shall be guaranteed as follows:

Crude Protein, minimum,_____%,

(This includes not more than_____% equivalent protein from nonprotein nitrogen.)

b. Mixed feed concentrates and supplements containing less than 5% protein from natural sources may be guaranteed as follows:

Equivalent crude protein from nonprotein nitrogen, minimum,_____%.

c. Ingredient sources of nonprotein nitrogen such as urea, di-ammonium phosphate, ammonium polyphosphate solution, ammoniated rice hulls, or other basic nonprotein nitrogen ingredients defined by the Association of American Feed Control Officials shall be guaranteed as follows:

Nitrogen, minimum,_____%.

Equivalent crude protein from nonprotein nitrogen, minimum,_____%.

6.4(6) Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

6.5(65GA, Ch1156) Ingredients.

6.5(1) The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the official definitions of feed ingredients as published in the official publication of the Association of American Feed Control Officials, the common or usual name, or one approved by the secretary.

6.5(2) The name of each ingredient must be shown in letters or type of the same size.

6.5(3) No reference to quality or grade of an ingredient shall appear in the ingredient statement of a feed.

6.5(4) The term "dehydrated" may precede the name of any product that has been artificially dried.

6.5(5) A single ingredient product defined by the Association of American Feed Control Officials is not required to have an ingredient statement.

6.5(6) Tentative definitions for ingredients shall not be used until adopted as official, unless no official definition exists or the ingredient has a common accepted name that requires no definition, (i.e. sugar).

6.5(7) When the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than 0.007% iodine, uniformly distributed.

6.6(65GA, Ch1156) Directions for use and precautionary statements.

6.6(1) Directions for use and precautionary statements on the labeling of all commercial feeds and customer-formula feeds containing additives (including drugs, special purpose additives, or nonnutritive additives) shall:

a. Be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles: and,

b. Include, but not be limited to, all information prescribed by all applicable regulations under the Federal Food, Drug and Cosmetic Act.

6.6(2) Adequate directions for use and precautionary statements are required for feeds containing nonprotein nitrogen as specified in 6.7.

6.6(3) Adequate directions for use and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral or other dietary nutrient or compound.

6.7(65GA, Ch1156) Nonprotein nitrogen.

6.7(1) Urea and other nonprotein nitrogen products defined in the official publication of the Association of American Feed Control Officials are acceptable ingredients only in commercial feeds for ruminant animals as a source of equivalent crude protein and are not to be used in commercial feeds for other animals and birds.

6.7(2) If the commercial feed contains more than 8.75% of equivalent crude protein from all forms of nonprotein nitrogen, added as such, or the equivalent crude protein from all forms of nonprotein nitrogen, added as such, exceeds one-third of the total crude protein, the label shall bear adequate directions for the safe use of feeds and a precautionary statement:

"CAUTION: USE AS DIRECTED"

The directions for use and the caution statement shall be in type of such size so placed on the label that they will be read and understood by ordinary persons under customary conditions of purchase and use.

6.7(3) On labels such as those for medicated feeds which bear adequate feeding directions or warning statements, or both, the presence of added nonprotein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of nonprotein nitrogen.

6.8(65GA, Ch1156) Drug and feed additives.

6.8(1) Prior to approval of a registration application and/or approval of a label for commercial feed which contains additives, (including drugs, other special purpose additives, or nonnutritive additives) the distributor may be required to submit evidence

to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

6.8(2) Satisfactory evidence of safety and efficacy of a commercial feed may be:

a. When the commercial feed contains such additives the use of which conforms to the requirements of the applicable regulation in the Code of Federal Regulations, Title 21, or which are "prior sanctioned" or "generally recognized as safe" for such use, or

b. When the commercial feed is itself a drug as defined in section 3, subsection 7, of the Act and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under Title 21 U.S.C. 360 (b).

6.9(65GA, Ch1156) Adulterants.

6.9(1) For the purpose of section 7 (1), "*a*", of the Act, the terms "poisonous or deleterious substances" include but are not limited to the following:

a. Fluorine and any mineral or mineral mixture which is to be used directly for the feeding of domestic animals and in which the fluorine exceeds 0.30% for cattle, 0.35% for sheep, 0.45% for swine, and 0.60% for poultry.

b. Fluorine-bearing ingredients when used in such amounts that they raise the fluorine content of the total ration above the following amounts: 0.009% for cattle, 0.01% for sheep, 0.014% for swine, and 0.035% for poultry.

c. Soybean meal, flakes or pellets or other vegetable meals, flakes or pellets which have been extracted with trichlorethylene or other chlorinated solvents.

d. Sulfur dioxide, sulfurous acid, and salts of sulfurous acid when used in or on feeds or feed ingredients which are considered or reported to be a significant source of vitamin B_1 (thiamine).

6.9(2) Screenings and by-products of grains or seeds containing viable weed seed shall not be used as an ingredient in the manufacture of commercial feed, unless the feed is so finely ground or otherwise treated so that the weed seed will not germinate.

6.10(65GA, Ch1156) Good manufacturing practice. For the purposes of enforcement of section 7, subsection 4, of the Act the secretary adopts the following as current good manufacturing practices:

a. The regulations prescribing good manufacturing practices for medicated feeds as published in the Code of Federal Regulations, Title 21, part 133, sections 133.100 to 133.110.

b. The regulations prescribing good manufacturing practices for medicated premixes as published in the Code of Federal Regulations, Title 21, part 133, sections 133.200 to 133.210.

[Effective November 8, 1974]

ATTACHMENT TO RULES

Pursuant to section 17A.8 of the Code, the following is a copy of the findings of the Departmental Rules Review Committee rendered pursuant to chapter 17A regarding commercial feed rules:

1. Amend 6.1(1) by striking from the end the words ", except as the Secretary designates otherwise in specific cases."

2. Amend 6.1(2) by striking the exception clause.

3. Amend 6.1(1) as amended by inserting at the end after "Officials" the words "and published as the 1974 official publication of the American Feed Control Officials, Inc., copyrighted in 1973,".

4. Amend 6.1(2) as amended by inserting at the end after "Officials" the words "and published as the 1974 official publication of the American Feed Control Officials, Inc., copyrighted in 1973,".

5. Amend 6.2(4)"*a*" by adding after "Minimum percentage of crude protein" the words "—list of ingredients from which protein is derived."

6. Strike 6.2(5)"*c*".

The findings of the Departmental Rules Review Committee are not incorporated into chapter 6, commercial feed rules.

AGRICULTURE DEPARTMENT

(continued)

Pursuant to the authority of Acts of the 65th General Assembly, chapter 1156, section 10, the rules appearing in 1973 IDR are amended by adding the following new chapter.

[Filed November 5, 1974]

CHAPTER 7

PET FOOD

7.1(65GA, Ch1156) Definitions and terms.

7.1(1) *"Principal display panel"* means the part of a label that is most likely to be displayed, presented, shown or examined under normal and customary conditions of display for retail sale.

7.1(2) *"Ingredient statements"* means a collective and contiguous listing on the label of the ingredients of which the pet food is composed.

7.1(3) *"Immediate container"* means the unit, can, box, tin, bag, or other receptacle or covering in which a pet food is displayed for sale to retail purchasers, but does not include containers used as shipping containers.

7.1(4) *"Association of American Feed Control Officials"* shall include the 1974 official publication of the American Feed Control Officials, Incorporated, copyrighted in 1973. 1973.

7.2(65GA, Ch1156) Label format and labeling.

7.2(1) The statement of net content and product name must be shown on the principal display panel. All other required information may be placed elsewhere on the label but shall be sufficiently conspicuous as to render it easily read by the average purchaser under ordinary conditions of purchase and sale.

7.2(2) The declaration of the net content shall be made in conformity with the United States "Fair Packaging and Labeling Act" and the regulations promulgated thereunder.

7.2(3) The information which is required to appear in the "Guaranteed Analysis" shall be listed in the following order:

Crude protein (Minimum amount)
Crude fat (Minimum amount)
Crude fiber (Maximum amount)
Moisture (Maximum amount)
Additional guarantees shall follow moisture.

7.2(4) The label of a pet food shall specify the name and address of the manufacturer, packer, or distributor of the pet food. The statement of the place of business should include the street address, if any, of such place unless such street address is shown in a current city directory or telephone directory.

7.2(5) If a person manufactures, packages, or distributes a pet food in a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such pet food was manufactured or packaged or is to be distributed, if such statement is not misleading in any particular.

7.2(6) A vignette, graphic, or pictorial representation of a product on a pet food label shall not misrepresent the contents of the package.

7.2(7) The use of the word "proven" in connection with label claims for a pet food is improper unless scientific or other empirical evidence establishing the claim represented as "proven" is available.

7.2(8) No statement shall appear upon the label of a pet food which makes false or misleading comparisons between that pet food and any other pet food.

7.2(9) Personal or commercial endorsements are permitted on pet food labels where said endorsements are factual and not otherwise misleading.

7.2(10) When a pet food is enclosed in an outer container or wrapper which is intended for retail sale, all required label information must appear on such outside wrapper or container unless all of the required label information is readily legible through apertures or transparencies in such outside container or wrapper.

7.2(11) The words "Dog Food", "Cat Food", or similar designations must appear conspicuously upon the principal display panels of the pet food labels.

7.2(12) The label of a pet food shall not contain an unqualified representation or claim, directly or indirectly, that the pet food therein contained or a recommended feeding thereof, is or meets the requisites of a complete, perfect, scientific or balanced ration for dogs or cats unless such product or feeding:

a. Contains ingredients in quantities sufficient to provide the estimated nutrient requirements for all stages of the life of a dog or cat, as the case may be, which have been established by a recognized authority on animal nutrition, such as the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences or,

b. Contains a combination of ingredients which when fed to a normal animal as the only source of nourishment will provide satisfactorily for fertility of females, gestation and lactation, normal growth from weaning to maturity without supplementary feeding, and will maintain the normal weight of an adult animal whether working or at rest and has had its capabilities in this regard demonstrated by adequate testing.

7.2(13) Labels for products which are compounded for or which are suitable for only a limited purpose (i.e., a product designed for the feeding of puppies) may contain representations that said pet food product or recommended feeding thereof, is or meets the requisites of a complete, perfect, scientific or balanced ration for dogs or cats only:

a. In conjunction with a statement of the limited purpose for which the product is intended or suitable (as, for example, in the statement "a complete food for puppies"). Such representations and such required qualification therefor shall be juxtaposed on the same panel and in the same size, style and color print; and

b. Such qualified representations may appear on pet food labels only if:

(1) The pet food contains ingredients in quantities sufficient to satisfy the estimated nutrient requirements established by a recognized authority on animal nutrition, such as the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences for such limited or qualified purpose; or

(2) The pet food product contains a combination of ingredients which when fed for such limited purpose will satisfy the nutrient requirements for such limited purpose and has had its capabilities in this regard demonstrated by adequate testing.

7.2(14) Except as specified by 7.3(1), the name of any ingredient which appears on the label other than in the product name shall not be given undue emphasis so as to create the impression that such an ingredient is present in the product in a larger amount than is the fact, and if the names of more than one such ingredient are shown, they shall appear in the order of their respective predominance by weight in the product.

7.3(65GA, Ch1156) Brand and product names.

7.3(1) No flavor designation shall be used on a pet food label unless the designated flavor is detectable by a recognized test method, or is one the presence of which provides a characteristic distinguishable by the pet. Any flavor designation on a pet food label must either conform to the name of its source as shown in the ingredient statement or the ingredient statement shall show the source of the flavor. The word "flavor" shall be printed in the same size type and with an equal degree of conspicuousness as the ingredient term(s) from which the flavor designation is derived.

Distributors of pet food employing such flavor designation or claims on the labels of the product distributed by them shall, upon request, supply verification of the designated or claimed flavor to the appropriate control official.

7.3(2) The designation "100%" or "All" or words of similar connotation shall not be used in the brand or product name of a pet food if it contains more than one ingredient. However, for the purpose of this provision, water sufficient for processing, required decharacterizing agents and trace amounts of preservatives and condiments shall not be considered ingredients.

7.3(3) The term "meat" and "meat by-products" shall be qualified to designate the animal from which the meat and meat by-products are derived unless the meat and meat by-products are from cattle, swine, sheep, and goats. For example, "horsemeat" and "horsemeat by-products."

7.3(4) The name of the pet food shall not be derived from one or more ingredients of a mixture to the exclusion of other ingredients and shall not be one representing any components of a mixture of a pet food product unless all components or ingredients are included in the name except as specified by rule 7.3(1), (5), or (6); provided that the name of an ingredient or combination of ingredients may be used as a part of the product name if:

a. The ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts which have a material bearing upon the price of the product or upon acceptance of the product by the purchaser thereof; or

b. It does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients; or

c. It is not otherwise false or misleading.

7.3(5) When an ingredient or a combination of ingredients derived from animals, poultry, or fish constitutes 95% or more of the total weight of all ingredients of a pet food mixture, the name or names of such ingredient(s) may form a part of the product name of the pet food; provided, that where more than one ingredient is part of such product name, then all such ingredient names shall be in the same size, style, and color print.

7.3(6) When an ingredient or a combination of ingredients derived from animals, poultry or fish constitutes at least 25% but less than 95% of the total weight of all ingredients of a pet food mixture the name or names of such ingredient or ingredients may form a part of the product name of the pet food only if the product name also includes a primary descriptive term such as "meatballs" or "fishcakes" so that the product name describes the contents of the product in accordance with an established law, custom or usage or so that the product name is not misleading. All such ingredient names and the primary descriptive term shall be in the same size, style and color print.

7.3(7) Contractions or coined names referring to ingredients shall not be used in the brand name of a pet food unless it is in compliance with rule 7.3(1), (4), (5), or (6).

7.4(65GA, Ch1156) Expression of guarantees.

7.4(1) The sliding scale method of expressing a guaranteed analysis (for example, "protein 15-18%") is prohibited.

7.4(2) Pursuant to section 5 (1) (c) of the Act, pet foods containing 6½% or more of mineral elements, shall include in the guaranteed analysis the minimum and maximum percentages of calcium (Ca), the minimum percentage of phosphorus (P), and if added, the minimum and maximum percentages of salt (NaCl). All other minerals, when quantitatively guaranteed, shall be expressed as the element in units of measurement established by a recognized authority on animal nutrition such as the National Research Council.

7.4(3) Pursuant to section 5 (1) (c) of the Act, the label of pet food which is formulated as and represented to be a vitamin supplement, shall include a guarantee of the minimum content of each vitamin declared in the ingredient statement. Such guarantees shall be stated in units of measurements established by a recognized authority on animal nutrition such as the National Research Council.

7.4(4) The vitamin potency of pet food products distributed in containers smaller than one pound may be guaranteed in approved units per ounce.

7.4(5) If the label of a pet food does not represent the pet food to be either a vitamin or a mineral supplement, but does include a table of comparison of a typical analysis of the vitamin, mineral, or nutrient content of the pet food with levels recommended by a recognized animal nutrition authority, such comparison may be stated in the units of measurement used by the recognized authority on animal nutrition such as the National Research Council. The statement in a table of comparison of the vitamin, mineral, or nutrient content shall constitute a guarantee, but need not be repeated in the guaranteed analysis. Such table of comparison may appear on the label separate and apart from the guaranteed analysis.

7.5(65GA, Ch1156) Ingredients.

7.5(1) The maximum moisture in all pet foods shall be guaranteed and shall not exceed 78.00% or the natural moisture content of the constituent ingredients of the product,

whichever is greater. Pet foods such as those consisting principally of stew, gravy, sauce, broth, juice or a milk replacer which are so labeled, may contain moisture in excess of 78.00%.

7.5(2) Each ingredient of the pet food shall be listed in the ingredient statement, and names of all ingredients in the ingredient statement must be shown in letters or type of the same size. The failure to list the ingredients of a pet food in descending order by their predominance by weight in nonquantitative terms may be misleading. Any ingredient for which the Association of American Feed Control Officials has established a name and definition shall be identified by the name so established. Any ingredient for which no name and definition has been so established shall be identified by the common or usual name of the ingredient. Brand or trade names shall not be used in the ingredient statement.

7.5(3) The term "dehydrated" may precede the name of any ingredient in the ingredient list that has artificially dried.

7.5(4) No reference to quality or grade of an ingredient shall appear in the ingredient statement of a pet food.

7.6(65GA, Ch1156) Directions for use. The label of a pet food product which is suitable only for intermittent or supplemental feeding or for some other limited purpose shall:

7.6(1) Bear a clear and conspicuous disclosure to that effect; or

7.6(2) Contain specific feeding directions which clearly state that the product should be used only in conjunction with other foods.

7.7(65GA, Ch1156) Drugs and pet food additives.

7.7(1) An artificial color may be used in a pet food only if it has been shown to be harmless to pets. The permanent or provisional listing of an artificial color in the United States Food and Drug Regulations as safe for use, together with the conditions, limitations, and tolerances, if any, incorporated therein, shall be deemed to be satisfactory evidence that the color is, when used pursuant to such regulations, harmless to pets.

7.7(2) Prior to approval of a registration application or approval of a label for pet food, which contains additives, (including drugs, other special purpose additives, or nonnutritive additives) the distributor may be required to submit evidence to prove the safety and efficacy of the pet food, when used according to directions furnished on the label. Satisfactory evidence of the safety and efficacy of a pet food may be:

a. When the pet food contains such additives, the use of which conforms to the requirements of the applicable regulation in the Code of Federal Regulations, Title 21, or which are "prior sanctioned" or "generally recognized as safe" for such use or;

b. When the pet food itself is a drug as defined in section 3, subsection 7, of the Act and is generally recognized as safe and effective for label use or is marketed subject to the application approved by the Food and Drug Administration under Title 21, U.S.C. 355 or 357.

7.7(3) The medicated labeling format recommended by the Association of American Feed Control Officials shall be used to assure that adequate labeling is provided.

[Effective November 5, 1974]

AGRICULTURE DEPARTMENT

(continued)

Pursuant to the authority of section 215.18 of the Code, rule 14.33(215) appearing in 1973 IDR 50 and amended March 15, 1973 by July 1973 IDR Supplement 10, is further amended as follows:

[Filed July 10, 1974]

Rule 14.33(215) is amended by striking "1973" and inserting in lieu thereof "1974".

[Effective July 10, 1974]

AGRICULTURE DEPARTMENT

(continued)

Pursuant to the authority of section 164.4 of the Code, the rules appearing in the January 1974 Supplement, page 5, relating to bovine brucellosis are rescinded and the following adopted in lieu thereof.

[Filed December 9, 1974]

16.138(164) Fee schedule.

16.138(1) *Bleeding.* Ten dollars per stop (herd) and two dollars per head for the first ten bled, one dollar and fifty cents per head for the next 25 head, and one dollar per head for all cattle bled thereafter.

16.138(2) *Tagging and branding reactors.* Ten dollars for the first reactor and two dollars fifty cents for each additional reactor.

[Effective December 9, 1974]

AGRICULTURE DEPARTMENT

(continued)

Pursuant to the authority of section 163A.9 of the Code, rules appearing in the January 1974 Supplement, page 5, relating to swine brucellosis are rescinded and the following adopted in lieu thereof.

[Filed December 9, 1974]

ERADICATION OF SWINE BRUCELLOSIS

16.142 Reserved for future use.

16.143(163A) Fee schedule.

16.143(1) *Bleeding.* Ten dollars per stop (herd) and two dollars per head for the first ten bled and one dollar per head for all animals bled thereafter.

16.143(2) *Tagging of reactors.* Ten dollars per stop (herd) and one dollar per head for all swine tagged.

16.144 Reserved for future use.

[Effective December 9, 1974]

AGRICULTURE DEPARTMENT

(continued)

Pursuant to the authority of section 162.16 of the Code, the following new chapter is adopted.

[Filed December 9, 1974]

CHAPTER 20

ANIMAL WELFARE

20.1(162) These rules are promulgated to apply to all dogs, cats, rabbits, rodents, nonhuman primates, birds or other vertebrate animals handled under section 162.1 of the Code.

20.2(162) Housing facilities and primary enclosures.

20.2(1) *Housing facilities.*

a. Buildings shall be of adequate structure and maintained in good repair so as to ensure protection of animals from injury.

b. Shelter shall be provided to allow access to shade from direct sunlight and regress from exposure to rain or snow. Heat, insulation, or bedding adequate to provide comfort shall be provided when the atmospheric temperature is below 50° F. or that temperature to which the particular animals are acclimated. Indoor housing facilities shall be provided for dogs and cats under the age of eight weeks and for dogs and cats within two weeks of whelping.

c. Indoor and outdoor housing facilities shall at all times be provided with ventilation by means of doors, windows, vents, air conditioning or direct flow of fresh air that is adequate to provide for the good health and comfort of the animals. Such ventilation shall be environmentally provided as to

minimize drafts, moisture condensation, odors or stagnant vapors of excreta.

d. Ample lighting shall be provided by natural or artificial means or both during sunrise to sunset hours to allow efficient cleaning of the facilities and routine inspection of the facilities and animals contained therein.

e. Ceilings, walls and floors shall be so constructed as to lend themselves to efficient cleaning and sanitizing. Such surfaces shall be kept in good repair and maintained so that they are substantially impervious to moisture. Floors and walls to a height of four feet shall have finished surfaces.

f. Food supplies and bedding materials shall be stored so as to adequately protect them from contamination or infestation by vermin or other factors which would render the food or bedding unclean. Separate storage facilities shall be maintained for cleaning and sanitizing equipment and supplies.

g. Washrooms, basins or sinks shall be provided within or be readily accessible to each housing facility, for maintaining cleanliness among animal caretakers and sanitizing of food and water utensils.

h. Equipment shall be available for removal and disposal of all waste materials from housing facilities to minimize vermin infestation, odors and disease hazards. Drainage systems shall be functional to effect the above purposes.

i. Facilities shall be provided to isolate diseased animals, to prevent exposure to healthy animals.

j. Outdoor dog runs and exercise areas shall be of sound construction and kept in good repair so as to safely contain the animal(s) therein without injury. Floors shall be concrete, gravel or materials which can be regularly cleaned and kept free of waste accumulation. Wire floors are permissible, provided that they are not injurious to the animals.

k. Group housing is permitted for animals which are compatible with one another. Adequate space shall be provided to prevent crowding and to allow freedom of movement and comfort to animals of the size which are housed in the facility. Females in estrus shall not be housed with males, except for breeding purposes.

20.2(2) *Primary enclosures.*

a. Primary enclosures shall be of sound construction and maintained in good repair to protect the animals from injury.

b. Construction materials and maintenance shall allow the animals to be kept clean and dry. Walls and floors shall be impervious to urine and other moisture.

c. The shape and size of the enclosure shall afford ample space for the individual(s) to comfortably turn about, stand erect, sit or lie. Not more than twelve dogs or cats shall be housed in the same primary enclosure.

d. Litter pans, containing clean litter, shall be provided at all times for kittens and cats.

e. Means shall be provided to maintain that temperature and ventilation which is comfortable for the species within the primary enclosure. Lighting shall be adequate to allow observation of the animals but they shall be protected from excessive illumination.

f. Animals shall be removed from their primary enclosures at least twice in each twenty-four hour period and exercised, unless the primary enclosure shall be of sufficient size to provide this exercise.

g. If doghouses with chains are used as primary enclosures for dogs kept outdoors, the chains used shall be so placed or attached that they cannot become entangled with the chains of other dogs or any other objects. Such chains shall be of a type commonly used for the size dog involved and shall be attached to the dog by means of a well fitted collar. Such chains shall be at least three times the length of the dog as measured from the tip of its nose to the base of its tail and shall allow the dog convenient access to the doghouse.

20.3(162) General care and husbandry standards.

20.3(1) *Feeding and watering.*

a. All species covered under chapter 162 of the Code shall be provided with adequate feed as defined in section 162.2, subsection 16.

b. Young animals and animals under veterinary care shall be fed at more frequent intervals and with specific diets as their needs shall dictate.

c. All species covered under chapter 162 shall be provided with adequate water as defined in section 162.2, subsection 17.

20.3(2) *Sanitation.*

a. Housing facilities and primary enclosures shall be cleaned a minimum of once in each twenty-four hour period and more frequently as may be necessary to reduce disease hazards and odors.

b. Housing facilities and primary enclosures shall be sanitized at intervals not to exceed two weeks or more frequently as may be necessary to reduce disease hazards. Primary enclosures for dogs and cats in pet shops shall be sanitized at intervals not to exceed forty-eight hours. Sanitizing shall be done by washing the surfaces with hot water and soap or detergent, followed by the application of a safe and effective disinfectant. Pressure water systems or live steam may be used for cleaning, if animals are removed while cleaning. Runs and exercise areas having gravel or other nonpermanent surface materials shall be sanitized by periodic removal of soiled materials, application of suitable disinfectants, and replacement with clean surface materials.

c. An effective program shall be established and maintained for the control of vermin infestation.

20.3(3) *Veterinary care.*

a. Programs of disease prevention and control shall be established and maintained.

b. Sick, diseased or injured animals shall be provided with proper veterinary care or disposed of by euthanasia.

c. All species regulated under chapter 162 which are infected with contagious diseases shall be immediately placed into facilities provided for in rule 20.2(1),*"i"*.

d. All dogs and cats transported into housing facilities regulated under chapter 162, excluding pounds and animal shelters, shall have been vaccinated against distemper and rabies, unless exempted by direct recommendation of the owner's veterinarian or exempted by section 351.33 or 351.42 of the Code.

20.3(4) *Personnel.*

a. The owner or his employee shall be present at least once in each twenty-four hour period to supervise and ascertain that the care of animals and maintenance of facilities conform to all of the provisions of chapter 162.

b. A sufficient number of employees shall be utilized to provide the required care of animals and maintenance of facilities during normal business hours.

20.4(162) Transportation.

20.4(1) *Primary enclosures.*

a. Primary enclosures utilized in transportation shall be of sound construction and maintained in good repair so as to ensure protection of animals from injury.

b. Floors and lower sides shall be so constructed or shall be covered on the inner surfaces so as to contain excreta and bedding materials.

c. Adequate space shall be provided so that the individual(s) contained therein may comfortably turn about, stand erect, sit or lie.

d. Openings shall be provided in enclosures so that adequate ventilation can be maintained when they are positioned in the transporting vehicle.

e. Primary enclosures shall be cleaned and sanitized before each trip.

f. The temperature within primary enclosures shall not be allowed to exceed the atmospheric temperature; moreover the ambient temperature shall not be allowed to exceed 95° F. for a period of more than two hours, nor be allowed at any time to fall below 45° F. unless the animals are acclimated to lower temperatures.

20.4(2) *Vehicles.*

a. Protection shall be afforded to primary enclosures transported in the vehicle, sheltering the animals from drafts and extremes of hot or cold temperatures to which they are not acclimated.

b. Primary enclosures used in transportation shall be securely positioned in the vehicle to protect the animals from injury.

20.4(3) *Care in transit.*

a. Animals in transit shall be provided adequate feed and adequate water as defined in section 162.2, subsection 16, and section 162.2, subsection 17.

b. Incompatible animals shall not be placed together during shipment. Females in estrus shall not be placed in the same primary enclosure with a male.

c. Animals shall be inspected at least once in each six hour period and their emergency needs attended to immediately.

d. Animals shall be removed for exercise and their enclosures cleaned if they shall have been enroute for a twenty-four hour period.

20.5(162) Purchase, sale, trade and adoption.

20.5(1) Records shall be made, and retained for a period of twelve months for each dog, cat or nonhuman primate sold, traded, or adopted from a licensee or registered pound or animal shelter. Records shall include date of sale or transfer, identification of animal, names and addresses of seller and purchaser or transferor and recipient, and source of the animal. Records shall be similarly kept on other small vertebrate animals sold or transferred, except that individual identifications shall not be required.

20.5(2) Licensees, pounds, and animal shelters shall furnish a statement of sale, transfer, or adoption to each purchaser or recipient of a dog, cat, nonhuman primate, bird, or other vertebrate animal. This statement shall include: Name and address of the seller or transferor, name and address of the purchaser or recipient, date of sale or transfer, description or identification of the vertebrate sold or transferred, prophylactic immunization(s) and date(s) administered, and internal parasite medication(s) given and date(s) administered.

20.5(3) All vertebrate animals regulated under chapter 162 which are known to be exposed to or show symptoms of having infectious and contagious diseases or which show symptoms of parasitism or malnutrition sufficient to adversely affect the health of the animals are restricted from sale or transfer.

The secretary may order quarantine on premises or housing facilities in which any of the above listed conditions in 20.5(3) shall exist. Quarantine shall be removed when at the discretion of the secretary or his designee, the disease conditions for which quarantined are no longer evident and the apparent health of the animals indicates absence of contagion.

20.6(162) Public health.

20.6(1) Animal wardens aiding in the enforcement of the provisions of chapter 162 shall enlist veterinary aid in programming control measures to protect the public from zoonotic diseases which may be suspected to be on the premises of a licensee or registrant of said chapter.

20.6(2) Animals, housing facilities, or premises may be placed under quarantine by order of the secretary when it is deemed necessary to protect the public from zoonotic diseases.

20.7(162) Miscellaneous.

20.7(1) *Boarding kennels and commercial kennels.*

a. Records shall be made, and retained for a period of twelve months for each animal boarded, groomed or trained. Records shall include owner's name and address, identification of animal, duration of stay, service provided and illnesses which have occurred.

b. Animals exhibiting symptoms of disease shall be promptly examined and treated by a veterinarian.

c. Group housing is permitted only if the animals are owned by the same person and are compatible.

d. Grooming and training utensils and equipment shall be cleaned and sanitized between use on animals owned by different persons.

e. Primary enclosures shall be cleaned and sanitized between use in containing animals owned by different persons.

20.7(2) *Animal shelters and pounds.*

a. Dogs, cats and other vertebrates upon which euthanasia may be permitted by law, shall be destroyed only as defined by euthanasia under chapter 162.

b. In addition to records required by 20.5(1), a euthanasia record shall be made and retained for a period of twelve months, and shall include date of entry, source of animal, identification of animal, and date of euthanasia. Records shall be kept of all dogs, cats or other vertebrates which may have been lawfully claimed by a research facility.

20.7(3) *Inspection.*

a. The premises, housing facilities and records required by chapter 162 shall be

open for inspection by authorized personnel of the Iowa department of agriculture during normal business hours.

b. Animals seized or impounded under provisions of sections 162.13 and 162.14 may be returned to the person owning them if there is satisfactory evidence that the animals shall receive adequate care by that person. Costs of care while in custody shall be borne by the person owning the facility from which seized.

Conditions of this rule and sections 162.13 and 162.14 of the Code shall likewise apply to all eligible licensees or registrants, whether or not they have been properly licensed by chapter 162.

20.7(4) The secretary may adopt by reference or otherwise such provisions of the rules, regulations and standards under the federal Acts, with such changes therein as he deems appropriate to make them applicable to operations and businesses subject to chapter 162, which shall have the same force and effect as if promulgated under said chapter.

[Effective December 9, 1974]

BANKING DEPARTMENT

STATE BANK DIVISION

Pursuant to the authority of section 524.213 of the Code, rules of the banking department appearing in the 1973 IDR, pages 82 to 84, relating to the definition of a savings deposit are amended as follows:

[Filed December 6, 1974]

ITEM 1. Rule 8.1(3), page 83, line 2, is amended by inserting after the word "of" the words "a governmental unit,".

[Effective December 6, 1974]

BANKING DEPARTMENT

(continued)

STATE BANK DIVISION

Pursuant to the authority of section 524.213 of the Code, Rule 8.2(2) appearing in January 1974 IDR Supplement, page 10, relating to maximum interest on time deposits of less than $100,000 is rescinded and the following adopted in lieu thereof:

[Filed December 6, 1974]

8.2(2) *Time deposits of less than $100,000.* The following shall apply:

a. Governmental units. The maximum rate of interest is 7½% on such deposits having a maturity of not less than thirty days.

b. Other depositors:

Maturity	Maximum percent
30 days or more but less than 90 days	5 %
90 days or more but less than 1 year	5½%
1 year or more but less than 2½ years	6 %
2½ years or more	6½%
4 years or more	7¼% (certificates of $1,000 or more)

[Effective December 6, 1974]

BANKING DEPARTMENT

(continued)

STATE BANK DIVISION

Pursuant to the authority of section 524.213 of the Code, a change in rule 8.2(2) filed with the secretary of state December 6, 1974, relating to maximum interest on time deposits of less than $100,000, is rescinded and the following adopted in lieu thereof:

[Filed December 19, 1974]

8.2(2) *Time deposits of less than $100,000.* The following shall apply:

a. Governmental units. The maximum rate of interest is 7¾% on such deposits having a maturity of not less than thirty days.

b. Other depositors:

Maturity	Maximum Percent
30 days or more but less than 90 days	5%
90 days or more but less than 1 year	5½%
1 year or more but less than 2½ years	6%
2½ years or more but less than 4 years	6½%
4 years or more but less than 6 years	7¼% (certificates of $1,000 or more)
6 years or more	7½% (certificates of $1,000 or more)

[Effective December 19, 1974]

CAMPAIGN FINANCE DISCLOSURE COMMISSION

Pursuant to the authority of Acts of the 65th General Assembly, chapter 138, the following rules are adopted.

[Filed October 2, 1974]

CHAPTER 3
MISCELLANEOUS RULES

3.1(65GA, Ch138) Anonymous contributions received by any candidate or committee in such amounts as would require the keeping of a record thereof or require a report as to the identity of the donor shall, if thereafter used for political purposes, be considered to be received in violation of this Act.

3.2(65GA, Ch138) All candidates shall submit to the commission on each required reporting date a list of nonstatutory committees working for the candidate which the candidate recognizes. For the purpose of this rule, "recognizes" shall mean knowledge and approval by the candidate of the action by any person or political committee on behalf of a candidate.

3.3(65GA, Ch138) Any person or committee in charge of a fund-raising event as defined in 65th GA, chapter 138, shall make records for and report all those who donate goods or services in excess of the limits set forth in 65th GA, chapter 138, and shall also make records for and report all those who purchase goods or services in excess of the record keeping and reporting requirements. The record keeping and reporting requirements imposed herein shall be the same as is required for those persons or committees listed in 65th GA, chapter 138, to whom the fund-raising proceeds are contributed.

3.4(65GA, Ch138) State and county commissioners shall file a summary of all committees and candidates who are required to file reports with the commissioners, which summary shall show if such report has been filed and the filing date thereof. Such summary reports from the commissioners shall be filed with the commission not later than twenty days after each reporting period as required by Acts of the 65th GA, chapter 138.

These rules are intended to implement chapter 138, 65th GA, 1973 session.

[Effective October 2, 1974]

CITY DEVELOPMENT BOARD

Pursuant to the authority of 64GA, chapter 1088, section 34, rules appearing in January 1974 IDR Supplement, pages 11 to 15 relating to the City Development Board, are amended as follows.

[Filed November 13, 1974]

1.4(1), line 2, is amended by striking "1974" and inserting in lieu thereof "1975".

1.4(2), line 2, is amended by striking all after the words "A map of the territory, city or cities involved, ..." and inserting in lieu thereof "which will show all features which, in the judgement of the board, are pertinent to the proposed action".

1.18(64GA, Ch1088), line 7, is amended by striking all after "documents", and inserting in lieu thereof, "unless directed by the board, will be issued only upon application unto the board in writing".

[Effective November 13, 1974]

CITY FINANCE COMMITTEE

Pursuant to the authority of Acts of the 64th General Assembly, Chapter 1088, Division VII, Part 2, (as amended), the following rules are adopted.

[Filed November 4, 1974]

CHAPTER 1

OPERATIONS OF CITY FINANCE COMMITTEE

1.1(64GA, Ch1088) Purpose. To assure that the proceedings of the city finance committee are conducted in an orderly manner and also to provide that the public is kept informed of actions taken by the city finance committee, the committee adopts the following rules.

1.2(64GA, Ch1088) Membership. The selection, appointment and approval of members to the city finance committee are made as provided for in section 94 of the Act (64GA, Ch1088). Names of designees shall be given to the committee chairman in writing by July 1 of each year, or promptly if changed.

1.3(64GA, Ch1088) Responsibilities of officers. The officers of the city finance committee shall consist of a chairman, a vice chairman, and a secretary.

1.3(1) *Chairman.* As provided by law the state comptroller or his designee serves as chairman of the committee and shall preside over the proceedings of the city finance committee.

The chairman shall at each regular meeting of the city finance committee submit a report of the financial condition of the committee. Such report shall be entered into the committee's minutes.

Upon a vacancy on the city finance committee the chairman shall notify the governor that such a vacancy exists.

1.3(2) *Vice chairman.* The vice chairman shall serve in absence of the chairman, and shall be assigned such other duties as the committee determines. The vice chairman shall be elected yearly at the July meeting.

1.3(3) *Secretary.* Yearly at the July meeting, the city finance committee shall appoint a secretary to record the proceedings of the committee. The secretary may or may not be a member of the committee.

The secretary shall give advance public notice of the time, and place of each meeting. Such notice must be in accordance with section 28A.4 of the Code.

At least one week prior to the date of a regular meeting, the secretary shall prepare a tentative agenda for the next meeting of the committee and must distribute this tentative agenda to the persons listed on a mailing list approved by the committee. This agenda shall also list the date, time and place of the meeting.

The secretary shall keep minutes of all proceedings of each meeting. The minutes will constitute the official record of all actions of the committee. Following each meeting, the secretary shall duplicate the minutes and distribute them to the persons listed on the approved mailing list.

When the secretary is absent from a committee meeting, the chairman shall appoint a

member of the committee or its staff to act as secretary until such time as the regular secretary is present.

The secretary shall provide to the committee members at the July meeting a list of the committee's members including the members' addresses, phone numbers and term of office.

1.4(64GA, Ch1088) Subcommittees. The city finance committee may establish temporary or permanent subcommittees to research and investigate items of business to the committee. The rules set forth in this chapter shall guide the subcommittee, if applicable. Subcommittee members shall be appointed by the chairman and reported to the committee. Subcommittee members need not be members of the committee. They shall be reimbursed for expenses in the same manner as committee members.

1.5(64GA, Ch1088) Staff. The state comptroller is to provide staff assistance to the committee as provided by law.

1.6(64GA, Ch1088) Compensation. Committee members are to be compensated as provided by law.

1.7(64GA, Ch1088) Meeting. The regular meeting of the committee shall be on the second Friday of each month, unless the committee provides otherwise. In no case shall meetings be less than bimonthly. Upon written request of at least five members of the committee, the chairman shall promptly call a special meeting.

All meetings of the committee shall be open to the public at all times, except that closed meetings may be held for the purposes provided in section 28A.3 of the Code. Closed sessions shall be called and conducted as provided for in section 28A.3 of the Code.

1.8(64GA, Ch1088) Office location. All submissions to or requests of the committee shall be made through the state comptroller's office during normal working hours.

All records, minutes, manuals and other information concerning the proceedings of the committee shall be kept in the comptroller's office. Such information shall be open to inspection by the public during normal working hours.

1.9(64GA, Ch1088) Quorum and majority vote. A quorum shall consist of six of the members of the committee. All actions of the committee for promulgating rules as provided for by law shall require five votes. All other actions of the committee must be approved by a simple majority vote of the members present at a meeting. The secretary shall record the vote of each member of the committee indicating if the vote was an aye, no or abstention.

1.10(64GA, Ch1088) Order of business. The meetings of the city finance committee are to be presided over by the chairman or the vice chairman. Unless otherwise stipulated in these rules, Robert's Rules of Order are to be followed in conducting the business of the committee.

1.11(64GA, Ch1088) Selection of city budget to review. Any member of the committee may at any time submit the name(s) of a specific city or a group of cities, sharing common characteristics, to the committee for it to review and comment on the form of a city's proposed budget. The committee shall by a majority vote of the members present at a meeting decide whether or not to review the proposed budget of the city or cities which name(s) were submitted.

These rules are intended to implement Acts of the Sixty-fourth General Assembly, Chapter 1088, Division VII, Part 2, (as amended).

[Effective November 4, 1974]

CITY FINANCE COMMITTEE

(continued)

Pursuant to the authority of Acts of the 64th General Assembly, chapter 1088, section 96(1), the following rules are adopted.

[Filed November 4, 1974]

CHAPTER 2

BUDGET AMENDMENTS AND FUND TRANSFERS

Preamble: Consistent with home rule legislation, the city finance committee encourages as much flexibility as possible in

municipal budget administration. At the same time, it is the responsibility of the city finance committee to require those procedures and processes necessary to assure adequate notice to citizens of proposed and adopted changes in the local budget and to provide an opportunity for citizen involvement in the reallocation process.

2.1(64GA, Ch1088) Definitions. The following terms when used in the rules of this part have the following meanings:

2.1(1) "*Act*" means the Home Rule Act, Acts of the Sixty-fourth General Assembly, Chapter 1088, as amended.

2.1(2) "*Budget appropriation*" means the allocation of the total appropriation to each program for the following fiscal year, as provided for by a city's budget as finally adopted. All appropriations shall be allocated to one or more of the four programs as defined in 2.1(4) of these rules.

Any expenditure authorized as provided for in Division VII, Parts 3, 4, and 5 of the Act shall be deemed appropriated.

2.1(3) "*Budget amendment*" means any change in the appropriations of a city's budget after the budget has been finally adopted, and that requires preparation and adoption as provided in section 97 and subject to protest as provided in section 100 of the Act.

If in these rules the committee has provided that amendments of certain types or up to certain amounts do not require preparation and adoption as provided in section 97 and are not subject to protest as provided in section 100 of the Act, then these types of amendments are not considered to be budget amendments.

2.1(4) "*Program*" means any one of the following four major areas of public service that the city finance committee requires cities to use in defining its program structure:

a. Community protection.

b. Human development.

c. Home and community environment.

d. Policy and administration.

2.1(5) *"Fund"* means an independent fiscal and accounting entity with a self-balancing set of accounts recording cash and other resources together with all related liabilities, obligations, reserves and equities which are segregated for the purpose of carrying on specific activities or obtaining certain objectives in accordance with special regulations, restrictions or limitations.

2.1(6) *"Transfers between funds"* means the transfer of amounts from one fund to another fund.

2.2(64GA, Ch1088) Appropriation of unanticipated amounts. Budget amendments to the adopted city budget to permit the appropriation and expenditure of unencumbered and unanticipated balances, or amounts anticipated to be available from sources other than property taxes but which have not been appropriated in the adopted budget shall be prepared as provided in section 97 and subject to protest as provided in section 100 of the Act.

All adopted budget amendments to appropriate and expend unanticipated amounts must be certified to the auditor of the county or counties where the city is located and to the state comptroller.

2.3(64GA, Ch1088) Transfers between programs. Except as specifically provided elsewhere in these rules, all appropriation transfers between programs are budget amendments and shall be prepared as provided in section 97 and subject to protest as provided in section 100 of the Act.

All adopted budget amendments to permit the transfer of adopted budget appropriations between programs must be certified to the auditor of the county or counties where the city is located and to the state comptroller.

2.4(64GA, Ch1088) Transfers within programs. Transfers within programs are not budget amendments within the meaning of section 99 of the Act. It is the responsibility of the governing body of each city to provide its own written rules for transfers within programs.

2.5(64GA, Ch1088) Fund transfers.

2.5(1) *General provision.* Transfers between funds but still in one program are types of amendments that do not require preparation and adoption as provided in section 97 and are not subject to protest as provided in section 100 of the Act, but such transfers must comply with the state laws

regarding the funds and the following subrules:

2.5(2) *Emergency fund.* No transfer may be made from any fund to the emergency fund.

2.5(3) *Debt service fund.* Except where specifically prohibited by state law, moneys may be transferred from any other city fund to the debt service fund to meet outstanding principal and interest. Such transfers must be authorized by the original budget or a budget amendment which has been adopted as provided in section 97 and subject to protest as provided in section 100 of the Act.

2.5(4) *Capital improvements reserve fund.* Except where specifically prohibited by state law, moneys may be transferred from any city fund to the capital improvements reserve fund for purposes specified in section 88 of the Act. Such transfers must be authorized by the original budget or a budget amendment which has been adopted as provided in section 97 and subject to protest as provided in section 100 of the Act.

2.5(5) *City utility fund and city enterprise fund.* Any governing body of a city utility, combined utility system, city enterprise, or combined city enterprise which has a surplus in its fund may transfer such surpluses to any other city fund, except the emergency fund, by resolution of the appropriate governing body. A surplus shall be defined as a situation in which revenues exceed obligations including depreciation reserve schedules and when there remains such moneys as are necessary to pay principal and interest on all indebtedness of the enterprise or utility. No transfer shall be made that is in violation of the law or the other rules of the city finance committee.

These rules are intended to implement Acts of the Sixty-fourth General Assembly, Chapter 1088, Division VII and VIII (as amended).

[Effective November 4, 1974]

CITY FINANCE COMMITTEE

(continued)

Pursuant to the authority of Acts of the Sixty-fourth General Assembly, Chapter 1088, Divison VII, Part 2, (as amended), the following rules are adopted.

[Filed November 4, 1974]

CHAPTER 3

BUDGET FORMS

3.1(64GA, Ch1088) Budget forms. The city finance committee through the state comptroller will prescribe the forms to be used for public notice of estimates and for certifying the original budget or budget amendments. The original budget certificate form shall permit the provision of a working balance which shall consist of a reserve for encumbrances and a cash reserve for operations prior to the collection of taxes for the budget adopted, exclusive of capital outlay items.

These rules are intended to implement Acts of the Sixty-fourth General Assembly, Chapter 1088, Division VII, Part 2, (as amended).

[Effective November 4, 1974]

CIVIL RIGHTS COMMISSION

Pursuant to the authority of section 601.9(14) of the Code, Departmental Rules pages 97 to 99 relating to rules of practice are hereby rescinded and the following adopted in lieu thereof.

[Filed July 9, 1974]

CHAPTER 3

RULES OF PRACTICE

[See substitute filed October 7, 1974]

3.1(601A) Definitions.

3.1(1) The term "*Act*" as used herein shall mean the Iowa civil rights Act of 1965, as amended (chapter 601A of the Code).

3.1(2) Unless indicated otherwise, the terms *"court," "person," "employment agency," "labor organization," "employer," "employee," "unfair practice" or "discriminatory practice," "commission," "commissioner,"* and *"public accommodation"* shall have the same meaning as set forth in chapter 601A of the Iowa Code.

3.1(3) The term *"chairperson"* shall mean the chairperson of the Iowa civil rights commission; and the term *"commissioner"* shall mean any member, including the chairperson, of the Iowa civil rights commission. The chairperson or a majority of the commission may designate any member of the commission to serve, in the absence of the chairperson, as acting chairperson; and, in the absence of the chairperson, the acting chairperson shall have all of the duties, powers, and authority conferred upon the chairperson by the Act and these rules. At all times it shall be necessary that a quorum be present before the commission can transact any official business.

3.1(4) The term *"hearing examiner"* shall mean any person duly appointed by the commission to conduct a public hearing upon a complaint brought to a public hearing upon the order of the Iowa civil rights commission.

3.1(5) The term *"executive director"* shall mean an employee of the commission, selected by, and serving at the will of, the commission as executive director, who shall have such duties, powers and authority as may be conferred upon him or her by the commission, subject to the provisions of the Act.

3.1(6) The term *"withdrawn"* shall mean that a complainant has indicated in writing the desire that no further action be taken by the commission regarding his or her complaint.

3.1(7) The term *"satisfactorily adjusted"* shall mean that the complainant has indicated in writing that the complaint has been resolved to his or her satisfaction, and that no further action is desired from the commission.

3.1(8) The term *"successfully conciliated"* shall mean that a written agreement has been executed on behalf of the respondent, on behalf of the complainant, and on behalf of the commission, the contents of which are designed to remedy the alleged discriminatory act or practice and any other unlawful discrimination which may have been uncovered during the course of the investigation.

3.1(9) The term *"no jurisdiction"* shall mean that the alleged discriminatory act or practice is not one that is prohibited by the Iowa Civil Rights Act or where the complaint does not conform to the requirements of the Act.

3.1(10) The term *"administratively closed"* shall mean that, in the opinion of the investigating commissioner, no useful purpose would be served by further action by the commission respecting a complaint, such as where the commission staff has not been successful in locating a complainant after diligent efforts or where the respondent has gone out of business.

3.2(601A) The complaint.

3.2(1) *Amendment of complaint.* A complaint or any part thereof may be amended by the complainant or by the commission any time prior to the hearing thereon and, thereafter, at the discretion of the commissioners.

3.2(2) *Withdrawal of complaint.* A complaint or any part thereof may be withdrawn by the complainant at any time prior to the hearing thereon and, thereafter, at the discretion of the commissioners. However, nothing herein shall preclude the commission from continuing the investigation and initiating a complaint on its own behalf against the original respondent, as provided for in the Act, whenever it deems it in the public interest.

3.2(3) *Timely filing of the complaint.*

a. Ninety-day limitation. The complaint shall be filed within the ninety days after the occurrence of the alleged unlawful practice or act.

b. Continuing violation. If the alleged unlawful discriminatory practice or act is of a continuing nature, the date of the occurrence of said alleged unlawful practice shall be deemed to be any date subsequent to the commencement of the alleged unlawful practice up to and including the date upon which the unlawful practice has ceased.

3.3(601A) Processing the complaint.

3.3(1) *Receipt and acknowledgment of complaint.* Upon the receipt of a verified complaint, the executive director, or a member of the commission staff designated by the executive director, shall send a letter to the complainant acknowledging receipt of the complaint and recommending that the complainant take whatever additional legal or nonlegal action that may be necessary to protect his or her rights under other applicable provisions of city and municipal ordinances and state and federal law.

3.3(2) *Withdrawal and no jurisdiction.* Designated staff of the commission shall promptly close those cases which have been withdrawn by the complainant or in which the commission has no legal jurisdiction.

3.3(3) *Anonymity of complaint.* For purposes of public commission meetings the complaints shall be identified only by case number so that the anonymity of the complainants and respondents can be preserved. Nothing in this provision shall apply to executive sessions of the commission, or after the commission has made a decision to hold a public hearing.

3.4(601A) Investigation and conciliation.

3.4(1) *Investigating commissioner.*

a. Assignment of investigating commissioner. After a complaint has been filed, the executive director, or a designated staff member shall designate one of the commissioners, with the assistance of the commission staff, to make a prompt investigation of the allegations of the complaint. The commissioner assigned to a specific case shall be known as the investigating commissioner. As part of the investigation the respondent shall be permitted to submit a statement of his position in respect to the allegations of the complaint.

b. Disqualification of investigating commissioner. A commissioner appointed to act as an investigating commissioner shall disqualify himself or herself should he or she have a personal interest in the case at issue or any personal acquaintanceship with the complaining or responding party. Where such a conflict exists, the commissioner shall notify the staff promptly.

c. The investigation shall then proceed to a determination of whether or not there exists probable cause to credit the allegations of the complaint. After the designated investigating staff member has completed his investigation of the facts alleged in the complaint he shall prepare a written report and submit it to the investigating commissioner for finding.

d. The investigating commissioner will find that there is either probable cause or no probable cause to believe that discrimination exists regarding a complaint, or, under the appropriate circumstances, that the complaint has been satisfactorily adjusted, or successfully conciliated, or that the complaint should be administratively closed. The investigating commissioner will promptly notify commission staff of the finding.

e. Both complainant and respondent shall be notified in writing of the investigating commissioner's finding, said notification to be sent by certified mail from the commission's office within thirty days of the date that the finding has been received by staff.

f. As soon as the investigating commissioner finds that probable cause exists to credit the allegations outlined in the complaint the investigating commissioner or authorized staff member, or both, shall proceed immediately to attempt to eliminate such discriminatory or unfair practice by conference, conciliation or persuasion or other remedial action. When a conference is held pursuant to this section, a synopsis of the facts which led to the finding of probable cause along with written recommendations for resolution will be presented to the respondent.

g. Both complainant and respondent shall be notified in writing of the time, date and place of any conciliation meeting. The complainant may be present during attempts at conciliation if feasible.

h. Where the complaint has not been conciliated within forty-five days after the complainant and respondent have received notification of a probable cause finding, the conciliation may be deemed to have failed.

i. A conciliation agreement becomes effective after it has been signed by respondent or the authorized representative of the respondent, by the complainant or his or her authorized representative, and by either the investigating commissioner, the chairperson, or the executive director on behalf of the commission.

j. Where a conciliation agreement has been agreed upon by the respondent, by the complainant, and by the commission, copies of the fully executed agreement shall be sent to the complainant and respondent by certified mail with return receipt requested and a copy thereof shall be sent to the investigating commissioner by regular mail.

3.5(601A) Conducting the hearing.

3.5(1) *Hearing examiners.* The chairperson of the commission shall designate three members of the commission, or a lawyer admitted to the Iowa bar, to conduct the hearing. The absence or disqualification of one or more members of a hearing panel appointed to hear a particular case shall not prevent the remaining panel members from hearing the case as independent hearing commissioners, unless other good cause can be shown that would prevent the individual commissioner(s) from acting as an independent hearing commissioner(s).

3.5(2) Any individual who has any interest in the case at issue, or personally knows the complainant or respondent, shall disqualify himself or herself to serve as a hearing examiner. The investigating commissioner in the case at issue shall not be appointed to serve as a hearing commissioner.

3.5(3) *Power of the hearing examiners.* The hearing examiner shall have full authority to make all decisions regarding the admission and exclusion of evidence, to control the procedures, and to rule upon all objections and motions. Except in extraordinary circumstances, evidence or testimony offered by any party shall be entered in the record subject to the objection of any party, in order that a complete record will be available in the event of appeal.

3.5(4) The hearing examiner may require that written briefs be submitted on behalf of the respondent and on behalf of the complainant.

3.5(5) *Sworn testimony.* All testimony given at a commission hearing shall be under oath administered by the court reporter present at the hearing.

3.5(6) *Order of presentation.* The case in support of the complaint shall be presented to the hearing examiner by one of the commission's attorneys, or by the attorney for the complainant, who shall present his evidence first. Where there is more than one complaining party the order of presentation shall be in the discretion of the hearing examiner. After all the evidence and testimony of the complaining parties have been received, all other parties shall be allowed to present their evidence or testimony. All parties shall be allowed to cross-examine any witness immediately after her or his testimony has been received.

3.5(7) *Stipulations.* The parties may, by stipulation in writing filed with the commission at any stage of the proceeding or orally made at the hearing, agree upon any pertinent facts in the proceeding.

3.5(8) *Transcript and record.* All testimony given at a hearing held pursuant to chapter 601A of the Iowa Code, shall be transcribed by a certified court reporter retained by the commission. The written transcript of the record upon the hearing before the hearing examiner shall consist of the notice of the hearing, the verified complaint, as the same may have been amended, the certified transcript of the testimony taken at the hearing, the exhibits and depositions in evidence, written applications and stipulations.

3.6(601A) Findings and orders.

3.6(1) *Recommended decision and commission adoption.* After a review of the transcript, the evidence, and the briefs, the hearing examiner shall state in writing his findings of fact, conclusions of law, and order, and recommend the same to the commission for its adoption, modification, or rejection.

3.6(2) *Disqualification of investigating commissioner.* The investigating commissioner shall not take part in the consideration or adoption of the recommended decision.

3.7(601A) Reopening proceedings. Within thirty days after the parties have been notified of the order or finding, the commission may, reopen any closed proceedings upon notice to all parties and take such action as it may deem necessary. The proceedings may be reopened upon the motion of the commission or any party in the interest of justice or for good cause shown.

3.8(601A) Reconsideration. Any party may file a motion for reconsideration within 30 days after the receipt of a final decision of

the commission rendered subsequent to public hearing. Such motion shall be submitted in writing to the commission, and in addition, shall include a statement of all matters alleged to have been erroneously decided, the reasons such decisions are believed to be erroneous, and if applicable, a statement as to any newly discovered matters or circumstances that have arisen subsequent to the final decision.

3.9(601A) Appeals to the district court(s). Appeals to the district court from the decision of the commission shall be perfected pursuant to the provisions of section 601A.10.

3.10(601A) Partial invalidity. If any provision of these rules shall be held invalid, the remainder of these rules shall not be affected thereby. The invalidity of any of these rules with respect to a particular person or under particular circumstances shall not effect their application to other persons or under different circumstances.

3.11(601A) Availability of rules. Copies of these rules of practice and procedure shall be available to the public on request, and shall be kept on file in the office of the Secretary of State, State Capitol Building, Des Moines, Iowa 50319.

[Effective August 8, 1974]

CIVIL RIGHTS COMMISSION

(continued)

Pursuant to the authority of section 601.9(14) of the Code, the rules of the Iowa civil rights commission which were filed on July 9, 1974 in the office of the secretary of state of Iowa relating to the rules of practice are hereby rescinded and the following adopted in lieu thereof.

[Filed October 7, 1974]

CHAPTER 3

RULES OF PRACTICE

3.1(601A) Definitions.

3.1(1) The term "*Act*" as used herein shall mean the Iowa Civil Rights Act of 1965, as amended (Chapter 601A of the Code).

3.1(2) Unless indicated otherwise, the terms "*court*", "*person*", "*employment agency*", "*labor organization*", "*employer*", "*employee*", "*unfair practice*" or "*discriminatory practice*", "*commission*", "*commissioner*", and "*public accommodation*" shall have the same meaning as set forth in chapter 601A of the Code.

3.1(3) The term "*chairperson*" shall mean the chairperson of the Iowa civil rights commission; and the term "*commissioner*" shall mean any member, including the chairperson, of the Iowa civil rights commission. The vice chairperson of the commission shall serve, in the absence of the chairperson, as acting chairperson; and, in the absence of the chairperson, the vice chairperson shall have all of the duties, powers, and authority conferred upon the chairperson by the Act and these rules and regulations. At all times it shall be necessary that a quorum be present before the commission can transact any official business.

3.1(4) The term "*hearing examiner*" shall mean any person duly appointed by the commission to conduct a public hearing upon a complaint brought to a public hearing upon the order of the Iowa civil rights commission.

3.1(5) The term "*executive director*" shall mean an employee of the commission, selected by, and serving at the will of, the commission as executive director, who shall have such duties, powers and authority as may be conferred upon him or her by the commission, subject to the provisions of the Act.

3.1(6) The term "*withdrawn*" shall mean that a complainant has indicated in writing the desire that no further action be taken by the commission regarding his or her complaint.

3.1(7) The term "*satisfactorily adjusted*" shall mean that the complainant has indicated in writing that the complaint has been resolved to his or her satisfaction, and that no further action is desired from the commission.

3.1(8) The term "*successfully conciliated*" shall mean that a written agreement has been executed on behalf of the respondent, on

behalf of the complainant, and on behalf of the commission, the contents of which are designed to remedy the alleged discriminatory act or practice and any other unlawful discrimination which may have been uncovered during the course of the investigation.

3.1(9) The term *"no jurisdiction"* shall mean that the alleged discriminatory act or practice is not one that is prohibited by the Iowa civil rights Act or where the complaint does not conform to the requirements of the Act.

3.1(10) The term *"administratively closed"* shall mean that, in the opinion of the investigating commissioner, no useful purpose would be served by further action by the commission respecting a complaint, such as where the commission staff has not been successful in locating a complainant after diligent efforts or where the respondent has gone out of business.

3.2(601A) The complaint.

3.2(1) *Amendment of complaint.* A complaint or any part thereof may be amended by the complainant or by the commission any time prior to the hearing thereon and, thereafter, at the discretion of the commissioners.

3.2(2) *Withdrawal of complaint.* A complaint or any part thereof may be withdrawn by the complainant at any time prior to the hearing thereon and, thereafter, at the discretion of the commissioners. However, nothing herein shall preclude the commission from continuing the investigation and initiating a complaint on its own behalf against the original respondent, as provided for in the Act, whenever it deems it in the public interest.

3.2(3) *Timely filing of the complaint.*

a. One hundred twenty day limitation. The complaint shall be filed within the one hundred twenty days after the occurrence of the alleged unlawful practice or act.

b. Continuing violation. If the alleged unlawful discriminatory practice or act is of a continuing nature, the date of the occurrence of said alleged unlawful practice shall be deemed to be any date subsequent to the commencement of the alleged unlawful practice up to and including the date upon which the unlawful practice has ceased.

3.3(601A) Processing the complaint.

3.3(1) *Receipt and acknowledgment of complaint.* Upon the receipt of a verified complaint, the executive director, or a member of the commission staff designated by the executive director, shall send a letter to the complainant acknowledging receipt of the complaint and recommending that the complainant take whatever additional legal or nonlegal action that may be necessary to protect his or her rights under other applicable provisions of city and municipal ordinances and state and federal law.

3.3(2) *Withdrawal and no jurisdiction.* Designated staff of the commission shall promptly close those cases which have been withdrawn by the complainant or in which the commission has no legal jurisdiction.

3.3(3) *Anonymity of complaint.* For purposes of public commission meetings the complaints shall be identified only by case number so that the anonymity of the complainants and respondents can be preserved. Nothing in this provision shall apply to executive sessions of the commission, or after the commission has made a decision to hold a public hearing.

3.4(601A) Investigation and conciliation.

3.4(1) *Investigating commissioner.*

a. Assignment of investigating commissioner. After a complaint has been filed, the executive director, or a designated staff member shall designate one of the commissioners, with the assistance of the commission staff, to make a prompt investigation of the allegations of the complaint. The commissioner assigned to a specific case shall be known as the investigating commissioner. As part of the investigation the respondent shall be permitted to submit a statement of his position in respect to the allegations of the complaint.

b. Disqualification of investigating commissioner. A commissioner appointed to act as an investigating commissioner shall disqualify himself or herself should he or she have a personal interest in the case at issue or any personal acquaintanceship with the complaining or responding party. Where such a conflict exists, the commissioner shall notify the staff promptly.

c. The investigation shall then proceed to a determination of whether or not there exists probable cause to credit the allegations

of the complaint. After the designated investigating staff member has completed his investigation of the facts alleged in the complaint he shall prepare a written report and submit it to the investigating commissioner for finding.

d. The investigating commissioner shall find that there is either probable cause or no probable cause to believe that discrimination exists regarding a complaint, or, under the appropriate circumstances, that the complaint has been satisfactorily adjusted, or successfully conciliated, or the complaint should be administratively closed. The investigating commissioner will promptly notify commission staff of the finding.

e. Both complainant and respondent will be notified in writing of the investigating commissioner's finding, said notification to be sent by certified mail from the commission's office within thirty days of the date that the finding has been received by staff.

f. As soon as the investigating commissioner finds that probable cause exists to credit the allegations outlined in the complaint the investigating commissioner or authorized staff member, or both, shall proceed immediately to attempt to eliminate such discriminatory or unfair practice by conference, conciliation or persuasion or other remedial action. When a conference is held pursuant to this section, a synopsis of the facts which led to the finding of probable cause along with written recommendations for resolution will be presented to the respondent.

g. Both complainant and respondent shall be notified in writing of the time, date and place of any conciliation meeting. The complainant may be present during attempts at conciliation if feasible.

h. Where the complaint has not been conciliated within forty-five days after the complainant and respondent have received notification of a probable cause finding, the conciliation may be deemed to have failed.

i. A conciliation agreement becomes effective after it has been signed by the respondent or the authorized representative of the respondent, by the complainant or his or her authorized representative, and by either the investigating commissioner, the chairperson, or the executive director on behalf of the commission.

j. Where a conciliation agreement has been agreed upon by the respondent, by the complainant, and by the commission, copies of the fully executed agreement shall be sent to the complainant and respondent by certified mail with return receipt requested and a copy thereof shall be sent to the investigating commissioner by regular mail.

3.5(601A) Subpoenas.

3.5(1) The executive director shall issue subpoenas, either under authorization of the investigating commissioner or, where he or she is not available, under the authorization of the chairperson of the commission. The issuance of a subpoena on behalf of a party shall depend upon a showing of the relevancy thereof.

3.5(2) Prior to the issuance of a subpoena under these rules, the commission staff shall make a request in written form. The written request shall be either hand delivered by a member of the commission staff or sent by certified mail, return receipt requested. A subpoena may be issued not less than one day after the written request has been delivered to the person having possession of the requested materials. Irrespective of the above provisions, subpoenas may be issued without prior oral or written requests where the complaint has been scheduled for public hearing.

3.5(3) Every subpoena shall state the name of the commission, the purpose for which the subpoena is issued, and the name and address of the party on whose behalf it was issued.

3.5(4) The subpoena shall be directed to a specific person and shall command that person to produce designated books or papers under his or her control at a specified time and place. Where a public hearing has been scheduled, the subpoena may command the person to whom it is directed to attend and give testimony.

3.5(5) The subpoena shall be served either by personal service by any official authorized by law to serve subpoenas or by any member of the commission staff by delivery of a copy thereof to the person named therein.

3.5(6) Where service is accomplished by personal service, proof of service will be by acknowledgment of receipt by the person served or by the affidavit of the person serving the subpoena.

3.5(7) Upon prompt motion by the person to whom the subpoena is addressed, the executive director, the investigating commissioner or the chairperson of the commission may quash or modify a subpoena where its demands appear to be unreasonable or not relevant to the proceeding in question.

3.5(8) Where a party fails to respond to a subpoena, the commission may vote to file a petition with the district court as provided in the Act.

3.6(601A) Temporary injunctions. If the executive director or an appropriately designated staff person determines that a complainant may be irreparably injured before a public hearing can be called to determine the merits of the complaint, he will contact the investigating commissioner or, upon his or her unavailability, the chairperson of the commission who may authorize the executive director to instruct the attorney for the commission to seek such temporary injunctive relief as may be appropriate to preserve the rights of the complainant.

3.7(601A) Conducting the hearing.

3.7(1) *Hearing examiners.* The chairperson of the commission shall designate three members of the commission, or a lawyer admitted to the Iowa bar, to conduct the hearing. The absence or disqualification of one or more members of a hearing panel appointed to hear a particular case shall not prevent the remaining panel members from hearing the case as independent hearing commissioners, unless other good cause can be shown that would prevent the individual commissioner(s) from acting as an independent hearing commissioner(s).

3.7(2) Any individual who has any interest in the case at issue, or personally knows the complainant or respondent, shall disqualify himself or herself to serve as a hearing examiner. The investigating commissioner in the case at issue shall not be appointed to serve as a hearing commissioner.

3.7(3) *Power of the hearing examiners.* The hearing examiner shall have full authority to make all decisions regarding the admission and exclusion of evidence, to control the procedures, and to rule upon all objections and motions. Except in extraordinary circumstances, evidence or testimony offered by any party shall be entered in the record subject to the objection of any party, in order that a complete record will be available in the event of appeal.

3.7(4) The hearing examiner may require that written briefs be submitted on behalf of the respondent and on behalf of the complainant.

3.7(5) *Sworn testimony.* All testimony given at a commission hearing shall be under oath administered by the court reporter present at the hearing.

3.7(6) *Order of presentation.* The case in support of the complaint shall be presented to the hearing examiner by one of the commission's attorneys, or by the attorney for the complainant, who shall present his evidence first. Where there is more than one complaining party the order of presentation shall be in the discretion of the hearing examiner. After all the evidence and testimony of the complaining parties has been received, all other parties shall be allowed to present their evidence or testimony. All parties shall be allowed to cross-examine any witness immediately after her or his testimony has been received.

3.7(7) *Stipulations.* The parties may, by stipulation in writing filed with the commission at any stage of the proceeding or orally made at the hearing, agree upon any pertinent facts in the proceeding.

3.7(8) *Transcript and record.* All testimony given at a hearing held pursuant to chapter 601A of the Code, shall be transcribed by a certified court reporter retained by the commission. The written transcript of the record upon the hearing before the hearing examiner shall consist of the notice of the hearing, the verified complaint, as the same may have been amended, the certified transcript of the testimony taken at the hearing, the exhibits and depositions in evidence, written applications and stipulations.

3.8(601A) Findings and orders.

3.8(1) *Recommended decision and commission adoption.* After a review of the transcript, the evidence, and the briefs, the hearing examiner shall state in writing his or her findings of fact, conclusions of law, and order, then recommend the same to the commission for its adoption, modification, or rejection.

3.8(2) *Disqualifications of investigating commissioner.* The investigating commissioner shall not take part in the consideration or adoption of the recommended decision.

3.9(601A) Reopening Proceedings. Within thirty days after the parties have been notified of the order or finding, the commission may reopen any closed proceedings upon notice to all parties and take such action as it may deem necessary. The proceedings may be reopened upon the motion of the commission or any party in the interest of justice or for good cause shown.

3.10(601A) Reconsideration. Any party may file a motion for reconsideration within thirty days after the receipt of a final decision of the commission. Such motion shall be submitted in writing to the commission, and in addition, shall include a statement of all matters alleged to have been erroneously decided, and if applicable, a statement as to any newly discovered matters or circumstances that have arisen subsequent to the final decision.

3.11(601A) Appeals to the district court(s). Appeals to the district court from the decision of the commission shall be perfected pursuant to the provisions of section 601A.10 of the Code.

3.12(601A) Partial invalidity. If any provision of these rules shall be held invalid, the remainder of these rules shall not be affected thereby. The invalidity of any of these rules with respect to a particular person or under particular circumstances shall not affect their application to other persons or under different circumstances.

3.13(601A) Availability of rules. Copies of these rules of practice and procedure shall be available to the public on request, and shall be kept on file in the office of the Secretary of State, State Capitol Building, Des Moines, Iowa 50319.

[Effective November 6, 1974]

CIVIL RIGHTS COMMISSION

(continued)

Pursuant to 601A.6 of the Code, the Iowa Civil Rights Commission adopts chapter 5.

[Filed September 6, 1974]

CHAPTER 5

DISCRIMINATION IN CREDIT

5.1(601A) Definitions.

5.1(1) *"Credit"* means an amount or limit to the extent of which a person may receive goods, services or money for payment in the future, and includes but is not limited to, loans for any purpose and in any amount, checking accounts, charge accounts, mortgages and other home financing, credit cards and credit ratings.

5.1(2) *"Credit institution"* means banks, savings and loan associations, finance companies, credit departments of all retail businesses, credit rating services, credit card issuers, credit bureaus, credit unions and all other loan, credit, financing and mortgaging institutions.

5.1(3) *"Credit card"* means a small card (as one issued by hotels, restaurants, stores, petroleum companies or banks) authorizing the person or company named or its agent to charge goods or services or borrow money.

5.2(601A) Practices prohibited.

5.2(1) The criteria used to evaluate applicants for credit and the standards necessary to be met by the successful applicants shall be the same regardless of the age, color, creed, national origin, race, religion, marital status, sex or physical disability of the applicant.

5.2(2) No credit institution shall require any information, reference or countersignature of any applicant for credit which would not be required of all applicants, regardless of their age, color, creed, national origin, race, religion, marital status, sex or physical disability.

5.2(3) It shall be an unlawful practice for any credit institution to discount or disregard the earnings or income of a spouse in computing family income.

5.2(4) It shall be an unlawful practice for any credit institution to refuse to loan money or extend credit to a woman solely because

she is in the child-bearing years or solely because she is divorced, or solely because she is unmarried.

5.2(5) It shall be an unlawful practice for any credit institution to extinguish the established credit of any woman upon her marriage and to require that a new account be opened in the husband's name or either.

5.2(6) It shall be an unlawful practice for any credit institution to refuse to retain any records of credit transactions in the name of a married woman when she so requests in writing.

5.3(601A) Credit inquiries.

5.3(1) A credit application or credit interviewer may inquire as to age, disability, sex or marital status provided the inquiry is made in good faith for a nondiscriminatory purpose which expresses directly or indirectly any limitation, specification, or discrimination as to age, disability, sex or marital status shall be unlawful.

5.3(2) The information required to be given by the applicant for credit should be limited to what is necessary for determining the applicant's financial conditions and prospects for repayment regardless of the applicant's age, color, creed, national origin, race, religion, marital status, sex or physical disability nor shall the consent of a spouse be required where the applicant is otherwise eligible for credit.

5.4(601A) Exception.

5.4(1) Cosignatures may be required of a married couple intending to establish a joint credit account with the company or business issuing the credit card.

5.4(2) The exception for cosignatures is limited, and the issuer should presume that the applicant is seeking a credit card in his or her own name regardless of the marital status of the applicant.

5.4(3) These rules shall not prohibit any party to a credit transaction from considering the application of Iowa law on dower, title, descent, and distribution to the particular case or from taking constructive action thereof.

[Effective July 10, 1974]

CIVIL RIGHTS COMMISSION

(continued)

Pursuant to 601A.5(9) of the Code, the Iowa civil rights commission adopts the following rules.

[Filed December 23, 1974]

CHAPTER 6

AGE DISCRIMINATION IN EMPLOYMENT

6.1(601A) Ages protected.

6.1(1) Any person who has reached eighteen years of age may not be excluded from an employment right because of an arbitrary age limitation and shall be an aggrieved party for the purposes of section 601A.9 of the Code regardless of whether such person is excluded by reason of excessive age or insufficient age and shall possess all the rights and remedies to such discrimination provided in section 601A.7.

6.1(2) No employer, employment agency, or labor organization shall set an arbitrary age limitation in relation to employment or membership except as otherwise provided by these rules or by the Iowa Code.

6.2(601A) Help wanted notices.

6.2(1) No newspaper or other publication published within the State of Iowa shall accept, publish, print or otherwise cause to be advertised any notice of an employment opportunity from an employer, employment agency, or labor organization containing any indication of a preference, limitation, or specification based upon age, except as provided in these rules, unless such newspaper or publication has first obtained from the employer, employment agency, or labor organization an affidavit indicating that the age requirement for an applicant is a bona fide occupational qualification.

6.2(2) Help wanted notices of advertisements shall not contain terms and phrases such as "young", "boy", "girl", "college student", "recent college graduate", "retired person", or others of a similar

nature unless there is a bona fide occupational requirement for the position.

6.3(601A) Job applications for and other pre-employment inquiries.

6.3(1) An employer, employment agency or labor organization may make pre-employment inquiry regarding the age of an applicant provided that the inquiry is made in good faith for a nondiscriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification, or discrimination as to age shall be unlawful unless based upon a bona fide occupational qualification. The burden shall be on the employer, employment agency or labor organization to demonstrate that the direct or indirect pre-employment inquiry is based upon a bona fide occupational qualification.

6.3(2) Nothing in the above shall be construed to prohibit any inquiry as to whether an applicant is over eighteen years of age.

6.3(3) Nothing in the above shall be construed to prohibit postemployment inquiries as to age where such inquiries serve legitimate record-keeping purposes.

6.4(601A) Bona fide occupational qualifications.

6.4(1) An employer, employment agency, or labor organization may take any action otherwise prohibited under these rules where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business.

6.4(2) The concept of the bona fide occupational qualification is narrow in scope and will not be applied to include the mere preference or convenience of the employer.

6.4(3) Age requirements set by federal or state statute or regulatory agency shall be considered to be bona fide occupational qualifications where such requirements are necessarily related to the work which the employee must perform.

6.4(4) A bona fide occupational qualification will also be recognized where there exist special, individual occupational circumstances as such as where actors are required for characterizations of individuals of a specified age or where persons are used to advertise or promote the sale of products designed for, and directed to, certain age groups.

6.5(601A) Bona fide apprenticeship programs.

6.5(1) Where an age limit is placed upon entrance into an apprenticeship program, such limitation shall not be a violation of chapter 601A where the employer can demonstrate a legitimate economic interest in such limitation in terms of the length of the training period and the costs involved in providing the training. The age limit shall not be set any lower than reasonably necessary to enable the employer to recover the costs of training the employee and a reasonable profit.

6.6(601A) Employment benefits.

6.6(1) An employer is not required to provide the same pension, retirement, or insurance benefits to all employees where the cost thereof varies with the age of the individual employee. Business necessity or bona fide underwriting criteria shall be the only basis used by employers for providing different benefits to employees of different ages unless such benefits are provided under a retirement plan or benefit system not adopted as a mere subterfuge to evade the purposes of the Iowa civil rights Act.

6.6(2) The existence of a provision in a retirement plan stating a maximum eligibility age for entrance into a retirement plan shall not authorize rejecting from employment an applicant who is over the maximum eligibility age for the retirement plan.

6.7(601A) Retirement plans and benefit systems. These rules shall not be construed so as to prohibit an employer to retire an employee or to require an employer to hire back such employee following retirement or to hire an applicant for employment whose age is the retirement age under the employer's retirement plan or benefit system provided that such plan or system is not a mere subterfuge for the purpose of evading the provisions of the Iowa civil rights Act.

[Effective January 22, 1975]

CIVIL RIGHTS COMMISSION

(continued)

Pursuant to 601A.9(14), of the Code, the Iowa civil rights commission adopts the following rules:

[Filed December 23, 1974]

CHAPTER 7

DISABILITY DISCRIMINATION IN EMPLOYMENT

7.1(601A) General definitions.

7.1(1) The term *"physical and mental disability"* shall mean blindness, deafness or any physical or mental condition which constituted or constitutes a substantial handicap and which is unrelated to the person's ability to perform jobs or positions which are available to him or her. A substantial handicap shall be certified by the commission through the use of standards and criteria which are established by the Rehabilitation Education and Services Branch of the State of Iowa Department of Public Instruction or a medical examination or through medical records and evidence which have been submitted by a physician, psychiatrist or psychologist.

7.1(2) The term *"substantial handicap"* is a physical or mental disability which can constitute one of the following: Material rather than slight; permanent; stable, or slowly progressive and which is seldom fully corrected by medical treatment, therapy or surgical means.

7.1(3) The term *"blindness"* shall mean central visual acuity of 20/200 or less in the better eye with correcting glasses or a field of vision which at its widest diameter subtends an angular distance no greater than twenty degrees.

7.1(4) The term *"deafness"* shall mean that the average hearing level in the better ear at 500, 1000 and 2000 Hertz is over seventy-five decibels or less in the better ear with a hearing aid.

7.1(5) *"Fringe benefits"*, as used herein, include medical, hospital, accident insurance and retirement benefits, profit-sharing and bonus plans; leave, and other terms, privileges, and conditions of employment.

7.1(6) The term *"employer"*, as used herein, shall include any employer, labor organization, or employment agency insofar as their action or inaction may adversely affect employment opportunities, as defined in section 601A.5 of the Code.

7.2(601A) Assessment and placement.

7.2(1) If examinations or other assessments are required, examinations or other assessments should be directed towards determining whether an applicant for a job:

a. Has the physical and mental ability to perform the duties of the position. An individual applicant would have to identify the position for which he or she has applied.

b. Is physically and mentally qualified to do the work without adverse consequences such as creating a danger to life or health of fellow employees.

c. Is professionally competent or has the necessary skills or ability to become professionally competent to perform the duties and responsibilities which are required by the job.

7.2(2) Said examinations or other assessments should consider the degree to which the person has compensated for his limitations and the rehabilitation service he has received.

7.2(3) Physical standards for employment should be fair, reasonable, and adapted to the actual requirements of such employment. They shall be based on complete factual information concerning working conditions, hazards, and essential physical requirements of each job. Physical standards will not be used to arbitrarily eliminate the disabled person from consideration.

7.2(4) Where pre-employment tests are used, the opportunity will be provided applicants with disabilities to demonstrate pertinent knowledge, skills and abilities by testing methods adapted to their special circumstances.

7.2(5) Probationary trial periods in employment for entry-level positions which meet the criteria of business necessity may be instituted by the employer to prevent arbitrary elimination of the disabled.

7.2(6) An employer must attempt to make a reasonable accommodation to the physical and mental limitations of an employee or applicant unless the employer can demonstrate that such accommodation would impose an undue hardship on the conduct of the employer's business. In determining the extent of an employer's accommodation obligations, the following factors shall be included: *(a)* business necessity and *(b)* financial cost and expenses.

7.2(7) Occupational training and retraining programs, including but not limited to guidance programs, apprentice training programs, on-the-job training programs and executive training programs, shall not be conducted in such a manner as to discriminate against persons with physical or mental disabilities.

7.3(601A) Disabilities arising during employment. When an individual becomes disabled, from whatever cause, during a term of employment, the employer shall make every reasonable effort to continue the individual in the same position or to retain and reassign the employee and to assist in his or her rehabilitation. No terms in this section shall be construed to mean that the employer must erect a training and skills center.

7.4(601A) Wages and benefits.

7.4(1) While employers may re-engineer the conditions of work for the disabled person, the salary paid to said person shall be no lower than the lowest listed on the applicable wage grade schedule.

7.4(2) The wage schedule must be unrelated to the existence of physical or mental disabilities.

7.4(3) It shall be an unfair employment practice for an employer to discriminate between persons who are disabled and those who are not, with regard to fringe benefits, unless there is bona fide underwriting criteria.

7.4(4) A condition of disability shall not constitute a bona fide underwriting criteria in and of itself.

7.5(601A) Job policies.

7.5(1) Written personnel policies relating to this subject area must expressly indicate that there shall be no discrimination against employees on account of disability.

7.5(2) If the employer deals with a bargaining representative for his employees and there is a written agreement on conditions of employment, such agreement shall not be inconsistent with these guidelines.

7.6(601A) Recruitment and advertisement.

7.6(1) It shall be an unfair employment practice for any employer to print or circulate or cause to be printed or circulated any statement, advertisement or publication or to use any form of application pre-employment inquiry regarding mental or physical disability for prospective employment which is not job related a bona fide occupational qualification for employment and which directly or indirectly expresses any negative limitations, specifications, or discrimination as to persons with physical or mental disabilities. The burden shall be on the employer to demonstrate that the statement, advertisement, publication or inquiry is based upon a bona fide occupational qualification. This is subject, however, to the provisions of section 601A.7(1)"c".

7.6(2) It shall be an unfair employment practice to ask any question on the employment application form regarding a physical or mental disability unless the question is based upon a bona fide occupational qualification. The burden will be on the employer to demonstrate that the question is based upon a bona fide occupational qualification.

7.6(3) An employment interviewer may inquire as to a physical or mental disability provided the inquiry is made in good faith for a nondiscriminatory purpose.

7.7(601A) Bona fide occupational qualifications.

7.7(1) It shall be lawful for an employer, employment agency, or labor organization to take any action otherwise prohibited under these rules where mental or physcial ability is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business.

7.7(2) The concept of the bona fide occupational qualification is narrow in scope and will not be applied to include the mere preference or convenience of the employer.

7.7(3) Physical or mental disability requirements set by federal or state statute or regulatory agency shall be considered to be bona fide occupational qualifications where such requirements are necessarily related to the work which the employee must perform.

[Effective January 22, 1975]

COMPTROLLER

Pursuant to the authority of Section 8.16(16) of the Code, rules appearing in 1974 IDR July Supplement, page 12, relating to auditing claims are amended as follows:

[Filed December 23, 1974]

ITEM 1. Subrule 1.6(2), "a", line 3, is amended by striking "$18.00" and inserting in lieu thereof "$20.00".

ITEM 2. Subrule 1.6(2), "a", line 9, 10, and 11 are amended by striking the words "There will be no reimbursement for lunches on days when there is no lodging expense incurred."

ITEM 3. Subrule 1.6(2), "b",(1) is amended by striking all of paragraph 1, and inserting in lieu thereof "1. Those traveling on state business who are required to depart prior to 7:00 a.m. and required to return after 6:00 p.m. to their official domicile, may be reimbursed a maximum of $8.50 per day for three meals."

ITEM 4. Subrule 1.6(2), "b", (2) is amended by striking all of paragraph 2, and inserting in lieu thereof "2. Those traveling on state business who depart after 7:00 a.m. and are required to return after 6:00 p.m. may be reimbursed a maximum of $2.00 for lunch and $5.00 for dinner."

ITEM 5. Subrule 1.6(2), "b", (3) is amended by striking all of paragraph 3, and inserting in lieu thereof "3. Those traveling on state business who are required to depart before 7:00 a.m. and return before 6:00 p.m. may be reimbursed a maximum of $1.50 for breakfast and $2.00 for lunch."

ITEM 6. Subrule 1.6(2), "b",(4) is amended by striking all of paragraph 4, and inserting in lieu thereof "4. Those traveling on state business who are required to depart after 7:00 a.m. and return before 6:00 p.m. may be reimbursed a maximum of $2.00 for lunch."

ITEM 7. The following new temporary rule is adopted: "Items 2, 3, 4, 5, and 6 above shall be retroactive to July 5, 1974."

[Effective January 1, 1975]

CONSERVATION COMMISSION

Pursuant to the authority of section 107.24 of the Code, the rule appearing in the 1973 Iowa Departmental Rules, page 211, relating to state game refuges is rescinded and the following adopted in lieu thereof:

[Filed August 14, 1974]

DIVISION OF FISH AND GAME

CHAPTER 3

STATE GAME REFUGES

3.1(109) Restrictions. The following areas under the jurisdiction of the state conservation commission are established as game refuges where posted as such. It shall be unlawful to hunt, pursue, kill, trap or take any wild animal, bird or game on these areas at any time, and no one shall carry firearms thereon.

AREA	COUNTY
Rathbun Area	Appanoose
Wildlife Exhibit Area	Boone
Sweet Marsh	Bremer
Storm Lake Islands	Buena Vista
Big Marsh	Butler
South Twin Lake	Calhoun
Round Lake	Clay
Allen Green Refuge	Des Moines
Kettleson Area	Dickinson
Ingham Lake	Emmet
Forney Lake	Fremont
Riverton Area	Fremont
Dunbar Slough	Greene
McCord Pond	Guthrie
West Twin Lake	Hancock
Hawkeye Wildlife Area	Johnson
Muskrat Slough	Jones
Colyn Area	Lucas
Red Rock Area	Marion
Louisville Bend	Monona
Five Island Lake	Palo Alto
Flint Access	Polk
Smith Area	Pottawattamie

AREA	COUNTY
Lake View Area	Sac
Otter Creek Marsh	Tama
Rice Lake Refuge	Winnebago
Snyder Bend	Woodbury
Elk Creek Marsh	Worth
Lake Cornelia	Wright

This rule is intended to implement sections 109.5 and 109.6 of the Code.

[Effective August 14, 1974]

CONSERVATION COMMISSION

(continued)

Pursuant to the authority of Section 107.24 and 111.4 and 111.25, Code 1973, chapter 55, annual permit and rental fee schedule for state-owned riverbed, lake bed, and water front lands, appearing in 1973 Iowa Departmental Rules, page 224, is hereby amended as follows:

[Filed July 10, 1974]

DIVISION OF LANDS AND WATERS

55.2(111) is amended by striking paragraphs A and B following the table and inserting in lieu thereof the following:

A. The fee for increased depth on areas with a frontage up to 1,000 feet shall be at the rate of twenty-five dollars per segment (50' X 100') or any portion thereof.

B. The fee for additional frontage up to 1,000 feet shall be proportionate to that indicated on the table.

C. The fee for each segment (50' X 100') or portion thereof on areas in excess of the first 1,000 feet of frontage shall be one-half that for a like segment on areas with up to 1,000 feet of frontage.

This rule is intended to implement section 111.4 and section 111.25, Code 1973.

[Effective July 10, 1974]

DRUG ABUSE AUTHORITY

Pursuant to the authority of section 224B.5(9)[65GA, Ch181, 5(9)] of the Code the following rules are adopted.

[Filed December 31, 1974]

PREAMBLE

The Acts of the Sixty-fifth General Assembly, chapter 181, section 14, created within the Iowa drug abuse authority, the drug treatment licensing board with the responsibility and authority to oversee all phases of licensure of any drug abuse treatment and rehabilitation program in the state of Iowa.

The promulgation and enforcement of standards in the delivery of direct services is a major step in assuring the delivery of quality drug abuse prevention services to the citizens of Iowa. In addition, the promulgation of standards can facilitate the program evaluation process by ensuring the collection of program management and client data from each licensed program.

The Iowa drug abuse authority will provide for both licensing and certification of drug abuse prevention programs within the state. The authority will first focus on licensing of programs involved with treatment and rehabilitation of drug abusers and drug dependent individuals. The second focus will be the certification of all intervention, education, and other unlicensed programs receiving state or federal funds designated for drug abuse prevention. Intervention, education and other unlicensed programs that do not receive state or federal funds may voluntarily elect to apply for and receive certification.

Any program which received federal funds for drug abuse treatment whose licensing authority has not adopted the state of Iowa licensure standards for drug abuse treatment programs or any unlicensed program which received federal funds for drug abuse treatment shall provide assurances to the Iowa drug abuse authority and to the federal funding agency that the licensure standards for drug abuse treatment programs are being met and that the program will comply with all requirements, including those covering reporting and inspection, of a licensed program.

This document will describe the procedures necessary for licensing drug abuse treatment programs and the standards with which all licensed programs must comply. Included in the document will be: general information for treatment programs; standards applicable to all treatment programs; standards applicable to residential drug abuse treatment programs; standards applicable to outpatient drug abuse treatment programs; standards applicable to mental health centers; and, methadone requirements.

CHAPTER 1

LICENSING STANDARDS FOR DRUG ABUSE TREATMENT PROGRAMS

1.1(65GA, Ch181) Definitions. Unless otherwise indicated, the following definitions shall apply to the specific terms used in these rules:

1.1(1) *"Act"* means the laws of the Sixty-fifth General Assembly, 1973 Session, chapter 181.

1.1(2) *"Admission"* means the process of initiating services to an individual by a drug abuse program through specified protocols. This generally entails screening, processing and entrance into treatment, as well as establishment of a treatment regimen.

1.1(3) *"Applicant"* means any drug abuse treatment program which has applied for a license or renewal thereof.

1.1(4) *"Application"* means the process through which a drug abuse treatment program applies for a license or renewal as outlined in the application procedures.

1.1(5) *"Authority"* means the Iowa drug abuse authority.

1.1(6) *"Client"* means an individual who has a primary drug problem, for whom intake procedures have been undertaken, for whom a treatment plan has been initiated, and for whom a legitimate drug abuse treatment service is provided at least once per month.

1.1(7) *"Controlled substance"* means those substances subject to control in section 204.101, subsection 6 of the Code.

1.1(8) *"Counseling"* means an act of giving advice, opinion, or instruction to an individual or in a group setting to allow an opportunity for a person to explore his or her problems related directly or indirectly to drug abuse or dependence.

1.1(9) *"Detoxification"* means the withdrawal of a person from a physiologically addicting substance.

1.1(10) *"Director"* means the director of the Iowa drug abuse authority.

1.1(11) *"Drug abuse"* means the use of a controlled substance, which includes marijuana, which has mind altering effects, in a manner which interferes with one or more of the following: physical health, physical functioning, social functioning, educational performance, occupational functioning.

1.1(12) *"Drug dependence"* means the use of a controlled substance, which includes marijuana, resulting in a state of psychological or physical reliance or both, arising from administration of such a substance on a continuing basis.

1.1(13) *"Drug program"* means any drug abuse prevention function or any program to assist persons who are or have been involved in abuse of any controlled substance which includes marijuana.

1.1(14) *"D.T.L.B."* means the drug treatment licensing board of the Iowa drug abuse authority.

1.1(15) *"Inpatient program"* means a structured drug abuse program within a licensed medical or psychiatric hospital.

1.1(16) *"Intake"* means the process of collecting and analyzing information to determine the appropriateness of admitting a client into a drug abuse program.

1.1(17) *"Intervention"* means the provision of services in response to situational problems. A drug program providing services which are usually nonscheduled, short term, and referral oriented is considered to be an intervention program.

1.1(18) *"Licensee"* means any program licensed by the authority.

1.1(19) *"Licensure"* means the issuance of a license by the authority upon due process by the drug treatment licensing board which validates the licensee's compliance with drug abuse programs standards and authorizes the licensee to operate a drug abuse treatment program in the state of Iowa.

1.1(20) *"Methadone maintenance"* means the maintenance of an individual on methadone.

1.1(21) *"Maintenance"* means the prolonged scheduled administration of methadone or other controlled substances intended as a substitute or antagonist to abused drugs in accordance with federal and state regulations.

1.1(22) *"Mental health professional"* means an individual who, by virtue of training and experience, is capable of assessing the psychological and sociological background of a client for the purpose of determining the optimal treatment plan and is capable of providing and supervising the necessary counseling to carry out the treatment plan.

1.1(23) *"Outpatient program"* means a non-live-in program staffed by professional or professional and paraprofessional persons, offering treatment or rehabilitation services to drug abusers and drug dependent persons.

1.1(24) *"Readmission"* means the act of reinitiating services to an individual by a drug abuse program which had been previously providing services to that individual.

1.1(25) *"Rules"* mean the administrative procedures through which the licensure process occurs and with which both state licensing officials and local program operators must comply.

1.1(26) *"Rehabilitation"* means the restoration of a client to the fullest physical, mental, social, vocational, and economic usefulness of which he or she is capable. Rehabilitation includes, but is not limited to, medical treatment, occupational training, job counseling, social and domestic rehabilitation, and education.

1.1(27) *"Residential program"* means a live-in facility, staffed by professional or professional paraprofessional persons, offering treatment or rehabilitation services to drug abusers and drug dependent persons.

1.1(28) *"Staff"* means paid or volunteer staff members.

1.1(29) *"Standards"* mean specifications representing the minimal characteristics of a drug abuse treatment program which are acceptable for the issuance of a license.

1.1(30) *"Treatment"* means the broad range of planned and continuing, inpatient, outpatient and residential services, including diagnostic evaluation, counseling, medical, psychiatric, psychological, and social service care, which may be extended to drug abusers or drug dependent persons and which is geared towards influencing the behavior of such individual to achieve a state of rehabilitation.

1.2(65GA, Ch181) Licensing and services.

1.2(1) A single license will be issued to each qualifying drug abuse treatment program. The license will delineate one or more categories of services the program is authorized to provide. Although a program may have more than one facility, only one license will be issued to the program. When an aspect of a program is unable to meet the licensing standards, a provisional license will be issued to that program for a specified period citing all areas of noncompliance that have not been reconciled to the director and the D.T.L.B. The authority will have the option to revoke the provisional license or issue a standard renewal license.

1.2(2) The categories of services for which licenses will be issued are:

a. Residential.

b. Nonresidential/outpatient.

c. Chemical substitute/antagonist/detoxification.

d. Inpatient.

1.2(3) The authority shall charge a nominal fee of ten dollars for licensing and renewal adequate to cover the cost of processing each application and conducting inspections pursuant to licensure.

1.3(65GA, Ch181) Types of licenses. Two types of licenses may be issued by the authority. A standard renewal license may be issued for one year when the D.T.L.B. has determined the applicant is in compliance with these rules. Provisional licenses may be issued for 90, 180, or 270 days (at the discretion of the D.T.L.B.) to an applicant who is determined by the D.T.L.B. to be temporarily unable to comply with these rules. A provisional license shall not be renewed or extended.

All standard licenses shall expire one calendar year from the date of issue, and a renewal of such license shall be issued only on application, as required herein. The renewal of a license shall be contingent upon demonstration of substantial continuation of the program operation for which the initial license was granted for the previously licensed year. Failure to apply for and receive renewal of such license prior to the expiration date shall result in immediate termination of licensure and require reapplication.

1.4(65GA, Ch181) Nonassignability. When a program is discontinued, its current license is void immediately and shall be returned to the authority. A discontinued program is one which has terminated its services for which it has been licensed. A license is not transferable. A license issued by the authority for the operation of a drug abuse program applies both to the applicant program and the premises upon which the program is to be operated. Any person or other legal entity acquiring a licensed facility for the purpose of operating a drug abuse program shall make an application as provided herein for a new license. Similarly, any person or legal entity having acquired a license and desiring to expand or transfer to different premises

must notify the authority thirty days prior to said action in order for the authority to review the site change and to determine appropriate action.

A licensee shall, if possible, notify the authority of impending closure of the licensed program at least thirty days prior to such closure. The licensee shall be responsible for the removal and placement of patients or clients and for the preservation and delivery of all records to the authority upon request by the D.T.L.B. Upon closing all facilities and terminating all service delivery activities, the license shall be immediately returned to the authority.

1.5(65GA, Ch181) Application procedures.

1.5(1) An applicant for licensure shall submit at least the following information on forms provided by the authority:

a. The name and address of the applicant drug abuse treatment program.

b. The name and address of the executive director of such drug abuse treatment program.

c. An outline of the staff table of organization, names and qualifications.

d. The names and addresses of members of the board of directors, sponsors, or advisory boards of such drug abuse treatment program and existing articles of incorporation and bylaws.

e. The names and addresses of all physicians, other professionally trained personnel, medical facilities, and other individuals or organizations with whom the drug abuse treatment program has a direct referral agreement or is otherwise affiliated.

f. A description of the nature of treament services provided by such drug abuse treatment program setting forth program goals and objectives and a description of the treatment methodology.

g. Submission of materials substantiating compliance with all related federal, state and local acts, ordinances, rules and amendments thereto, i.e., state fire marshal's rules, board of health and building code compliance.

h. The source of funds used to finance such drug abuse program, and the annual budget of the organization.

1.5(2) An application for renewal shall be made on forms provided by the authority at least sixty calendar days before expiration of the current license.

1.6(65GA, Ch181) Application review. The authority shall develop a review process through which applications for licensing shall be reviewed. The review process may include, but is not limited to, comments about the program by IDAA district councils, program self-review and on-site inspections. The applicant shall be notified of approval or denial of a license within sixty calendar days after receipt of a completed application by the authority.

1.7(65GA, Ch181) Denial of application. When the D.T.L.B. determines that an applicant's request for a license should be denied, the director shall notify the applicant, by certified mail, (return receipt requested) that the authority intends to deny licensure. The notice of intention to deny licensure shall contain the reasons for the denial and a statement that the denial of the application shall become final. Within the following thirty days, the applicant may submit to the authority written notification of correction of each deficiency, or written objections to each reason for denial, stating why it should not remain. If objections to the denial of license are submitted to the authority, a full opportunity for settling of all issues shall be provided. If a settlement of the issues in contention cannot be made or if objections to the notice of denial are not submitted, or if for any other reason an application is denied, the applicant may request a hearing before the D.T.L.B. within thirty days after the denial becomes final. This request shall be granted and the applicant notified of the date, time and place of the hearing.

1.8(65GA, Ch181) Suspension and revocation of licenses.

1.8(1) The D.T.L.B. may suspend or revoke a license for any of the following reasons:

a. Violation by the program, its director or staff, of any rule promulgated by the authority pertaining to drug abuse treatment programs.

b. Permitting, aiding or abetting the commission of an unlawful act within the facilities maintained by the program, or permitting, aiding or abetting the commission of an unlawful act involving drugs within the program.

c. Conduct or practices found by the authority to be detrimental to the general health or welfare of a participant in the program or the general community.

d. Deviation by the program from the plan of operation originally licensed which, in the judgment of the authority, adversely affects the character, quality or scope of services intended to be provided to drug abusers within the scope of the program.

1.8(2) When the authority determines that a licensed program may have committed an act, or may have engaged in conduct or practices, justifying suspension or revocation of license, the director shall notify the program by certified mail, (return receipt requested), of his intent to suspend or revoke the license. After review of the act, conduct or practice by the D.T.L.B., a final disposition regarding the suspension or termination of the license will be made and notification sent to the program.

1.8(3) If the suspension or revocation is protested within thirty days after receipt of the notice, the D.T.L.B. shall conduct a hearing determining the issue of suspension or revocation of the license. Notice of the hearing shall be mailed at least ten days before the date of the hearing. The notice shall state the matters of law and fact to be determined at the hearing, and the date, time and place of the hearing.

1.8(4) If the director finds that the health, safety or welfare of the public are endangered by continued operation of a drug abuse treatment program, summary suspension of a license may be ordered effective on the date specified in the order.

1.9(65GA, Ch181) Hearings. A hearing to determine issues relating to the denial, suspension or revocation of a license shall conform to section 19 of the Act.

1.10(65GA, Ch181) Confidentiality.

1.10(1) All client records shall be kept confidential and shall be handled in compliance with section 23 of the Act and the federal confidentiality regulations (special action office for drug abuse prevention-confidentiality of drug abuse patient records, Federal Register, Volume 38, No. 234, paragraph 1401) and with other applicable federal and state rules. When a conflict occurs with state and federal confidentiality laws, the federally funded program will comply with federal confidentiality laws while state funded programs must minimally comply with state statutes and rules.

1.10(2) If the patient gives his specific written consent, the content of the record may be disclosed to:

a. Legal counsel upon written endorsement by the attorney.

b. Nongovernmental personnel for purpose of collecting health insurance claims or other benefits.

c. A potential employer when such employment is conditioned upon his status or progress in a treatment program.

1.10(3) Disclosure of information for research, management, audit or evaluation purposes must be specifically authorized by the director or his designee.

1.10(4) The client's written release of information shall be kept in the client's record.

1.10(5) A program shall insure that all staff and clients, as a part of their orientation, are made aware of these requirements. Any decision to disclose client information under any provision of the Act, or other applicable federal or state rule which permits such disclosure, shall be made only by the program director or his designee.

1.11(65GA, Ch181) Funding. The issuance of a license to any program shall not be construed as a commitment on the part of either the state or federal government to provide funds to such licensed program.

1.12(65GA, Ch181) Inspection. Each applicant or licensee agrees as a condition of said license to permit properly designated representatives of the authority to enter into and inspect any and all premises of programs for which a license has been either applied or issued to verify information contained in the application or to assure compliance with all laws, rules, and regulations relating thereto, during all hours of operation of said facility and at any other reasonable hour. Further, each licensee agrees to permit properly designated representatives of the authority to audit and collect statistical data from all records maintained by the licensee. Such right of entry and inspection shall, under due process of law, extend to any premises on which the authority has reason to believe a

program is being operated in violation of these rules.

1.13(65GA, Ch181) Waivers. The director, in consultation with the D.T.L.B., may with adequate substantiation waive any rule promulgated under the Act. When federal rules are involved, the director will consult with the appropriate governmental agency and the D.T.L.B. prior to waiving any rule.

1.14(65GA, Ch181) Standards for all drug abuse treatment programs. The following standards shall apply to all drug abuse treatment programs in the state of Iowa regardless of the category of treatment services provided by such programs. In situations where differences between general standards for all treatment programs and specific standards occur, both general and specific standards must be met.

1.14(1) *Program management.*

a. One individual shall be identified as having primary responsibility for overall program operation.

b. One individual shall also be identified as having primary fiscal responsibility for the program. These individuals may be the same person.

c. A medical director with responsibility for medical matters shall be designated.

d. A program shall have a formally designated board of directors or advisory group. A record of this group including names, addresses, occupations, places of employment and relationship to any staff member of the program shall be maintained by the program director.

e. A written set of bylaws must be maintained which specifies, at a minimum, the method of selection of appointment to the board of directors or advisory group, the number of members, the length of members' terms and the frequency of meetings. Minutes of meetings shall be kept and available for review by the authority.

f. The board of directors or advisory groups shall be representative of the community being served.

1.14(2) *Records.*

a. A program shall maintain financial, client and personnel records in a systematic fashion which provide for program and client management.

b. Records shall be kept for at least three years or in accordance with federal or state regulations, whichever is greater, to permit client follow-up and facilitate program evaluation.

c. Such records shall be safeguarded from access by unauthorized persons. Record-keeping procedures and confidentiality rules, 1.10, will be read and signed, acknowledging understanding by all staff.

d. All records shall be available to any duly designated officer or employee of the authority who requires such access for the purpose of conducting authorized monitoring or evaluation functions.

1.14(3) *Reports.* A program shall furnish to the authority such required regular reports and special reports as are specified by the authority.

1.14(4) *Procedures manual.*

a. A program shall develop and maintain a manual of its operating procedures. The procedures shall be sufficiently clear to be easily understood and provide sufficient detail to accurately reflect program activity. Revisions shall be entered with the date and the name of the person making the entries. Programs unable to develop a procedures manual prior to licensure may be granted ninety additional days to complete said manual.

b. A drug abuse treatment program shall establish client admission and termination criteria for each category of treatment provided.

1.14(5) *Personnel policies.* A program shall develop and maintain an up-to-date manual of personnel policies. Drug abuse treatment programs shall establish policies for managing staff members suspected of having drug abuse problems. The policies shall be published in the personnel policy manual and shall be made available and discussed thoroughly with the staff members. The policies may require urinalysis of all staff members. If personnel policies are different for former drug abusers than for other staff members, these differences must be stated in the program personnel policies manual.

1.14(6) *Training.* A program shall develop and conduct initial training as well as ongoing training for all staff members. Such training shall be directed to the needs of

professionals, paraprofessionals, and volunteers, and shall incorporate input from both professionals and paraprofessionals. Initial training of each professional staff member shall include, but not be limited to structured, scheduled orientation relating to the psychosocial, medical, pharmacological, and legal aspects of drug abuse prevention activities, an orientation to the program and community resources, social interaction and listening skills, and counseling skill development. Ongoing staff development training responsive to staff needs shall also be available. Training opportunities available through the authority shall be circulated to all drug abuse programs.

1.14(7) *Referrals.* A program shall develop an appropriate system of referral, including but not limited to, a current listing of all agencies, organizations and individuals to whom referrals may be made, and a brief description of the range of services available from each of these referral resources. A record of all referrals made to or received from other community resources shall be maintained in addition to a written record indicating the action taken on referrals. Agencies from whom referrals are received shall be notified at intake of a client referred by them, provided that the client has given written consent.

1.14(8) *Internal evaluation.* A program shall develop and implement a plan for ongoing internal evaluation of the effectiveness of its program. The plan is subject to review by the authority. Technical assistance shall be made available through the authority to assist in the development of evaluation procedures. Each program shall establish a follow-up policy which encourages a schedule of minimum contact available for discharged clients.

1.14(9) *Substance use.* The unlawful, illicit or unauthorized use of drugs on or within the facility of a program is prohibited.

1.14(10) *Facilities.* A drug abuse treatment facility shall comply with all applicable federal, state, and local acts, ordinances, and rules, and amendments thereto. Such drug abuse treatment facilities shall be maintained in a clean and safe condition, and shall be appropriately furnished to meet the needs of the clients being served by the program.

1.14(11) *Intake procedures.* The intake interview is considered the first step in treatment for all treatment modalities. The purpose of the interview is to determine what mode of treatment is the most appropriate for the client and to ensure that the client understands the nature of the program and the program's expectation of him.

Each new admission or readmission shall be interviewed by a mental health professional. The intake worker shall take a complete personal history (name, address, family, education, occupation, legal and related areas), drug abuse history (kinds of drugs abused, when use started, prior treatment attempts), and any other relevant social, mental, and physical health information.

Individual treatment plans shall be initiated upon intake and shall be reviewed by a mental health professional no less than every ninety days for outpatient modalities, and no less than every thirty days for other modalities. Evidence of this review shall be recorded in each client's record.

Every treatment plan must include documentation of:

a. A statement of the program's and client's short and long term goals for treatment.

b. The assignment of a primary counselor.

c. A delineation of the type and frequency of counseling services to be provided.

d. A delineation of those supportive services needed by the individual client.

Each new admission or readmission shall have a physical examination performed by a licensed physician as soon as possible, but not later than twenty-one days after admission.

1.14(12) *Controlled substances.*

a. A drug abuse treatment program using any controlled substance as a component of treatment, shall comply with all federal, state, and local Acts and rules pertaining to controlled substances.

b. Such a program shall develop policies relating to the eligibility of clients for a controlled substance regimen, permissible dosage levels, allowable take-home dosages, and security against redistribution of controlled substances.

c. Any program that maintains a supply of controlled substances on the program

premises shall comply with all state board of pharmacy examiners rules and federal regulations relating to the possession and distribution of such substances.

d. In addition to the medical director, who has ultimate responsibility for distribution of controlled substances, each program shall have an agreement with a registered pharmacist to ensure proper maintenance and distribution of such substances.

e. For those patients receiving prescription medication through the program, contact with a program physician is required at least once every four weeks or more frequently, depending on patient needs.

1.14(13) *Urinalysis.*

a. Urine specimens from each client shall be collected, under appropriate supervision, on a randomly scheduled basis, at least once per week, except for outpatient drug free modalities, and analyzed for morphine, methadone, cocaine, codeine, amphetamines, barbiturates and other substances if indicated. Breath analysis is acceptable for alcohol testing where appropriate.

b. Any laboratory used by the program for urine testing and analysis shall comply with all federal and state proficiency testing programs.

c. Urine testing results shall be used as a diagnostic tool for inpatient management and in the determination of client treatment plans. Patient records shall reflect the manner in which test results are utilized. Provisions for urine testing of outpatient drug free clients should be made, and used by program staff as appropriate.

d. Each program shall develop policies concerning measures to be employed when urine specimens of clients are found to contain the aforementioned substances. These policies shall be subject to review by the authority.

1.14(14) *Professional services.*

a. A written agreement shall exist between the licensee and at least one licensed physician and one hospital, for the provision of emergency, inpatient and ambulatory medical services as appropriate. If such a facility does not exist within forty miles of the licensee's facility, an agreement shall exist between the licensee and at least one licensed physician to provide emergency medical services.

b. Referral agreements shall exist between the licensee and at least one mental health facility within the program's service area. Appropriate agreements shall be initiated to ensure a minimum of five hours of professional mental health consultation is provided for each one hundred clients in order to review selected cases and to provide assistance to staff in client management.

1.14(15) *Client activities.* A variety of counseling techniques may be utilized in individual, group, or family counseling, in conjunction with, or under the supervision of a mental health professional. In outpatient modalities, each client shall have three hours per week of counseling available, while ten hours per week shall be available in residential and day care modalities.

1.14(16) *Support and rehabilitative services.* The following support and rehabilitative services shall be available to all clients on an as needed basis:

a. Education.

b. Vocational counseling and training.

c. Job development and placement.

d. Financial counseling.

e. Legal services.

f. Recreational activities.

Formal agreements for the provision of primary and supportive services should be obtained from available community resources. As soon as appropriate, but not later than one hundred twenty days after the last date of admission, each client shall be enrolled in either an education program or a job training program, or begin gainful employment. Any exception to this requirement shall be recorded and justified in the client's record. Clients have the right not to become involved in these programs, however, they should be encouraged to do so as a basic element of the treatment plan.

1.15(65GA, Ch181) Standards for residential drug abuse treatment programs.

1.15(1) *Hours of operation.* A residential drug abuse treatment program shall operate no less than seven days per week, for no less than twenty-four hours per day.

1.15(2) *Meals.* A residential drug abuse treatment program shall provide a minimum of three meals per day to each client enrolled in the program. Residential programs such as halfway houses, live in, work out centers, and other programs where clients are not present during mealtimes shall provide the number of meals as necessary.

1.15(3) *Facilities.* A residential drug abuse treatment program shall comply with appropriate state department of health rules, state fire marshal's rules and local building and housing codes and fire ordinances.

1.15(4) *Physical examinations.* The physical examination required for every client shall be performed as soon as possible but no later than twenty-one days after entrance into the program, and shall include an examination stressing:

a. Infectious diseases.

b. Pulmonary abnormalities.

c. Liver abnormalities.

d. Cardiac abnormalities.

e. Dermatolgic sequela of addiction.

f. Possible concurrent surgical problems.

1.15(5) *Laboratory examinations.* The laboratory examination required for every client for intake should include a complete blood count and:

a. Serologic test for syphilis.

b. Routine and microscopic urinalysis.

c. SMA 12/60 or its equivalent.

d. Urine screening for drug (toxicology).

e. Chest X ray, as appropriate.

f. Australian Antigen, as appropriate.

g. Sickle cell, pap smear or gonorrhea culture, EKG and biological test for pregnancy, as appropriate.

h. Any other laboratory test deemed necessary by the medical director.

1.16(65GA, Ch181) Standards for outpatient drug abuse treatment programs.

1.16(1) *Hours of operation.*

a. All outpatient programs shall operate no less than five days per week, and eight hours per day. In all cases, at least two hours of one eight-hour day must be outside 9:00 a.m. and 5:00 p.m. The authority will allow flexibility on operation hours as indicated by community needs.

b. At hours during which the program does not operate, it shall display, in a conspicuous place, the program's hours of operation and provide for emergency after hours services.

1.16(2) *Physical examinations.* The nature and extent of the physical examination required of every client at intake shall conform with the physical examinations of the residential standards of 1.15(4).

1.17(65GA, Ch181) Special. A license may be issued, at the discretion of the authority for special research, pilot, or demonstration programs which offer significant potential benefit to drug abusers or drug dependent persons.

1.18(65GA, Ch181) Standards for mental health centers.

1.18(1) *General.* Federally and state funded comprehensive community mental health centers containing an identifiable drug abuse program, component or counselor, which has the primary purpose of treatment and rehabilitation of drug dependent individuals, shall comply with all rules and standards promulgated for mental health centers by the state of Iowa, and be subject to licensure by the authority.

1.18(2) *Training.* All mental health centers shall provide for an initial scheduled orientation of all staff which shall include but not be limited to the psychosocial, medical, pharmacological and legal aspects of drug abuse prevention. Adequate ongoing staff development training relating to the above shall also be available to all staff members.

1.19(65GA, Ch181) Standards for methadone treatment centers. All programs which use methadone in treatment of narcotic addicts must conform to licensure standards of the authority, and to the department of health, education, and welfare, food and drug administration methadone regulations as listed in the December 15, 1972 Federal Register, Volume 37, No. 242, part III, and the revision in the Federal Register, Volume 38, No. 90 on May 20, 1973.

These rules are intended to implement Acts of the 65th General Assembly, chapter 181.

[Effective December 31, 1974]

DRUG ABUSE AUTHORITY

(continued)

Pursuant to the authority of the Acts of the 65th General Assembly, chapter 181, section 5(9), of the Code the following rules are adopted.

[Filed December 31, 1974]

PREAMBLE

The Acts of the Sixty-fifth General Assembly, chapter 181, section 2, established the Iowa drug abuse authority in the office of the governor for the purpose of providing overall planning, policy making and implementation of objectives and priorities identified in the comprehensive state plan for drug abuse prevention.

In the spirit of section 2 and section 5(6),"a" of the law and the implementation of the approved Iowa comprehensive state plan for drug abuse prevention the Iowa drug abuse authority is promulgating certification standards in order to safeguard the general health and welfare of consumers and recipients of drug abuse services in unlicensed drug abuse prevention programs.

The Iowa drug abuse authority will provide for the certification of drug abuse prevention programs within the state by certifying all intervention, education, and other unlicensed programs receiving state or federal funds designated for drug abuse prevention functions. Intervention, education and other programs that do not receive state or federal funds for drug abuse prevention functions may voluntarily elect to apply for and receive certification.

This document will describe the procedures necessary for certifying drug abuse intervention and education programs and the standards with which all certified programs must comply. The following will be included in this document: general information for intervention, education, and other programs; standards applicable to all intervention, education, and other programs; standards applicable to intervention programs; standards applicable to education programs; standards applicable to other programs.

CHAPTER 2

CERTIFICATION STANDARDS FOR DRUG ABUSE INTERVENTION, EDUCATION AND OTHER PROGRAMS

2.1(65GA, Ch181) Definitions. Unless otherwise indicated the following definitions shall apply to all specified terms used in these rules:

2.1(1) *"Act"* means the Acts of the Sixty-fifth General Assembly, 1973 Session, chapter 181.

2.1(2) *"Admission"* means the process of initiating services to an individual, group of individuals, or legally constituted body, public or private, as a recipient of drug abuse services.

2.1(3) *"Applicant"* means any program applying for certification or renewal thereof.

2.1(4) *"Application"* means the process through which a drug abuse intervention, education or other program applies for certification or renewal as outlined in the application procedures.

2.1.(5) *"Authority"* means the Iowa drug abuse authority.

2.1(6) *"Client"* means the recipient of drug abuse services.

2.1(7) *"Counseling"* means an act of giving advice, opinion, or instruction to an individual or in a group setting to allow an opportunity for a person to explore his or her problems related directly or indirectly to drug abuse or dependence.

2.1(8) *"Director"* means the director of the Iowa drug abuse authority.

2.1(9) *"Drug dependence"* means the use of a controlled substance which includes marijuana resulting in a state of psychological or physical reliance or both, arising from administration of such a substance on a continuing basis.

2.1(10) *"Drug education"* means a program utilizing various techniques to assist prior, current, or potential drug users, abusers or dependent individuals, community groups, schools, or agencies in understanding the complexities involved in the problem of drug abuse and approaches that can be used to prevent individuals and groups from misusing and abusing chemical substances.

2.1(11) *"Drug program"* means any drug abuse prevention function or any program to assist persons who are or have been involved in abuse of any controlled substance.

2.1(12) *"D.T.L.B."* means the drug treatment licensing board of the Iowa drug abuse authority.

2.1(13) *"Hot line"* means an intervention program providing emergency treatment, referral, short term counseling and general information to the general population.

2.1(14) *"Intake"* means the process of admitting a client into a program.

2.1(15) *"Intervention"* means the provision of services in response to situational problems. A drug program providing services which are usually nonscheduled, short

term, and referral oriented is considered to be an intervention program.

2.1(16) *"Rules"* mean the administrative procedures through which the certification process occurs and with which both state certification officials and local program operators must comply.

2.1(17) *"Rehabilitation"* means the restoration of a client to the fullest physical, mental, social, vocational, and economic usefulness of which he or she is capable. Rehabilitation includes, but is not limited to, medical treatment, occupational training, job counseling, social and domestic rehabilitation, and education.

2.1(18) *"Staff"* means paid or volunteer staff members.

2.1(19) *"Standards"* mean specifications representing the minimal characteristics of a program which are acceptable for the issuance of a certificate.

2.2(65GA, Ch181) Certification and services.

2.2(1) A certificate will be issued for each qualifying intervention, education, or other program. The certificate will delineate one or more categories of services the program is authorized to provide. The categories of programs for which certificates will be issued are:

a. Intervention programs including hot lines.

b. Education programs.

c. Other (i.e., community drug information projects, alternative programs).

2.2(2) The authority shall charge a nominal fee of ten dollars for certification and renewal adequate to cover the cost of processing each application.

2.2(3) Program operating more than one component will receive a single certificate providing a delineation of which programs and services have been certified by the authority.

2.3(65GA, Ch181) Types of certification.

2.3(1) Two types of certificates may be issued by the authority.

a. A standard renewable certificate may be issued for one year after the D.T.L.B. has determined the applicant is in compliance with these rules.

b. A provisional certificate may be issued for thirty, sixty, ninety, or one hundred eighty days (at the discretion of the D.T.L.B.) to an applicant who is determined by the D.T.L.B. to be temporarily unable to comply with these rules. A provisional certificate may not be renewed or extended.

2.3(2) A new certificate shall be issued only on application, as required herein. The issuance of a new certificate shall be contingent upon a showing of substantial compliance with the program outlines for the previously certified year. Failure to obtain renewal of such certificate by that date shall automatically result in termination of certification and require reapplication.

2.4(65GA, Ch181) Nonassignability. When a program is discontinued, its current certification is void immediately and shall be returned to the authority. A certificate is not transferable. A certificate issued by the authority for the operation of a drug abuse program applied both to the applicant program and the premises upon which the program is to be operated. Any person or other legal entity acquiring a certified facility shall make an application as provided herein for a new certificate. Similarly, any person or legal entity having acquired a certificate and desiring to expand or transfer to new or different premises must make application for a new certificate.

A certificate holder shall, if possible, notify the authority of impending closure of the certified program at least thirty days prior to such closure. The certificate holder shall be responsible for the removal and placement of patients or clients and for the preservation of all records. Upon closure, the certificate shall be immediately returned to the authority.

2.5(65GA, Ch181) Application procedures. An applicant for certification shall submit at least the following information on forms provided by the authority.

2.5(1) The name and address of the applicant drug abuse intervention, education or other program.

2.5(2) The name and address of the executive director of such drug abuse intervention, education or other program.

2.5(3) The names and addresses of members of the board of directors, sponsors or advisory boards of such program.

2.5(4) The names and addresses of all physicians, other professionally trained personnel, medical facilities, and other individuals or organizations with whom the program has a direct referral agreement or is otherwise affiliated.

2.5(5) A description of the nature of intervention services provided by such drug abuse intervention program setting forth program goals and objectives and a description of the methodology.

2.5(6) An outline of the staff table of organization, names and qualifications.

2.5(7) The source of funds used to finance the activities of such drug abuse program and the annual budget of the organization.

2.5(8) Submission of materials substantiating compliance with all related federal, state and local Acts, ordinances, rules and amendments thereto, i.e., state fire marshal's inspection, board of health and building code compliance.

2.5(9) An application for renewal shall be made on forms provided by the authority at least sixty calendar days before expiration of the current certificate.

2.6(65GA, Ch181) Application review. The authority shall develop a review process through which applications for certification shall be evaluated. The review process may include, but is not limited to, review and comments on programs by the IDAA district councils, program self-review, and on-site inspections. The applicant shall be notified of approval or denial of certification within sixty calendar days after receipt of the application by the authority.

2.7(65GA, Ch181) Denial of application. When the D.T.L.B. determines that an applicant's request for certification should be denied, the director shall notify the applicant, by certified mail, return receipt requested, that the authority intends to deny certification. The notice of intention to deny certification shall contain a delineation of the reasons for the denial and a statement that the denial of the application shall become final. Within the following thirty days, the applicant may submit to the authority written objections to each reason for denial, stating why it should not remain. If objections to the denial of certification are submitted to the authority, a full opportunity for settling of all issues shall be provided. If a settlement of the issues in contention cannot be made or if objections to the notice of denial are not submitted, or if for any other reason an application is denied, the applicant may request a hearing before the D.T.L.B. within thirty days after the denial becomes final. This request shall be granted and the applicant notified of the date, time and place of the hearing.

2.8(65GA, Ch181) Suspension and revocation of certificates.

2.8(1) The D.T.L.B. may suspend or revoke a certificate for any of the following reasons:

a. Violation by the program, its director or staff, of any rule promulgated by the authority pertaining to drug abuse programs.

b. Permitting, aiding or abetting the commission of an unlawful act within the facilities maintained by the program, or permitting, aiding or abetting the commission of an unlawful act involving drugs within the program.

c. Conduct or practices found by the authority to be detrimental to the general health or welfare of a participant in the program or the general community.

d. Deviation by the program from the plan of operation originally certified which, in the judgment of the authority, adversely affects the character, quality or scope of services intended to be provided to drug abusers within the scope of the program.

2.8(2) *Procedures.*

a. When the authority determines that a certified program may have committed an act, or may have engaged in conduct or practices, justifying suspension or revocation of certification, the director shall notify the program by certified mail, return receipt requested, of his intent to suspend or revoke the certificate.

b. If the suspension or revocation is protested within thirty days after receipt of the notice, the D.T.L.B. shall conduct a hearing determining the issue of suspension or revocation of the certificate. Notice of the hearing shall be mailed at least ten days

before the date of the hearing. The notice shall state the matters of law and fact to be determined at the hearing, and the date, time and place of the hearing.

c. If the director finds that the public health, safety or welfare are endangered by continued operation of a drug abuse program, summary suspension of a certificate may be ordered effective on the date specified in the order.

2.9(65GA, Ch181) Hearings. A hearing to determine issues relating to the denial, suspension or revocation of a certificate shall conform to the Iowa administrative procedure Act.

2.10(65GA, Ch181) Confidentiality.

2.10(1) All client records shall be kept confidential and shall be handled in compliance with section 23 of the Act and the federal confidentiality regulations (special action office for drug abuse prevention - confidentiality of drug abuse patient records, Federal Register, Volume 38, No. 234, paragraph 1401), and other federal and state rules.

2.10(2) If the patient gives his specific written consent, the content of the record may be disclosed:

a. To legal counsel upon written endorsement by the attorney.

b. To nongovernmental personnel for purpose of collecting health or insurance claims.

c. To a potential employer when such employment is conditioned upon his status or progress in a treatment program.

2.10(3) Disclosure of information for research, management, audit, or evaluation purposes must be specifically authorized by the director or his designee.

2.10(4) The client's written release of information shall be kept in the client's record.

2.10(5) A program shall insure that all staff and clients, as part of their orientation, are made aware of and understand these requirements. A decision to disclose client information under any provision of these rules, or other applicable federal or state rule which permits such disclosure, shall be made only by the program director or his designee.

2.11(65GA, Ch181) Funding. The issuance of a certificate to any program shall not be construed as a commitment on the part of either the state or federal government to provide funds to such certified program.

2.12(65GA, Ch181) Inspection. Each applicant or certificate holder agrees as a condition of said certificate to permit properly designated representatives of the authority to enter into and inspect any and all premises of programs for which a certificate has been either applied or issued to verify information contained in the application or to assure compliance with all laws and rules relating thereto, during all hours of operation of said facility and at any other reasonable hour. Further, each certificate holder agrees to permit properly designated representatives of the authority to audit and collect statistical data from all records maintained by the certificate holder. Such right of entry and inspection shall under due process of law extend to any premises on which the authority has reason to believe is being operated a program in violation of these rules.

2.13(65GA, Ch181) Waivers. After consultation with the D.T.L.B., the director may waive any rule promulgated by the authority.

2.14(65GA, Ch181) Standards for all drug abuse intervention, education and other programs. The following standards shall apply to all drug abuse intervention, education and other programs in the state of Iowa:

2.14(1) *Program management.* One individual shall be identified as having primary responsibility for overall program operation. One individual shall also be identified as having primary fiscal responsibility for the program. These individuals may be the same person.

2.14(2) *Records.* A program shall maintain financial, personnel and client (where possible and applicable) records in a systematic fashion which provide for program and client management. Records shall be kept for at least three years in accordance with federal or state regulations to permit client follow-up and facilitate adequate program evaluation. Such records shall be available to any duly designated officer or employee of the authority who requires such access for the purpose of conducting authorized monitoring or evaluation functions.

2.14(3) *Reports.* A program shall furnish to the authority such required regular reports and special reports as are specified by the authority.

2.14(4) *Procedures manual.* A program shall develop and maintain a manual of its operating procedures. The procedures shall be sufficiently clear to be easily understood and provide sufficient detail to accurately reflect program activity. Revisions shall be entered with the date and the name of the person making the entries.

2.14(5) *Internal evaluation.* A program shall develop and implement a plan for ongoing internal evaluation of the effectiveness of its program. The plan is subject to review by the authority. Technical assistance may be made available through the authority to develop evaluation procedures. Each program shall establish a follow-up policy which encourages a schedule of minimum contact for discharged clients.

2.14(6) *Substance use.* The unlawful, illicit or unauthorized use of drugs on or within the facility of a program is prohibited.

2.14(7) *Facilities.* A drug abuse intervention, education or other facility shall comply with all applicable federal, state and local Acts, ordinances, rules, and amendments thereto. Such a facility shall be maintained in a clean, safe and attractive condition and shall be appropriately furnished to meet the needs of the clients being served by the program.

2.14(8) *Staffing.* All intervention, education, and other programs shall maintain staff which are qualified to achieve the objectives of the program and serve the program's clientele in a manner which safeguards their health and welfare.

2.15(65GA, Ch181) Standards for intervention programs. The following programs shall apply to all drug abuse intervention programs:

2.15(1) *Hours of operation.* Intervention programs shall operate during hours which make their services reasonably accessible to their target populations. At hours during which a crisis intervention center does not operate, it shall display, in a conspicuous place outside the building, the program's hours of operation. At hours during which a hotline does not operate, it shall provide a recorded message identifying the program's hours of operation and a telephone number to call for emergency service.

2.15(2) *Advisory group.* A program shall have a formally designated board of directors or advisory group. A record of this group including names, addresses, occupations, places of employment and relationship to any staff member of the program shall be maintained by the program director. A written set of bylaws which specifies, at a minimum the method of selection or appointment, the size of the membership, the length of members' terms and the frequency of meetings shall also be maintained. Minutes of meetings shall be kept and available for inspection. A board of directors or advisory group shall be representative of the community being served.

2.15(3) *Intake procedures.* Drug abuse intervention programs shall develop intake procedures appropriate to their methods of operation. These procedures shall be subject to review by the authority.

2.15(4) *Personnel policies.* A program shall develop and maintain an up-to-date manual of personnel policies. Programs shall establish policies for handling staff members suspected of having drug abuse problems. The policies shall be published in the personnel policy manual and shall be made available and discussed thoroughly with the staff members. If personnel policies are different for former drug abusers than those applied to other staff members, the policies must be stated in the program personnel policies manual. A program may use volunteers, when appropriate. The volunteers shall operate under the supervision of the program director or his designee.

2.15(5) *Training.* A program shall develop and conduct a program of training for all staff members. Such training shall be provided for professionals, paraprofessionals, and volunteers, and shall incorporate input from both professionals and paraprofessionals. Initial training of each professional staff member shall include, but not be limited to, structured, scheduled orientation relating to the psychosocial, medical, pharmacological, and legal aspects of drug abuse prevention activities. Training and orientation to the program and the community, social interaction and listening skills, and counseling skill development should also be provided. Adequate ongoing staff development

training shall also be available to all staff members.

2.15(6) *Referrals.* A program shall develop an appropriate system of referral, including but not limited to, a current listing of all agencies, organizations and individuals to whom referrals may be made, and a brief description of the range of service available from each of these referral resources. A record of all referrals made to or received from other community resources shall be maintained. Agencies from whom referrals are received shall be notified at intake of a client referred by them, provided that the client has given written consent.

2.15(7) *Professional services.* Written agreements shall exist between the program and appropriate medical, psychological, social, and educational resources to ensure that the health and welfare of each client is protected.

2.16(65GA, Ch181) Standards for drug abuse education programs. The following standards shall apply to all drug abuse education programs.

2.16(1) *Hours of operation.* Education program shall operate during hours which make their services reasonably accessible to their target populations.

2.16(2) *Curriculum.* The content of all drug abuse education programs shall be designed to provide relevance to the client's everyday living.

2.16(3) *Training.* The staff of drug abuse training programs shall be appropriately trained to serve the best interests of the program's clients.

2.17(65GA, Ch181) Standards for other unlicensed and uncertified drug abuse programs. The standards for other unlicensed and uncertified drug abuse programs have not been developed. When developed, the standards shall apply to other unlicensed and uncertified programs which may be certified. This category may include coordinating, planning and administrative bodies and such other programs as the director feels will benefit the people of the state of Iowa. All drug abuse programs certified under the category shall comply with all appropriate rules and standards developed by the D.T.L.B.

These rules are intended to implement Acts of the 65th General Assembly, chapter 181.

[Effective December 31, 1974]

ENVIRONMENTAL QUALITY DEPARTMENT

Pursuant to the authority of sections 455B.5(4) and 455B.12(2) of the Code, the rules appearing in the 1973 IDR, pages 267 to 270 as amended in the January 1974 IDR supplement, page 18, are further amended as follows.

[Filed December 17, 1974]

AIR QUALITY COMMISSION

ITEM 1. Subrule 1.2(7) is amended by striking from line three the period and inserting "10017." in lieu thereof.

ITEM 2. Subrule 1.2(8) is amended by striking the period from the end and inserting "19103." in lieu thereof.

ITEM 3. Subrule 1.2(23) is amended by striking from line three the words "at the effective date of these rules" and inserting the words "prior to September 23, 1970" in lieu thereof.

ITEM 4. Subrule 1.2(24) is amended by inserting in line two between the words "consisting," and "but" the word "of".

ITEM 5. Subrule 1.2(25) is amended by striking from line two the words "particulate solid" and inserting the words "solid particulate" in lieu thereof.

ITEM 6. Subrule 1.2(30) is amended by striking from line four the words "wastes are" and inserting the words "refuse is" in lieu thereof.

ITEM 7. Subrule 1.2(33) is rescinded and the following new subrule adopted in lieu thereof.

1.2(33) *New equipment.* Except for any new equipment as defined in 40 Code of Federal Regulations, Part 60 (1972), or Code of Federal Regulations, Part 60 (1974), any equipment or control equipment not under construction or for which components have not been purchased on or before September

23, 1970, and any equipment which is altered or modified after such date, which may cause the emission of air contaminants or eliminate, reduce or control the emission of air contaminants.

These rules are intended to implement sections 455B.12(2) and 455B.12(4) of the Code.

[Effective December 17, 1974]

ENVIRONMENTAL QUALITY DEPARTMENT

(continued)

Pursuant to the authority of sections 455B.5(4) and 455B.12(2) of the Code, the rule appearing in the 1973 IDR, page 270 as amended in the January 1974 IDR supplement, pages 18 to 19, is further amended as follows.

[Filed December 17, 1974]

AIR QUALITY COMMISSION

ITEM 1. Subrule 2.1(2) is amended by striking the number "4.1(5)" and inserting the number "4.1(11)" in lieu thereof.

This rule is intended to supplement sections 455B.12(2) and 455B.12(4) of the Code.

[Effective December 17, 1974]

ENVIRONMENTAL QUALITY DEPARTMENT

(continued)

Pursuant to the authority of sections 455B.5(4) and 455B.12(2) of the Code, the rules appearing in the 1973 IDR, pages 270 to 272 as amended in the January 1974 IDR supplement, pages 19 to 20, are further amended as follows.

[Filed December 17, 1974]

AIR QUALITY COMMISSION

ITEM 1. Subrule 3.1(1) is amended by inserting in line three between the word "in" and the number "1.2(20)" the word "subrule".

ITEM 2. Subrule 3.1(1) is further amended by inserting in line four between the word "in" and the number "1.2(16)" the word "subrule".

ITEM 3. Subrule 3.1(3), paragraph *"a"*, is amended by striking from line three the word "number" and inserting the word "Number" in lieu thereof.

ITEM 4. Subrule 3.1(3), paragraph *"d"*, is amended by inserting between the word "in" and the number "4.4(7)" the word "subrule".

ITEM 5. Subrule 3.1(3) is amended by inserting following paragraph *"d"* the following new paragraph.

e. Incinerators with a rated refuse burning capacity of less than twenty-five pounds per hour.

ITEM 6. Subrule 3.4(1), paragraph *"a"*, is amended by striking at the end thereof the words "Department of Environmental Quality" and inserting the word "department" in lieu thereof.

These rules are intended to implement sections 455B.12(2) and 455B.12(4) of the Code.

[Effective December 17, 1974]

ENVIRONMENTAL QUALITY DEPARTMENT

(continued)

Pursuant to the authority of sections 455B.5(4) and 455B.12(2) of the Code, the rules appearing in the 1973 IDR, pages 272 to 275 as amended in the January 1974 IDR Supplement, pages 20 to 22, are further amended as follows.

[Filed December 17, 1974]

AIR QUALITY COMMISSION

ITEM 1. Rule 4.1(455B) is amended by inserting following the words "Part 60 (1972)" the words "and 40 Code of Federal Regulations Part 60 (1974)".

ITEM 2. Rule 4.1 (455B) is further amended by adding the following new subrules.

4.1(6) *Asphalt concrete plants.* For asphalt concrete plants the provisions of Volume 39, Number 47, Part II of the Federal Register (March 8, 1974) shall apply.

4.1(7) *Petroleum refineries.* For petroleum refineries the provisions of Volume 39, Number 47, Part II of the Federal Register (March 8, 1974) shall apply.

4.1(8) *Secondary lead smelters.* For secondary lead smelters with pot furnaces of more than 250 kilograms (550 lb.) charging capacity, or blast furnaces or reverberatory furnaces, the provisions of Volume 39, Number 47, Part II of the Federal Register (March 8, 1974) shall apply.

4.1(9) *Secondary brass and bronze ingot production plants.* For secondary brass or bronze ingot production plants with reverberatory or electric furnaces of 1000 kilograms (2205 lb.) or greater production capacity and blast (cupola) furnaces of 250 kilograms per hour (550 lbs. per hour) or greater production capacity the provisions of Volume 39, Number 47, Part II of the Federal Register (March 8, 1974) shall apply.

4.1(10) *Iron and steel plants.* For the basic oxygen process furnace of an iron or steel plant, the provisions of Volume 39, Number 47, Part II of the Federal Register (March 8, 1974) shall apply.

4.1(11) *Sewage treatment plants.* For incinerators which burn sludge produced by municipal sewage treatment facilities, the provisions of Volume 39, Number 47, Part II of the Federal Register (March 8, 1974) shall apply.

ITEM 3. Subrule 4.2(3), paragraph *"g"*, is amended in line two by inserting between the words "training" and "public" the word "of".

ITEM 4. Subrule 4.3(2), paragraph *"a"*, line four, is amended by inserting between the numbers "3.2(455B)", and "4.4(455B)" the number "4.1(455B),".

ITEM 5. Stricken by IDR committee.

ITEM 6. Subrule 4.3(2), paragraph *"c"*, is amended by striking from line one the words "After September 1, 1972,".

ITEM 7. Subrule 4.3(2), paragraph *"c"*, is further amended by inserting in line seven, following the word "unpaved" the word "public".

ITEM 8. Subrule 4.3(2), paragraph *"c"*, is further amended by inserting in line ten following the number "657.1" the words "of the Code".

ITEM 9. Subrule 4.3(2), paragraph *"c"*, is further amended by inserting in line fifteen following the word "originate.", the following sentence: "The public highway authority shall be responsible for taking corrective action in those cases where said authority has received complaints of or has actual knowledge of dust conditions which require abatement pursuant to this subrule."

ITEM 10. Subrule 4.3(2), paragraph *"c"*, subparagraph (2), is amended by striking from line three the word "dirt" and inserting the word "unpaved" in lieu thereof.

ITEM 11. Subrule 4.3(2), paragraph *"d"*, is amended by striking from line one and two the words "After September 1, 1972,".

ITEM 12. Subrule 4.3(3), paragraph *"a"*, is rescinded and the following adopted in lieu thereof.

a. Sulfur dioxide from use of fuels (1975). After July 31, 1975, no person shall allow, cause or permit the emission of sulfur dioxide into the atmosphere in an amount greater than six pounds of sulfur dioxide, replicated maximum two-hour average per million BTU of heat input from any solid fuel-burning installation for any combination of fuels burned; nor the emission of sulfur dioxide into the atmosphere in an amount greater than 2.5 pounds of sulfur dioxide, replicated maximum two-hour average, per million BTU of heat input for any liquid fuel-burning installation.

ITEM 13. Subrule 4.3(3) is further amended by inserting following paragraph *"a"* the following new paragraph *"b"* and relettering all subsequent paragraphs to conform with alphabetical sequence.

b. Sulfur dioxide from use of fuels (1978). After July 31, 1978, no person shall allow, cause or permit the emission of sulfur dioxide into the atmosphere in an amount greater than five pounds of sulfur dioxide, replicated maximum two-hour average, per million BTU of heat input from any solid fuel-burning installation for any combination of fuels burned; nor the emission of sulfur dioxide into the atmosphere in an

amount greater than 2.5 pounds of sulfur dioxide, replicated maximum two-hour average, per million BTU of heat input from any liquid fuel-burning installation. An emission reduction program for meeting the emission standards of this paragraph shall be submitted on or before December 31, 1975 by the owner or operator of any solid or liquid fuel-burning source with heat input equal to or greater than 250 million BTU per hour.

ITEM 14. Subrule 4.4(6) is amended by striking from line two the word "location" and inserting the word "installation" in lieu thereof.

These rules are intended to supplement section 455B.12(2) and section 455B.12(4) of the Code.

[Effective December 17, 1974]

ENVIRONMENTAL QUALITY DEPARTMENT

(continued)

Pursuant to the authority of sections 455B.5(4) and 455B.12(2) of the Code, the rule appearing in the 1973 IDR, page 277 as amended in the January 1974 IDR Supplement, page 22, is further amended as follows.

[Filed December 17, 1974]

AIR QUALITY COMMISSION

ITEM 1. Subrule 5.1(3) is amended by inserting in line seven following the words "specified in", the word "paragraphs".

This rule is intended to implement section 455B.12(2) and section 455B.12(4) of the Code.

[Effective December 17, 1974]

ENVIRONMENTAL QUALITY DEPARTMENT

(continued)

Pursuant to the authority of sections 455B.5(4) and 455B.12(2) of the Code, the rule appearing in the 1973 IDR, page 278 as amended in the January 1974 IDR Supplement, page 22, is further amended as follows.

[Filed December 17, 1974]

AIR QUALITY COMMISSION

ITEM 1. Subrule 7.1(1) is amended by inserting in line one following the words "owner of new" the words "or existing".

This rule is intended to implement section 455B.12(2) and section 455B.12(4) of the Code.

[Effective December 17, 1974]

ENVIRONMENTAL QUALITY DEPARTMENT

(continued)

Pursuant to the authority of sections 455B.5(4) and 455B.12(2) of the Code, the rules appearing in the 1973 IDR, pages 278 to 280 as amended in the January 1974 IDR Supplement, pages 22 to 23, are further amended as follows.

[Filed December 17, 1974]

AIR QUALITY COMMISSION

ITEM 1. Subrule 8.3(1), paragraph *"a"*, is amended by striking from line three the

numerals "IV-VI" and inserting the numerals "III-V" in lieu thereof.

ITEM 2. Subrule 8.4(1), paragraph *"b"*, is amended by striking from line four the numeral "V" and inserting the numeral "IV" in lieu thereof.

These rules are intended to implement section 455B.12(2) and section 455B.12(4) of the Code.

[Effective December 17, 1974]

ENVIRONMENTAL QUALITY DEPARTMENT

(continued)

Pursuant to the authority of section 427.1 of the Code as amended by the 1974 Session of the 65th General Assembly, chapter 1126, section 1, the rules appearing in the 1973 IDR, pages 267 to 284, are supplemented by adopting the following new chapter.

[Filed December 17, 1974]

AIR QUALITY COMMISSION

CHAPTER 13

CERTIFICATION OF POLLUTION CONTROL PROPERTY

13.1(455B) Request for certification. A request for certification under this chapter shall be submitted on forms supplied by the department.

13.1(1) The request shall include the information specified below. A request may incorporate by reference information contained in an application for a permit under chapter three of the rules of the Iowa air quality commission or contained in a request previously submitted under this chapter.

a. Name and address of the taxpayer.

b. Address, including the county, where the property is located.

c. Legal description of the land on which the property is located.

d. Name, address and phone number of person to whom questions regarding the request and to whom the certificate, if granted, should be sent.

e. A precise description of the property for which certification is being sought, including manufacturer's make or model number and model year, if appropriate, and a copy of schematic or engineering drawings, plans or specifications.

f. A description of the process by which such property removes or treats contaminants, including, if appropriate, references to processes described in subrule 13.6(1) of this chapter.

g. A description of the types and quantities of air contaminants removed or treated by such property.

h. A statement by the taxpayer or responsible official of the taxpayer that the property is in operation, including the date on which construction or installation was completed and the date on which operation commenced; and an affidavit that the information contained in the request is true to the best of the declarant's knowledge.

i. The number of any permit granted for the installation of equipment capable of controlling air contaminants pursuant to section 455B.13, subsection 4, of the Code and chapter three of these rules, or a statement regarding any other contact with the department or its predecessor concerning such property which statement shall include the dates and circumstances thereof.

j. Whether the request is made on the basis of enhancing the quality of the air of the state, or on the basis of controlling or abating pollution of the air of the state (See rule 13.3).

k. The amount of saleable or useable materials which are being recovered or reprocessed and the estimated value reasonably expected to be derived through such recovery or reprocessing in the operation of the facility.

l. If the property also performs any function other than removal or treatment of air contaminants (e.g., drying corn), a descript of all other functions performed by the property.

m. A general description of the operation in connection with which such property is

used and a description of the influent and effluent of the property, which shall include test data or best available estimates of the concentration and quantity of the effluent contaminants.

n. A description of the method and frequency of sampling and methods of analysis used to determine that the quantities of air contaminants emitted are meeting design specifications.

o. Such other relevant information as may be required.

13.1(2) A separate request must be submitted for each system or identifiable unit of property for which a permit was issued. In the case where no permit was required, a request should include all property at the facility which is claimed to be pollution control property.

13.2(455B) Time of submission. In order for property to be certified by February 1 of any year, except February 1, 1975, a request or a notice of intent to submit a request must be filed by October 10 of the preceding year. A notice of intent to submit a request is sufficient only when construction or installation has not been completed by October 1 preceding the October 10 deadline.

13.2(1) A notice of intent may consist of a request which, except for the omission of the statement that the construction has been completed and the property is in operation, is otherwise complete. Such a request will not be finally processed until such statement has been submitted.

13.2(2) For good cause shown, a request may be submitted after October 10 without prior submission of a notice of intent to submit a request, but such a request will not be processed until timely filed requests have been processed.

13.2(3) All requests including those for 1975, must be properly completed and submitted by January 10.

13.3(455B) Compliance with standards. Property which has been installed in order to meet an emission standard of chapter four of these rules, or in order to control hydrocarbons, fugitive dust, odors or other air contaminants in a reasonably adequate manner shall be considered to be used primarily to control or abate pollution of the air of this state. Property which has been installed to meet an emission standard more stringent than an emission standard of chapter four of these rules shall be considered to be used primarily to enhance the quality of the air of this state.

13.3(1) No property shall be certified as pollution control property unless it is used primarily to control or abate pollution of the air of this state or to enhance the quality of the air of this state. Property may be denied certification if the property is not being operated in compliance with the rules of the Iowa air quality commission so as to effectively control or abate pollution or enhance the quality of the air of the state.

13.4(455B) Notice. The executive director shall notify the taxpayer of the time and place of the meeting of the commission at which the taxpayer's request will be considered, at least five days in advance of such meeting. The notice shall include, if possible, any recommendation to the commission either to deny the request, to certify the lesser portion of the property than requested or to grant the request.

13.5(455B) Issuance. Upon the decision of the commission to certify all or any portion of the property for which a request has been made, two copies of the certificate will be signed by the executive director and mailed to the taxpayer. The certificate shall describe the property certified and state the date on which the executive director certified the property.

13.6(455B) General guidelines of eligibility. Each request will be considered in the context of its particular circumstances. The guidelines below are illustrative and not determinative.

13.6(1) The following property will normally be considered eligible for certification.

a. Inertial separators (cyclones, etc.)

b. Wet collection devices (scrubbers).

c. Electrostatic percipitators.

d. Cloth filter collectors (baghouses).

e. Direct fired afterburners.

f. Catalytic afterburners.

g. Gas adsorption equipment.

h. Gas absorption equipment.

i. Vapor condensers.

j. Vapor recovery system.

k. Floating roofs for storage tanks.

l. Controlled flare stacks.

m. Fugitive dust controls (such as enclosures or spray systems).

n. Standby systems and spare parts such as cloth dust collector bags, nozzles and minor spare parts, required for the continuous operation of other pollution control property.

o. Combinations of the above.

p. Sampling or monitoring equipment for air contaminants for which there are standards where such equipment is owned and operated by the owner of the source of air contaminants, and the results from the use of such equipment are submitted to the department.

13.6(2) The following property will normally be considered ineligible.

a. Land purchased or held as a site for pollution control property.

b. Property which is constructed or installed in order to circumvent the rules of the department.

c. Incinerators, provided that features added to or incorporated in incinerators for pollution control may be eligible.

d. Solid waste compactors used in place of incinerators or open burning.

e. Replacement boilers or changeovers in fuels unless made in compliance with an emissions reduction program approved by the department of environmental quality of the State of Iowa and unless in compliance with a schedule approved by the environmental protection agency.

f. Consumable or process materials (e.g., in low sulfur coal purchased to replace higher sulfur content coal, or chemicals used in treatment).

g. Process changes even if the taxpayer utilizes a process known to be "cleaner" than the previous process (e.g., replacing a cupola with an electric induction furnace, since both methods are used primarily for the production of iron and not for air pollution control).

h. Property installed for the protection of employees from air contaminants inside commercial and industrial plants, works or shops under the jurisdiction of chapters 88 and 91 of the Code.

These rules are intended to implement section 427.1 of the Code as amended by the 1974 Session of the 65th General Assembly, chapter 1226, section 1.

[Effective December 17, 1974]

ENVIRONMENTAL QUALITY DEPARTMENT

(continued)

Pursuant to the authority of section 455B.65 of the Code, the rules appearing in the 1973 IDR, pages 293 to 294, relating to water supplies (chapter 22) are amended.

[Filed July 31, 1974]

WATER QUALITY COMMISSION

ITEM 1. Rule 22.1(455B) is amended by adopting the following new subrule.

22.1(3) *Standard specifications.* Standard specifications shall mean those specifications submitted to the department for use as a reference in reviewing future plans for proposed construction.

ITEM 2. Rule 22.11(455B) is amended by striking from lines 5 and 6 the words "state or local health officer" and inserting in lieu thereof the word "department".

ITEM 3. Subrule 22.12(1) is amended by striking from line 4 the words "before construction begins." and inserting in lieu thereof the words "at least 30 days prior to the proposed date for commencing construction or awarding of contracts. The department shall within 30 days of receipt of the application, either approve said application, or notify the applicant of the reasons for failure to approve. Contracts for construction shall not be awarded nor shall construction commence until receipt of written approval by the department except as provided under subrule 22.12(2)."

ITEM 4. Subrule 22.12(2) is rescinded and the following subrule adopted in lieu thereof.

22.12(2) Standard specifications for water main construction by an entity may be submitted to the department for approval. Such approval, which shall not preclude a future requirement for changes or additions as may be deemed necessary by the department, shall apply to all future water main construction by or for that entity for which plans are submitted with a statement referring to the applicable sections of the approved standard specifications. In those cases where such approved specifications are on file, construction may commence thirty days following receipt of such plans by the department, if no action has been taken by the department.

ITEM 5. Rule 22.12(455B) is further amended by adopting the following new subrules.

22.12(3) Plans and specifications submitted to the department for construction or modification of or addition to a public water supply shall comply with criteria contained in "Recommended Standards for Water Works", 1968 edition and 1972 addenda, as adopted by the Great Lakes-Upper Mississippi River Board of State Sanitary Engineers; and "1974 American Water Works Association (AWWA) Standards". Variance from such standards must be approved by the department in writing.

22.12(4) Water delivered to the consumer's service connection of a public water supply shall meet all requirements of the "United States Public Health Service Drinking Water Standards, 1962", as published in Reprint 956 from the public health reports on file in the office of the department. Variations from these standards may be required, where, in the opinion of the department, current technology does not provide a feasible method of achieving the required standards, where benefits to the public deriving from improved quality do not justify the cost of providing such improved quality, or where the sampling or analytical requirements of these standards do not appear to adequately assure the safety of a public water supply.

ITEM 6. Subrule 22.13(1) is amended by striking from line 4 the words "before construction begins." and inserting in lieu thereof the words "at least 30 days prior to the proposed date for commencing construction or awarding of contracts. The department shall within 30 days of receipt of the application, either approve said application, or notify the applicant of the reasons for failure to approve. Contracts for construction shall not be awarded nor shall construction commence prior to receipt of written approval by the department."

ITEM 7. Subrule 22.13(2) is rescinded and the following subrule adopted in lieu thereof.

22.13(2) Water delivered to the consumer's service connection of a quasi-public surface water supply shall meet the bacteriological requirements of the "United States Public Health Service Drinking Water Standards, 1962", as published in Reprint 956 from the public health reports on file in the office of the department. Variations from these standards may be required, where, in the opinion of the department, the sampling and analytical requirements of these standards do not appear to adequately assure the safety of the quasi-public water supply.

ITEM 8. Subrule 22.14(2) is amended by striking from the title thereof the words "and springs".

ITEM 9. Subrule 22.14(2) paragraphs *"a"*, *"b"* and *"c"* are rescinded and the following paragraphs adopted in lieu thereof.

a. Location. Wells must be located on ground at least one foot higher than the ground surrounding within a fifteen foot radius.

On grounds subject to surface flood water, ground must be filled with compacted earth within a twenty-five foot radius of the well to an elevation at least two feet higher than the highest known flood level. No sewers or drains of any kind, except a pump house floor drain, shall be permitted within a ten foot radius of the well. Pump house floor drains shall be located at least five feet from the well and be constructed of cast iron pipe with mechanical or slip-on joints, all of which shall be encased in four inches of concrete to a distance of ten feet from the well. Sewers and drains farther than ten feet, but within fifty feet of the well shall be cast iron pipe with mechanical or slip-on joints.

No septic tanks shall be permitted within fifty feet of the well.

Sewers and drains farther than fifty feet but within seventy-five feet of the well shall be cast iron pipe with mechanical or slip-on joints or vitrified clay pipe with watertight slip-on joints or other approved jointing material.

No open-jointed sewer, drain, disposal field, cesspool, privy leaching pit, barnyard, pigpen or other such source of pollution shall be permitted within seventy-five feet of the well except as approved by the department.

b. Construction. The well shall be constructed in accordance with the criteria contained in the "Recommended Standards for Water Works", 1968 edition and 1972 addenda as adopted by the Great Lakes-Upper Mississippi River Board of State Sanitary Engineers; and "1974 American Water Works Association (AWWA) Standards".

c. Pump setting.

(1) *Mechanically driven pumps.* Pumps shall be set in compliance with criteria contained in the 1968 edition and 1972 addenda of "Recommended Standards for Water Works" and "1974 American Water Works Association (AWWA) Standards".

Watertight seals shall be provided at the top of the well between the casing and drop pipe and between the concrete pedestal and pump base. Nonhardening asphalt, lead or cement grout may be used as the sealing material.

The upper well casing or pitless adaptor unit shall terminate at least twelve inches above the finished ground elevation. Vents shall terminate in a down-turned ell not less than twelve inches above the floor in an enclosed pump house nor less than twenty-four inches above the finished ground elevation where the well is not enclosed in a pump house. The open end of the vent shall be covered with a twenty mesh copper screen.

(2) *Hand pumps.* Hand pumps shall be set as described in Iowa State Department of Health Bulletin Number PB-SP15390, "Sanitary Standards for Water Wells".

ITEM 10. Subrule 22.14(2) paragraph *"h"* is rescinded and the following paragraph adopted in lieu thereof.

h. Treatment. Ground water supplies shall comply with the bacteriological requirements of the "United States Public Health Service Drinking Water Standards, 1962". Those supplies not meeting such standards shall be treated by methods required in subrule 22.12(3), or if it is impossible by any method of treatment to secure compliance with said requirements, said well shall be abandoned, sterilized, and sealed in accordance with the procedures outlined in Iowa Geological Survey Public Information Circular Number One, 1971, on file in the office of the department. Variance from such procedures for well abandonment must be approved by the department in writing.

ITEM 11. Subrule 22.14(2) paragraph *"i"* is amended by striking from lines 7, 8, 9 and 10 the words "maintain a residual of at least twenty-five parts per million in the chlorinated water in contact with the well, reservoir, pump and piping" and inserting in lieu thereof the words "obtain a residual of at least fifty milligrams per liter in the chlorinated water in the well, reservoir, pump and piping. A ten milligrams per liter chlorine residual shall be maintained".

ITEM 12. Subrule 22.14(2) paragraph *"k"* is amended by striking from each of lines 4 and 8 the words "health officer" and inserting in lieu thereof in each place the word "department".

ITEM 13. Subrule 22.14(2) paragraph *"l"* is rescinded.

These rules are intended to implement section 455B.65 of the Code.

[Effective July 31, 1974]

ENVIRONMENTAL QUALITY DEPARTMENT

(continued)

Pursuant to the authority of section 427.1 of the Code as amended by the 1974 Session of the 65th General Assembly, chapter 1226, section 1, the rules appearing in the 1973 IDR, pages 285 to 294 are supplemented by adopting the following new chapter.

[Filed December 4, 1974]

WATER QUALITY COMMISSION

CHAPTER 23
CERTIFICATION OF POLLUTION CONTROL PROPERTY

23.1(455B) Request for certification. A request for certification under this chapter shall be submitted on forms supplied by the department.

23.1(1) The request shall include the information specified below. A request may incorporate by reference information contained in an application for a permit under chapter 19 of the rules of the Iowa water quality commission or contained in a request previously submitted under this chapter.

a. Name and address of the taxpayer.

b. Address, including the county, where the property is located.

c. Legal description of the land on which the property is located.

d. Name, address and phone number of person to whom questions regarding the request and to whom a certificate, if granted, should be sent.

e. A precise description of the property for which certification is being sought, including manufacturer's make or model number and model year, if appropriate, and a copy of schematic or engineering drawings, plans or specifications.

f. A description of the process by which such property removes, treats or disposes of the sewage, industrial waste or other waste.

g. A description of the types and quantities of sewage industrial waste or other waste removed, treated or disposed of by such property.

h. A statement by the taxpayer or a responsible official of the taxpayer that the property is in operation, including the date on which construction or installation was completed and the date on which operation commenced; and an affidavit that the information contained in the request is true to the best of the declarant's knowledge.

i. The number of any permit for the construction or operation of a waste water disposal system granted pursuant to section 455B.45 of the Code or chapter 19 of these rules, or a statement regarding any other contact with the department or its predecessor concerning such property which statement shall include the dates and circumstances thereof.

j. Whether the request is made on the basis of either enhancing the quality of a water of the state or controlling or abating pollution of a water of the state. (See rule 23.3)

k. The amount of saleable or useable materials which are being recovered or reprocessed and the estimated value reasonably expected to be derived through such recovery or reprocessing in the operation of the facility.

l. If the property also performs any function other than removal, treatment or disposal of sewage, industrial waste or other waste, a description of all other functions performed by the property.

m. A general description of the operation in connection with which such property is used and a description of the influent and effluent of the property, which shall include a laboratory analysis of the strength and components thereof.

n. A description of the method and frequency of sampling and methods of anaylsis used to determine the influent and effluent strength and components stated in the answer to *"m."*

o. Such other relevant information as may be required.

23.1(2) A separate request may be submitted for each system or identifiable unit of property for which a permit was issued. In the case where no permit was required, e.g. a pretreatment facility, a request should include all property at the facility which is claimed to be pollution control property.

23.2(455B) Time of submission. In order for property to be certified by February 1 of any year, except February 1, 1975, a request or a notice of intent to submit a request must be filed by October 10 of the preceding year. A notice of intent to submit a request is sufficient only when construction or installation has not been completed by October 1 preceding the October 10 deadline.

23.2(1) A notice of intent may consist of a request which, except for the omission of the statement that the construction has been completed and that the property is in operation, is otherwise complete. Such a request

will not be finally processed until such statement has been submitted.

23.2(2) For good cause shown, a request may be submitted after October 10 without prior submission of a notice of intent to submit a request, but such a request will not be processed until timely filed requests have been processed.

23.2(3) All requests, including those for 1975, must be properly completed and submitted by January 10.

23.3(455B) Compliance with standards. Property which has been installed in order to meet a water quality standard of chapter 16 of these rules shall be considered to be used primarily to control or abate pollution of water of the state. Property which has been installed to meet a water quality standard more stringent than a water quality standard of chapter 16 of these rules shall be considered to be used primarily to enhance the quality of water of the state.

Property may be denied certification if the property is not being operated in compliance with the rules of the Iowa water quality commission so as to effectively control or abate pollution or enhance the quality of the waters of the state.

23.4(455B) Notice. The executive director shall notify the taxpayer of the time and place of the meeting of the commission at which the taxpayer's request will be considered, at least five days in advance of such meeting. The notice shall include, if possible, any recommendation to the commission either to deny the request, to certify a lesser portion of the property than requested or to grant the request.

23.5(455B) Issuance. Upon the decision of the commission to certify all or any portion of the property for which a request has been made, two copies of the certificate will be signed by the executive director and mailed to the taxpayer. The certificate shall describe the property certified and state the date on which the executive director certified the property.

23.6(455B) General guidelines of eligibility. Each request will be considered in the context of its particular circumstances. The guidelines below are illustrative and not determinative.

23.6(1) The following property will normally be considered eligible for certification.

a. Pretreatment facilities such as those which neutralize or stabilize sewage, industrial waste or other waste from a point immediately preceding the point of such treatment, including necessary pumping and transmitting facilities.

b. Treatment facilities such as those which neutralize or stabilize sewage, industrial waste or other waste from a point immediately preceding the point of such treatment to a point of disposal, including the necessary pumping and transmitting facilities.

c. Improvements to real property, e.g., ancillary devices and facilities such as lagoons, ponds and structures for the storage and/or treatment of sewage, industrial waste or other waste from a plant or other property.

d. Standby systems or spare parts which are required for the continuous operation of other pollution control property.

e. Property which exclusively conveys or transports accumulated sewage, industrial waste or other recovered materials as an integral part of the control operation.

f. A building which performs no function other than housing or sheltering other pollution control property.

g. Sampling or monitoring equipment for water pollutants for which there are standards where such equipment is owned and operated by the owner of the source of water pollutants, and the results from the use of such equipment are submitted to the department.

h. Property which dissipates heat (e.g. cooling towers).

23.6(2) The following property will normally be considered ineligible for certification.

a. Land purchased or held as a site for pollution control property or for land disposal of waste material.

b. Property which merely dilutes sewage, industrial waste, or other waste (including heat) unless required by the department.

c. Consumable or process materials (e.g. chemicals used in treatment).

d. Licensed motor vehicles used to transport accumulated sewage, industrial waste, other waste or recovered materials.

These rules are intended to implement section 427.1 of the Code as amended by the 1974 Session of the 65th General Assembly, chapter 1226, section 1.

[Effective December 4, 1974]

ENVIRONMENTAL QUALITY DEPARTMENT

(continued)

Pursuant to the authority of sections 455B.101 and 455B.102 of the Code, the rules appearing in 1973 IDR, page 301, relating to agricultural chemicals (chapter 35) are amended as follows.

[Filed October 9, 1974]

CHEMICAL TECHNOLOGY

Rule 35.2(455B) is rescinded and the following rule adopted in lieu thereof.

35.2(455B) Use of inorganic arsenic.

35.2(1) *Home use.* Formulations of inorganic arsenic containing more than one percent arsenic (expressed as elemental arsenic) shall not be distributed or sold for use as a pesticide in or around the home for the purpose of preventing, destroying or repelling any weed, rodent, insect or other pests.

35.2(2) *Other uses.* Formulations of inorganic arsenic shall not be distributed, or sold for use as a pesticide for the purpose of preventing, destroying or repelling any weed, rodent, insect or other pests, unless there are no acceptable alternative methods of control available, as determined by the chemical technology commission. Where no acceptable alternative methods of control are available, and an inorganic arsenic formulation is approved for use by the chemical technology commission, such approval shall include specific conditions designed to protect the applicator, as well as the public health and welfare, and a permit must be secured by the user from the Iowa department of agriculture prior to the application or use of the product.

This rule is intended to implement sections 455B.101 and 455B.102 of the Code.

[Effective October 9, 1974]

HEALTH DEPARTMENT

Pursuant to authority of sections 135.11(16), 140.11 and 596.3 of the Code, subrule 3.1(6) appearing in 1973 IDR, page 334, relating to blood testing laboratories is rescinded and the following adopted in lieu thereof.

[Filed September 11, 1974]

3.1(6) Those private and other governmental laboratories performing serologic tests for syphilis within the state of Iowa which meet the standards established for this purpose by the state department of health. A list of the approved private and other governmental laboratories is available upon request to the State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

This amendment is intended to implement sections 140.11 and 596.3 of the Code.

[Effective September 11, 1974]

HEALTH DEPARTMENT

(continued)

Pursuant to the authority of section 148B.7 of the Code, the rules appearing in the 1973 IDR, title XXVI, pages 462 to 465, are amended by adding a new chapter as follows:

[Filed November 14, 1974]

CHAPTER 136

PHYSICIANS' ASSISTANTS

136.1(148B) General. A physician's assistant is a person qualified by general education, training, experience, and personal

character to provide patient services under the direction and supervision of an actively licensed physician in good standing. The purpose of the physician's assistant program is to enable the physician to extend high quality medical care to more people throughout the state.

The licensed physician shall in all cases be regarded as the employer of the physician's assistant and shall be responsible for establishing whatever supervision is necessary to insure that the physician's assistant is performing properly in the field of medicine for which he or she is trained and the acts which he or she is authorized by law to perform.

These rules are not intended to affect or limit a physician's existing right to delegate various medical tasks to aides, assistants or others acting under his or her supervision or direction. Aides, assistants or others who perform only those tasks which can be so delegated shall not be required to qualify as physicians' assistants.

136.2(148B) Definitions.

136.2(1) *"Board"* means the board of medical examiners of the state of Iowa.

136.2(2) *"Department"* means the state department of health.

136.2(3) *"Approved program"* means a program for the education of physicians' assistants which has been formally approved by the board.

136.2(4) *"Trainee"* means a person who is currently enrolled in an approved program.

136.2(5) *"Physician"* means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy.

136.2(6) *"Physician's assistant"* means a person who has successfully completed an approved program or is otherwise found to be qualified as a physician's assistant and is approved by the board to perform medical services under the supervision of one or more physicians approved by the board to supervise such assistant.

136.2(7) *"Supervising physician"* means a physician approved by the board to supervise and be responsible for a particular assistant to the physician, who evaluates his patient's total health care needs and who accepts initial and continuing responsibilities therefor.

136.2(8) *"Supervision"* means the responsibility of the supervising physician to retain authority for patient care, although the physician need not be physically present at each activity of the assistant, nor be specifically consulted before each delegated task is performed. The physician's assistant may be involved with patients of the physician in any medical setting within the established scope of the physician's practice, not prohibited by law or these rules. The physician's assistant service may be utilized in all medical settings, including the office, the ambulatory clinic, the hospital, the patient's home, extended care facilities and nursing homes. Diagnostic and therapeutic procedures common to the physician's practice may be assigned after demonstration of proficiency and competence.

The term "supervision" shall not be construed as requiring the personal presence of a supervising physician at the place where such services are rendered except insofar as the personal presence is expressly required by these rules or by chapter 148B of the Code.

136.3(148B) Application for approval.

136.3(1) Application for approval of an assistant must be made upon forms supplied by the board and must be submitted by the physician with whom the assistant will work and who will assume responsibility for the assistant's performance.

136.3(2) Each application made by a physician to the board shall include all of the following:

a. The qualifications, including related experience, possessed by the proposed physician's assistant.

b. The professional background and specialty of the physician.

c. A description by the physician of his practice, and the way in which the assistant is to be utilized.

136.3(3) The board shall not approve an application by any one physician to supervise more than two physician's assistants at any one time.

136.3(4) Application forms submitted to the board must be complete in every detail. Every supporting document required by the application form must be submitted with each application.

136.3(5) If for any reason an assistant discontinues working at the direction and under the supervision of the physician who submitted the application under which the assistant was approved, such assistant shall so inform the board and his approval shall terminate until such time as a new application is submitted by the same or another physician and is approved by the board.

136.4(148B) Qualifications.

136.4(1) Each applicant for approval to be a physician's assistant shall:

a. Present satisfactory evidence of a preliminary education equivalent to at least four years' study in an accredited high school or other secondary school.

b. Be of good moral character.

c. Present a diploma from an approved program or present other evidence of equivalent education and training approved by the board.

d. Pass an examination prescribed by the board which shall include subjects which determine the applicant's qualifications to be a physician's assistant and which shall be given according to the methods deemed by the board to be the most appropriate and practicable. However, any national standardized examination which the board shall approve may be administered to all applicants in lieu of or in conjunction with other examinations which the board shall prescribe.

136.4(2) The applicant shall be a graduate of a program for the education of physician assistant which has been formally approved by the board, the American Medical Association, or such other national accrediting organization as may be approved by the board.

136.4(3) Applicants who have not graduated from an approved program shall be referred to the Physician Assistant Program faculty of the University of Iowa for their evaluation of the applicant's educational preparation. The board shall require that this evaluation shall show that the applicant's educational background is equivalent to that required in these rules.

136.4(4) All physician assistant approvals shall be granted on a year to year basis.

136.4(5) At such time when a nationally recognized certifying examination is approved and adopted by the board, all physicians' assistants in the state of Iowa shall be required to successfully complete this examination as requirement for approval.

136.5(148B) Duties.

136.5(1) The ultimate role of the assistant to the primary care physician cannot be rigidly defined because of the variations in practice requirements due to geographic, economic, and sociologic factors. The high degree of responsibility an assistant to the primary care physician may assume, requires that at the conclusion of his formal education he possess the knowledge, skills and abilities necessary to provide those services appropriate to the primary care setting. These services would include, but need not be limited to, the following:

a. The initial approach to a patient of any age group in any setting to elicit a detailed and accurate history, perform an appropriate physical examination and record and present pertinent data in a manner meaningful to the physician.

b. Performance or assistance in performance of routine laboratory and related studies as appropriate for a specific practice setting, such as the drawing of blood samples, performance of urinalyses, and the taking of electrocardiographic tracings.

c. Performance of such routine therapeutic procedures as injections, immunizations, and the suturing and care of wounds.

d. Instruction and counseling of patients regarding physical and mental health on matters such as diets, disease, therapy, and normal growth and development.

e. Assisting the physician in the hospital setting by making patient rounds, recording patient progress notes, accurately and appropriately transcribing and executing standing orders and other specific orders at the direction of the supervising physician, and compiling and recording detailed narrative case summaries.

f. Providing assistance in the delivery of services to patients requiring continuing care (home, nursing home, extended care facilities, etc.) including the review and monitoring of treatment and therapy plans.

g. Independent performance of evaluation and treatment procedures essential to

providing an appropriate response to life-threatening, emergency situations.

h. Maintain an awareness of the community's various health facilities, agencies, and resources in order to facilitate the physician's referral of appropriate patients.

i. Assist the physician in the office in the ordering of drugs and supplies, in the keeping of records, and in the upkeep of equipment.

136.5(2) The physician's assistant must clearly identify himself as such when performing his duties. He shall at all times while on duty wear a name tag with a designation of physician's assistant thereon.

136.5(3) The assistant must generally function in reasonable proximity to the physician. If he is to perform duties away from the responsible physician, such physician must clearly specify to the board those circumstances which would justify this action and the written policies established to protect the patient.

136.5(4) Special permission may be granted by the board to utilize a physician's assistant in a place remote from the physician's primary place for meeting patients if:

a. There is a demonstrated need for such utilization.

b. Adequate provision for immediate communication between the physician and his physician's assistant exists.

c. A mechanism has been developed to provide for the establishment of a direct patient-physician relationship between the supervising physician and patients who may be seen initially by the physician's assistant.

d. The responsible physician spends at least two one-half days per week in the remote office.

e. Adequate supervision and review of the work of the physician's assistant is provided.

136.5(5) It shall be the responsibility of the supervising physician to insure that:

a. The best interests of his patients are served by the utilization of a physician's assistant.

b. Adequate supervision and review of the work of the physician's assistant is provided.

(1) The supervising physician shall review at least weekly all patient care provided by the physician's assistant if such care is rendered without direct consultation with the physician and shall countersign all notes made by the physician's assistant.

(2) In the temporary absence of the supervising physician, the physician's assistant may carry out those tasks for which he is registered, if the supervisory and review mechanisms are provided by a delegated alternative physician supervisor.

(3) The physician's assistant may not function as such if these supervisory and review functions are impossible.

c. No physician's assistant in his employ advertises himself in any manner which would tend to mislead the public generally or the patients of the physician as to his role.

d. The physician's assistant in his employ performs only those tasks which have been authorized by the board. If the physician's assistant is being trained to perform additional tasks beyond those authorized, such training may be carried out only under the direct, personal supervision of the supervising physician or a qualified person designated by him.

136.5(6) The assistant must be prepared to demonstrate upon request to a member of the board or to other persons designated by the board, his ability to perform those tasks assigned to him by his responsible physician.

136.6(148B) Termination of approval.

136.6(1) The approval of an assistant shall be terminated by the board when, after due notice and a hearing in accordance with the provisions of this rule, it shall find:

a. The assistant has held himself out or permitted another to represent him as a licensed physician.

b. The assistant has, in fact, performed otherwise than at the direction and under the supervision of a physician licensed by the board.

c. The assistant has been delegated a task or performed a task beyond his competence, unless there may be some mitigating circumstances such as a physician's assistant attending a patient in a life-threatening emergency.

d. The assistant is an habitual user of intoxicants or drugs to such an extent that he is

unable to perform as an assistant to the physician.

e. The assistant has been convicted of a felony or other criminal offense involving moral turpitude. A plea of guilty or a copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence thereof.

f. The assistant has been adjudicated a mental incompetent or whose mental condition renders him unable to safely perform as an assistant to a physician; or

g. The assistant has failed to comply with any of the provisions of these rules or the provisions of chapter 148B of the Code.

136.6(2) Before the board shall terminate approval granted by it to an assistant it will give to the assistant and to the physician to whom he is certified notice of hearing by registered mail indicating the general nature of charges, accusation, or complaint preferred against him and stating that the assistant will be given an opportunity to be heard concerning such charges or complaints at a time and place stated in such notice, or to be thereafter fixed by the board, and shall hold a public hearing within a reasonable time. The burden of satisfying the board that the charges or complaints are unfounded shall be upon the assistant. The board shall determine the charge or charges upon the merits on the basis of the evidence in the record before it and shall prepare written findings of fact and its decision based thereon. A copy of the board's decision shall immediately be sent by registered mail to the assistant's last known post-office address.

136.6(3) In hearings held pursuant to this rule, the board shall admit and hear evidence in the same manner and form as prescribed by law for actions in equity.

136.6(4) The board's findings with respect to grounds for termination shall be based upon a preponderance of evidence under the rules applicable to the trial of civil cases, provided that relevant and material information of any nature including that contained in reports, studies, or examinations may be admitted and relied upon to the extent of its probative value. When information contained in a report, study or examination is admitted in evidence, the person making such a report, study, or examination shall be subject to both direct and cross-examination when reasonably available.

136.7(148B) Grounds for refusing. The board may refuse to grant approval to any person otherwise qualified upon any of the grounds for which the approval of an assistant may be terminated by the board.

136.8(148B) Termination of employment. Upon termination of employment the board shall require the physician and the physician's assistant to submit a summary of reasons for and circumstances of termination of employment. Certification of approval shall be automatically terminated and withdrawn on termination of employment.

136.9(148B) Professional corporation or partnership.

136.9(1) Whenever the supervising physician is a member of a professional corporation or partnership, the supervising physician shall be solely responsible for the direction and supervision of the physician's assistant. The supervising physician may designate another physician to direct and supervise the physician's assistant when such other physician is a member of the supervising physician's partnership, corporation, clinic, or other legal entity and when such delegation of authority to supervise a physician's assistant has been approved by the board. Such responsibility for supervision cannot be transferred to the corporation or partnership even though such corporation or partnership may pay the physician's and the physician's assistant's salary, or enter into an employment agreement with such physician's assistant or supervising physician.

136.9(2) The limitation of two physician's assistants to a supervising physician approved by the board shall apply to physicians who are members of professional corporations or partnerships.

136.10(148B) Physician's assistant trainee.

136.10(1) Any person who is enrolled as a trainee in any school offering an accredited physician's assistant training program shall comply with the rules set forth herein.

136.10(2) Notwithstanding any other provisions of these rules, a trainee may perform medical services when such services are rendered within the scope of an approved program.

136.11(148B) Application for program approval.

136.11(1) Application for program approval for the education and training of

physician's assistants must be made upon forms supplied by the board and must be signed by the medical director or the program director.

136.11(2) Application forms submitted to the board must be completed in every detail. Every supporting document required by the application form must be submitted with each application.

136.12(148B) Essential requirements of an approved program. An educational program for the instruction of a physician's assistant shall meet the following essential requirements:

136.12(1) Educational programs may be established in:

a. Medical schools.

b. Senior colleges and universities in affiliation with an accredited teaching hospital.

c. Medical educational facilities of the federal government.

d. Other institutions with clinical facilities, which are acceptable to the Council on Medical Education of the American Medical Association.

The institution should be accredited or otherwise acceptable to the Council on Medical Education of the American Medical Association or other nationalized accrediting agency approved by the board. Senior colleges and universities must have the necessary clinical affiliations.

136.12(2) *Clinical affiliations.* The clinical phase of the educational program must be conducted in a clinical setting and under competent clinical direction.

In programs where the academic instruction and clinical teaching are not provided in the same institution, accreditation shall be given to the institution responsible for the academic preparation (student selection, curriculum, academic credit, etc.) and the educational administrators shall be responsible for assuring that the activities assigned to students in the clinical setting are, in fact, educational.

In the clinical teaching environment, an appropriate ratio of students to physicians shall be maintained.

136.12(3) *Facilities.*

a. Adequate classrooms, laboratories, and administrative offices should be provided.

b. Appropriate modern equipment and supplies for directed experience should be available in sufficient quantities.

c. A library should be readily accessible and should contain an adequate supply of up-to-date, scientific books, periodicals, and other reference materials related to the curriculum.

136.12(4) *Finances.*

a. Financial resources for continued operation of the educational program shall be assured for each class of students enrolled.

b. The institution shall not charge excessive student fees.

c. Advertising must be appropriate to an educational institution.

d. The program shall not substitute students for paid personnel to conduct the work of the clinical facility.

136.12(5) *Faculty.*

a. Program director.

(1) The program director shall meet the requirements specified by the institution providing the didactic portion of the educational program.

(2) The program director shall be responsible for the organization, administration, periodic review, continued development, and general effectiveness of the program.

b. Medical director.

(1) The medical director shall provide competent medical direction for the clinical instruction and for clinical relationships with other educational programs. He should have the understanding and support of practicing physicians.

(2) The medical director shall be a physician experienced in the delivery of the type of health care services for which the student is being trained.

(3) The medical director may also be the program director.

c. Change of director. If the program director or medical director is changed, immediate notification should be sent to the board. The curriculum vitae of the new director, giving details of his training, education, and experience, must be submitted.

d. Instructional staff.

(1) The faculty must be qualified, through academic preparation and experience, to teach the subjects assigned.

(2) The faculty for the clinical portion of the educational program must include physicians who are involved in the provision of patient care services. Because of the unique characteristics of the assistant to the primary care physician, it is necessary that the preponderance of clinical teaching be conducted by practicing physicians.

e. Advisory committee. An advisory committee shall be appointed to assist the director in continuing program development and evaluation, in faculty co-ordination of effective clinical relationships. For maximum effectiveness, an advisory committee shall include representation of the primary institution involved, the program administration, organized medicine, the practicing physician, and others.

136.12(6) *Students.*

a. Selection of students shall be made by an admissions committee in co-operation with those responsible for the educational program. Admissions data shall be on file at all times in the institution responsible for the administration of the program.

b. Selection procedures shall include an evaluation of previous academic performance and experience and shall seek to accommodate candidates with a health related background and give due weight to the knowledge, skills and abilities they possess.

c. Applicants shall be required to submit evidence of good health. When students are learning in a clinical setting or a hospital, the hospital or clinical setting should provide them with the protection of the same physical examinations and immunizations as are provided to hospital employees working in the same clinical setting.

d. The number of students enrolled in each class shall be commensurate with the most effective learning and teaching practices and shall also be consistent with acceptable student-teacher ratios.

e. A student guidance and placement service shall be available.

f. Students enrolled in the educational program must be clearly identified to distinguish them from physicians, medical students, and students and personnel for other health occupations.

136.12(7) *Records.* Satisfactory records shall be provided for all work accomplished by the student while enrolled in the program. Annual reports of the operation of the program shall be prepared and available for review.

a. Student.

(1) Transcripts of high school and any college credits and other credentials shall be on file.

(2) Reports of medical examination upon admission and records of any subsequent illness during training shall be maintained.

(3) Records of class and laboratory participation and academic and clinical achievements of each student shall be maintained in accordance with the requirements of the institution.

b. Curriculum.

(1) A synopsis of the current curriculum shall be kept on file.

(2) This synopsis shall include the rotation of assignments, the outline of the instruction supplied, and lists of multimedia instructional aids used to augment the experience of the student.

c. Activity.

(1) A satisfactory record system shall be provided for all student performance.

(2) Practical and written examinations shall be continually evaluated.

136.12(8) *Curriculum.*

a. The length of the educational programs for the assistant to the primary care physician may vary from program to program. The length of time an individual spends in the training program may vary on the basis of the student's background and in consideration of his previous education, experience, knowledge, skills and abilities, and his ability to perform the tasks, functions and duties of a physician's assistant.

b. Instruction, tailored to meet the student's needs, shall follow a planned outline including:

(1) Assignment of appropriate instructional materials.

(2) Classroom presentations, discussions and demonstrations.

(3) Supervised practice discussions.

(4) Examinations, tests, and quizzes —both practical and written—for the didactic and clinical portions of the educational program.

c. General courses of topics and study, both didactic and clinical, shall include the following:

(1) The general courses and topics of study must be achievement oriented and provide the graduates with the necessary knowledge, skills, and abilities to accurately and reliably perform tasks, functions, and duties implied in the "Method of Performance".

(2) Instruction shall be sufficiently comprehensive so as to provide the graduate with an understanding of mental and physical disease in both the ambulatory and hospitalized patient. Attention shall also be given to preventive medicine and public health and to the social and economic aspects of the systems for delivering health and medical services. Instruction shall stress the role of the assistant to the physician relative to the health maintenance and medical care of his supervising physician's patients. Throughout, the student shall be encouraged to develop those basic intellectual, ethical, and moral attitudes and principles that are essential for his gaining and maintaining the trust of those with whom he works and the support of the community in which he lives.

(3) A "model unit of primary medical care", such as the models used in departments of family practice in medical schools and family practice residencies, shall be encouraged so that the medical student, the resident, and the assistant to the physician can jointly share the educational experience in an atmosphere that reflects and encourages the actual practice of primary medical care.

(4) The curriculum shall be broad enough to provide the assistant to the physician with the technical capabilities, behavioral characteristics, and judgment necessary to perform in a professional capacity all of his assignments, and shall take into consideration any proficiency and knowledge obtained elsewhere and demonstrated prior to completion of the program.

136.12(9) *Administration.* An official publication, including a description of the program, shall be available. It shall include information regarding the organization of the program, a brief description of required courses, names and academic rank of faculty, entrance requirements, tuition and fees, and information concerning hospitals and facilities used for training.

The evaluation (including survey team visits) of a program of study must be initiated by the express invitation of the chief administrator of the institution or his officially designated representative.

The program may withdraw its request for initial approval at any time (even after evaluation) prior to final action.

The board may withdraw approval whenever:

1. The educational program is not maintained in accordance with the standards outlined above, or

2. There are no students in the program for two consecutive years.

Approval may be withdrawn only after advance notice has been given to the director of the program that such action is contemplated, and the reasons therefor, sufficient to permit timely response and use of the established procedure for appeal and review in accordance with the Administrative Procedure Act.

a. Evaluation.

(1) The head of the institution being evaluated is given an opportunity to become acquainted with the factual part of the report prepared by the visiting survey team, and to comment on its accuracy before final action is taken.

(2) At the request of the head of the institution, a re-evaluation may be made. Adverse decisions may be appealed in writing to the board.

(3) The evaluation, including survey team visits of a program of study made by the Council on Medical Education of the American Medical Association, will be adopted by the board for program evaluation and approval.

b. Recognized program. To retain its recognition by the board, a recognized program shall:

(1) Make available to the board yearly summaries of case loads and educational activities done by clinical affiliates, including

volume of out-patient visits, number of in-patients, and the operating budget;

(2) Maintain a satisfactory record of the entrance qualifications and evaluations of all work done by each student, which shall be available to the board; and

(3) Notify the board in writing of any major changes in the curriculum or a change in the directorship of the program.

Recognition of a program may be withdrawn when, in the opinion of the board, the program fails to maintain the educational standards described above. When a program has not been in operation for a period of two consecutive years, recognition will automatically be withdrawn. Withdrawal of recognition from a program will in no way affect the status of an assistant who graduated from such program while it was recognized and who has been approved by the board.

136.12(148B) Prohibition. No physician's assistant shall be permitted to prescribe lenses, prisms or contact lenses for the aid, relief or correction of human vision. No physician's assistant shall be permitted to measure the visual power and visual efficiency of the human eye, as distinguished from routine visual screening, except in the personal presence of a supervising physician at the place where such services are rendered.

These rules are intended to implement chapter 148B of the Code.

[Effective November 14, 1974]

HIGHWAY COMMISSION

Pursuant to the authority of section 321E.15 of the Code, rules of the highway commission, appearing in 1973 IDR, chapter 2, pages 502 and 503, relating to special permits, operation and movement of vehicles and loads of excess size and weight, are amended as follows:

[Filed December 4, 1974]

ITEM 1. Subrule 2.4(2) is amended by inserting new paragraph "*j.* Escort fee shall not exceed eighty dollars per ten-hour day or prorated fraction thereof per man and car." following paragraph *"i."*

ITEM 2. Subrule 2.4(4) *"a"* (3) is amended by inserting "(Escort may be waived at the discretion of the permit issuing authority.)" immediately following the first sentence.

These rules are intended to implement chapter 321E of the Code.

[Effective December 4, 1974]

HIGHWAY COMMISSION

(continued)

Pursuant to the authority of section 306.6 of the Code, as amended by senate file 1062, 1974 session of the 65th general assembly, rules appearing in 1973 IDR, Highway Commission, chapter 3, pages 511 and 512, relating to functional classification of highways are amended as follows:

[Filed October 8, 1974]

ITEM 1. Subrule 3.6(1) is amended by inserting new paragraph "*f.* County conservation parkway" following paragraph *"e"* and relettering old paragraph *"f"* to "*g.* Area service".

ITEM 2. Subrule 3.6(2) is amended by inserting new paragraph "*i.* Municipal residential alley" following paragraph *"h."*

ITEM 3. Subrule 3.10(2) paragraph *"a"* is amended by inserting "County conservation parkway...Yellow" following "Trunk collector...Brown".

Further amend said rule, paragraph *"b"* by inserting new line "Municipal residential alley...Black" following "Municipal service...Black."

ITEM 5. Subrule 3.10(3) is amended by striking paragraph *"b"* and inserting new paragraph *"b.* Listing of each segment of road contained in the individual classes except for the area service system, county conservation parkway system, municipal residential alley system, and the municipal service system."

These rules are intended to implement chapter 306 of the Code.

[Effective October 8, 1974]

HIGHWAY COMMISSION

(continued)

Pursuant to the authority of section 306C.11, subsection 5, of the Code, as amended by House File 1425, 1974 Session of the 65th General Assembly, rules of highway commission, appearing in the January 1974 Supplement to IDR, chapter 5, pages 37 to 60, relating to Outdoor Advertising are amended as follows:

[Filed October 8, 1974]

ITEM 1. Subrule 5.1(5), page 37, is amended by striking from lines 3 and 4 the words "in the same manner as other official traffic signs" and substituting the words "within the highway right of way".

Further amend said rule, paragraph *"a"*, by striking from lines 1 and 2 the words "'gas', 'food', or 'lodging'" and inserting the words "GAS", "FOOD", "LODGING" or "CAMPING".

ITEM 2. Rule 5.1(306B, 306C), pages 37 to 39 is amended by adding the following subrule:

5.1(20) *"Theoretical gore"* means the earliest point at which the exit roadway becomes fully separated from the mainline roadway.

ITEM 3. Subrule 5.7(2), pages 45 to 48, is rescinded and the following subrule is substituted.

5.7(2) *Official signs within right of way of interstate and freeway primary highways giving specific information to the traveling public, (logo signing).* The commission shall control the erection and maintenance of official signs giving specific information of interest to the traveling public in accord with the following criteria. (See Appendix Figures 1-10):

a. The commission shall erect specific information panels at rural interchanges. Specific information panels shall not be installed within suburban or urban areas, except where roadside development is not urban in character.

b. Specific information panels shall be fabricated and located as detailed on the signing plans for the interchange and shall be located in a manner to take advantage of natural terrain and to have the least impact on the scenic environment.

c. A separate mainline specific information panel shall be provided on the interchange approach for each qualified type of motorist service. Where a qualified type of motorist service is not available at an interchange, the specific information panel may not be erected.

d. The mainline specific information panel shall be erected between the previous interchange and one-half mile in advance of the theoretical gore for the approaching interchange; providing no panel shall be closer than 800 feet to any major guide sign, with at least a 1000-foot spacing between the information panels. In the direction of traffic, the successive panels shall be those for "CAMPING", "LODGING", "FOOD", "GAS", in that order. (See Appendix Figures 1, 3, and 7). If the spacing limitations prohibit the erection of specific information panels for all of the four types of services, preference shall be given to available "GAS", "FOOD", "LODGING", or "CAMPING", services in that order. No specific information panels shall be erected where minimum spacing limitations cannot be met.

e. On a single exit interchange where the advertised activity or the on premise signing of a service installation identified by a business sign on the mainline specific information panel is not visible from the ramp terminal, a ramp specific information panel for the qualified type of motorist service shall be erected. (See Appendix Figure 7). When the advertised activity or on premise signing is visible from the ramp terminal, no ramp specific information panel shall be erected. (See Appendix Figure 3).

f. The ramp specific information panel shall be erected as detailed on the signing plans for the interchange. If conditions permit, the successive panels along the ramp in the direction of traffic shall be those for "CAMPING", "LODGING", "FOOD", "GAS", in that order. (See Appendix Figure 7). If conditions require panel installation other than successive panels along the ramp, preference shall be given to "GAS", "FOOD", "LODGING", "CAMPING", in that order, from top to bottom or left to right.

g. Specific information panels may not be erected at an interchange at which an exit

from the interstate or freeway primary highway is provided, but at which no entrance ramp exists at the interchange or at another reasonably convenient location that would permit a motorist to proceed in the desired direction of travel without undue indirection or use of poor connection roads.

h. Business signs may be permitted upon mainline specific information panels provided said signs comply with the following criteria:

(1) The individual business installation whose name, symbol or trademark appears on a business sign, shall have given written assurance of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, religion, color, or national origin and shall not be in continuing breach of that assurance.

(2) The maximum distance that the "GAS", "FOOD", "LODGING", or "CAMPING" services can be located from the exit shall not exceed one mile for "GAS", three miles for "FOOD" and "LODGING", and five miles for "CAMPING", in either direction. Said distance shall be measured from the earliest possible point of entry from the exit ramp to the intersecting crossroad, in the direction of the service location.

(3) "GAS" and associated services to qualify for erection of a business sign on a panel shall include—

(i) Appropriate licensing as required by law

(ii) Vehicle services such as fuel, oil, and water

(iii) Rest room facilities and drinking water

(iv) Year-around operation at least sixteen continuous hours per day, seven days a week

(v) Public telephone

(4) "FOOD" to qualify for erection of a business sign on a panel shall include—

(i) Appropriate licensing as required by law

(ii) Year-around operation at least twelve continuous hours per day to serve three meals a day (breakfast, lunch, and dinner), seven days a week

(iii) Public telephone

(5) "LODGING" to qualify for erection of a business sign on a panel shall include—

(i) Appropriate licensing as required by law

(ii) Adequate sleeping accommodations consisting of a minimum of ten units each, including bathroom and sleeping room

(iii) Public telephone

(6) "CAMPING" to qualify for erection of a business sign on a panel shall include—

(i) Appropriate licensing as required by local and State law, including chapter 135D, of the Code

(ii) Removal or masking of said business sign by the commission during off-seasons, if operated on a seasonal basis

(iii) Public telephone

(7) Erection or maintenance of any advertising device in violation of section 306C.11 or section 306C.13 of the Code, which serves the same business shall disqualify any such advertiser from obtaining a business sign upon any specific information panel.

(8) When the advertised activity or on premise signing of the service installation are not visible from the ramp terminal and a ramp specific information panel is erected, application shall be made for space on the ramp specific information panel in addition to application for space on the mainline specific information panel.

i. For single-exit interchanges, the maximum size of the "GAS" mainline specific information panel shall be fifteen feet wide and ten feet high (See Appendix Figure 4), the minimum size shall be fifteen feet wide and six feet high (See Appendix Figure 5). The directional legend "NEXT RIGHT" shall be displayed on the panel.

j. For single-exit interchanges, the maximum size of the "FOOD", "LODGING", or "CAMPING" mainline specific information panel shall be thirteen feet wide and ten feet high (See Appendix Figure 4), the minimum size shall be thirteen feet wide and six feet high (See Appendix Figure 5). The directional legend "NEXT RIGHT" shall be displayed on the panel.

k. For single-exit interchanges, the size of the ramp specific information panel shall be

as detailed on the signing plans for the interchange. (See Appendix Figures 8 and 9). Directional arrows shall be displayed on the panel to indicate the direction of the appropriate service.

l. For double-exit interchanges where "GAS" service is to be signed for only one exit, one fifteen feet wide and six feet high mainline specific information panel shall be used. Where "GAS" services are to be signed for each exit, the mainline specific information panel shall consist of two fifteen feet wide and six feet high sections and shall display the appropriate business signs and directional information for each exit. The top section shall display the business signs for the first exit with the directional legend "NEXT RIGHT". The lower section shall display the business signs for the second exit with the directional legend "SECOND RIGHT". (See Appendix Figure 2).

m. For double-exit interchanges where "FOOD", "LODGING", or "CAMPING" services are to be signed for only one exit, one thirteen feet wide and six feet high mainline specific information panel shall be used. Where "FOOD", "LODGING", or "CAMPING" services are to be signed for each exit, the mainline specific information panel shall consist of two thirteen feet wide and six feet high sections and shall display the appropriate business signs and directional information for each exit. The top section shall display the business signs for the first exit with the directional legend "NEXT RIGHT". The lower section shall display the business signs for the second exit with the directional legend "SECOND RIGHT". (See Appendix Figure 2).

n. On double-exit interchanges, ramp specific information panels shall not be erected.

o. The mainline specific information panel shall be a blue panel with a white reflectorized border and with white reflectorized words "GAS", "FOOD", "LODGING", or "CAMPING" and exit directional legend in ten-inch capital letters.

p. The ramp specific information panel shall be a blue panel with a white reflectorized border and with white reflectorized words "GAS", "FOOD", or "LODGING" in eight-inch capital letters.

q. The "GAS", mainline specific information panel shall be limited to a maximum of six individual business signs with a maximum of three signs per horizontal row and the "FOOD" or "LODGING" mainline specific information panel shall be limited to a maximum of four individual business signs with a maximum of two signs per horizontal row.

r. The "GAS", ramp specific information panel shall be limited to a maximum of six individual business signs with a maximum of five signs per horizontal row and the "FOOD", "LODGING", or "CAMPING" ramp specific information panel shall be limited to a maximum of four individual business signs with a maximum of three signs per horizontal row.

s. Business sign installation order upon specific information panels shall be in the order of travel distance measured from the earliest possible point of entry from the exit ramp to the intersecting crossroad, in the direction of the service location.

t. On mainline specific information panels for either a double-exit interchange or for a single-exit interchange where a minimum size specific information panel is used, business sign installation shall be in a single horizontal row from left to right with respect to travel distance. (See Appendix Figures 1, 3, and 7).

u. On maximum size mainline specific information panels for a single-exit interchange, business sign installation shall be in a single horizontal row from left to right with respect to travel distance when the number of business signs displayed is more than one half or less of the maximum allowed. When the number of business signs displayed is more than one half of the maximum allowed, installation shall be nearest service, top left, next nearest service, lower left and continuing top row, lower row to the right. (See Appendix Figures 3 and 7).

v. On ramp specific information panels, business sign installation shall be in a single horizontal, top row for service installations in the "left" direction and in a single horizontal, bottom row for service installations in the "right" direction. Installation order shall be from left to right with respect to travel distance. (See Appendix Figure 7).

w. Individual businesses requesting placement of a business sign upon a mainline specific information panel shall submit an application form, provided by the commission, containing the necessary information,

with remittance in a form other than cash in the amount of twenty-five dollars for each mainline and each ramp business sign. The twenty-five dollar remittance shall not be refundable either in full or proportionately unless the initial sign application is denied. An annual renewal fee of twenty-five dollars for each business sign will be due thirty days in advance of July 1 each year. Failure to submit renewal fees by this date shall be cause for removal and disposal of the business sign by the commission.

x. Upon approval of the application, the applicant shall furnish a business sign to the commission which meets commission specifications for placement on specific information panels. The business sign shall be a blue sign with a white border and white legend, except that colors consistent with customary use should be used with nationally, regionally, or locally known symbols or trademarks. Reflectorization may be used on business signs only when the service is available twenty-four hours per day, seven days a week.

y. On mainline business signs the principal legend shall be at least ten-inch letters whether capital or lowercase, except when the symbol or trademark is used alone for the business sign, any legend thereon shall be proportional to the size customarily used on said symbol or trademark. The "GAS" mainline business sign shall be contained within a forty-eight-inch wide and thirty-six-inch high rectangular panel. The "FOOD", "LODGING" or "CAMPING" mainline business sign shall be contained within a sixty-inch wide and thirty-six-inch high rectangular panel. (See Appendix Figure 6).

z. On ramp business signs the principal legend shall be at least four-inch letters whether capital or lowercase, except when the symbol or trademark is used alone for the business sign, any legend thereon shall be proportional to the size customarily used on said symbol or trademark. The "GAS" business sign shall be contained with a twenty-four inch wide and sixteen inch high rectangular panel. The "FOOD", "LODGING", or "CAMPING" ramp business sign shall be contained with a thirty-six-inch wide and sixteen-inch high rectangular panel. (See Appendix Figure 10).

aa. The commission shall perform all required installation, maintenance, and removal and replacement of all business signs upon specific information panels within the right of way.

bb. No business sign shall be displayed which would mislead or misinform the traveling public, or which is unsightly, badly faded, or in a substantial state of dilapidation. Any message, trademarks, or brand symbols which interfere with, imitate, or resemble any official warning or regulatory traffic sign, signal or device are prohibited. The commission shall remove, replace, or mask any such business signs as appropriate. Ordinary initial installation and maintenance services shall be performed by the commission at such necessary times upon payment of the annual renewal fee, and removal shall be performed upon failure to pay any fee or for violation of any provision of these rules and the business sign shall be disposed of.

cc. At such other times the commission may perform additional requested services in connection with changes of the business sign, upon payment of a twenty-five dollar service charge, and any new or renovated business sign required for such purpose shall be provided by the applicant.

dd. The commission shall not be responsible for damages to business signs caused by acts of vandalism or natural causes requiring repair or replacement of business panels. Applicants in such event shall provide a new or renovated business panel together with payment of a twenty-five dollar service charge to the commission to replace such damaged business panels.

ITEM 4. Figures 1 to 10, pages 51 to 60, are rescinded and the attached figures 1 to 10 are substituted.

FIGURE I – TYPICAL SIGNING FOR DOUBLE EXIT INTERCHANGE

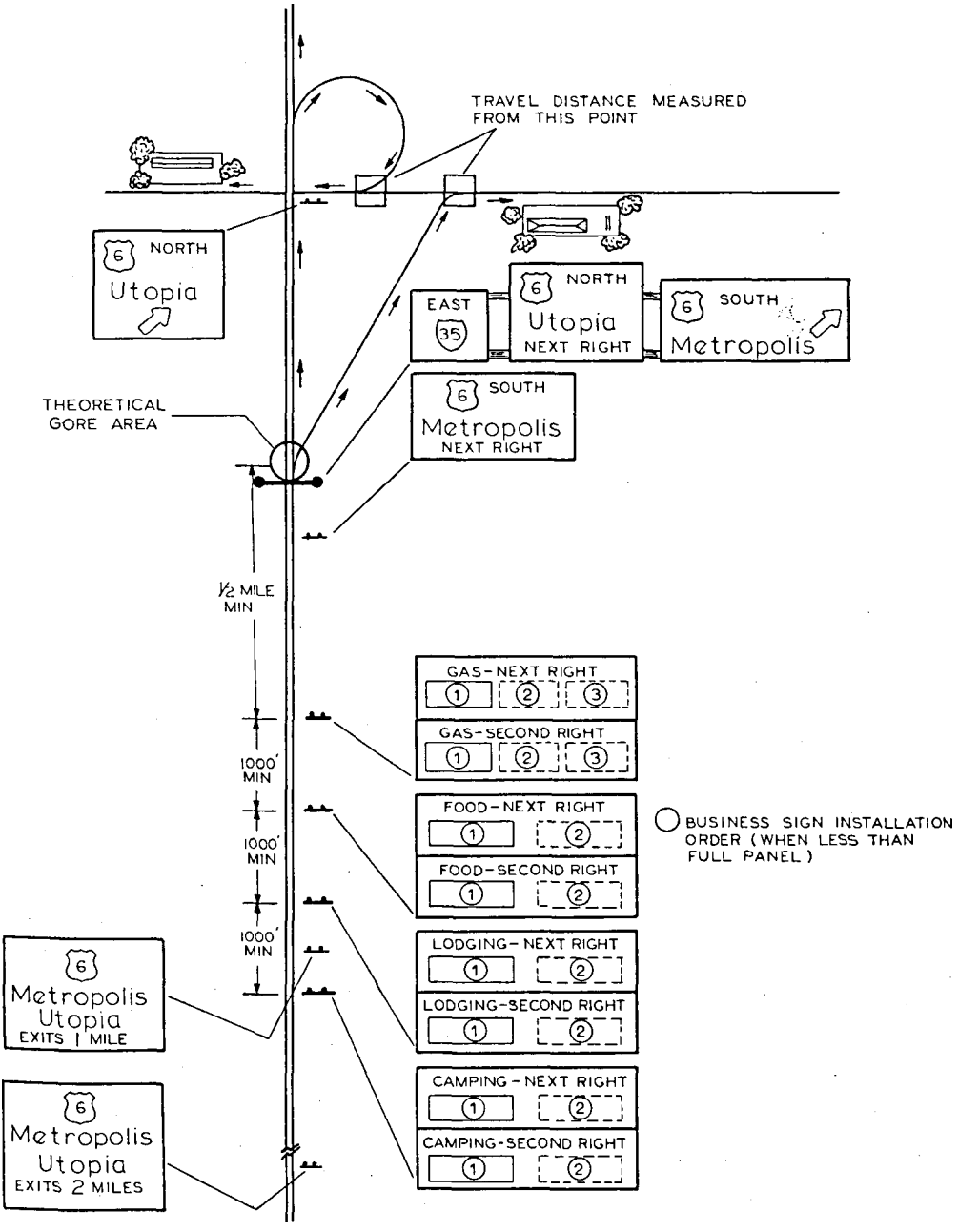
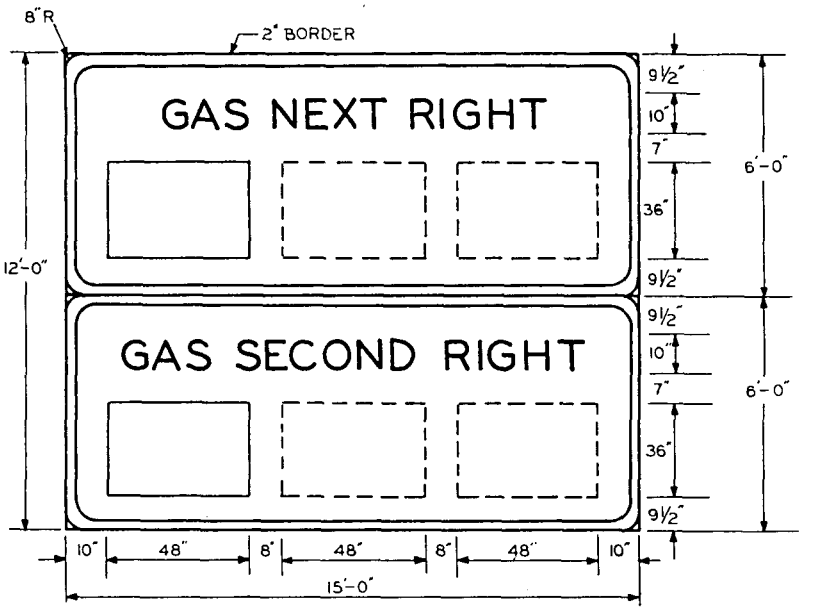
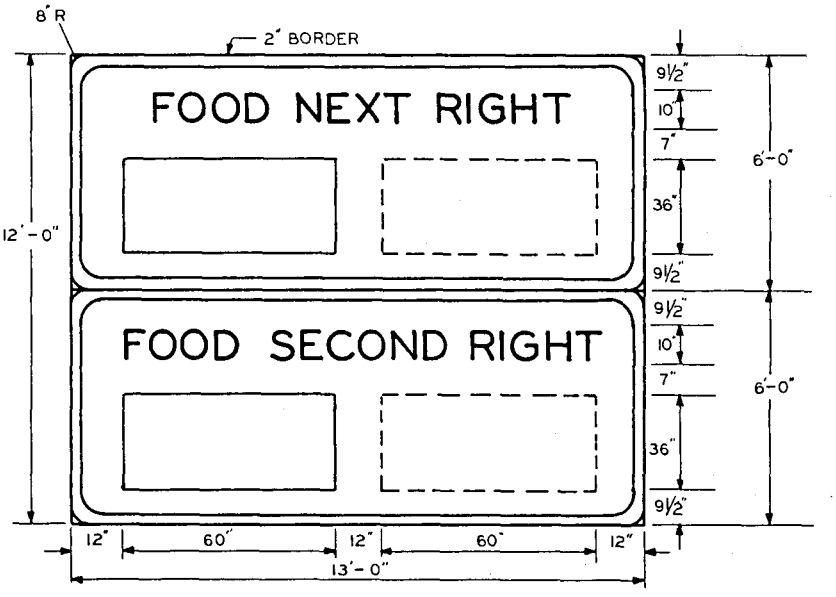


FIGURE 2 – MAINLINE SPECIFIC INFORMATION PANEL
FOR DOUBLE EXIT INTERCHANGE



GAS PANEL



FOOD, LODGING OR CAMPING PANEL

FIGURE 3 – TYPICAL SIGNING FOR SINGLE EXIT INTERCHANGE WHERE THE SERVICES ARE VISIBLE FROM THE RAMP TERMINAL

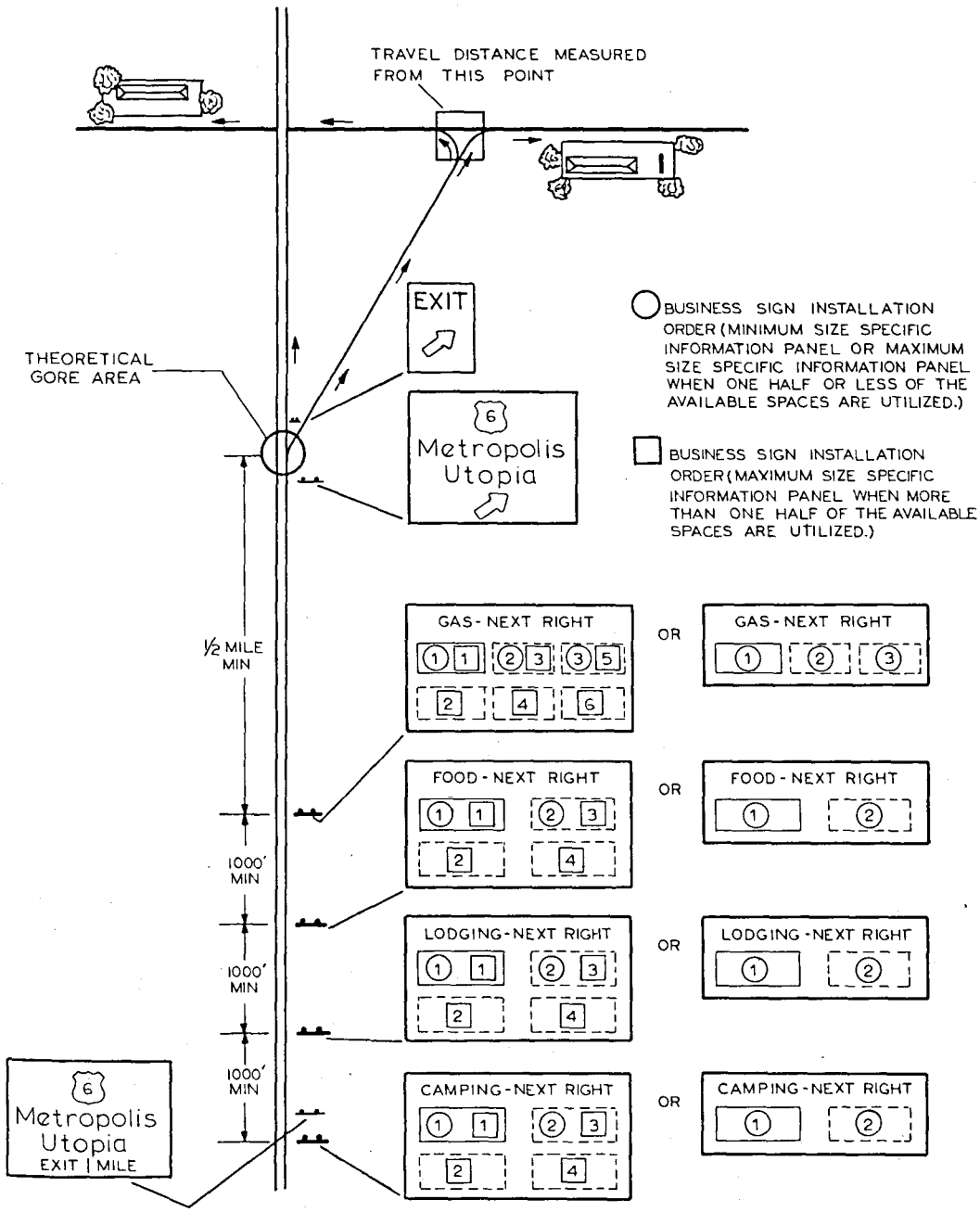
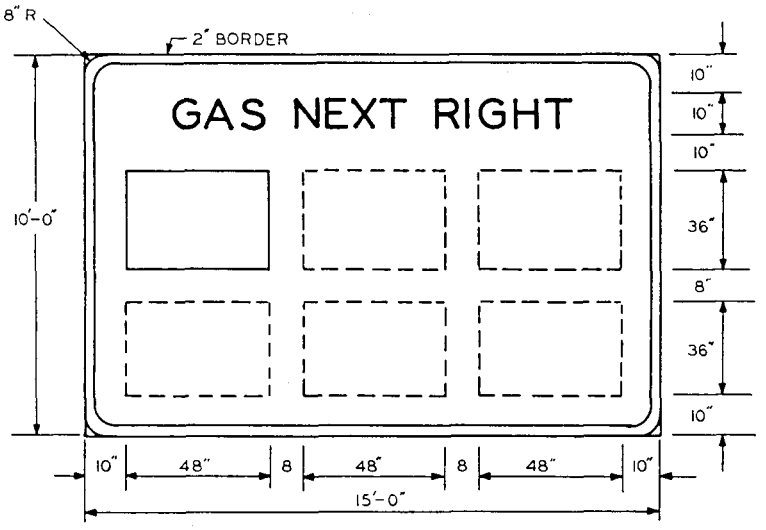
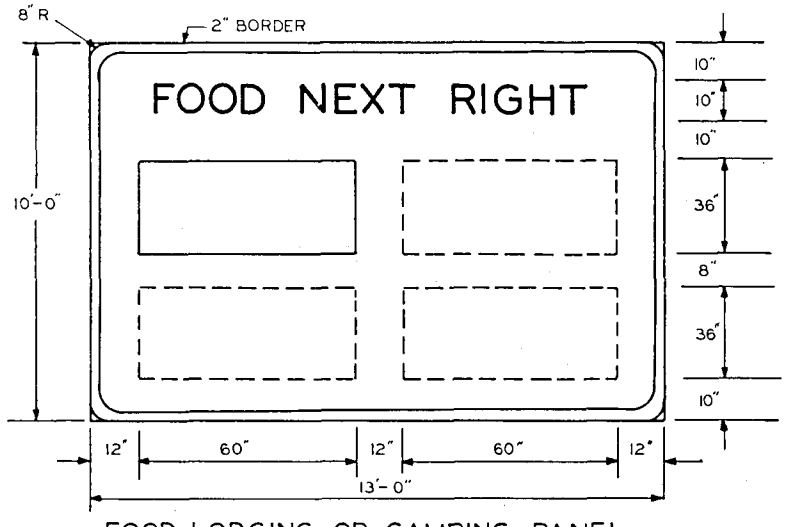


FIGURE 4 – MAXIMUM SIZE MAINLINE SPECIFIC INFORMATION PANEL FOR SINGLE EXIT INTERCHANGE

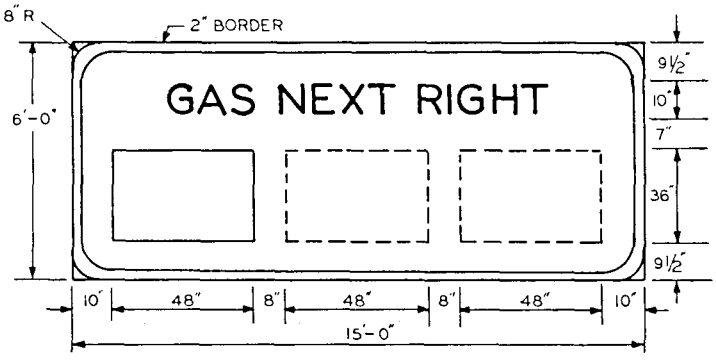


GAS PANEL

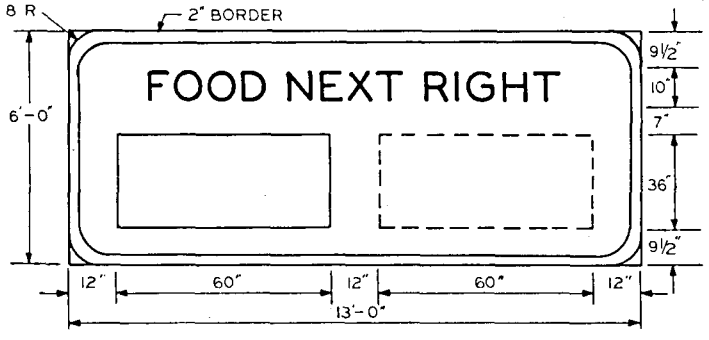


FOOD, LODGING OR CAMPING PANEL

FIGURE 5 – MINIMUM SIZE MAINLINE SPECIFIC INFORMATION PANEL FOR SINGLE EXIT INTERCHANGE

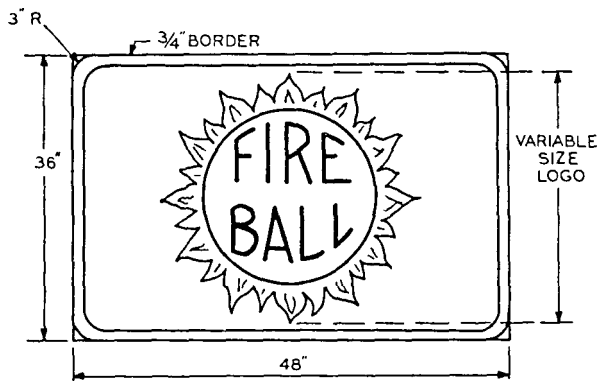


GAS PANEL

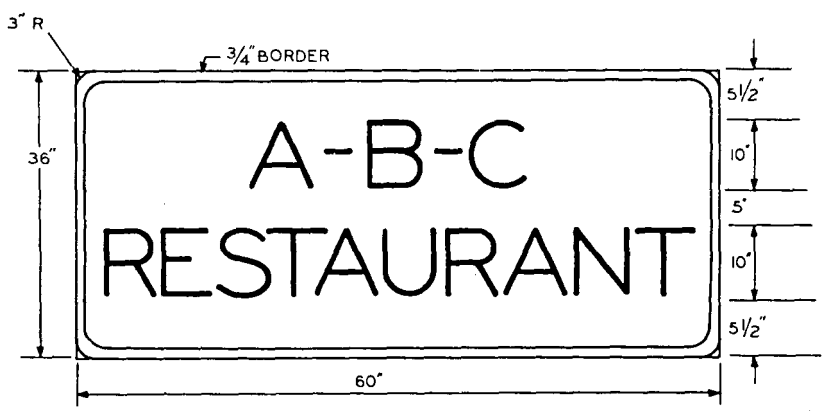


FOOD, LODGING OR CAMPING PANEL

FIGURE 6 – MAINLINE BUSINESS SIGNS



GAS SIGN



FOOD, LODGING OR CAMPING SIGN

FIGURE 7 – TYPICAL SIGNING FOR SINGLE EXIT INTERCHANGE WHERE THE SERVICES ARE NOT VISIBLE FROM THE RAMP TERMINAL

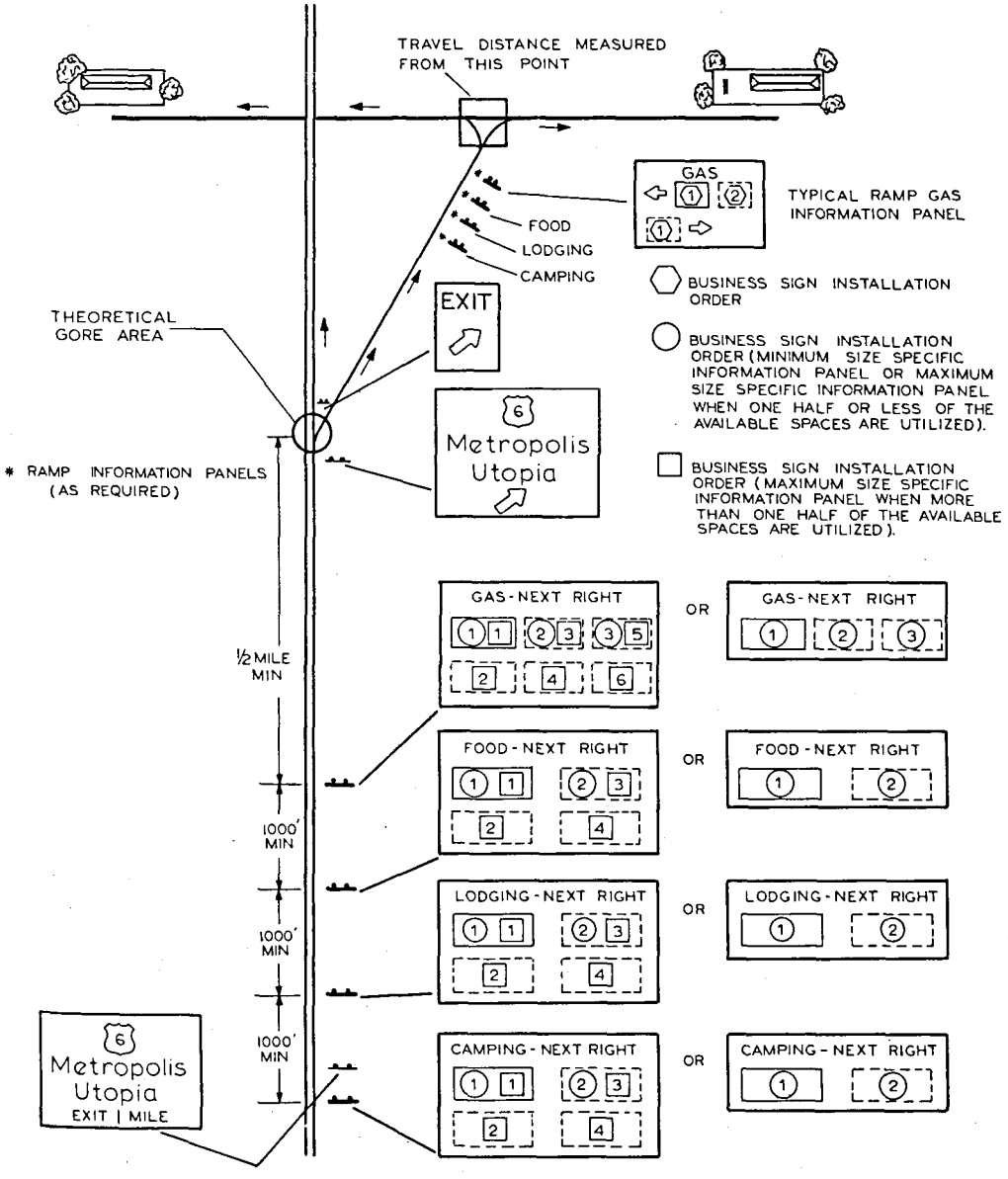
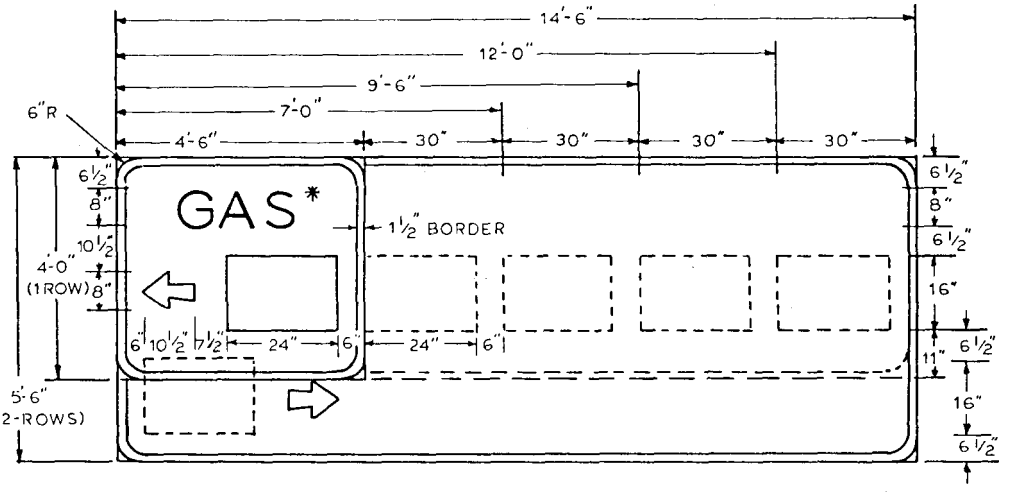
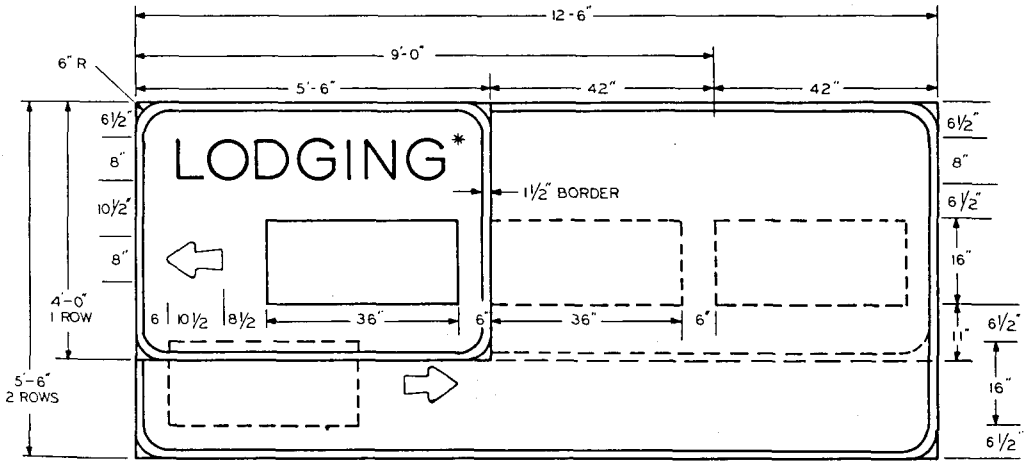


FIGURE 8 - RAMP GAS SPECIFIC INFORMATION PANEL
FOR SINGLE EXIT INTERCHANGE



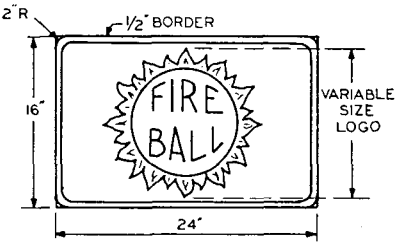
* CENTERED BASED ON LENGTH OF RAMP INFORMATION PANEL REQUIRED.

FIGURE 9 – RAMP FOOD, LODGING OR CAMPING SPECIFIC INFORMATION PANEL FOR SINGLE EXIT INTERCHANGE

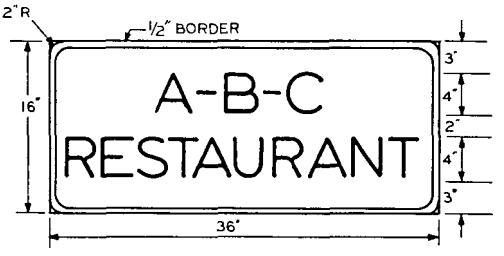


* CENTERED BASED ON LENGTH OF RAMP INFORMATION PANEL REQUIRED

FIGURE 10 – RAMP BUSINESS SIGNS



GAS SIGN



FOOD, LODGING OR CAMPING SIGN

These rules are intended to implement Chapters 306B and 306C of the Code.

[Effective October 8, 1974]

HIGHWAY COMMISSION

(continued)

Pursuant to the authority of section 306C.11 of the Code, rules of the highway commission, appearing in the January 1974 Supplement to Iowa Departmental Rules, chapter 5, relating to outdoor advertising, page 50, are amended as follows:

[Filed December 4, 1974]

ITEM 1. Subrule 5.8(5) is amended by striking the subrule in its entirety and substituting the following:

5.8(5) *Removal from right of way and other state-owned property.* Advertising devices erected upon the right of way of any public highway shall be removed pursuant to section 319.13 of the Code. Unauthorized advertising devices erected upon other property owned by the state of Iowa shall be subject to removal by the agency, board or commission having control or jurisdiction of the same.

This rule is intended to implement chapter 319 of the Code.

[Effective December 4, 1974]

HIGHWAY COMMISSION

(continued)

Pursuant to the authority of section 321.252 of the Code, rules appearing in 1973 IDR, page 517, relating to the manual on uniform traffic control devices are amended as follows.

[Filed September 24, 1974]

Paragraph 1, line 2, is amended by inserting after the word "Highways" the words ", the Errata, and Volumes I—V of Official Rulings on Requests for Interpretations, Changes, and Experimentations".

These rules are intended to implement section 321.252 of the Code.

[Effective September 24, 1974]

LABOR BUREAU

Pursuant to the authority of section 88.5 of the Code, rules appearing in the January 1974 IDR Supplement, page 64 relating to occupational safety and health standards (Chapter 10) are amended as follows.

[Filed December 3, 1974]

CHAPTER 10

OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Amend rule 10.21(88) by inserting at the end thereof the words

"39 Fed. Reg. 19468 (June 3, 1974)
39 Fed. Reg. 35896 (October 4, 1974)".

[Effective December 3, 1974]

LABOR BUREAU

(continued)

Pursuant to the authority of section 88.5 of the Code, rules appearing in the January 1974 IDR Supplement, page 65 relating to safety and health regulations for construction (Chapter 26) are amended as follows.

[Filed December 3, 1974]

CHAPTER 26

SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Amend rule 26.1(88) by inserting at the end thereof the words

"39 Fed. Reg. 19470 (June 3, 1974)
39 Fed. Reg. 24361 (July 2, 1974)".

[Effective December 3, 1974]

MERIT EMPLOYMENT DEPARTMENT

Pursuant to the authority of section 19A.9 of the Code, the rules appearing in the 1973 IDR, pages 632-636, relating to pay plan, (Chapter 4 of the merit employment department rules) are amended as follows:

[Filed July 26, 1974]

ITEM 1. On line 10, under paragraph 4.5(8)*"b"*, by striking "the following pay adjustments will be made to employees occupying positions of that class:" and inserting "the employee's rate of pay shall be maintained at the former rate of pay by adjusting to a step in the new lower pay grade corresponding to the rate of pay in the old pay grade. Employees in that class whose rate of pay exceeds the maximum step in the new lower pay grade shall be "red-circled" or frozen at the former rate of pay in the old pay range."

On line 14, under paragraph 4.5(8)*"b"*, by striking all of subparagraphs (1) and (2).

ITEM 2. On line 3, under subrule 4.6(1) by deleting the words "in seven consecutive days for shift assignments."; by adding a period after the word "work"; by adding "A workweek is a fixed and regularly recurring period of 168 hours—seven consecutive twenty-four hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. A single workweek may be established for an agency or other unit as a whole or different workweeks may be established."

ITEM 3. On line 1, under subrule 4.6(3) by deleting entire section and marking "Reserved for future use."

ITEM 4. On line 1, under rule 4.8, by deleting entire section and marking "Reserved for future use."

These rules are intended to implement section 19A.9 of the Code as amended by Acts of the 65th General Assembly, Ch 1094.

[Effective July 26, 1974]

MERIT EMPLOYMENT DEPARTMENT

(continued)

Pursuant to the authority of section 19A.9 of the Code, the rules appearing in the 1973 IDR, pages 642 to 643, relating to certification, (chapter 7 of the merit employment department rules) are amended as follows:

[Filed July 26, 1974]

ITEM 1. On line 2, under subrule 7.3(2), by striking the word "three" and the words "ranking names" and inserting "ten percent" after the word "highest".

On line 3, under subrule 7.3(2), by adding the word "appropriate" before the word "state-wide".

On line 4, under subrule 7.3(2), by deleting the words "and one name for each additional vacancy" and adding the words "or the highest five, if there are less than fifty on the appropriate state-wide eligible list,"

On line 6, under subrule 7.3(2), by striking the word "top".

On line 7, under subrule 7.3(2), by striking the word "three" and adding the words "highest ten percent or highest five" before the word "available".

On line 8, under subrule 7.3(2), by adding after the word agency. "Two names shall be added for each additional vacancy."

On line 3, under subrule 7.3(3), by striking the word "three" and adding the word "five"; by striking the word "one" and adding the word "two"; by striking the word "name" and adding the word "names".

On line 4, under subrule 7.3(3), by striking the words "the upper one-half of" and adding the words "highest ten percent from"; by adding the word "appropriate" before the word "promotional".

On line 5, under subrule 7.3(3), by adding the word "eligible" before the word "list"; by deleting the words "whichever is greater" and adding the words "if the number on the appropriate promotional eligible list exceeds fifty."

On line 7, under subrule 7.3(3), by deleting ", except that appointment may be made

from the upper half of the promotional list if the number of eligibles on the list exceeds six."

On line 3, under subrule 7.3(6), by deleting the word "three" and adding the word "five".

On line 5, under subrule 7.3(7), by deleting the word "three" and adding the word "five".

On line 11, under paragraph 7.3(8)*"b"*, by deleting the word "three" and adding the word "five".

On line 5, under subrule 7.3(9), by striking the word "three" and inserting the word "five".

ITEM 2. On line 3, under rule 7.7, by adding the words "or she" before the word "fails".

On line 5, under rule 7.7, by striking the word "calendar" and adding the word "working".

On line 6, under rule 7.7, by striking the word "calendar" and adding the word "working"; by adding the words "or telephoned" before the word "inquiry".

These rules are intended to implement section 19A.9 of the Code as amended by Acts of the 65th General Assembly, Ch 1094.

[Effective July 26, 1974]

MERIT EMPLOYMENT DEPARTMENT

(continued)

Pursuant to the authority of section 19A.9 of the Code, the rules appearing in the 1973 IDR, pages 643 to 645, relating to appointments, (chapter 8 of the merit employment department rules) are amended as follows:

[Filed July 26, 1974]

ITEM 1. On line 3, under rule 8.2, by deleting the words "from the three highest available names on the certificate submitted by the director".

On line 9, under rule 8.2, by deleting the words "one-year" and adding the words "six months".

ITEM 2. On line 2, under rule 8.4, by deleting the word "three" and adding the word "five".

These rules are intended to implement section 19A.9 as amended by Acts of the 65th General Assembly, ch 1094.

[Effective July 26, 1974]

MERIT EMPLOYMENT DEPARTMENT

(continued)

Pursuant to the authority of section 19A.9 of the Code, the rules appearing in the 1973 IDR, pages 645 to 646, relating to probationary period, (Chapter 9 of the merit employment department rules) are amended as follows:

[Filed July 26, 1974]

ITEM 1. On line 5, under rule 9.1, by deleting the words "one year" and adding the words "six months".

ITEM 2. On line 3, under rule 9.5, by adding the words "or her" after the word "his".

On line 10, under rule 9.5, by adding "." after the word "area".

On line 11, under rule 9.5, by deleting "until six months of the probationary period has been completed."

ITEM 3. On line 7, under rule 9.8, by adding the words "or she" after the word "he".

On line 9, under rule 9.8, by deleting the word "six", and adding the word "three".

On line 19, under rule 9.8, by adding the words "or she" after the word "he"; by adding the words "or her" after the word "his".

On line 21, under rule 9.8, by adding the words "or her" after the word "him".

On line 22, under rule 9.8, by adding the words "or her" after the word "his".

On line 23, under rule 9.8, by adding the words "shall not entitle the individual to an appeal or hearing before the" after the word "action" and striking the word "by" before the word "merit".

On line 24, under rule 9.8, by adding the words "or her" after the word "him".

These rules are intended to implement section 19A.9 of the Code as amended by Acts of the 65th General Assembly, ch 1094.

[Effective July 26, 1974]

MERIT EMPLOYMENT DEPARTMENT

(continued)

Pursuant to the authority of section 19A.9 of the Code, the rules appearing in the 1973 IDR, pages 646 to 647, relating to promotions, reassignments, transfers and demotions, (chapter 10 of the merit employment department rules) are amended as follows:

[Filed July 26, 1974]

ITEM 1. On line 3, under rule 10.2, by deleting the word "a" and inserting the word "another".

On line 4, under subrule 10.2(1), by deleting the words "six months of".

On line 5, under subrule 10.2(1), by deleting the word "have" and inserting the word "has".

On line 5, under subrule 10.2(2), by striking the words "six months of".

On line 6, under subrule 10.2(2), by deleting the word "have" and inserting the word "has"; by striking the words "or the reassignment proposed requires the same special qualifications which justified the original certification."

ITEM 2. On line 2, under rule 10.3, by striking the words "or a probationary employee who has completed six months of his probationary period,"

On line 6, under rule 10.3, by adding the words "or she" after the word "he".

On line 7, under rule 10.3, by adding the words "or she" after the word "he".

These rules are intended to implement section 19A.9 of the Code as amended by Acts of the 65th General Assembly, ch 1094.

[Effective July 26, 1974]

MERIT EMPLOYMENT DEPARTMENT

(continued)

Pursuant to the authority of section 19A.9 of the Code, the rules appearing in the 1973 IDR, pages 652 to 654, relating to vacation and leave, (chapter 14 of the merit employment department rules) are amended as follows:

[Filed July 26, 1974]

ITEM 1. On line 5, under rule 14.9, by deleting the "." after the word "agency" and inserting ", the Code of Iowa or the Fair Labor Standards Act."

On line 6, under rule 14.9, by adding the words "or statutory provisions" after the word "regulations".

These rules are intended to implement section 19A.9 of the Code as amended by Acts of the 65th General Assembly, ch 1094.

[Effective July 26, 1974]

MERIT EMPLOYMENT DEPARTMENT

(continued)

Pursuant to the authority of section 19A.9 of the Code, the rules appearing in the 1973 IDR, page 656, relating to political activity, (Chapter 16 of the merit employment department rules) are amended as follows:

[Filed July 26, 1974]

ITEM 1. On line 4, under rule 16.3, by deleting the "." after 123.17 and adding ", Code of Iowa."

On line 5, under rule 16.3, by striking "by the liquor control commission" and adding the words "of the Iowa beer and liquor control department".

These rules are intended to implement section 19A.9 of the Code as amended by Acts of the 65th General Assembly, ch 1094.

[Effective July 26, 1974]

PHARMACY EXAMINERS

Pursuant to the authority of section 204.301 of the Code, Chapter 8—controlled substances—rules are amended by adding new rules as follows:

[Filed August 14, 1974]

8.14(204) Temporary designation of a new controlled substance.

8.14(1) The controlled substances listed in this subrule are in schedule II. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

Methaqualone.

8.14(2) The controlled substances listed in this subrule are in schedule III. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible with the specific chemical designation:

a. Benzphetamine.

b. Chlorphentermine.

c. Mazindol.

d. Clortermine.

e. Phendimetrazine.

8.14(3) The controlled substances listed in this subrule are in schedule IV.

a. Any material, compound, mixture or preparation which contains any quantity of the substance fenfluramine, including its salts, isomers (whether optical, position or geometric), and salts, isomers and salts of isomers is possible.

b. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Diethylpropion.

(2) Phentermine.

These rules are intended to implement section 204.201, subsection 4 of the Code.

[Effective August 14, 1974]

PUBLIC INSTRUCTION DEPARTMENT

Pursuant to the authority of chapters 257 and 281 of the Code, and Acts of 65 GA, 1974 session, chapter 1172, the following rules are adopted.

[Filed December 31, 1974]

CHAPTER 1

AREA EDUCATION AGENCY MEDIA CENTERS

1.1(65GA, Ch1172) Scope and general principles. For the purposes of these rules the following scope and general principles will be assumed.

1.1(1) *Scope.* These rules apply to media services which are to be provided by area education agencies to students from prekindergarten through secondary school, to all special education students, and to all teachers of such students.

1.1(2) *General principles.* Media services shall be made available to all students and

teachers of local school districts within the boundaries of a given area education agency and which may be made available to nonpublic students from prekindergarten through secondary schools.

It is the responsibility of the school districts to provide library media centers and adequate professional and support staff in each attendance center to support that center's curriculum program. To the extent practicable all services shall be provided at the attendance center level. The area education agency shall supplement, support and encourage the development of, but not supplant, these local centers and services.

1.2(65GA, Ch1172) Acronyms. For the purposes of these rules the following acronyms shall be used.

1.2(1) *"AEA"* shall mean area education agency.

1.2(2) *"AEAMC"* shall mean area education agency media center.

1.3(65GA, Ch1172) Definitions. For the purposes of these rules the following definitions shall be used.

1.3(1) *"Analysis of needs"* shall mean an assessment of the present holdings and services of local school media centers or attendance centers, the identified needs of those centers, the needs which should be met by the AEAMC, and the degree to which the AEAMC currently meets those needs.

1.3(2) *"Consultative services"* shall mean those one-to-one and one-to-group professional services related to the AEAMC and offered by AEAMC personnel to its patrons, and, similar services off the premises or concerning local school programs, offered by AEAMC personnel.

1.3(3) *"Curriculum laboratory"* shall mean a facility where professional assistance is provided instructional staff members in planning and preparing for instruction. It includes, at least on a temporary basis, any pertinent materials in print, nonprint or other formats, and their support equipment, which will help the user to develop curriculum or instructional plans.

1.3(4) *"Department"* means state department of public instruction.

1.3(5) *"Materials lending library"* shall mean those materials, regardless of format, which are purchased for or otherwise designed for loan to school systems being served by the AEA, the storage space, and the preparation, circulation and borrower services related to the materials.

1.3(6) *"Production of media-oriented instructional materials"* shall mean production, reproduction, or other preparation, of print or nonprint instructional materials.

1.3(7) A *"professional library"* includes both books and other print and nonprint media on subject areas, methodology and other related topics of value to the educational specialist or practitioner. It further includes space for the use of these materials on the premises, provision for borrowing for use off the premises, opportunity for expansion of the collection through various types of interlibrary loan, and professional assistance for the borrower.

1.3(8) *"Services"* from an AEAMC shall mean services available to school districts at no additional charge unless otherwise specified in these rules.

1.4(65GA, Ch1172) Department responsibility. The department shall:

1.4(1) Provide forms, outlines or models for development of AEA program proposals for AEAMC services. These outlines shall be provided not fewer than 60 days before programs are due for approval. The department shall provide models or formats for needs assessment instruments, not fewer than 30 days before these are due to be completed. The department shall also provide other forms, or outlines, as specified in these rules.

1.4(2) Provide program review and approval. Each AEA proposal shall be reviewed in the order received. Each AEA shall be advised of department action in writing. Proposals not approved shall be returned with written comments concerning needed information, clarification or amendment.

1.4(3) Establish a state advisory committee with broad representation to review policy, initiate policy recommendations and suggest priorites.

1.4(4) Provide consultation and evaluation. The department shall provide consultative service to AEAMC staffs regarding their relation to the state and in their service

to the schools. It shall assist in in-service planning and participation, in selection of materials and in other appropriate activities. Personnel of the media section of the department shall make at least one consultative visit to each AEAMC each fiscal year. More formal evaluations may be provided at the discretion of the department or on the request of the AEA.

1.5(65GA, Ch1172) Area education agency media center responsibility. The AEAMC shall:

1.5(1) Provide a materials lending library which shall contain print and nonprint materials which may include, but not be limited to, 8mm and 16mm films, filmstrips, slides, transparencies, art and study prints, models, sculpture, realia, framed pictures, multimedia kits, audio and video recordings, books, periodicals, pamphlets, microforms and programmed materials. The AEAMC shall provide for repair and maintenance of all material collections and equipment. There shall be at least one catalog for this collection for each school media center in each local school district with a minimum of one per attendance center. Additional catalogs may be provided at the discretion of the AEAMC. The catalog shall be updated at least annually by supplements or revision and shall be totally revised at least once every three years. The department shall develop minimum standards for AEAMC catalogs with implementation to begin by July 1, 1978. The department shall use an advisory committee in the development of these standards.

1.5(2) Provide a professional library which shall contain those print and nonprint materials necessary to provide basic reference and research materials. Each AEAMC shall supplement its own professional collections as needed by the use of state and regional information services. Each AEA may also co-operate or contract with other agencies for supplemental services. Such contracts shall be subject to approval by the department. Space shall be provided for educators to use these collections. Professional media assistance shall be available. There shall be one catalog for this collection for each local school media center in each school district with a minimum of one per attendance center. Additional catalogs may be provided at the discretion of the AEAMC. The catalog may be separate or a part of the materials lending library catalog. The catalog shall be updated at least annually by supplements or revision and shall be totally revised at least once every three years.

1.5(3) Supply a curriculum laboratory which shall provide for storage and display of curriculum materials and may circulate these materials. The AEAMC shall purchase, accept on long-term loan, borrow, or transfer from its lending library whatever curriculum materials are needed to maintain a functional collection. Space shall be provided for educators to work with these materials. Professional assistance shall be available. Current lists of materials available for use in the center or for loan shall be maintained.

1.5(4) Provide or contract to provide the following production services:

a. Each AEAMC shall have the capability to provide basic media-oriented materials production services, including but not limited to: Dry mounting and laminating; slide photography; transparency production (in both thermal and diazo methods); audio tape duplication; enlarging or reducing teacher materials; offset print services. These services shall not be contracted and shall be provided at the actual cost of materials used.

b. Each AEAMC shall provide, contract, or subcontract to provide, quality and quantity reproduction services and other more sophisticated media services including but not limited to: Microfilming services; photography services; TV production and cable programming; motion picture production; video tape duplication; graphic and print services; maintenance of media hardware. The AEAMC may charge actual costs incurred in providing these services.

c. Each AEAMC staff shall include a specialist who can supervise production facilities.

1.5(5) Meet the following requirements for staff, staff employment qualifications, and staff responsibilities:

a. Each AEAMC staff shall include a minimum of two full-time media specialists, one of whom shall serve as director. Their specializations shall be complementary. For example, if one has emphasis in library science, the other shall have emphasis in instructional technology.

b. Each AEAMC serving more than thirty thousand pupils shall include at least one additional media specialist or qualified media professional as defined in these rules, for each additional thirty thousand pupils or major fraction thereof.

c. Minimum employment qualifications for mandated professional staff, whether employed directly or included in a contractual agreement, shall be:

(1) The director shall have a master's degree with endorsement as director of library services or educational media specialist; permanent professional teacher's certificate in Iowa; minimum of three years experience in school media services.

(2) A media specialist shall have a master's degree with endorsement as educational media specialist or director of library services; permanent professional teacher's certificate in Iowa; minimum of two years experience in school media services.

(3) A qualified media professional shall have a master's degree with endorsement as educational media specialist or director of library services; professional teacher's certificate in Iowa.

(4) These criteria shall not be applied to any media employee of county school systems and joint county systems who holds a valid Iowa teacher's certificate or has a master's degree in library science or educational media and whose position terminates on July 1, 1975 and who was employed prior to July 1, 1974.

d. The number and kind of supporting staff members shall be determined by the extent of the approved programs and services provided by the AEAMC. Support staff in each AEAMC may include, but not be limited to: Clerical personnel, technicians, aides, delivery and custodial personnel, working under the direction of a professional staff member.

e. In addition each AEA shall provide the professional staff needed for services which are not mandated but are included in its approved media services program.

f. The primary responsibility of the director of the AEAMC shall be the administration, supervision and operation of the AEAMC. However, the director may supervise other programs, or personnel if included as part of the AEA's proposed program for media services and approved by the department. The director of each AEAMC shall be directly responsible to the AEA Administrator.

1.5(6) Provide physical facilities. The physical facilities for each AEAMC may vary depending on the needs of that area. Each shall include space for: The materials lending library, professional library and curriculum laboratory; a media production area which will allow school personnel as well as staff to use selected equipment; office and work areas for staff; preview areas; storage space; and circulation and distribution area. Each AEAMC shall also have: Access to a large meeting area which may be shared with other AEA programs; a location that is easily accessible to a loading area, and easy access to parking area. Any major change of facilities, including new construction, remodeling, or relocation, shall provide for physically handicapped persons.

1.5(7) Purchase other materials and equipment necessary for the continued development of its materials lending library; professional library; curriculum laboratory, and production services. In addition each AEA shall purchase the necessary equipment and materials for services which are not mandated but are included in its approved program.

1.5(8) Submit to the department its proposed media services program for the ensuing fiscal year. This proposed program shall follow the format developed by the department and made available to each AEA at least sixty days prior to the due date.

1.5(9) Include in its proposed AEAMC program a summary of its analysis of needs of the local school district media programs with explanation of the relation of the proposed AEAMC program to those needs. Both the model for the analysis and the summary report shall follow formats approved by the department and shall include but not be limited to:

a. What local materials and equipment are available, and what materials and equipment services are needed from the AEAMC.

b. What local production services are available, and what production services are needed from the AEAMC.

c. What local staff is available and what in-service is needed from the AEAMC.

1.5(10) Establish an AEAMC advisory committeee which shall meet not fewer than three times a year and which shall include but not be limited to administrators, classroom teachers, curriculum specialists, media specialists and students. Committee membership, tenure, and function shall be included in the AEAMC's program proposal. However, the functions shall include but not be limited to:

a. Selection of a chairman and a secretary for the committee.

b. Evaluation of needs assessment and relation of local needs to the AEAMC materials and services.

c. Review of program and budget.

d. Recommendation of policy and procedures.

e. Preview and recommend selection of materials and equipment.

f. Consideration of other areas of concern identified by the department, the AEA, the AEAMC staff, or the advisory committee itself.

1.5(11) Select all materials purchased for or received by an AEAMC in accordance with a materials selection policy filed by the AEA as part of its proposed program for the AEAMC and approved by the department. In preparation of this policy the AEAMC shall give consideration to at least the following:

a. The media needs of the local school districts.

b. Cost effectiveness of circulation of specific titles or media from an AEAMC as opposed to a local school media center.

c. Cost effectiveness of circulation of specific titles or media from an AEAMC as opposed to use of interlibrary loan or other co-operative activity.

d. Provision for reconsideration of challenged materials.

e. Provision for weeding or discarding.

1.5(12) Submit all contractual arrangements for media services to the department for its approval.

1.5(13) Include in its program plans submitted to the department a description of its co-ordination of services with other divisions of the AEA, with the merged area school, local schools, colleges and universities, and with other library, information, and communication networks. Each AEA shall participate in planning for state level co-operation among AEAMCs and between AEAMCs and other agencies.

1.5(14) Provide for delivery and return by AEA operated or contracted vehicles of all AEAMC circulating materials to each local school district attendance center on at least a twice a week basis during the regular school year. The AEA may contract for local delivery services with any school district that has established at least twice a week delivery to each attendance center in its district.

1.5(15) Submit to the department prior to August 15 of each year an annual report of the AEAMC services for the previous fiscal year. This report shall follow the format developed by the department and made available to each AEA at least thirty days prior to the beginning of the reporting period.

1.5(16) Provide appropriate consultative services. The primary function of the AEAMC consultative services shall be to provide center-related consultation and in-service training. Within the limits of funds available, an AEAMC may also provide other qualified media professionals for related consultation and in-service training which may include but not be limited to:

a. Providing leadership and working with local school personnel in the planning and equipping of media centers, the selection of the materials and equipment, including planning general facilities for effective use of print and nonprint materials.

b. Working closely with administrators, consultants, and teachers at the local, area, and state levels in providing workshops in the evaluation, selection, and use of materials and equipment.

c. Co-operating with merged area schools, colleges and universities, and other agencies, on preservice, extension and visitation activities.

d. Participating with professional education and media associations in planning, developing and implementing media activities in improving instruction.

[Effective January 30, 1975]

PUBLIC INSTRUCTION DEPARTMENT

(continued)

Pursuant to the authority of chapter 257 of the Code, rules appearing in 1973 IDR, pages 692 to 700, relating to the approval of schools are rescinded and the following adopted in lieu thereof.

[Filed December 31, 1974]

CHAPTER 3

APPROVED SCHOOLS AND SCHOOL DISTRICTS

DIVISION I

GENERAL STANDARDS

3.1 General standards.

DIVISION II

DEFINITIONS

3.2 Definitions.

DIVISION III

ADMINISTRATION

3.3 Administration.

DIVISION IV

SCHOOL PERSONNEL

3.4 School personnel.

DIVISION V

EDUCATIONAL PROGRAM

3.5 Educational program.

DIVISION VI

ACTIVITY PROGRAM

3.6 Activity program.

DIVISION VII

STAFF IN-SERVICE

3.7 In-service growth of staff.

DIVISION I

GENERAL STANDARDS

3.1(257) General standards.

3.1(1) *Educational units governed by standards.* The following standards shall govern the approval of all schools and school districts operated by public school corporations and the approval of all schools operated under nonpublic auspices. "School" means prekindergarten and kindergarten, if offered, elementary school, middle school, junior high school or high school that is operated in Iowa.

3.1(2) *School board.* Each school or school district shall be governed by an identifiable authority which shall exercise functions necessary for the effective operation of the school. As used herein the authority governing each school, public and nonpublic, shall be referred to by the word "board."

3.1(3) *Application for approval.* The board of any school or school district that is not on the approved list of schools on the effective date of these standards and which seeks approval shall file an application for approval on or before the first day of July of the school year for which approval is desired.

3.1(4) *Approved schools and school districts.* Each school or school district on the list of approved schools on the effective date of these standards shall continue to be approved except in those instances, when by subsequent actions of the state board of public instruction, it is removed from the approved list in accordance with 257.25(11) of the Code. Each school or school district shall submit such annual reports that the state board of public instruction may request.

3.1(5) *When nonapproved.* A school or school district shall be considered as nonapproved on the day after the date it was removed from the approved list.

3.1(6) *Innovative programs.* Board of directors of any public school district or authorities in charge of any nonpublic school which wishes to initiate responsible administrative, organizational, or program innovations that depart in pattern but not in

substance from the standards outlined herein are encouraged to do so. A description of such innovations shall be filed with the state board of public instruction in accordance with 257.25(8). Exemptions under innovative programs shall be granted only if the state board deems that such a request made is an essential part of a planned innovative curriculum project which the state board determines will adequately meet the educational needs and interests of the pupils and be broadly consistent with the intent of the educational program as defined in 257.25. After reviewing the filed description the state board of public instruction may give exemption for a period not to exceed one year. On the basis of information gained by the staff of the department of public instruction concerning the success of such innovations, the state board of public instruction may, upon recommendation of the superintendent of public instruction and at its discretion, give continuing exemptions.

3.1(7) *Provisional approval.* The state board of public instruction, at its discretion, may extend provisional approval on a year-to-year basis to schools or school systems which currently are not meeting all the standards outlined herein but which are making a good faith effort and substantial progress toward full compliance and if this failure to comply is due to factors beyond the control of the board of directors or governing body of such school.

NOTE: Grace period. See section 257.25, subsections 11 and 12.

DIVISION II

DEFINITIONS

3.2(257) Definitions. For purposes of these approval standards, the following definitions shall be used.

3.2(1) *Prekindergarten school program.* A prekindergarten school program shall be defined as a program designed to: *(a)* Help children to work and play with others; express themselves; learn to use and manage their bodies; extend their interests and understandings of the world about them; relate the role of the family to the child's developing sense of self and his perception of others; encourage co-operative efforts between home and school; and focus on community resources; *(b)* the program shall be for children who attend on a regularly enrolled basis prior to kindergarten, if kindergarten is offered. If no kindergarten is offered, the program shall be for children prior to first grade. If children reach their fifth birthday during the school year they shall be eligible to continue in the prekindergarten program until the close of that year or until eligible to enter first grade if no kindergarten is offered.

3.2(2) *Kindergarten.* A kindergarten program is hereby defined as a program which provides educational activities especially planned for developing the potentialities of children of school age who are past prekindergarten age but who have not been enrolled in grade one.

3.2(3) *Elementary school.* The elementary school is hereby defined as consisting of prekindergarten and kindergarten, if operated, and grades one through eight or grades one through six when grades seven and eight are included in a secondary school as defined herein.

3.2(4) *Middle school.* The middle school is hereby defined as a separately organized and administered unit usually beginning with grades five or six or its equivalent and including at least two grades. It serves a transition function for the education program between the elementary and secondary schools.

3.2(5) *Junior high school.* The junior high school is hereby defined as consisting of grades seven, eight, and nine, or grades seven and eight, when such grades are included in a unit that is separately organized and administered.

3.2(6) *Senior high school.* The senior high school is hereby defined as consisting of grades nine, ten, eleven and twelve or grades ten, eleven and twelve when such grades are included in a unit that is separately organized and administered.

3.2(7) *Junior-senior high school.* The junior-senior high school is hereby defined as consisting of grades seven, eight, nine, ten, eleven and twelve when such grades are included in a unit that is separately organized and administered.

3.2(8) *Secondary school.* The secondary school is hereby defined according to one of the following patterns: *(a)* A junior high school comprising grades seven, eight and

nine, and a senior high school; *(b)* a combined junior-senior high school comprising grades seven through twelve; *(c)* a junior high school comprising grades seven and eight and high school comprising grades nine through twelve; or *(d)* a high school comprising grades nine through twelve.

3.2(9) *Enrolled public school pupil.* A pupil shall be regarded as enrolled in a public school after he has registered and is taking part in that school's education program.

3.2(10) *Enrolled nonpublic school pupil.* A pupil shall be regarded as enrolled in a nonpublic school after he has registered and is taking part in that school's education program.

3.2(11) *School day.* A school day shall be defined as the number of hours the school is actually in session as determined by the local board. On any day when the school is forced to close early because of weather or other emergencies, the portion of that day that school was in session shall be defined as a day of school.

A day of school shall be defined as a day that school is in session and pupils are engaged in school projects and activities and are under the guidance and instruction of teachers.

3.2(12) *Day of attendance.* A day of attendance shall be a day during which a pupil was present under the guidance and instruction of the teachers. Pupils shall not be counted in attendance on a day when school was dismissed for improvement-of-instruction institute or other educational meeting.

3.2(13) *Aggregate days of attendance.* Aggregate days of attendance shall mean the sum of the days of attendance for all pupils who are enrolled during the school year.

3.2(14) *Average daily attendance.* Average daily attendance shall be defined as the average obtained by dividing the aggregate days of attendance for the school year by the total number of days school was legally in session.

3.2(15) *Member.* A pupil shall be considered a member of a class or school from the date he is enrolled until the date he leaves the class or school permanently. The date of the pupil's withdrawal shall be the date on which it became officially known that he had left that class or school, which may not necessarily be the first day after the date he last attended. Membership, on any given date, may be obtained by adding the total number of re-enrollments and subtracting therefrom the total number of withdrawals. Membership may also be obtained by adding the total number present to the total number absent. Membership means the total number belonging.

3.2(16) *Aggregate days of membership.* Aggregate days of membership shall mean the sum of the days of attendance and the days of absence for all pupils who were enrolled during the school year.

3.2(17) *Average daily membership.* Average daily membership shall mean the aggregate days of membership divided by the number of days of school.

3.2(18) *Pupils between seven and sixteen years of age.* When reporting the number of pupils enrolled who are between the ages of seven and sixteen during the school year, a pupil shall be counted if any portion of the school year falls between his seventh and sixteenth birthdays.

3.2(19) *High school dropout.* For purposes of school approval, a high school dropout shall be a pupil who has been in membership in grades nine, ten, eleven, or twelve in a school at any time, during the twelve-month period from July 1 through the following June 30, who withdraws from such school for any reason other than those specified in section 257.27.

A high school pupil shall be recorded as having transferred to another school if, within the twelve-month period cited herein, [he] has become enrolled in an approved educational institution.

A high school pupil shall not be regarded as a dropout within the meaning of section 257.27 if, within the twelve-month period cited herein, he has been: *(a)* Issued a diploma in formal recognition of successful completion of a high school program of instruction, or *(b)* issued either a certificate of attendance or completion of a high school's program of instruction.

3.2(20) *Board's responsibility for recording dropouts.* Each board shall require its administrator to prepare annually, in a manner prescribed by the state board of public instruction, a permanent office record of the

number and percent of pupil dropouts for the preceding twelve months and this record shall clearly identify those pupils who are high school dropouts as defined in 3.2(19) and in section 257.27.

Division III

ADMINISTRATION

3.3(257) Administration. The following standards shall apply to the administration of approved schools.

3.3(1) *Board records.* Each board shall adopt and maintain accurate records which shall provide for the recording of minutes of all board meetings, coding of all receipts and expenditures, and the recording and filing of all reports. All public school boards shall maintain census records required by the appropriate sections of the Code of Iowa and they shall retain copies of attendance reports on all children of compulsory school age who have attended nonpublic schools.

3.3(2) *Report of nonpublic school instruction.* Between September 1 and October 1 of each year the secretary of each public school board shall request from each nonpublic school located within the public school district a report of school instruction and attendance as required by section 299.3 of the Code. Each such nonpublic school shall submit the required duplicate report on forms prescribed by the state board of public instruction. One copy of this duplicate report shall constitute the report that the secretary of the public school board is required to file in the office of the administrator of the area education agency.

Each nonpublic school, between September 1 and October 1 of each year, shall send to each school district from which it receives pupils a list of the pupils of compulsory school age who are residents of that district and who are enrolled in that nonpublic school. The list shall include the name, grade, date of birth, name of parent or guardian and location of residence.

3.3(3) *Activity fund record.* Accurate, complete, and up-to-date records of all pupil-activity funds shall be maintained according to a system approved by the state board of public instruction.

3.3(4) *Audit of school funds.* The result of the annual audit of all public school funds by a state auditor or a private auditing firm shall be made part of the official records of the board.

3.3(5) *Minimum school year.* The minimum length of the school year shall be one hundred eighty days. One day or equivalent devoted to an improvement-of-instruction meeting shall be counted as one of the one hundred eighty days but the other one hundred seventy-nine days shall be counted days of school.

3.3(6) *School system organizational structure.* Each board that maintains a school system comprising both an elementary and a secondary school shall adopt an elementary and secondary school organizational structure consistent with 3.2(3) to 3.2(8).

3.3(7) *Elementary school organization.* Each board that maintains a nonpublic elementary school only shall adopt an elementary school organizational structure consistent with 3.2(3) and 3.2(4).

3.3(8) *Secondary school organization.* Each board maintaining a nonpublic secondary school only shall adopt a secondary school organizational structure consistent with 3.2(5) to 3.2(8).

3.3(9) *Pupil accounting system.* Each board shall adopt a system of pupil accounting that is consistent with the principles and procedures included in the state board of public instruction's handbook, Pupil Accounting For Iowa Schools.

3.3(10) *Permanent office records of pupils.* Each board shall require its administrative staff to establish and maintain an accurate and complete permanent office record (a pupil record which has permanent value and which always remains in the files of the school or school district - see Pupil Accounting For Iowa Schools) for every enrolled pupil, and it shall be stored in a fire-resistant safe or vault.

3.3(11) *Cumulative records of pupils.* In addition to the permanent office record, the board shall require the instructional, guidance, and administrative personnel to establish and maintain a pupil's cumulative record (a continuous and current record of significant information regarding the progress and growth of a pupil as he goes through school, including such information as courses, school marks, scholastic progress, school attendance, personal

characteristics and traits, family background, physical and health record, experiences, interests, aptitudes, attitudes, abilities, honors, extracurricular activities, part-time employment and future plans. The cumulative record is used to assist professional school personnel in understanding the pupil—see Pupil Accounting For Iowa Schools). A copy of the cumulative record shall be sent to the officials of the receiving school when the pupil is transferred.

3.3(12) *Board's responsibility for establishing standards for secondary school graduation.* Each board that operates a secondary school which extends through grade twelve shall formulate policies consistent with the Code and these standards, that pupils must meet to be eligible for high school graduation.

DIVISION IV

SCHOOL PERSONNEL

3.4(257) School personnel. The following standards shall apply to the personnel employed in approved schools.

3.4(1) *Instructional professional staff.* Every person who holds a certificate endorsed for the service for which that person is employed shall be eligible for classification as a member of the instructional professional staff of the school or school system.

3.4(2) *Noninstructional professional staff.* Every person who holds a statement of professional recognition in one of the noninstructional areas listed in section 257.25(9),"*b*", or in one of the other noninstructional professional areas designated by the state board of public instruction, shall be eligible for classification as a member of the noninstructional professional staff of the school or school system.

3.4(3) *Basis for approval of professional staff.* Each member of the professional staff shall be classified as either instructional or noninstructional. A professional staff member shall be regarded as approved when holding either an appropriate certificate and an approval statement indicating the specific teaching assignments may be given, or alternatively, a statement of professional recognition for the specific type of noninstructional school professional service for which employed.

3.4(4) *Teacher.* A teacher shall be defined as a member of the instructional professional staff who: *(a)* Holds a certificate, issued by the state board of public instruction, endorsed for the type of position in which employed; *(b)* diagnoses, prescribes, evaluates, and directs student learnings in terms of the school's objectives either singly or in concert with other professional staff members; *(c)* shares responsibility with the total professional staff for the development of educational procedures and student activities to be used in achieving these objectives; *(d)* supervises educational aides who assist in serving students for whom the teacher is responsible; and *(e)* evaluates or assesses student progress both during and following instruction, in terms of the objectives sought, and uses the information thus gained as a basis for developing further educational procedures.

3.4(5) *Educational aides.* Educational aides shall be defined as employed or volunteer persons who, under the direction, supervision, and control of the instructional professional staff: *(a)* Supervise students on a monitorial or service basis; *(b)* work with students in a supportive role under conditions determined by the instructional professional staff responsible for the students, but not as a substitute for or a replacement of functions and duties of a teacher as established in 3.4(4) of these rules.

3.4(6) *Record of certificate.* The board shall require each administrator, supervisor, teacher and noninstructional professional on its staff to supply evidence that each holds a certificate, or statement of professional recognition or license which is in force and valid for the type of position in which employed.

3.4(7) *Record required regarding teacher assignment.* The board shall require its superintendent or other designated administrative official to have on file at the beginning of and throughout each school year complete official transcripts of the preparation of all regularly employed members of the instructional professional staff. The official shall maintain for all members of said staff, including substitute teachers, a file consisting of copies of their legal certificates or copies of records made therefrom showing that they are legally eligible for the position in which they are

employed and that these certificates are registered in the office of the administrator of the area education agency. The board shall also require said official to have on file for each member of the noninstructional professional staff a legal certificate or statement of professional recognition as defined in 3.4.

3.4(8) *Nurses.* Each board that employs a nurse shall require a current license to be filed.

3.4(9) *Required administrative personnel.* Each board that operates a school system consisting of both elementary schools and secondary schools shall employ as its executive officer and chief administrator a person who holds a certificate endorsed for service as a school superintendent.

The board or governing authority of each school or school district shall provide such principals as it finds necessary to provide effective supervision and administration for each school and its faculty and student body; and those persons employed to fill such positions shall hold certificates endorsed for service as principal at the school level (elementary or secondary, as defined herein) to which they are assigned.

3.4(10) *Staffing policies—elementary schools.* The board operating an elementary school organized as defined in 3.2(3), or alternatively, organized according to a plan submitted in accordance with the procedure described in 3.1(6), shall develop and adopt staffing policies designed to attract, hold and effectively utilize competent personnel.

When grades seven and eight are part of an organized and administered junior high school, the staffing policies adopted by the board for secondary schools shall apply.

3.4(11) *Staffing policies—secondary schools.* The board operating a secondary school organized according to one of the four patterns defined in 3.2(9) or alternatively, organized according to a plan submitted in accordance with the procedures described in 3.1(6) shall develop and adopt staffing policies designed to attract, hold, and effectively utilize competent personnel.

3.4(12) *Prekindergarten staff.* A prekindergarten program shall be staffed by a teacher who holds a certificate certifying that the holder is qualified to teach in prekindergarten.

The board or governing authority of each school or school district shall provide such personnel as necessary to provide effective supervision and instruction in the prekindergarten program.

3.4(13) *Provision for a prekindergarten school program health supervision.* Each prekindergarten school program shall have health supervision, on a routine basis, by a physician or by a person who has an Iowa license as a registered professional nurse.

3.4(14) *Medical examination.* Except as otherwise provided in the rules of the state board of public instruction, the local board shall require each employee to file with it, at the beginning of service and at three-year intervals thereafter, a written report of a medical examination by a physician which shall include a check for tuberculosis, certifying that such employee has the fitness to perform the tasks assigned.

DIVISION V

EDUCATIONAL PROGRAMS

3.5(257) Educational program. The following standards shall apply to the educational program of approved schools.

3.5(1) *Curriculum defined.* The word curriculum is hereby defined as including all pupil experiences that take place under the guidance of the school. It shall be used to describe the school-connected learning experiences of any pupil and also to indicate the arrangement of a group of courses to be taken by groups of pupils having a common objective.

3.5(2) *Educational program defined.* The educational program is hereby defined as including the entire offering of the school, including the out-of-class activities, and the arrangement or sequence of subjects and activities. It may be referred to as the program of studies and activities.

3.5(3) *Educational program—form and content.* The educational program, as adopted by each board, shall set forth the administrative measures and the sequence of learning situations through which attempts are made to provide pupils with well-articulated developmental learning experiences from the date of school entrance until high school graduation.

3.5(4) *Educational program—description and filing.* The board shall require its administrators and professional staff to develop and furnish a description of the total prekindergarten, if offered, through grade twelve educational program that the board is willing to approve. This description, after having been adopted by the board, and all subsequent revisions thereof, shall be filed locally in a readily available form and location as evidence of compliance with the provision of the law.

The description of the prekindergarten school educational program, if offered, elementary school educational program, middle school educational program, junior high school educational program, and the high school educational program shall be in sequential order and shall explain the manner which pupils are served in each of the areas of instruction as specified in chapters 257, 280, and 321 of the Code.

3.5(5) *Instructional guide for each subject.* Classroom instruction in each subject taught in the schools shall be based on careful planning. The board shall require that a resource guide be developed for each instructional sequence and it shall include a statement of its educational purposes; suggested instructional activities, materials, and content; and a description of the performance criteria useful in evaluating each pupil's progress during the educational sequence.

3.5(6) *Subject offering.* A board shall be judged as offering a subject when: *(a)* The teacher of the subject has met the personnel approval standards of the state board of public instruction for that subject; *(b)* instructional materials and facilities for that subject have been provided; and *(c)* pupils have been informed, on the basis of their individual aptitudes, interests, and abilities, about possible value of the subject to them.

A subject that the law requires to be taught annually shall be regarded as taught only when, during each year, pupils enroll in it and are instructed in it in accordance with all applicable standards outlined herein. Subjects which the law requires schools to offer and teach shall be made available during the school day in session as defined in 3.2(11), 3.2(12) or as it falls in 3.1(6).

3.5(7) *Provision for special education.* The board shall adopt a plan which makes provisions for special education programs and services for children requiring special education who are under five years of age and through grade twelve. These services shall be those defined in the rules of the state board of public instruction implementing chapters 257, 280 and 281 of the Code of Iowa and chapter 1172 of the Acts of the 1974 Session of the 65th General Assembly, and they shall be designed for handicapped pupils as defined in said rules. This plan shall be filed with the state department of public instruction as evidence of compliance with this standard.

3.5(8) *Provision for career education.* The board of each school, public and nonpublic, shall incorporate into the educational program the total concept of career education. Curricular and co-curricular teaching-learning experiences from the prekindergarten level through grade twelve shall be provided for all students in accordance with section 280.9, Code 1975.

3.5(9) *Provision for physical education.* All students physically able shall be required to participate in physical education activities and meet the requirements as set forth in 257.25(6)"*g*" and 257.25(7).

Modified physical activities for credit shall be provided as an alternative for those pupils who for health reasons are certified by a physician as unable to take the courses as set forth in 257.25.

3.5(10) *Unit of credit.* A unit of credit is hereby defined as that amount of credit earned by a pupil who successfully completes a course or related components or partial units that is either pursued for thirty-six weeks for the required number of minutes per week or as an equated requirement as a part of an innovative program filed as prescribed in 3.1(6). A fractional unit of credit shall be awarded in a manner consistent with this standard.

In order for a course to yield one unit of credit, it must either be pursued for thirty-six weeks for at least two hundred minutes per week or for the equivalent of one hundred twenty hours of instruction. The board may award credit on a performance basis through the administration of an examination, provided that said examination covers the content ordinarily included in a regular course in the subject involved.

3.5(11) *Organization of daily and weekly schedules.* Daily and weekly schedules shall be organized by school officials in a manner which, in their judgment, best fits the conditions within their schools.

3.5(12) *Program of testing and evaluation.* The board shall require its instructional professional staff to develop and present to it for approval an ongoing program of testing and evaluation.

Persons administering individual psychological examination of pupils shall hold a certificate endorsed for service as a school psychologist or be approved by the state department of public instruction as competent specifically in the administration of individual psychological examinations.

3.5(13) *Evaluation of educational program.* The board shall, systematically evaluate the educational program. In making this evaluation, the board shall follow the plan mandated in chapter 280.

3.5(14) *Parent-teacher communications.* The board in every school shall provide for parent-teacher communications to improve the pupil-home-school relationship, and to meet more effectively each individual pupil's need.

3.5(15) *Guidance program in secondary schools.* Every board that operates a school offering any grades seven through twelve, except a school which offers grades one through eight as an elementary school shall provide therein an organized and functioning guidance program to aid pupils with their personal, educational, and career development. The guidance program shall be staffed as specified in section 257.25(9)*"b"*. The board shall indicate the extent to which it adopts the recommended standards of the state board of public instruction based on the number of students in attendance and other appropriate factors.

3.5(16) *Guidance services in elementary schools.* The board shall adopt and maintain a clearly described program of guidance services for its elementary schools to aid pupils with their personal, educational, and career development in conformity with section 280.14, Code 1975.

3.5(17) *Kindergarten program.* Each board that operates a kindergarten shall require its professional staff to develop an educational program that meets the conditions for kindergarten activities as specified in chapter 257.

3.5(18) *Prekindergarten school program.* Each board that operates a prekindergarten school program shall require its professional staff to develop an educational program that meets the conditions for the prekindergarten school program of activities as set forth in chapter 257.

3.5(19) *Instructional needs.* The board of each school shall establish and maintain adequate facilities, grounds, instructional supplies and materials to support the educational program it has adopted in compliance with sections 280.10, 280.11 and 280.14, Code 1975.

3.5(20) *Organization and adequacy of media center.* Each board shall establish in each secondary school attendance center a media center organized as a resource center of instructional materials for that school attendance center's entire educational program. The number and kind of library and reference books, periodicals, newspapers, pamphlets, information files, audiovisual materials and equipment, and other learning aids shall be adequate for the number of pupils and the needs of instruction in all courses.

Each media center shall be equipped to adequately support the programs of media utilization and service adopted for that center. The entire collection shall be cataloged and classified according to a recognized accepted system and made accessible to teachers and pupils alike. An area for the preparation of learning and instructional materials shall be provided in each center.

DIVISION VI

ACTIVITY PROGRAM

3.6(257) Activity program. The following standards shall apply to the activity program of approved schools.

3.6(1) *Pupil activity program—general guidelines.* The board shall sponsor a pupil activity program sufficiently broad and balanced to offer opportunities for all pupils to participate. The activity program shall be co-operatively planned by pupils and teachers, shall be supervised by qualified

school personnel, and shall be designed to: *(a)* Meet the needs and challenge the interests and abilities of all pupils consistent with their individual stages of development; *(b)* contribute to the physical, mental, athletic, civic, social, moral, emotional and spiritual growth of all pupils; *(c)* offer opportunities for both individual and group activities; *(d)* be integrated with the instructional program; *(e)* provide balance whereby a limited number of activities will not be perpetuated at the expense of others; *(f)* be controlled to a degree that interscholastic activities do not unreasonably interfere with the regularly scheduled daily program; and *(g)* furnish guidance to pupils to insure that they regulate the amount of time they participate in the activity program so they will optimize benefits they might receive from other aspects of the school program.

The board shall make reasonable efforts to provide and maintain adequate facilities and equipment to develop and encourage a broad activities program.

3.6(2) *Pupil activity program in elementary schools.* The board shall sponsor a broad balanced pupil activity program closely integrated with the instructional program, and designed to help pupils achieve maximum personal development.

3.6(3) *Interscholastic contests and competitions.* All public schools that participate in interscholastic contests and competitions shall follow the rules established by the state board of public instruction and those set forth in section 280.13, Code 1975.

3.6(4) *Interscholastic competitive activities in elementary schools.* Schools composed of kindergarten and grades one through six, shall not participate in, encourage, or promote, or sponsor interscholastic competitive activities. (Interscholastic in this rule does not prohibit activities between grades in different buildings within a school or school system.)

3.6(5) *Supervised intramural sports.* The board shall sponsor a varied voluntary program of supervised intramural sports activities for all pupils in grades seven through twelve (this would not prevent intramural participation of lower grades if the school were organized as a middle school comprising grades (6-7-8) or (5-6-7). Professionally qualified personnel, space and facilities, and equipment and supplies shall be provided. The program shall be based upon individual and group needs of all pupils.

3.6(6) *Pupil activity program in junior high schools.* The board shall sponsor a balanced pupil activities program in the junior high school closely integrated with the instructional program designed to help pupils achieve maximum personal development.

3.6(7) *Pupil activity program in senior high schools.* The board shall sponsor a pupil activity program in the senior high school based on group as well as individual needs, interests and abilities. The program shall be organized and administered in such a manner that broad and varied experiences which contribute to the enrichment of the total educational program will be available. Leisure time activities shall be emphasized which benefit the pupil outside the school environment and after he severs his membership in the school.

3.6(8) *Balanced activity program required.* The activity program in the senior high school in specific areas shall not be overemphasized to the extent that other worthwhile and constructive activities are unduly weakened or eliminated.

DIVISION VII

STAFF IN-SERVICE

3.7(257) In-service growth of staff. The following standards shall apply to the provisions for the in-service growth of the staff.

3.7(1) *Budget for in-service growth.* The board shall maintain and support a planned comprehensive program for in-service growth of its staff.

3.7(2) *In-service library.* The board shall establish and maintain library/media materials collection for use by its staff. The budget shall provide for annual expenditures to make additions to the collection.

These rules are intended to implement chapters 257, 280 and 281 of the Code.

[Effective December 31, 1974]

PUBLIC INSTRUCTION DEPARTMENT

(continued)

Pursuant to the authority conferred by section 281.3, Code of Iowa, and for the purpose of implementing chapter 281, Code of Iowa, Title X of the rules of the state department of public instruction, which appears at pages 720 to 724 of the 1973 IDR, and consists of chapter 12, is hereby rescinded and the following adopted in lieu thereof.

[Filed October 31, 1974]

TITLE X

SPECIAL EDUCATION AND GUIDANCE

CHAPTER 12
SPECIAL EDUCATION

DIVISION I

AUTHORITY, SCOPE, GENERAL PRINCIPLES AND DEFINITIONS

DIVISION II

METHODS OF PROVIDING PROGRAMS AND SERVICES

DIVISION III

DISTRICT AND AREA RESPONSIBILITIES

DIVISION IV

PLANNING

DIVISION V

SERVICES AND PROGRAM MANAGEMENT

DIVISION VI

PERSONNEL

DIVISION VII

FACILITIES, MATERIALS AND EQUIPMENT

DIVISION VIII

PROGRAM REVIEW

DIVISION IX

PUBLIC PARTICIPATION

DIVISION X

FINANCE

DIVISION I

AUTHORITY, SCOPE, GENERAL PRINCIPLES AND DEFINITIONS

12.1(257, 281 and 442) Scope. These rules apply to the provision of educational and education-related services to children requiring special education between birth and the age of twenty-one (and to a maximum allowable age in accord with section 281.8 of the Iowa Code) who are enrolled in the public schools of this state or in nonpublic schools. In addition, they apply to children who require special education and are being educated at home, in hospitals, or in facilities other than schools, and to persons below or above the compulsory school attendance age, to the extent that programs of special education and related services are required or available pursuant to statute for such persons.

12.2(257, 280 and 281) General principles.

12.2(1) Special education programs and services must be made available to all children requiring special education. For all persons referred to in rule 12.1 of these rules, required services include screening, assessment and evaluation to ascertain whether a pupil is in need of special education, remedial or supportive instruction and habilitation, counseling or other aid in order to permit each child requiring special education to benefit from an educational program or service or to perform reasonably therein.

12.2(2) It is the responsibility of school districts to assure special education programs and services adequate to meet the requirements of state statute and these rules. This responsibility shall be met by one or more of the following: By each school district acting for itself; by action of two or more school districts through establishment and maintenance of joint programs; by the area education agency; by contract for services from suitable public or private agencies having the appropriate programs, capacity and competence; or, by any combination of the foregoing. Regardless of the method or methods chosen the individual school district has the responsibility and is accountable for provision and appropriateness of the programs and services. The appropriateness of special education programs and services shall be determined by the area education agency director of special education.

12.2(3) To the extent practicable, children requiring special education programs or services shall be educated in the regular school program of the school district; shall receive instruction in classes attended primarily by pupils who are not handicapped; shall receive instructional time equivalent to pupils who are not handicapped; and, shall be furnished such supplemental equipment, facilities, instructional materials and remedial or other services as may be necessary to enable them to perform satisfactorily in the normal environment of the school. Special education instructional classes, facilities and services shall be provided outside of the regular school program only to the extent that such other locations are necessary for the proper performance of clinical, medical or other services or that performance requires personnel, equipment or facilities which cannot be reasonably and efficiently accommodated on the premises of regular schools.

12.3(281) Definitions. As used in these rules:

12.3(1) *"Department"* means the state department of public instruction.

12.3(2) *"Parent"* means a natural parent or any other person who has personal guardianship rights and responsibilities for a pupil.

12.3(3) *"Pupil"* means a person over seven and under sixteen years of age who pursuant to the statutes of this state is entitled or required to receive a public education; a person under seven or over sixteen years of age who pursuant to the statutes of this state is entitled to receive a public education; and, a person under twenty-one years of age who pursuant to the statutes of this state is entitled or required to receive special education programs and services.

12.3(4) *"Children requiring special education"* are those pupils handicapped in obtaining an education as specified in chapter 281 of the Iowa Code, and as defined in these rules.

a. "Physical disability" is the inclusive term used in denoting physical or visual impairments of pupils requiring special education programs and services.

(1) Pupils with physical impairments manifest an aberration of an essential body structure, system or function. Included may

be disabilities resulting from cardiac, congenital or orthopedic anomalies and conditions, or conditions of unknown or miscellaneous causes.

(2) Pupils with visual impairments are those whose vision deviates from the normal to such an extent that they, in the combined opinion of an educator qualified in the education of the visually impaired and an eye specialist, require special education programs, facilities or services. Visual acuity and educational functioning are used in determining needs of partially sighted and blind pupils.

b. "Mental disability" is the inclusive term denoting significant deficits in adaptive behavior and subaverage general intellectual functioning. For educational purposes, adaptive behavior refers to the individual's effectiveness in meeting the demands of his environment and subaverage general intellectual functioning as evidenced by performance greater than one standard deviation below the mean on a reliable individual test of general intelligence valid for the individual pupil.

c. "Emotional disability" is the inclusive term denoting behaviors manifested within the school setting which significantly interfere with the learning process, interpersonal relationships or personal adjustment of the pupil and require provision of special education programs and services. Behaviors indicative of emotional disability may include but are not limited to:

(1) Withdrawal from social interaction in the school environment.

(2) Difficulty in maintaining satisfactory interpersonal relationships with peers or adults.

(3) Consistently inappropriate behavior under normal circumstances.

(4) General pervasive mood of unhappiness or depression.

d. "Communication disability" is the inclusive term denoting deficits in language, voice, fluency, articulation and hearing.

(1) Impairment in language is a disability in verbal learning resulting in a markedly impaired ability to acquire, use or comprehend spoken, read or written language due to difficulties in acquisition and usage of syntax, morphology, phonology and semantics.

(2) Impairment in voice is an abnormality in pitch, loudness or quality resulting from pathological conditions, psychogenic factors or inappropriate use of the vocal mechanism which interferes with communication or results in maladjustment.

(3) Impairment in fluency is a disruption in the normal flow of verbal expression which occurs frequently, or is markedly noticeable and not readily controllable by the pupil. These disruptions occur to the degree that the pupil or his listeners evidence reactions to the manner of one's communication and one's disruptions so that communication is impeded.

(4) Impairment in articulation is defective production of phonemes which interferes with ready intelligibility of speech.

(5) Impairment in hearing is a loss of auditory sensitivity ranging from mild to profound which may affect one's ability to communicate with others.

"Deaf" pupils include those individuals whose hearing impairment is so severe that they do not learn primarily by the auditory channel even with a hearing aid, and who need extensive specialized instruction in order to develop language, communicative and learning skills.

"Hard of hearing" pupils include those individuals whose level of communicative ability is adequate to allow them to acquire speech, language and to learn by auditory means although they may experience difficulty, under certain circumstances, in oral communication, language and learning skills with or without amplification and who may need various classroom and instructional modifications in order to make full use of school experiences.

e. "Learning disability" is the inclusive term denoting deficiencies which inhibit a pupil's ability to efficiently learn in keeping with his potential by the instructional approaches presented in the usual curriculum and require special education programs and services for educational progress.

These deficiencies occur in the acquisition of learning skills and processes or language skills and processes, including, but not limited to the ability to read, write, spell or arithmetically reason and calculate. These deficiencies may also be manifested in an inability to receive, organize, or express information relevant to school functioning.

The deficiencies displayed by pupils with learning disabilities are not primarily due to sensory deprivation, mental disabilities, severe emotional disabilities or a different language spoken in the home.

f. "Children who are chronically disruptive" refers to those pupils who, due to marked personal, school, family or community adjustment problems, have been excluded from school, are under judicial jurisdiction and require a self-contained special class program.

12.3(5) *"Children who are handicapped in obtaining an education"* are those pupils whose educational potential cannot be adequately realized in the regular school experience without the provision of special education programs or services.

12.3(6) *"Special education programs and services"* are all special education activities provided for children requiring special education by the department, area education agency or school district. Special education provides a continuum of program and service options in order to provide the intervention which is required to meet the educational needs of each pupil regardless of his disability.

12.3(7) *"Special education instructional programs"* are those regular or special education classroom and instructionally related activities for children requiring special education ordinarily provided by the school district but which in some instances, subject to the approval of the department, may be contracted from the area education agency or another public or private agency.

12.3(8) *"Special education support programs and services"* are those special education activities including interdistrict transportation and other unique service needs as approved by the department which augment, supplement or support regular or special educational programs and services for children requiring special education and which are ordinarily provided by the area education agency but may be provided by contractual arrangement, subject to the approval of the department, by the school district or another qualified public or private agency.

12.3(9) *"Director of special education"* means the director of special education of the area education agency.

12.3(10) *"Severely handicapped"* are those pupils also termed "profoundly handicapped" who have special education needs which require intensive special education programs and services.

12.3(11) *"Multiple handicaps"* are those conditions in which a pupil has two or more disabilities requiring intensive special education programs and services designed to ameliorate the effects of the combined disabilities.

DIVISION II

METHODS OF PROVIDING PROGRAMS AND SERVICES

12.4(281) Regular instruction preferred. In implementation of section 281.2 of the Iowa Code and these rules, children requiring special education shall attend regular class and receive services in a regular school to the maximum extent possible and appropriate. It is the policy of the department that school districts shall in co-operation with the area education agency, assemble sufficient numbers of children requiring special education in individual regular schools so that they may be efficiently served in conjunction with school programs for nonhandicapped pupils.

12.5(281) Special education instructional programs. Special education instructional programs may be of three types:

12.5(1) Self-contained special class—an educational program serving pupils with similar special education needs to the degree that they require special education instruction on a full-time basis. Such pupils ordinarily cannot profit from participation with regularly enrolled pupils in academic subjects but benefit from integration into other school activities.

12.5(2) Special class with integration—an educational program for children requiring special education with similar educational needs who are enrolled in a special education classroom but who can profit from participation in one or more academic subjects with pupils who are not handicapped. These programs may be operated on a multidisability basis when approved by the department.

12.5(3) Resource teaching program—an educational program for children requiring special education who are enrolled in a regular classroom program for most of the

school day but who require special education instruction in specific skill areas on a part-time basis. These programs may be operated on a multidisability basis.

12.6(281) Itinerant model. Special education programs and services may be provided on an itinerant basis whenever the number and location of pupils to be served does not justify their provision by professional personnel attached on a full-time basis to two or less attendance centers. It shall be a condition precedent to approval of an itinerant program that the director of special education submit evidence satisfactory to the department that the quantity and quality of an itinerant program does and will continue to meet the requirements of each pupil at each location and in the area as a whole.

12.7(281) Home services—hospital services. Pupils whose condition is such as to preclude their attendance at school shall not be denied instruction on account thereof. Instruction and appropriate special education services shall be provided through home or hospital programs. The provision of special education programs and services for homebound or hospitalized pupils will be approved only for those pupils with a disability (or disabilities) which precludes their participation in the regular or special education program conducted in schools or related facilities.

12.8(281) Special school provisions.

12.8(1) Special schools for children who cannot be effectively educated in the regular schools shall be maintained by individual school districts; jointly by two or more school districts; by the area education agency; jointly by two or more area education agencies; or, by contractual agreement. In appropriate circumstances, such schools may provide services of a supplementary or support character for regular schools and children in attendance in them.

12.8(2) School districts may make provision for children requiring special education by contracting with a private school or facility offering competent and appropriate programs and services, but in the case of a particular pupil, the program or service furnished shall be in a private school or facility only if it is impracticable for the school district to provide the program or service pursuant to subrule 1 of this rule.

12.8(3) The state may provide instruction and related services in special schools which it maintains and operates, but in the case of a particular pupil, consideration will first be given to accommodation of the pupil in a regular school, or in a school maintained and operated pursuant to subrule 1 of this rule.

12.8(4) When the choice is between accommodating a pupil in a private facility or program or in a state school, the decision shall be made on the basis of the following criteria:

a. The comparative distances of the facilities involved from the pupil's home or regular place of residence.

b. The comparative quality and suitability of the state and private programs being considered.

12.9(281) Transportation. School districts shall make provisions for special transportation for any pupil whose handicap or subsequent special education program or service requires him to be transported to and from or in and about school.

12.10(281) Special education centers. Special education centers may be established pursuant to section 281.4, subsection 10, of the Iowa Code and subject to approval by the department.

DIVISION III

DISTRICT AND AREA RESPONSIBILITIES

12.11(281) School district responsibilities.

12.11(1) To the extent, and in those cases where it is not expressly otherwise provided by state statute, it is the responsibility of each school district to provide each pupil who is a resident thereof with a suitable special education program of instruction and with services incidental thereto. This responsibility may be fulfilled by using the service delivery alternatives and program options as enumerated in division II of these rules, with the extent and character of pupil need as the chief determinant of the nature and degree of intervention provided.

12.11(2) School districts, in conjunction with the area education agency or the department, shall implement activities designed to evaluate and improve special education programs and services.

12.11(3) School districts should cooperate in research activities designed to evaluate and to improve programs and services received by children requiring special education.

12.11(4) School districts contracting with other districts, area education agency or private agencies to provide programs for an individual pupil or groups of pupils shall maintain responsibility for pupils receiving such programs or services by:

a. Insuring the adequacy and appropriateness of the program or service provided by requiring and reviewing periodic reports; and,

b. Conditioning payments on the proper delivery of program or service.

12.11(5) The school district shall assist the area education agency in selecting the site or sites of special education programs and services from among the several schools which may be within the area.

12.11(6) Policies, rules and procedures pertinent to the provision of special education programs and services shall be filed at the area education agency.

12.12(281) Area education agency responsibilities.

12.12(1) The area education agency shall develop policy and provide special education programs and services to children requiring special education pursuant to Acts of the 65th G.A., chapter 1172, and these rules.

12.12(2) Area education agencies contracting with school districts, other area education agencies, or private agencies to provide programs or services for individual pupils or groups of pupils shall maintain responsibility for quality of such programs or services by:

a. Insuring the adequacy and appropriateness of the programs or services provided by requiring and reviewing periodic reports; and,

b. Conditioning payments on the proper delivery of programs or services.

12.12(3) The area education agency shall maintain sufficient records and reports for audit by the department pursuant to section 281.9 of the Iowa Code.

12.12(4) School district and area education agency policies, rules and procedures pertinent to the provision of special education programs and services shall be filed at the area education agency.

12.12(5) The area education agency and school districts shall insure that rules pertinent to programs and services, eligibility, equipment, materials, facilities, evaluation, supervision and duties of personnel are observed in extended year or vacation period programs for children requiring special education.

DIVISION IV
PLANNING

12.13(281) Content and development of plan.

12.13(1) On or before November 1, of each year for the school year commencing the following July 1, each area education agency shall submit to the department, on forms provided by it, a plan for providing comprehensive special education programs and services for pupils, and for relating such programs and services to the educational needs of children requiring special education within the area served by the area education agency. The plan shall:

a. Set forth the number of children in the area in need of special education; the number presently receiving it; and the means being employed or proposed to be employed to provide appropriate special education to any child not receiving it but in need thereof.

b. Identify the kinds of special education required to meet the needs of all children in the area; the numbers of children needing each type, and the number presently receiving that type of special education.

c. Provide a statement indicating to what extent the children referred to in response to paragraphs *"a"* and *"b"* hereof receive special education (e.g., on a daily basis throughout the school year, on a part-time basis, or at intervals).

d. Survey existing programs, services and facilities and provide an assessment of pupil needs.

e. Identify the goals and objectives of planned programs and services and designate the role of staff to meet these goals and objectives.

f. Specify provisions for the ongoing identification, assessment, evaluation and placement of pupils in appropriate programs and services, the extent of parental involvement, co-operation with appropriate community service agencies, and the use and composition of diagnostic-educational teams for evaluation and placement recommendations.

g. Describe provisions for the orderly development of sequential programs and services including curriculum, instructional resources, administrative/supervisory services, staffing, personnel training, facilities, funding sources and any plans for co-operative or contractual arrangements.

h. Describe the design for evaluation of programs and services.

i. Be revised and resubmitted annually.

12.13(2) The plan shall identify, by district, the number of personnel positions, sponsoring agency, and geographical location of programs and services. Names of professional personnel employed to fill the positions shall be submitted to the department by September 15 of the school year in which the plan is in force.

12.13(3) Special education programs and services shall be preceded by careful planning which insures proper identification of pupils, meeting of required standards, and continuity of instruction which includes follow-up activities at all levels consistent with needs of each child requiring special education. Consideration shall be given to the number of children requiring special education necessary to produce appropriate groupings according to the nature and severity of disability, ages of pupils, educational objectives at all educational levels and to the provision for appropriate and continuous identification procedures.

12.13(4) Written approval shall be obtained from the department prior to initiation of special education programs and services which depend upon the employment of personnel who are employed part-time in special education and part-time in other capacities within the school or part-time in two or more of the special education personnel areas, or, only part-time within the school system.

12.14(281) Basis of approval of plan. Department approval of each area education agency plan shall be based on the following:

12.14(1) Receipt of data and information from which it can reasonably be concluded that there are or will be procedures and resources to provide the programs and services required by state statute and these rules.

12.14(2) Prior approval of the area education agency plan by the area board of directors.

12.14(3) Verification of the data and information submitted and supplemental information acquired by site visits, program reviews and otherwise, when deemed appropriate by the department.

12.14(4) Evidence of school district involvement in the formulation of the area education plan.

12.15(281) Approval of plan—exceptions. The department will notify each area education agency in writing of the approval of its plan. If approval is denied, the written notice thereof shall contain a statement of the reasons therefore. A plan may be approved in part, or subject to the remedying of deficiencies or omissions. A plan denied approval in whole or in part shall be revised and resubmitted by the area education agency.

12.16(281) Approval of plan—personnel. No plan shall be approved unless the department is satisfied that the personnel resources committed thereto by the area education agency or the participating school district or districts is sufficient for the provision of adequate services. The grounds for requiring increased personnel shall include:

a. Newly identified children requiring special education support services.

b. Referral backlog of pupils who need special education identification and evaluation.

c. Implementation of new models and increased intervention for previously identified pupils.

d. Demographic consideration which make it appear that present staff distributions cannot reasonably service the entire area and its children requiring special education.

DIVISION V
SERVICES AND PROGRAM MANAGEMENT

12.17(281) Programs and procedures required. Consistent with provisions of a

working environment which will encourage efficient and effective utilization of the professional abilities and time of special educators and the integration of special education programs and services with the instructional and other programs of the school district as a whole, the area education agency and school district shall establish and maintain procedures to provide the programs and services identified herein.

12.18(281) Identification, assessment and evaluation. Each area education agency, in conjunction with each school district, shall establish and maintain an ongoing identification, assessment and diagnostic program to insure early identification of and appropriate service for children requiring special education. The program shall include:

12.18(1) Screening for pupils who may require special education which is consistent with the following:

a. The population to be screened and the screening model(s) used shall be specified.

b. Qualified personnel shall conduct or supervise screening programs. Paraprofessional personnel, after receiving appropriate training, may assist in screening under supervision of a qualified professional.

c. Measures shall be included to secure procedural uniformity by all examiners.

d. Control measures shall be included to validate and, where necessary, to refine screening procedures.

e. Referral for further evaluation shall be arranged for those pupils who show problems significant enough to warrant further diagnostic study.

12.18(2) A referral system which includes interaction with pupils, teachers, school administrators, parents and others having specific responsibilities for or knowledge of pupils who may require special education. The referral system shall show specific procedures for:

a. Securing initial screening for previously unidentified pupils who may require special education.

b. Obtaining health history, social work services, psychological evaluation, educational evaluation, vision evaluation, language, speech and hearing evaluations and other evaluations considered necessary for pupils as a result of special education screening or assessment.

12.18(3) Specialized tests, materials and equipment appropriate to the diagnostic process shall be available for use by qualified professionals.

a. When assessment and diagnostic procedures and instruments are selected, adjustments shall be made where necessary to account for sensory and physical differences, emotional and perceptual characteristics, socio-cultural and linguistic background and home environment of pupils. The appropriateness of such procedures and instruments shall be considered in administering such tests and evaluating the results.

b. Tests to determine the intellectual functioning of hearing imparied pupils shall be selected from nonlanguage performance scales standardized on, or adapted for, the hearing impaired.

12.18(4) A confidential record, subject to audit by the department, registering the name and certified disability of each child requiring special education and shall be maintained by the area education agency and provision made for its periodic revision. Adequate records of the population screened shall be maintained.

12.18(5) If the screening, assessment and evaluation procedures required by these rules are performed under contract by an agency other than the school district or area education agency, it shall be the duty of the area education agency to assure that these requirements are met.

12.19(281) Placement.

12.19(1) The area education agency shall have written procedures for the determination of eligibility and placement of pupils in appropriate special education programs and the receipt by pupils of special education services. The area education agency and any school district therein, in discharging its responsibilities in connection with the provisions of special education, shall employ such procedures. They shall include:

a. The utilization of diagnostic-educational teams for evaluation and placement recommendations for children requiring special education instructional programs.

b. The compilation or acquisition of a comprehensive educational evaluation for each pupil which includes recent evaluations of vision, hearing, language and speech, intellect, social functioning, academic status, health history and other elements as deemed appropriate by the diagnostic-educational team.

c. A process for informing the parents of the results of screening, assessment, diagnosis and which also provides for parental involvement in determining plans for habilitation prior to placement of any child requiring special education.

d. Specified procedures for parental appeal of placement decisions as defined in section 281.6 of the Iowa Code.

e. The director of special education's certification and assignment of the appropriate weighted enrollment factor.

12.19(2) When decisions for professional programs and services are made for a particular handicapping condition, the appropriate specialist shall have primary responsibility for recommending the type of program model needed, the extent of services to be provided and the frequency of direct/indirect contacts scheduled for the pupil.

12.19(3) When recommendations for a pupil with emotional disabilities indicate a need for provision of services in a special class, self-contained special class or class for pupils with severe handicaps, a clinical psychologist or psychiatrist, approved by the department, shall be consulted prior to certification by the director of special education. Such consultation may provide recommendations for additional evaluation, instructional and support services necessary to meet the pupil's needs.

12.19(4) Placement of each child requiring special education shall be reviewed for appropriateness on an annual basis. When comprehensive re-evaluation is required or requested by school personnel or parent, the pupil shall be referred to the diagnostic-educational team. In either case, written documentation shall be prepared for:

a. Continuation in the program,

b. Transfer to a different program or service, or,

c. Dismissal and follow-up.

12.19(5) Maximum class size limits are set forth in the following chart and may not exceed the number of pupils indicated.

	Itinerant Teacher	Resource Teaching Programs	Special Class With Integration		Self-Contained Special Class			Severely Handicapped
			Elementary	Secondary	Preschool	Elementary	Secondary	
Communication Disability	Not An Option	18	12	15	Department Approval	8	10*	5
Hearing Impaired	10	Department Approval	10	10		8	10*	5
Emotional Disability	10	18	12	15		8	10*	5
Learning Disability	10	18	12	15		8	10*	5
Mental Disability	Department Approval	18	12	15		8	10*	5
Physical Disability	10	18	12	15		8	10*	5
Visually Impaired	10	Department Approval	12	15		8	10*	5
Chronically Disruptive	Not An Option							5
Multiple Handicaps	Not An Option							5

*Self-contained special classes at the secondary level may be operated with an enrollment limit of 15 students if a work experience instructor supervises on-the-job work experience and provides related instruction.

NOTE: Chronological Age Range Limitations

1. Resource teaching programs and special classes with integration will be housed in elementary or secondary school facilities and serve pupils of a corresponding age range.
2. Self-contained special classes may be operated at the preschool level or other instructional levels so long as the chronological age range of pupils enrolled does not exceed six years.

12.20(281) Scheduling—records.

12.20(1) Within the first thirty days of the school year, each school district, in conjunction with the area education agency, shall provide for the initiation of screening and assessment programs in its schools in order to ascertain which pupils may require special education programs and services.

12.20(2) Children requiring special education who are preregistered for the school year or who were enrolled previously and are known to require continued special education of a particular kind or degree shall receive such services or programs as are necessary to permit their satisfactory performance in the education program from the beginning of the school year. Facilities, personnel, classes, supplementary activities, equipment and supplies shall be provided to accomplish this requirement. Necessary programs and services may also be provided to pupils on an extended year basis or in sessions during vacation periods.

12.21(281) Habilitation and instruction.

12.21(1) The programs and services provided by special education staff shall be based on and responsive to assessment and diagnostic evaluation of the pupil's case history and present status. The relationship between the special education provided and the overall needs of the child shall be fully considered. The approach shall be interdisciplinary and shall have the objective of improving the capacity of the pupil to learn and function, as nearly as may be, in a normal family and community environment or, if that is not probable of attainment, in the environment most suitable for the pupil.

12.21(2) The programs and services provided for each child requiring special education shall be contained in a written individualized plan which includes:

a. Establishment of goals and objectives to meet individual needs which are consistent with the pupil's total educational program and curriculum, including opportunities for vocational and career education.

b. Continuous evaluation of the efficacy of the special education program or service provided for each pupil, with resultant redefinition of objectives and habilitative or instructional procedures as needed.

c. The setting forth of the goals and objectives which, when attained, will warrant a change in services provided or dismissal from the program.

d. Reporting pupil status on a periodic basis to parents, teachers and other responsible parties involved.

12.22(281) Consultative services. Special education consultative services include:

12.22(1) Provision of information and support to classroom teachers, curriculum specialists, special education support personnel and administrators.

12.22(2) Supervision and training of aides.

12.22(3) In-service training of personnel providing or being prepared to provide instructional or related services.

12.22(4) Parent counseling and instruction.

12.22(5) Demonstration of instructional or therapeutic procedures and techniques.

12.22(6) Curriculum development activities.

12.23(281) Co-ordination time. Co-ordination time shall be provided to staff delivering special education programs and services to allow staff to perform necessary professional responsibilities, such as:

12.23(1) Parent conferences.

12.23(2) Attendance at in-service professional development activities.

12.23(3) Consultations with medical, teaching and other professional support personnel.

12.23(4) Screening, assessing and evaluating pupils referred after the initial identification program has ended.

12.23(5) Classroom observation of pupils.

12.23(6) Planning, record keeping and correspondence.

12.24(281) Records and reports.

12.24(1) For each pupil, all screening, assessment and evaluation results shall be evaluated promptly, and a full record made and preserved. The record shall show in detail the handicapping condition of the pupil with respect to performance and capability. For children identified as needing special education programs or services, their

records shall also show the certified handicapping condition, the program or services required, and the manner of and extent to which they are being provided, together with the course of progress or regression, if any. Such records shall be confidential and neither the records themselves nor information contained therein shall be disclosed to any persons, except for school personnel required to use them in connection with the instruction or treatment of the pupil, the parents of the pupil, or persons authorized by a parent. The parental authorization must be in writing and signed.

12.24(2) Records initiated in accordance with the foregoing paragraph shall be maintained in a current status.

12.24(3) The area education agency shall adopt and recommend an individual case record for use by professional staff incorporating the following characteristics:

a. The written program and services planned as required by subrule 12.21(2) of these rules.

b. Relevant background data, results of assessment and diagnostic reports.

c. The person responsible for primary management of each case and other participants involved.

d. A chronology of all programs or services rendered. Each item appearing in the record shall be dated and signed by the person providing the program or service.

e. Progress reports for pupils receiving services shall be prepared at regular intervals and shall become part of each pupil's case record. A final summary report shall be prepared at the time when services are terminated.

12.24(4) Individual case records shall be considered official school records and subject as such to general regulations regarding such records. They shall be kept in a manner which insures security, continuity and confidentiality. (See chapter 68A of the Iowa Code.)

12.24(5) The custodian of case records shall not furnish them, or information from them, to persons not professionally employed by the school district or area education agency, unless the custodian is in receipt of a release signed by the parent authorizing the furnishing of case record information. Such a release shall provide authority for the furnishing of information only to the person or persons specified therein, unless the terms thereof make it clear that the release is a general release. Whenever information is released, a record shall be made and preserved that shows the recipient and the date of transmittal.

12.24(6) Procedures shall be established to terminate maintenance of individual case records when the instructional and habilitative program is completed and the pupil no longer has need for services. If there is no time period otherwise prescribed, records shall be kept until not less than three years after the pupil has completed the school program or would have reached the maximum age of compulsory school attendance. This does not preclude transfer of records, or copies thereof, to the school district in which the pupil is newly enrolled.

12.24(7) Records and reports shall be initiated and maintained by the area education agency in order to provide evidence of:

a. Certification of the existence of an individual's disability for children requiring special education.

b. Approval for pupil participation in programs or services.

c. Approval of program and service personnel.

d. Continuity and sequential development of programs and services.

e. Nature and extent of present programs and services.

f. Assessment of present needs and projections for future needs.

g. Periodic program and services evaluation by staff or outside consultants.

h. Baseline data for research efforts necessary to improve decision-making program planning and staff performance.

12.24(8) The area education agency and the school district shall submit to the department records and reports specifically requested.

DIVISION VI

PERSONNEL

12.25(281) Certification. Special education personnel shall meet the department certification or recognition requirements for

the position employed and shall meet the approval requirements of the department as provided for particular special education services and programs. In addition, any special education personnel who, by the nature of their work, are required to hold a professional or occupational license, certificate, or permit in order to practice or perform the particular duties involved in this state shall be required to hold such license, certificate, or permit.

12.26(281) Authorized personnel. The following types of special education personnel are authorized to be employed by a school district or area education agency as appropriate. Except as provided in subrule 12.13(4) of these rules, the area education agency or school district must employ its authorized personnel on a full-time special education assignment to be eligible for special education funding.

12.26(1) "Director of special education" shall function as an advocate for children requiring special education and serve as an extension of the state division of special education in meeting the intent of the special education mandate and compliance with statutes and rules. The director of special education shall be responsible for the implementation of programs and services for children requiring special education pursuant to provisions of Acts of the 65th G.A., chapter 1172, section 6 and these rules. The director of special education shall be employed on a full-time basis and shall not be assigned the responsibility for any other administrative unit within the area education agency. It shall be the responsibility of the director of special education to report any violation of these rules to the department for appropriate action as provided in the Iowa Code.

12.26(2) Instructional personnel may be employed to serve as resource teachers, special class teachers, or self-contained classroom teachers in the following areas:

a. Chronically disruptive.

b. Communication disability.

c. Emotional disability.

d. Hearing impaired.

e. Learning disability.

f. Mental disability.

g. Multiple handicapped.

h. Physical disability.

i. Preschool handicapped.

j. Severely handicapped.

k. Visually impaired.

12.26(3) The following positions are classified as support personnel:

a. "Assistant director of special education" shall assist the director of special education in the performance of specific area-wide administrative, supervisory and co-ordinating functions as delegated by the director of special education.

b. "Special education co-ordinator" shall be a special educator and shall assist the director of special education in co-ordinating special education programs and services within a school district.

c. "Supervisor" shall be the professional discipline specialist who has been assigned responsibility by the director of special education for the development, maintenance, supervision, improvement and evaluation of professional practices and personnel within a specialty area.

d. "Hearing clinician" shall provide services necessary for the identification and diagnostic evaluation of pupils having hearing impairments and for the planning and providing of special education programs and services for them.

e. "School psychologist" shall provide psychological services for the identification, planning, referral and counseling of children requiring special education programs and services, and consultation with school personnel and parents.

f. "Speech clinician" shall provide clinical language and speech services necessary for identifying, planning, co-ordinating and carrying out programs and services for pupils with deficits in language, voice, articulation and fluency.

g. "Consultant" shall be the instructional program specialist and shall provide ongoing support to instructional programs for children requiring special education through the supervision and evaluation of curriculum and methodology.

h. "Hospital/homebound teacher" shall provide instruction for pupils who are homebound or hospitalized and unable to attend classes.

i. "School social worker" shall serve children requiring special education through group or individual casework practice, consultation with school personnel, and counseling with parents and pupils.

j. "Educational strategist" shall provide assistance to regular classroom teachers in developing intervention strategies for pupils who are mildly handicapped in obtaining an education but can be accommodated in the regular classroom environment.

k. "Itinerant teacher" shall provide supportive instruction on an itinerant basis to children requiring special education.

l. "Occupational therapist" shall provide those specific therapeutic activities needed by handicapped children.

m. "Physical therapist" shall provide those specific therapies prescribed by a physician that are needed by children requiring special education.

n. "Preschool teacher" shall provide specialized instructional programs and assistance for children less than five years of age who require special education programs and services.

o. "School vocational rehabilitation counselor" shall plan and implement vocational habilitation services to children requiring special education.

p. "Special education media specialist" a media specialist who shall provide correlation of media services only for children requiring special education and provide for the development, availability, maintenance and effective utilization of media for special education programs and support services.

q. "Special education nurse" a school nurse who shall provide professional nursing services only to children requiring special education.

r. "Work experience instructor" shall plan and implement a sequential secondary school program which provides on and off-campus work experiences for children requiring special education.

s. Paraprofessional personnel.

(1) *"Audiometrist"* shall provide hearing screening and other specific activities, as approved by the department, and as assigned and supervised by the hearing clinician.

(2) *"Communication aide"* shall provide, under supervision of a speech clinician, certain language, articulation, voice and fluency activities specifically assigned by the supervising speech clinician.

(3) Other paraprofessionals as approved by the department.

12.27(281) Support personnel ratios. The granting of departmental approval for the employment of special education support personnel shall be determined after reviewing the justification for employment of such personnel as outlined in the area education agency's special education plan. The employment of special education support services personnel shall be based upon service needs and models utilized. Application for staff/pupil ratios smaller than those specified below will require detailed justification as to the unique special education needs that require the granting of a ratio exception.

Position	*Ratio*
Hearing clinician	1:6,000-12,000 enrollment
School psychologist	1:2,000-2,500 enrollment
Speech clinician	1:1,000-1,500 enrollment
Consultant	1:10-15 instructional programs
Hospital/homebound teacher	1:10 handicapped pupils
School social worker	1:2,500-3,000 enrollment
Educational strategist	1:1,000-1,500 enrollment
Occupational therapist	1:special education facility
Physical therapist	1:special education facility
School vocational rehabilitation counselor	1:5,000 enrollment
Special education media specialist	1-3:area education agency
Special education nurse	1-5:area education agency
Work experience instructor	1:20-35 handicapped pupils

Modifications in these staff/pupil ratios may be approved subject to the following variations:

12.27(1) Unusual concentration of handicapped children due to the following:

a. Concentration of special education programs and facilities within a community.

b. High risk socio-economic nature of the community.

c. Other unusual situations resulting in a higher or lower than average prevalence of handicapping conditions.

12.27(2) Severity of the handicapping condition served.

12.27(3) Geographic distribution of pupils to be served.

12.27(4) Characteristics of service model or models to be employed.

12.27(5) Availability and utilization of paraprofessional assistance.

12.27(6) Administrative, supervisory and clinical support available to special education personnel.

12.27(7) Additional responsibilities of support personnel such as staffing, screening and supervision.

12.27(8) Availability of support personnel who provide complementary service in a team approach.

12.28(281) Paraprofessionals. Clinical aides and instructional aides (paraprofessional personnel), as approved by the department, may be employed as ancillary personnel in special education and shall:

12.28(1) Be at least eighteen years of age.

12.28(2) Complete appropriate preservice or in-service training specific to the functions to be performed. The area education agency or school district, as the case may be, shall make provision for and require such completion prior to the beginning of service wherever practicable, and within a reasonable time of the beginning of service where the pre-entry completion is not practicable. In addition, the area education agency or school district shall provide such advanced or continuing training or instruction as may be appropriate on an in-service basis.

12.28(3) Work under the supervision of the appropriate professional.

DIVISION VII
FACILITIES, MATERIALS AND EQUIPMENT

12.29(281) Facilities.

12.29(1) Each school or other center where special education programs or services are provided shall supply therefor facilities which shall be at least equivalent in quality to regular classrooms in the system, located in buildings housing regularly enrolled pupils of comparable ages and meet the following criteria:

a. Rooms shall be provided for itinerant and permanently-assigned staff and shall be regularly available for their use, of adequate size, with sufficient and appropriate work space, seating space and furnishings.

b. Physical mobility of pupils shall be considered in providing an environment that is architecturally barrier-free.

12.29(2) Where available space in schools or other centers does not meet these standards, relocatable buildings for special education programs and services may be approved by the department. The use of such buildings shall be subject to reapproval or termination of approval, by the department, at intervals not to exceed one year.

12.29(3) Special education personnel shall be provided office space, secretarial and clerical assistance and telephone service.

12.30(281) Materials and equipment.

12.30(1) Each school district shall make provision for its special education programs and services, building modifications, necessary equipment and materials, including both durable items and expendable supplies; provided that, where an area education agency, pursuant to appropriate arrangements authorized by the laws of this state, furnishes a special education program or service, performance by the area education agency shall be accepted in lieu of performance by the school district.

12.30(2) Each area education agency or school district operating one or more special education programs or services shall have a comprehensive program in operation under which equipment for those programs and services is acquired, inventoried, maintained,

calibrated and replaced on a planned and regular basis.

12.30(3) The area education agency or school district responsible for the operation of a special education program or service shall provide special aids, equipment, materials, or supplies as necessary and approved by the department, but shall not provide devices prescribed or designed on an individual basis for a particular pupil.

DIVISION VIII
PROGRAM REVIEW

12.31(281) Reports and consultation.

12.31(1) Not later than August 1 of each calendar year, each area education agency, on forms provided by the department, shall make a report covering the fiscal year just ended on June 30 to the department containing the following:

a. A narrative summary of the special education programs and services of the area education agency and constituent school districts during the school year just concluded.

b. The number of pupils who, during the school year or any part thereof, were identified to be in need of special education programs and services, listed by resident school district, types of programs and services needed with the number of pupils needing each type.

c. The number of pupils receiving special education, both in total and by each classification for each school district.

d. The reasons for any disparity between the numbers of pupils needing programs and services and the numbers receiving them.

e. Such other information and data as the department may require.

12.31(2) The department will evaluate each report submitted and may require the reporting area education agency to furnish additional information to ascertain the status of special education programs and services of the area education agency in compliance with the requirements of chapters 257 and 281 of the Iowa Code and these rules.

12.31(3) The department shall inform the area education agency in writing if any aspect of its report is unsatisfactory and, in such case, shall include the reasons therefor. At the initiation of the area education agency, school district or the department, conferences and consultations may be held on any matter relating to a report of the special education programs and services of the area education agency.

12.32(281) Rule exception. When, in unique circumstances, these rules do not provide for the appropriate program for a child requiring special education, the director of special education may request a rule exception from the department. Such a request shall be in writing and include:

12.32(1) A description of the unique circumstances, and,

12.32(2) The proposed program or service alternatives. Department action on a request for a rule exception shall be communicated in writing to the director of special education and, if granted, such an exception shall be valid for one year.

12.33(281) State aid. Any state aid otherwise available to a school district or area education agency on account of its special education programs and services, or otherwise, may be suspended or withheld in whole or in part by the department in the case of a school district, area education agency, or other entitled entity to which these rules apply and which district, agency or entity is not in compliance therewith.

DIVISION IX
PUBLIC PARTICIPATION

12.34(281) Information.

12.34(1) Pupils, parents and the general public are the patrons of special education programs and services provided by school districts and area education agencies. To the end that these patrons may have reasonable opportunity to know of the programs, services and appeal procedures to which they are entitled, the procedures for obtaining them and the manner in which they are being provided, each area education agency shall:

a. Establish and conduct an information program relating to special education programs and services, including their content, methodology and availability.

b. Notify parents of pupils of the times and places where screenings and assessments

are to occur to identify children requiring special education.

c. Promptly following each such screening, assessment, or diagnostic evaluation, notify the parents of each pupil screened, assessed or diagnosed of the results thereof as they pertain to the child of such parents. The notification shall include a statement as to whether the child was found to deviate from the norm in any respect and whether a program of treatment or special education service is proposed, together with an explanation of its intended character and duration. If a handicap is identified and no program of treatment or service is proposed, the reasons for making no proposal shall be set forth in the notice.

12.34(2) Each school district and area education agency shall assure that the professional personnel engaged in its special education programs and services are available for individual conferences with parents. With reference to a child receiving special education, the conferences shall be for the purpose of providing information on the nature of the program, progress or lack thereof on the part of the child, and measures recommended to be taken by the parents and other family members. Parents of children not receiving special education also shall be entitled to a conference with professional personnel, if they desire to ascertain why their children are not receiving special education.

12.35(281) Advisory mechanisms and procedures.

12.35(1) Each area education agency may provide on a regular basis for the receipt of advice from parents and the community at large concerning the education of children requiring special education programs and services and the special needs of such pupils. The area education agency shall inform the department of the method and arrangements which it employs to secure such advice and shall provide such documentation concerning the actual operation thereof as the department may require.

12.35(2) The area education agency shall prepare, issue, keep in force and from time to time revise or amend rules and procedures whereby parents may obtain a review of decisions made by school authorities concerning the extent and character of special education programs and services provided for or denied to a pupil. Such rules and procedures shall be on file in the office of the school district as a public record, in the offices of the area education agency and a copy thereof shall be available to any resident of the school district without charge, upon request.

DIVISION X
FINANCE

12.36(281) Administrative support. Administrative costs incurred in behalf of the area education agency special education support services, including facilities for special education support services personnel, shall be included in calculating the cost per pupil to be assessed school districts.

12.37(281) Contractual agreements. Any special education instructional program not provided directly by a school district or any special education support service not provided by an area education agency can only be provided through a contractual agreement approved by the department.

12.38(281) Research and demonstration projects and models for special education program development. Applications for aid, whether provided directly from state funds or from federal or other sources, for special education research and demonstration projects and models for program development shall be submitted to the department.

12.39(281) Additional services. Additional programs and services for children requiring special education made available through the provisions of Acts of the 65th G.A., chapter 1172, section 8, shall be furnished in a manner consistent with these rules.

12.40(281) Extended year or vacation period programs. Approved extended year or vacation period programs for special education programs and services, when provided by the area education agency for children requiring special education, shall be funded through procedures as provided for special education support services in section 442.7 of the Iowa Code.

12.41(281) Special education centers. Special education centers, diagnostic and prescriptive, are authorized and funded in accord with special education support services provisions of sections 281.4 and 442.7

of the Iowa Code. When the special educational needs of a child have been determined and when the weighted enrollment factor has been certified, the instructional program will be funded in accord with provisions of section 281.9 of the Iowa Code.

12.42(281) Program costs. The program costs charged by a school district or area education agency for an instructional program for a nonresident child requiring special education shall be the actual costs incurred in providing that program.

These rules are intended to implement Chapters 257, 280, 281 and 442 of the Code.

[Effective October 31, 1974]

These proposed rules were submitted to the attorney general on September 26, 1974, and the attorney general did not render an opinion thereon within thirty days of said date.

PUBLIC INSTRUCTION DEPARTMENT

(continued)

Pursuant to authority of section 285.8 of the Code, rules appearing in 1973 IDR, pages 752 to 759, relating to school transportation, are amended as follows:

[Filed November 19, 1974]

ITEM 1. Rule 22.1(285) is hereby rescinded and the number reserved for future use.

ITEM 2. Rule 22.2(285) is hereby rescinded and the number reserved for future use.

ITEM 3. Rule 22.3(285) is hereby rescinded and the number reserved for future use.

ITEM 4. Rule 22.4(285) is amended by striking subrule 22.4(3) and inserting in lieu thereof the following:

22.4(3) The riding time, under normal conditions, from the designated stop to the attendance center, or on the return trip, shall not exceed seventy-five minutes for high school pupils or sixty minutes for elementary pupils. (These limits may be waived upon request of the parents.)

ITEM 5. Rule 22.4(285) is hereby further amended by striking all of subrules 22.4(6), 22.4(7), 22.4(8), and 22.4(9).

ITEM 6. Rule 22.6(285) is hereby rescinded and the number reserved for future use.

ITEM 7. Rules 22.7(285), 22.8(285), 22.9(285), 22.10(285), 22.11(285), and 22.12(285) are hereby rescinded and the numbers reserved for future use.

ITEM 8. Rules 22.19(285), 22.20(285), 22.21(285), 22.22(285), 22.23(285), and 22.24(285) are hereby rescinded and the numbers reserved for future use.

ITEM 9. Rules 22.26(285), 22.27(285), 22.28(285), 22.29(285), 22.30(285), and 22.31(285) are hereby rescinded and the numbers reserved for future use.

ITEM 10. Rule 22.32(285) is amended by adding a new subrule as follows:

22.32(5) School buses may be used by an organization of, or sponsoring activities for, senior citizens, children, or handicapped persons under the following conditions:

a. The "School Bus" signs shall be covered and the flashing warning lamps and stop arm made inoperable.

b. Transportation outside the state of Iowa shall not be provided without the approval of the Interstate Commerce Commission.

c. For adult groups, no more than two persons shall occupy a thirty-nine inch seat. Standees shall not be permitted.

d. A chaperone shall accompany each bus to assist the passengers in boarding and disembarking from the bus and to aid them in case of illness or injury.

e. The driver of the bus shall be approved by the local board of education and must possess a chauffeur's license and a school bus driver's permit.

f. The driver of the bus shall observe the maximum speed limits for school buses at all times.

ITEM 11. Rule 22.58(285) is amended by striking the period at the end of the last

sentence and adding the following: ", or on Form TR-F-14R, School Bus Accident Report, Iowa department of public instruction."

ITEM 12. Rule 22.59(285) is amended by adding the following sentence at the end thereof:

"After stopping, the driver shall open the entrance door, look and listen for approaching trains and shall not proceed to cross the tracks until it is safe to do so."

ITEM 13. Rule 22.60(285) is hereby rescinded and the following inserted in lieu thereof:

22.60(285) Driver restrictions.

22.60(1) The driver of a school bus shall not smoke when there are passengers on the bus.

22.60(2) The driver shall not permit firearms to be carried in the bus.

22.60(3) The driver shall not fill the gasoline tank while the motor is running.

[Effective November 19, 1974]

PUBLIC SAFETY DEPARTMENT

Pursuant to the authority of 321.4 of the Code, the following rules are hereby enacted as an addition to Department of Public Safety rules identified as Title I, Administration, Chapter 1, motor vehicle lighting devices and other safety equipment.

[Filed December 9, 1974]

TITLE I

ADMINISTRATION

CHAPTER 1

MOTOR VEHICLE LIGHTING DEVICES AND OTHER SAFETY EQUIPMENT

1.2(321) Equipment requirements for specially constructed and reconstructed motor vehicles, other than motorcycles. The following standards are minimum requirements for construction and equipping of specially constructed motor vehicles as defined in section 321.1(12) of the Code, and reconstructed motor vehicles as defined in section 321.1(13).

1.2(1) *Definitions.* The definitions in section 321.1 of the Code are hereby made part of this chapter.

1.2(2) *Certification.* Upon application for title as a specially constructed or reconstructed vehicle, the owner of the vehicle shall submit the vehicle for examination to an officer of the motor vehicle law enforcement division of the department, as required in section 321.23 of the Code. If upon examination, that officer finds the vehicle in compliance with these standards, he shall so certify the vehicle as properly equipped and eligible for registration.

Nothing in this chapter shall be construed as exempting any such vehicle from the requirements of section 321.238 as it pertains to motor vehicle inspection.

1.2(3) *Defroster and defogging device.* Every closed specially constructed or reconstructed motor vehicle, and every such open vehicle equipped with a convertible top, shall be equipped with a device capable of defogging or defrosting the windshield area.

1.2(4) *Door latches.* Every specially constructed and reconstructed motor vehicle that is equipped with doors leading directly into a compartment that contains one or more seating accommodations shall be equipped with mechanically actuated door latches which firmly and automatically secure the door when pushed closed and which allow each door to be opened from the inside by the actuation of a convenient lever, handle or other suitable device.

1.2(5) *Floor pan.* Every specially constructed or reconstructed motor vehicle shall be equipped with a floor pan under the entire passenger carrying compartment. The floor pan shall support the weight of the number of occupants that the vehicle is designed to carry. The floor pan shall be so constructed that it prevents the entry of exhaust fumes.

1.2(6) *Glazing.*

a. Windshields. Every specially constructed and reconstructed motor vehicle

shall be equipped with a laminated safety glass windshield that complies with and bears the approval marking of the American National Standards Institute (ANSI) Z 26.1 Standard. The windshield shall be in such a position that it affords continuous horizontal frontal protection to the driver and front seat occupants. The minimum vertical height of the unobstructed windshield glass shall be six inches. This paragraph does not preclude the use of a windshield that can be folded down to a horizontal position, provided that the windshield can be firmly fastened in both the vertical and horizontal positions.

b. Side and rear glass. Side and rear glass is not required in specially constructed and reconstructed vehicles. If present, however, this glass must be either laminated or tempered safety glass bearing the approval of the ANSI Z 26.1 Standard.

1.2(7) *Driver visibility.* Each specially constructed and reconstructed vehicle shall provide the driver with a minimum outward horizontal vision capability of ninety degrees each side of a vertical plane passing through the fore and aft centerline of the vehicle. This plane of vision may be interrupted by window framing and windshield door support posts not exceeding four inches in width at each side location.

1.2(8) *Hood latches.* If a specially constructed or reconstructed vehicle is equipped with a front opening hood, that hood shall be equipped with a primary and secondary latching system to hold the hood in a closed position.

1.2(9) *Instruments and controls.* Each specially constructed and reconstructed motor vehicle shall be equipped with:

a. An operating speedometer calibrated to indicate "miles per hour."

b. An operating odometer calibrated to indicate "total miles driven."

c. A steering wheel circular or nearly circular in shape, having an outside diameter of not less than thirteen inches.

d. An accelerator control system that returns the engine throttle to an idle position automatically when the driver removes the actuating force from the accelerator control.

1.2(10) *Brakes.*

a. Every specially constructed and reconstructed vehicle shall be equipped with brakes acting upon all wheels. The service brakes must be capable of meeting or exceeding the stopping requirements of section 321.431 of the Code. If necessary, the braking system may be tested by a road test on a public roadway by an officer of the motor vehicle law enforcement division of the department.

b. Every specially constructed and reconstructed motor vehicle shall be equipped with a parking brake operating on at least two wheels applied with required effectiveness despite exhaustion of any source of energy or leakage of any kind in the service brake system. The parking brake shall meet the requirements of sections 321.430 and 321.431.

1.2(11) *Rear view mirror.* Every specially constructed and reconstructed motor vehicle shall be equipped with two rear view mirrors, each having substantially unit magnification. One shall be mounted on the inside of the vehicle in such a position that it affords the driver a clear view to the rear. The other shall be mounted on the outside of the vehicle on the driver's side in such a position that it affords the driver a clear view to the rear. When an inside mirror does not give a clear view to the rear, a right-hand outside mirror shall be required in lieu thereof. The mirror mounting shall provide a stable support for the mirror, and shall provide for mirror adjustment by tilting in both horizontal and vertical directions. Each mirror shall have a minimum of ten square inches of reflective surface.

1.2(12) *Seat belts.* Every specially constructed and reconstructed motor vehicle shall be equipped with at least a Type I (lap belt) seat belt for the driver and each passenger seating position. The belts at each location shall comply with DOT Motor Vehicle Safety Standard No. 209, and shall be firmly anchored to the vehicle body.

1.2(13) *Seating.* All bench type and individual seats in specially constructed and reconstructed motor vehicles shall be attached to structural or body parts.

1.2(14) Reserved.

1.2(15) *Bumpers.* Every specially constructed and reconstructed motor vehicle shall be equipped with bumpers, one located at the front of the vehicle and one located at the rear. The bumpers may be either

horizontal, or vertical grill bars of sturdy construction, but in either case, shall have at least an evenly distributed portion of their horizontal load bearing width within fourteen inches and twenty-two inches above the level road surface, and which extend no less than the width of their respective wheel track distances. The horizontal bumper or vertical grill bars shall be at least four and one-half inches in vertical height and centered on the vehicle's fore and aft centerline, and shall be firmly attached to the vehicle frame. Trucks and truck tractors are excluded from the requirement for bumpers on the rear only.

1.2(16) *Exhaust system.* Every specially constructed and reconstructed motor vehicle shall have an exhaust system meeting the following requirements:

a. The system shall be free of leaks, including the exhaust manifold (or headers), piping forward of the muffler, the muffler(s), and tail piping.

b. Exhaust fumes shall be emitted to the extremity of the vehicle, behind the rear wheels, or to the extremity of the vehicle within six inches in front of the rear wheels. Exhaust fumes from trucks, other than enclosed vans, may be emitted to the rear of that part of the vehicle designed for, and normally used for carrying the driver and passengers.

c. Each exhaust system must be equipped with a muffler that prevents excessive noise.

d. No part of the exhaust system shall pass through any area of the vehicle that is used as a passenger carrying compartment, and shall be so constructed that persons entering the vehicle cannot make contact with the exhaust system.

1.2(17) Reserved.

1.2(18) *Fuel system.* Every specially constructed and reconstructed motor vehicle shall have a fuel system in which all components are securely fastened with fasteners designed for this purpose, including the tank, tubing, hoses, clamps, etc. The filler from the system shall be located in a position not within the passenger carrying compartment, and shall be capped. The system shall be leak proof, and fuel lines shall be positioned so as not to come in contact with high temperature surfaces or moving parts.

1.2(19) *Steering and suspension.*

a. Every specially constructed and reconstructed motor vehicle shall have no parts extending below the wheel rims in their lowest position, except for tires and electrical grounding devices designed for this purpose.

b. These vehicles shall have a right turn and left turn minimum turning radius of twenty feet measured from the center of the turning circle to the outside front wheel track. The steering system shall remain unobstructed when turned from lock to lock.

c. The steering wheel shall have no less than two turns and no more than six turns when turning the road wheels from lock to lock.

d. While in a sharp turn at a speed between five and fifteen MPH, release of the steering wheel shall result in a distinct tendency for the vehicle to increase its turning radius.

e. No specially constructed or reconstructed vehicle shall be constructed so that the weight on any axle is less than twenty percent of the gross weight of the vehicle and load.

f. Specially constructed and reconstructed motor vehicles shall be equipped with a damping device at each wheel location providing a minimum relative motion between the unsprung axle and the chassis of plus or minus two inches.

g. When each corner of the vehicle is depressed and released the damping device shall stop vertical body motion within two cycles.

1.2(20) *Tires.* Tires shall comply with section 321.440 of the Code. Each tire shall have a load bearing capacity in keeping with the size and weight of the vehicle.

1.2(21) *Lighting and electrical system.* Each specially constructed and reconstructed vehicle shall be equipped with approved lighting devices in sufficient number, type, and locations to meet the requirements of sections 321.384 through 321.423 of the Code, including headlamps, rear lamps, license plate lamp, rear reflectors, parking lamps, stop lamps, turn signals, and high-low beam indicator. In addition, every specially constructed and reconstructed motor vehicle shall be equipped with:

a. A driver controlled switch capable of selecting high and low beams (dimmer switch).

b. A manually operated switch controlled by the driver that shall cause the turn signal lamps to function. This switch shall be self-canceling.

c. A horn that shall be electrically actuated, and shall emit a sound clearly audible from a distance of two hundred feet. The horn shall be actuated with a switch easily accessible to the driver when operating the vehicle.

d. All wiring shall be done in an orderly and workmanlike fashion, with no wiring in contact with high temperature surfaces or moving parts.

[Effective January 8, 1975]

PUBLIC SAFETY DEPARTMENT

(continued)

Pursuant to the authority of section 321F.11 of the Code, the Department of Public Safety hereby adopts the following rules for the leasing and renting of vehicles.

[Filed October 8, 1974]

CHAPTER 6

LEASING AND RENTING OF VEHICLES

6.1(321F) Licenses. A license issued by the department under the provisions of chapter 321F shall expire on December 31 of the year of issue. No person shall engage in the business of leasing motor vehicles for use by others for compensation in this state without a license issued by the department of public safety valid for the year in which such business is conducted.

6.2(321F) Evidence of financial responsibility. The evidence of financial responsibility as provided in section 321F.1, subsection 7, paragraphs *"a"* and *"b"*, shall not be terminated until thirty days after the department has been notified that such termination will occur.

[Effective November 7, 1974]

REGENTS BOARD

Pursuant to the authority of section 262.12 of the Code, rules of the Board of Regents appearing in 1973 IDR, pages 866, 871, 872, 873, relating to the merit system, are amended as follows:

[Filed August 15, 1974]

ITEM 1. Rule 3.14(5) is amended by striking from lines 2 and 3 the words "three available candidates who have the highest standing on an eligibility list" and inserting in lieu thereof the words "highest ten percent of available candidates on the appropriate eligibility list, or the highest five if there are less than fifty available candidates on the eligibility list."

ITEM 2. Rule 3.69(19A) is amended by striking from line 6 of the second paragraph the words "the first three people" and inserting in lieu thereof the words "the first ten percent of those on the list or the first five if there are less than fifty names on the list,".

Rule 3.69(19A) is further amended by striking from lines 2 to 7 of the third paragraph the words "three persons with the highest standing on the list, with one additional name in the order of their standing on the list for each additional vacancy or, if the number of vacancies exceeds four, the upper one-half of the promotional list, whichever is greater." and inserting in lieu thereof the words "highest ten percent of those available on the list or the highest five if there are less than fifty names on the list. Two names will be added for each additional vacancy."

Said rule is further amended by striking from lines 2 and 3 of the fourth paragraph the words "three people with the highest standing on the list" and inserting in lieu thereof the words "highest ten percent of available candidates on the appropriate eligibility list or the highest five if there are less than fifty available candidates on the eligibility list,".

ITEM 3. Rule 3.69(1) is amended by striking from lines 2, 3 and 4 of the first paragraph the words "three available candidates who have the highest standing on an eligibility list" and inserting in lieu thereof

the words "the highest ten percent of those available on an eligibility list or the highest five if there are less than fifty available candidates on the eligibility list."

Rule 3.69(1) is further amended by striking from line 10, first paragraph, the first word, "three" and inserting in lieu thereof the word "five".

Said rule is further amended by striking from lines 12 and 13 of the second paragraph the words "three candidates plus one additional candidate" and inserting in lieu thereof the words "two additional names".

ITEM 4. Rule 3.90(2) is amended by striking from line 4 the words "one year" and inserting in lieu thereof the words "six months".

[Effective September 14, 1974]

REGENTS BOARD

(continued)

Pursuant to the authority of section 262.12 of the Code, rules of the Board of Regents appearing in 1973 IDR, pages 868, 869, 872 and 876, relating to the merit system, are amended as follows:

[Filed August 15, 1974]

ITEM 1. Subrule 3.39(1), paragraph *"a"*, is amended by striking from line 12 the words "under the same conditions" and inserting in lieu thereof the words "in the same geographical area".

ITEM 2. Subrule 3.39(2) is amended by deleting from lines 1 to 11 the words "Except as may be otherwise provided in the pay plan, a merit increase is the result of a change in salary from one step to the next higher step in the pay grade to which the class is assigned. Employees will be eligible for merit increases in accordance with the schedule prescribed in the pay plan. All increases in base rates of pay, except for special assignment in accordance with 3.39(6) and reassignment in accordance with 3.39(8) will establish new eligibility dates." and inserting in lieu thereof the following: "Permanent and probationary employees on Step 1 or Step 2 in a pay grade will be eligible for a two-step merit increase after six months of satisfactory performance in their assigned classification at the same step. Permanent and probationary employees on Step 3 or above in a pay grade will be eligible for a two-step merit increase after one year of satisfactory performance in their assigned classification at the same step except that no merit increase will be granted above the last step in the pay grade."

Said rule is amended further by deleting from line 19 the words "to the next highest step" and inserting in lieu thereof "of two steps".

Subrule 3.39(2) is further amended by deleting the word "any" from line 25 and inserting in lieu thereof the word "an".

Subrule 3.39(2) is amended further by inserting the words "or her" in line 26 after the word "his" and by deleting the word "for" in the same line 26.

ITEM 3. Subrule 3.39(3) which was reserved for future use should be completed as follows:

3.39(3) *Pay on promotion.* An employee who is promoted will be moved to the minimum of the new pay grade if the employee's present pay is below the minimum of the new grade if such a move will result in a salary that is two steps higher than the employee's present salary.

If movement to the minimum of the new grade will not result in a salary that is two or more steps higher than the employee's present salary, the employee will be moved to a step on the new grade that is two steps higher than the employee's present salary.

If the promotion involves movement to a new grade that is three or more grades higher than the employee's present grade, the resident director may approve, on written request from the employing department, an increase that is no greater than four steps higher than the employee's present salary.

ITEM 4. Subrule 3.39(8) is amended by deleting the last sentence of the first paragraph, namely "Those who are already being paid at a rate equal to or more than the minimum will be raised to the next higher step."

ITEM 5. After subrule 3.39(11) the following should be added:

3.39(12) *Lead worker status.* On request of an employing department and with approval of the resident director, an employee who is assigned and performs limited supervisory duties (such as distributing work assignments, maintaining a balanced workload within a group, and keeping attendance and work records) in addition to the duties performed by other employees in the same class, may be designated as lead worker in the classification assigned, and paid during the period of such designation a salary equivalent to a two-step increase.

3.39(13) *Pay for trainees and apprentices.* The schedule of wages for trainees and apprentices will consist of two steps in the pay matrix for every year of training required. Each employee whose performance is satisfactory will progress one step at a time in six-month intervals from the first step of the schedule to the entrance rate established for the journeyman class in the length of time established for training or apprenticeship.

3.39(14) *Special cost-of-living increase.* This rule is a special provision for 1974-1975, 1975-1976 and 1976-1977 to recognize the impact of the changes incorporated in the 1974-1975 pay plan. All permanent and probationary employees will be granted the full cost of living increase for 1974-1975, regardless of their position in their assigned pay grade. Permanent and probationary employees not eligible for a full cost-of-living increase in 1975-1976 because their salary is near or over the maximum salary level in the pay grade to which their classification is assigned will receive two-thirds of the cost of living increase granted in that pay plan.

Permanent and probationary employees who will not be eligible for a full cost-of-living increase in 1976-1977 because their salary is near or over the maximum salary level in the pay grade to which their classification is assigned will receive one-third of the cost-of-living increase granted in that pay plan.

3.39(15) *Special increase to provide a minimum step assignment based on years of service.* This rule is a special provision for 1974-1975 to spread employees in the pay grade to which their classification is assigned, based on their years of service.

Permanent and probationary employees who have been employed in their current classification in the merit system for three or more years and whose salary is below Step 5 in the pay grade to which their classification is assigned after being granted a cost-of-living increase will be eligible for an increase based on satisfactory work performance to put them on Step 5 of their assigned pay grade as of October 1, 1974.

Permanent and probationary employees who have been employed in their current classification in the merit system for six or more years and whose salary is below Step 9 in the pay grade to which their classification is assigned after being granted a cost-of-living and merit increase will be eligible for an increase based on satisfactory work performance to put them on Step 9 of their assigned pay grade as of April 1, 1975.

3.39(16) *Payment of a shift differential.* All employees will be paid a shift differential of $0.10 per hour for any shift of which four or more hours occur between 6:00 p.m. and midnight and a shift differential of $0.15 per hour for any shift of which four or more hours occur between midnight and 6:00 a.m."

ITEM 6. Subrule 3.90(2) is amended by adding at the end of the paragraph, after the word "service." the following: "Employees who are promoted from one class to another will serve a period of promotional probation for three months during which time they will retain all of their rights under the merit system except that of permanency in the new class."

[Effective September 14, 1974]

REGENTS BOARD

(continued)

Pursuant to the authority of section 262.12 of the Code, rules of the Board of Regents appearing in 1973 IDR, pages 876 and 877, relating to the merit system, are amended as follows:

[Filed November 4, 1974]

ITEM 1. Subrule 3.129(19A) is amended by adding at the end of the paragraph after the word "with 3.129(1)." the following:

"Employees in an initial probationary period will be allowed access to the grievance procedure with the right to appeal in writing at steps within the institution. The institution may permit an oral presentation at any step if they deem one necessary."

Subrule 3.129(19A) is further amended by striking from paragraph 8, line 4 the words "the appeals board." and inserting in lieu thereof the words "an arbitrator."

Subrule 3.129(19A) is amended further by striking from paragraph 9, lines 3 and 4 the words "the appeals board." and inserting in lieu thereof the words "an arbitrator."

Said rule is amended further by striking from paragraph 9, lines 4 to 7 the words "appeals board will inform both parties in writing of its decision within forty-five days after the appeal is filed with the merit system coordinator." and inserting in lieu thereof the words "arbitrator will be expected to render a decision within thirty calendar days following the conclusion of the hearing."

ITEM 2. Subrule 3.129(2) is amended by striking from paragraph 1, line 1 the word "board." which appears after the word "Appeals".

Said rule is further amended by striking from paragraph 1, lines 2 to 9 the words "appoint for three year terms (except for the initial appointments which may vary in duration) at least five persons who will be available to serve as members of an appeals board. Such persons will be knowledgeable in the field of employee relations or a related field and will have demonstrated their ability to make sound, impartial and objective judgments" and inserting in lieu thereof the words "approve the use of a single arbitrator in hearing an appeal. The selection of the arbitrator shall be made from a panel of arbitrators as referred from the Federal Mediation and Conciliation Service with a preference for those Iowans so certified."

Subrule 3.129(2) is further amended by striking from paragraph 2, lines 1 to 3 the words "Appointments will be made on a nonpartisan basis, and the names of persons so appointed will make up a list from which three will be selected to" and inserting in lieu thereof the words "The Arbitrator will".

Subrule 3.129(2) is further amended by deleting paragraph 3, namely "While all members of the appeals board will function in an impartial manner, they will be selected one by each of the parties to the dispute, the two members so selected will, by mutual agreement or by alternately striking names from the list, select the third member."

Subrule 3.129(2) is amended further by striking from paragraph 4, the first sentence, namely "The members of the appeals board will elect one of their number to serve as chairman."

Said rule is further amended by striking from paragraph 4, lines 2 and 3 the word "chairman" and inserting in lieu thereof the word "arbitrator".

Subrule 3.129(2) is further amended by inserting in paragraph 4, line 6 the words "or her".

Said rule is amended further by striking from paragraph 4, lines 7 and 8 the words "chairman will be responsible for presenting the decision of the appeals board" and inserting in lieu thereof the words "arbitrator will be expected to render a decision".

[Effective December 4, 1974]

REVENUE DEPARTMENT

ANALYSIS

REVENUE DEPARTMENT

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 925 to 979, relating to retail sales and use tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

TITLE II

RETAIL SALES TAX

CHAPTER 11

ADMINISTRATION

11.1(422,423) Definition. When the word "department" appears herein, the same refers to and is synonymous with the "Iowa Department of Revenue"; the word "director" is the "director of revenue"; the word "division" is the "Sales and Use Tax Division, Iowa Department of Revenue"; and the word "tax" is the "tax upon retail sales or use of tangible personal property or taxable services".

The administration of retail sales and use tax is a division created by the director. This division is charged with the administration of retail sales and use tax, subject always to the rules, regulations and direction of the director.

11.2(422,423) Statute of limitations. There shall be no limitations on any proceeding or action to appraise, assess, determine or enforce the collection of either sales or use tax when the taxpayer has not filed a return for the period for which the tax was owing, as required by law. If the taxpayer has filed a sales or use tax return, there shall be a limitation of five years from the date the return was filed in which to examine the return and assess any tax due.

11.3(422,423) Credentials and receipts. Employees of the department have official credentials, and the taxpayer should require proof of the identity of persons claiming to represent the department. No charges shall be made nor gratuities of any kind accepted by an employee of the department for assistance given in or out of the office of the department.

All employees authorized to collect money are supplied with official receipt forms. When cash is paid to an employee, the taxpayer should require the employee to issue an official receipt. Such receipt shall show the taxpayer's name, address and permit number; the purpose for the payment; and the amount of the payment. The taxpayer should retain all receipts, and only official receipts for payment will be recognized by the department.

11.4(422,423) Retailers required to keep records. Every taxpayer shall keep and preserve the following records:

1. A daily record of the amount of all cash and time payments and credit sales.

2. A record of the amount of all merchandise purchased, including all bills of lading, invoices and copies of purchase orders.

3. A record of all deductions and exemptions taken in filing a sales or use tax return.

4. A true and complete inventory of the value of the stock on hand taken at least once a year. This includes an inventory of merchandise accepted as partial payment of the sale price on new merchandise.

5. An accurate record of all services performed, including materials purchased for use in performing such services.

The records required in this rule shall be preserved for a period of five years and open for examination by the department during this period of time.

If a tax liability has been assessed and an appeal is pending to the department, state board of tax review or district or supreme court, books, papers, records, memoranda or documents specified in this rule which relate to the period covered by the assessment shall be preserved until the final disposition of the appeal.

Failure to keep and preserve adequate records shall be grounds for revocation of the permit.

11.5(422,423) Audit of records. The department shall have the right and duty to examine or cause to be examined the books, papers, records, memoranda or documents of a taxpayer for the purpose of verifying the correctness of a return filed or estimating the

tax liability of any taxpayer. The right to examine records includes the right to examine copies of the taxpayer's state and federal income tax returns. When a taxpayer fails or refuses to produce the records for examination when requested by the department, the director shall have authority to require, by a subpoena, the attendance of the taxpayer and any other witness(es) whom the department deems necessary or expedient to examine and compel the taxpayer and witness(es) to produce books, papers, records, memoranda or documents relating in any manner to sales and use tax.

The department shall have the legal obligation to inform the taxpayer when an examination of his books, papers, records, memoranda or documents has been completed and the amount of tax liability, if any, due upon completion of the audit. Tax liability includes the amount of tax, interest, penalty and fees which may be due.

11.6(422,423) Billings. A sales or use tax return filed by a taxpayer constitutes a self-billing. When a return is filed with the department and the payment of tax does not accompany the return or the amount of tax paid is insufficient, the taxpayer shall be billed for the amount of tax shown to be due on the return.

When a deficiency has been determined against the taxpayer by the department as a result of a field audit or any information received by the department from any source other than a return filed by the taxpayer, the department shall notify the taxpayer and require him to file either a corrected or sufficient return within twenty days after the date of such notice or remit the amount of deficient tax as determined by the department. If the taxpayer does not file a corrected or sufficient return or remit the amount of tax due, the department shall determine the amount of tax due and issue a formal assessment.

If the taxpayer is not in agreement and desires to appeal the determination of the amount of tax due, he may request a hearing.

11.7(422,423) Collections. If the director determines it expedient or advisable, he may enforce the collection of the tax liability which he has determined to be due. In such action, the attorney general shall appear for the department and have the assistance of the county attorney in the county in which the action is pending.

The remedies for the enforcement and collection of sales and use tax are cumulative, and action taken by the department or attorney general shall not be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other remedy.

11.8(422,423) No property exempt from distress and sale. By reference, Code section 422.56 makes Code section 422.26 a part of the sales and use tax law and provides that said section shall apply in respect to a sales and use tax liability determined to be due by the department. The department shall proceed to collect the tax liability after the same has become delinquent; but no property of the taxpayer shall be exempt from the payment of said tax.

11.9(422,423) Information confidential. When requested to do so by any person having a legitimate interest in such information, the department shall, after being presented with sufficient proof of the entire situation, disclose to such person the amount of unpaid taxes due by a taxpayer. Such person shall provide the department with sufficient proof consisting of all relevant facts and the reason or reasons for seeking information as to the amount of unpaid taxes due by the taxpayer. The information sought shall not be disclosed if the department determines that the person requesting information does not have a legitimate interest. Examples of those who might seek information on a taxpayer are persons from whom a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property.

Upon request, the department may disclose to any person whether or not a taxpayer has a sales tax permit because the law requires the taxpayer's permit to be conspicuously posted at all times in his place of business, thus becoming public information.

All other information obtained by employees of the department in the performance of their official duties is confidential and cannot be disclosed.

These rules are intended to implement Chapters 422 and 423 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 925 to 979, relating to retail sales and use tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 12

FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST

12.1(422) Returns, payment of tax, penalty and interest. Every retailer collecting fifty dollars in tax in any one month shall make a deposit with the department. A retailer collecting between fifty and five-hundred dollars a month shall deposit the actual amount of tax collected during the month or an amount equal to not less than thirty percent of the amount of tax collected and paid during the preceding quarter. A retailer collecting five-hundred dollars or more a month shall deposit the actual amount of tax collected. This deposit is due by the twentieth of the month following the month in which the tax is collected and applies only to the first two months in the quarter.

On the quarterly return, every retailer shall report the gross sales for the entire quarter, listing allowable deductions and figuring tax for the entire quarter. Space is provided on the return for a deduction of tax deposited the first and second months of the quarter.

12.2(422,423) Remittances. The correct amount of tax collected and due shall accompany the forms prescribed by the department. The name, address and permit number of the sender and the amount of tax for the quarterly remittance or monthly deposit shall be stated. Every return shall be signed and dated. Reporting forms and a self-addressed return envelope shall be furnished by the department to the taxpayer; and, when feasible, he shall use them when completing and mailing his return and remittance. All remittances shall be made payable to the Treasurer of the State of Iowa.

12.3(422,423) Nonpermit holders. Persons not regularly engaged in selling at retail and who do not have a permanent place of business but are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at state, county, district or local fairs, carnivals and the like shall collect and remit tax on a nonpermit basis. If the department deems it necessary and advisable to secure the collection of tax, transient or itinerant sellers shall be required to post a bond or certificate of deposit. A cash bond or a surety bond issued by a solvent surety company authorized to do business in Iowa shall be acceptable, provided the bonding company is approved by the insurance commissioner as to solvency and responsibility. The amount and type of bond shall be determined by the director.

The department shall determine the due date of returns and payment of tax for nonpermit holders, giving due consideration to the type of business and frequency of sales.

12.4(422,423) Regular permit holders responsible for collection of tax. A regular permit holder may operate by selling merchandise by trucks, canvassers or itinerant salesmen over fixed routes within the county in which the permanent place of business is located or other counties in this state. When this occurs, the regular permit holder is liable for reporting and paying tax on these sales. The person doing the selling for the regular permit holder shall be required to have a form, either in his possession or in his vehicle, which authorizes him to collect tax. This form is obtained from the department and shall contain the name, address and permit number of the retailer according to the records of the department.

12.5(422,423) Sale of business. A retailer selling his business shall file a return within the succeeding month thereafter and pay all tax due. Any unpaid tax shall be due prior to the transfer of title of any personal property to the purchaser and become delinquent one month after such sale.

A retailer discontinuing business shall maintain his records for a period of five years from the date of discontinuing his business unless a release from such provision shall be given by the department.

12.6(422) Bankruptcy, insolvency or assignment for benefit of creditors. In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

12.7(422) Vending machines and other coin-operated devices. An operator who places machines on location shall file a return which includes gross receipts from all machines or devices operated by him in Iowa during the period covered by the return.

12.8(422) Claim for refund of tax. Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer who collects the tax as an agent for purposes of receiving a refund of tax. A person or persons who claims a refund shall prepare the claim on the prescribed form furnished by the department.

A claim for refund shall be filed with the department, stating in detail the reasons and facts and, if necessary, supporting documents for which the claim for refund is based.

These rules are intended to implement chapters 422 and 423 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 925 to 979, relating to retail sales and use tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 13

PERMITS

13.1(422) Retail sales tax permit required. When used in this chapter or any other chapter relating to retail sales the word *permit* shall mean "a retail sales tax permit".

A person shall not engage in any Iowa business subject to tax until he has procured a permit except as provided in rule 13.5. The fee for each permit shall be one dollar and shall accompany the application. If a person makes retail sales from more than one location, each location shall be required to hold a permit.

13.2(422) Application for permit. An application for a permanent permit shall be made upon a form provided by the department, and the applicant shall furnish all information requested on such form.

An application for a permit for a business operating under a trade name shall state the trade name, as well as the individual owner's name, in the case of a sole ownership by an individual; or, the trade name and the name of all partners, in the case of a partnership. The application shall be signed by the owner, in the case of an individual business; by a partner, in the case of a partnership, although all partners' names shall appear on the application; and by the president, vice president, treasurer or other principal officer of a corporation or association, unless written authorization is given by such officers for another person to sign the application.

The application shall state the date when the applicant will begin selling tangible personal property or taxable services at retail in Iowa from the location for which the application is made.

At the discretion of the director, a bond may be required before issuance of a permit.

The one dollar permit fee shall not be refunded.

13.3(422) Permit not transferable—sale of business. Permits shall not be transferable. A permit holder selling his business shall cancel his permit, and the purchaser of the business shall apply for a new permit in his own name.

13.4(422) Permit—consolidated return optional. A permit holder procuring more than one permit may file a separate return for each permit; or, if arrangements have been made with the department, he may file one consolidated return reporting sales made at all locations for which he holds a permit.

When a taxpayer makes a consolidated return, forms furnished by the department shall be required to be filed.

All working papers used in the preparation of the information required must be available for examination by the department.

13.5(422) Retailers operating a temporary business. A person not regularly engaged in selling at retail and not having a permanent place of business but is temporarily selling from trucks, portable roadside stands, concessionaires at state, county, district or local fairs, carnivals and the like shall not be required to hold a permit. These retailers shall request an identification card from the department. The card shall be in a form prescribed by the director and shall be completed and displayed by the retailer to show authorization to collect tax. The issuance of the card by the department shall be dependent upon the frequency of sales and other conditions as each individual case may warrant.

13.6(422) Reinstatement of canceled permit. A person who previously held and canceled a permit and wishes to re-engage in business in the same county shall apply to the department for reinstatement of the permit. Upon receipt of the one dollar fee and a proper clearance for previous tax returns, a new permit shall be issued.

13.7(422) Reinstatement of revoked permit. A permit holder making application to the department for reinstatement of a revoked permit shall be charged the one dollar fee.

A revoked permit shall be reinstated only on such terms and conditions as the case may warrant. Terms and conditions do include payment of any tax liability which may be due the department.

13.8(422) Loss or destruction of permit. When it becomes necessary to replace an active permit by reason of loss or destruction of said permit, the applicable form furnished by the department shall be used without additional permit fee.

13.9(422) Change of location. When a permit holder changes his business location, the permit shall be canceled and an application shall be made for another permit at the new location. A one dollar fee shall be required for the new permit.

13.10(422) Change of ownership. A person changing his business entity shall apply for a new permit under the name of the new entity. This is required but not limited to such entity changes as proprietorship to partnership, partnership to corporation or any combination thereof. The one dollar permit fee shall accompany the application.

13.11(422) Permit must be posted. The permit shall be conspicuously posted at all times in the taxpayer's place of business in such manner and position that it may be readily seen and read by the public.

13.12(422) Trustees, receivers, executors and administrators. By virtue of their appointment, trustees, receivers, executors and administrators who continue to operate, manage or control a business involving the sale of tangible personal property or taxable services or engage in liquidating the assets of a business by means of sales made in the usual course of trade shall hold a permit and collect and remit tax. These officers are liable for the collection and remittance of tax, even though they may have been appointed by a state or federal court.

A permit of a ward, decedent, cestui que trust, bankrupt, assignor or debtor for whom a receiver has been appointed, which is valid at the time a fiduciary relation is created, shall continue to be a valid permit for the fiduciary to continue the business for a reasonable time or to close out the business for the purpose of settling an estate or terminating or liquidating a trust.

13.13(422) Vending machines and other coin-operated devices. An operator who places machines on location shall hold one permit for his principal place of business, whether same is located in the state of Iowa or outside the state of Iowa.

The department shall furnish a sticker to such operator for each unit or device operated in the state. The sticker shall be visible to the public, reflecting the permit number of the operator.

13.14(422) Other amusements. Billiard and pool tables, shooting galleries and other similar undertakings operated in a regular place of business owned and managed by the operator shall not come within the provisions of the rule with respect to holding one permit for the entire state. The provision

requiring a permit shall not include devices operated at fairs, circuses and carnivals which are temporarily located within the state of Iowa.

These rules are intended to implement chapters 422 and 423 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 925 to 979, relating to retail sales and use tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 14

COMPUTATION OF TAX

14.1(422) Tax not to be included in price. When a retailer pricemarks an article for retail sale and displays or advertises the same to the public with such pricemark, the price so marked or advertised shall include only the sale price of such article.

EXAMPLE: The advertised or marked price is $1.00. When sale is made, the purchaser pays or agrees to pay $1.03, which represents the purchase price plus tax, which when added becomes a part of the sale price or charge.

This rule does not prohibit advertising or displaying the sale price plus tax, as shown in the following examples:

"This dress—$10.00 plus tax", or "This dress—$10.00 plus 30 cents tax".

14.2(422) Retail bracket system. When practicable, the retailer shall add the sales tax or the average equivalent thereof to the sale price and collect the same from the consumer or user. Competing retailers and organizations or associations of retailers may provide uniform methods for passing such tax to the consumer with the cooperation of the department.

Pursuant to the foregoing provisions, the department has adopted the following bracket system for the application of tax:

SALES TAX SCHEDULE

$0.00	- $0.14	=	$0.00
0.15	- 0.44	=	0.01
0.45	- 0.74	=	0.02

SALES TAX SCHEDULE (Cont)

$0.75	- $1.14	=	$0.03
1.15	- 1.44	=	0.04
1.45	- 1.74	=	0.05
1.75	- 2.14	=	0.06
2.15	- 2.44	=	0.07
2.45	- 2.74	=	0.08
2.75	- 3.14	=	0.09
3.15	- 3.44	=	0.10
3.45	- 3.74	=	0.11
3.75	- 4.14	=	0.12
4.15	- 4.44	=	0.13
4.45	- 4.74	=	0.14
4.75	- 5.14	=	0.15
5.15	- 5.44	=	0.16
5.45	- 5.74	=	0.17

For sales larger than $5.74, tax shall be computed at straight three percent; one-half cent or more shall be treated as one cent.

When practicable, the department shall co-operate with retailers in applying the tax schedule; but in no event shall the same be administered in any manner that will result in the collection of substantially more than three percent of the amount on which tax shall be computed.

14.3(422) Computation of tax on admissions. When the charge for admission includes federal tax, the amount shall be deductible from the gross receipts, provided the taxpayer maintains such records determining such amount.

Places of amusement may advertise their total admission price but must use the statement, "including state sales tax". When computing the three percent sales tax on any admission, divide the total admission by the factor 34.33. The following chart outlines the breakdown, commencing with a twenty-five cent admission and concluding with a two dollar admission.

	25¢	35¢	40¢	50¢	60¢
Admission	$ .2427	$ .3398	$ .3884	$ .4854	$ .5825
State Sales Tax	.0073	.0102	.0116	.0146	.0175
TOTAL	$ .25	$ .35	$ .40	$ .50	$ .60

	75¢	$1.00	$1.25	$1.50	$2.00
Admission	$ .7282	$ .9709	$1.2136	$1.4563	$1.9417
State Sales Tax	.0218	.0291	.0364	.0437	.0583
TOTAL	$ .75	$1.00	$1.25	$1.50	$2.00

When theaters or other places of public amusement operate stores or stands for the sale of tangible personal property and sell the same at retail, they shall collect and remit tax on the gross receipts from such activities. No refund or credit shall be allowed by reason of nonuse of any ticket of admission unless the charge for it is refunded to the patron.

These rules are intended to implement chapters 422 and 423 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 925 to 979, relating to retail sales and use tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 15

DETERMINATION OF A SALE AND SALE PRICE

15.1(422) Conditional sales to be included in gross sales. When a conditional sale agreement exists the seller shall bill the purchaser for the full amount of tax due. This amount shall be computed on the entire contract price, and the seller shall remit the tax to the department at the close of the period during which the sale was made.

15.2(422) Repossessed goods. When tangible personal property which has been repossessed either by the original seller or by a finance company is resold to final users or consumers, the gross receipts from such sales shall be subject to tax.

A retailer repossessing sold merchandise shall be entitled only to a deduction for the amount of unpaid sales when the collected tax on that amount has been refunded to the purchaser.

15.3(422) Certificates of resale or processing. The gross receipts from the sale of tangible personal property for delivery in Iowa for the purpose of resale or processing by the purchaser shall not be subject to tax.

When a permit holder purchases tangible personal property for the purpose of resale, he shall furnish a certificate of resale to the supplier indicating that the property is being purchased for resale. The certificate shall indicate the purchaser's permit number in order that the supplier may omit the billing of tax. The certificate of resale shall be offered in good faith.

A person who is selling tangible personal property in Iowa for delivery in Iowa, but who is not making sales at retail, shall not be required to hold a permit. When this person purchases tangible personal property for resale, he shall furnish a certificate of resale to the supplier stating that the property was purchased for the purpose of resale. He shall also advise the supplier that he does not hold a permit because he is not making sales at retail in Iowa. The certificate of resale shall be offered and accepted in good faith.

A processor or fabricator purchasing tangible personal property which forms an integral or component part of the product he is manufacturing and which is ultimately sold at retail shall be entitled to purchase such property or service without payment of tax. When this occurs, the purchaser shall furnish a certificate of processing to the supplier stating the property purchased shall be used to form an integral or component part of other tangible personal property which is intended to be sold ultimately at retail. If the purchaser is making sales at retail in Iowa, he shall indicate his permit number on the certificate of processing. The purchaser shall also indicate on the certificate of processing that he does not hold a permit because he is not making retail sales in Iowa.

Certificates of resale or processing may be obtained upon request from the department.

Any person repeatedly selling the same type of property to the same customer for resale or processing may, at his risk, furnish a blanket certificate covering more than one transaction.

15.4(422) Bad debts. Bad debts shall be allowed as a credit on tax when all the following facts have been shown:

15.4(1) Tax has been previously paid on the gross receipts from the accounts on which the taxpayer claims credit for tax.

15.4(2) The accounts have been found to be worthless.

15.4(3) The taxpayer has records to show that the accounts have actually been charged off for income tax purposes.

Credit for bad debts shall not be allowed on merchandise which was exempt from tax when sold.

When credit on tax has been taken on account of bad debts and the debts are subsequently paid, the proceeds from the collection of such accounts shall be included in the gross receipts for the period in which payment is made.

15.5(422) Recovery of bad debts by collection agency or attorney. When bad debts have been charged off and later recovered in whole, or in part, through the services of a collection agency or an attorney, the full amount of the debt recovered shall be included with the gross sales for the period which the collection was made. The services of an agency or attorney are services purchased by a retailer and shall not reduce the gross amount collected for the retailer by the agency or attorney.

15.6(422,423) Discounts—when deductible. A discount shall be an abatement from the face of an account, with the remainder being the actual purchase price of the goods charged in the account. The purchaser entitled to the discount shall never owe the face of the bill as his debt—this being the net of the bill after the agreed discount has been deducted. The word "discount" shall mean "to buy at a reduction".

Any discount allowed by a retailer and taken on taxable sales shall be a proper deduction when collecting and reporting tax. This shall not be the case when the retailer offers a discount to a purchaser but bills and collects tax on the gross charge rather than on the net charge. The customer shall receive the benefit of the discount, for sales tax purposes, in order for the retailer to exclude it from his gross receipts.

Certain retailers bill their customers on a gross and net basis, with the difference considered to be a discount for payment purposes. When a customer does not resolve the bill within the net payment period, tax shall apply on the gross charge shown on the billing.

15.7(422,423) Trading stamps are not a discount. The issuance of trading stamps by a retailer shall not be a discount for calculating and reporting tax.

15.8(422,423) Returned merchandise. When merchandise is sold and returned by a customer who secures an allowance or a return of the full purchase price, the seller may deduct the amount allowed as full credit or refund, provided the merchandise is taxable merchandise and tax has been previously paid on the gross receipts.

An allowance shall not be made for the return of any merchandise which (1) is exempt from either sales or use tax; or (2) has not been reported in the taxpayer's gross receipts and tax previously paid.

15.9(422,423) Goods damaged in transit. If the title of goods shipped by a retailer passes to the consumer and thereafter the goods are damaged in the course of transit to the consumer, the retailer shall be liable for tax

upon the full sale price of the goods, as the sale has been completed.

If the title to the goods does not pass to the consumer, the sale to the consumer has not been completed; and the retailer shall not be taxed for the amount agreed to be paid by the consumer.

If the goods are destroyed, tax shall not apply to the damages paid the retailer for their destruction. If the goods are not destroyed and the carrier acquires title to the goods upon payment of damages, tax shall apply to that portion of the damages paid, which represents the fair retail value of the goods in their damaged condition at the time the carrier obtained title, unless they are purchased by the carrier for purpose of resale.

15.10(422) Consignment sales. When a retailer receives tangible personal property on consignment from others and the consigned merchandise is sold in the ordinary course of business with other merchandise owned or services performed by the retailer, such retailer or consignee shall be making sales at retail. In such cases, the consignee shall file a return and remit tax to the department along with his returns and remittances of gross receipts from the sale of other merchandise.

Sale of tangible personal property by an agent or consignee for another person shall be exempt, if such sales meet the requirements of a casual sale or any other exemptions.

15.11(422,423) Leased departments. When a permit holder leases a part of the premises where his retail business is conducted, the lessor shall immediately notify the department and supply the following information: (1) Name and home office address of the lessee; (2) type of merchandise sold by the lessee or service performed; (3) date when the lessee began making sales or performing services at retail in Iowa on the leased premises; and (4) whether the lessee has secured a permit whereby he will account directly to the department for tax due or if the lessee's sales will be accounted for in the lessor's tax return. Upon request, the department shall furnish a form to the lessor on which to report this information.

If the lessor fails to notify the department that a part of his premise has been leased and does not furnish the requested information, the lessor shall be responsible for tax due as a result of sales by the lessee, unless the lessee shall have properly remitted the tax due.

The lessor who has leased a part of his premise shall report to the department the names and addresses of all lessees. If the lessor is accounting for the lessee's sales, the lessor shall, after the name of each lessee, show the amount of net taxable sales made by the lessee and which net taxable sales are included in the lessor's return. If the lessee is reporting his tax directly to the department, the lessor shall show the permit number of the lessee.

When the lessee has terminated his selling activities, the lessor shall immediately notify the department.

15.12(422,423) Federal excise tax.

15.12(1) Federal manufacturer's excise tax may not be deducted from the sale price of tangible personal property as a base for computing Iowa sales or use tax, except when the manufacturer sells directly to the user or consumer.

15.12(2) Retailer's excise tax shall not be imposed until the sale is actually made. The retailer's excise tax shall not be a part of the sale price of tangible personal property and shall not be included in the base on which sales or use tax is computed.

In all cases when the retailer's excise tax was billed or charged as a separate item and it has been definitely shown by the retailer that the retailer's federal excise tax was included in the price for which the article was sold, a deduction from gross sales can be made in an amount equal to the tax paid by the retailer to the federal government.

15.12(3) Periodically, excise taxes are repealed or changed, and reference to excise taxes should be obtained from the Internal Revenue Service.

15.12(4) The federal excise tax on trucks, buses, trailers, chassis, bodies and parts is a manufacturer's tax and shall be computed on the full sale price, including the excise tax.

15.13(422,423) Freight and other transportation charges. The determination of whether freight and other transportation charges shall be subject to sales or use tax is dependent upon the terms of the sale agreement.

When tangible personal property or a taxable service is sold at retail in Iowa or purchased for use in Iowa and under the terms of the sale agreement the seller is to deliver the property to the buyer or the purchaser is responsible for delivery and such delivery charges are stated and agreed to in the sale agreement or the charges are separate from the sale agreement, the gross receipts derived from the freight or transportation charges shall not be subject to tax.

When freight and other transportation charges are not separately stated in the sale agreement or are not separately sold, the gross receipts from the freight or transportation charges become a part of the gross receipts from the sale of tangible personal property or a taxable service and are subject to tax.

15.14(422,423) Installation charges when tangible personal property is sold at retail. When the sale of tangible personal property includes a charge for installation of the personal property sold, the current rate of tax shall be measured on the entire receipts from the sale. This includes the installation, unless the installation is: (1) Sold separately from the sale of the personal property installed, and (2) not an enumerated service.

15.15(422) Premiums and gifts. A person who gives away or donates tangible personal property shall be deemed to be a consumer of such property for tax purposes. The gross receipts from the sale of tangible personal property to such persons for such purposes shall be subject to tax.

When a retailer purchases tangible personal property, exclusive of tax, for the purpose of resale in the regular course of business and later gives it away or donates it, he shall include in his return the value of such property at his cost price.

When a retailer sells tangible personal property and furnishes a premium with the property sold, he is considered to be the ultimate consumer or user of the premium furnished.

15.16(422) Gift certificates. When a retailer sells gift certificates, tax shall be added at the time the gift certificate is redeemed.

These rules are intended to implement chapters 422 and 423 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 925 to 979, relating to retail sales and use tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 16

TAXABLE SALES

16.1(422) Used or secondhand tangible personal property. The sale of used or secondhand tangible personal property in the form of goods, wares or merchandise shall be taxable in the same manner as new property. This condition eliminates any consideration for secondhand merchandise to be treated differently than new merchandise when sold at retail for sales tax purposes.

16.2(422,423) Tangible personal property used or consumed by the manufacturer thereof. When a person who is primarily engaged in the manufacture of building materials, supplies or equipment for sale and not for his own use or consumption, considering the totality of the business, from time to time uses or consumes such building materials, supplies or equipment for construction purposes, he shall be deemed to be making retail sales to himself and subject to tax on the basis of the fabricated cost of such items so used or consumed for construction purposes. Also see subrule 19.2(1) relating to contractors.

16.3(422,423) Patterns and dies. A person engaged in the business of making and selling patterns and dies to be used by other persons in the manufacture of tangible personal property shall be deemed as selling such patterns and dies at retail. If sold by a vendor in Iowa, the gross receipts from these sales

shall be subject to sales tax; and, if purchased from a vendor outside Iowa, the purchaser shall be subject to use tax.

When a manufacturer purchases or fabricates from raw materials purchased, dies, patterns, jigs, tools and manufacturing or printing aids for the account of customers who acquire title to the property upon delivery thereof or upon the completion of the fabrication thereof by the manufacturer, the manufacturer shall be regarded as purchasing such property either as an agent for, or resale to, his customers. Tax shall apply to either the manufacturer as an agent of his customer or to the sale by the manufacturer to the customer.

In determining whether the manufacturer purchases the property on behalf of, or for resale to, his customer, the terms of the contract with the customer, the custom of usage of the trade and any other pertinent factors shall be considered. For example, if the customer issues a purchase order for patterns, dies or other tools, or on the purchase order for the goods, itemizes or otherwise specifies the particular pattern, die or tool which will be required by the manufacturer to manufacture the goods desired by the customer and the manufacturer obtains such item pursuant to the customer's specific order, billing, itemizing or otherwise identifying it to the customer separately from the billing for the article manufactured therefrom, and either delivers it to the customer or holds it as bailee for the customer, it will be presumed that the manufacturer acquired the property on behalf of the customer or for immediate resale to him.

16.4(422,423) Explosives used in mines, quarries and elsewhere. A person engaged in the business of selling explosives to miners, quarrymen or other persons shall be subject to sales tax on the gross receipts from the sale of such property at retail in Iowa. The purchaser shall be liable for use tax upon all purchases for use in Iowa not subject to sales tax.

16.5(422,423) Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates and wood mounts. Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions shall be subject to tax when sold to users or consumers. The mentioned articles do not become an integral or component part of merchandise intended to be sold ultimately at retail.

16.6(422,423) Monotype and linotype makers and makers of photo-offset plates. Sales at retail of monotype, linotype or photo-offset plates to consumers or users shall be considered taxable sales.

16.7(422,423) Wholesalers and jobbers selling at retail. Sales made by a wholesaler or jobber to a purchaser for use or consumption by him or in his business and not for resale shall be considered retail sales and subject to tax, even though sold at wholesale prices or in wholesale quantities.

16.8(422,423) Materials and supplies sold to retail stores. Receipts from the sale of materials and supplies to retail stores for their use and not for resale shall be subject to tax. The retail store is the final buyer and ultimate consumer of such items as fuel, cash registers, adding machines, typewriters, stationery, display fixtures and numerous other commodities which are not sold by the store to its customers.

16.9(422,423) Sales to certain corporations organized under federal statutes. The sale of tangible personal property or taxable services at retail to the following corporations are sales for final use or consumption to which tax shall apply:

1. Federal savings and loan associations.
2. Federal savings and trust companies.
3. National banks.
4. Other organizations of like character.

16.10(422,423) Paper plates; paper cups; paper dishes; paper napkins; paper, wooden or plastic spoons and forks; straws; and butterchips. When paper, wooden or plastic cups, plates, dishes, napkins, spoons and forks are sold with tangible personal property and expended by such use, the sale of such properties to retailers shall be considered sales for resale. The gross receipts from the sale of such items by retailers to consumers or users shall be subject to tax.

When these articles are sold in connection with service or for free distribution by retailers apart from a retail sale, the transaction shall be deemed to be a retail sale to the retailer and shall be taxable.

Sales of reusable placemats to retailers who sell meals shall be subject to tax.

16.11(422) Tangible personal property purchased for resale but incidentally consumed by the purchaser. A retailer engaged in the business of selling tangible personal property who takes merchandise from stock for personal use, consumption or gifts shall report these items at the purchase cost on his return.

This rule does not authorize purchase for resale of items intended to be used by the retailer.

16.12(422) Sales by employers to employees—employees' meals. When an employer furnishes tangible personal property to employees without charge or uses merchandise for gifts or consumption, the cost of all such merchandise shall be subject to tax and included on the employer's return.

16.13(422) Sales in interstate commerce—goods coming into this state. When tangible personal property is purchased in interstate commerce and delivered for use or consumption in Iowa and the seller is engaged in the business of selling tangible personal property in Iowa, the sale shall be subject to tax. The tax shall apply, even though the purchaser's order may specify that the goods are to be manufactured or procured outside Iowa and shipped directly from the point of origin to the purchaser. The seller shall be required to collect and remit tax on all such transactions.

If the above conditions are met, it shall be immaterial if the contract of sale is closed by acceptance outside Iowa or if the contract is made before the property is brought into Iowa.

16.13(1) Delivery in state. Delivery is held to have taken place in Iowa when physical possession of the tangible personal property is actually transferred to the consumer or user within the state.

16.13(2) Sales not considered as interstate commerce. When the contract to sell (offer and acceptance) takes place within the state of Iowa and the seller delivers the goods from a point outside of Iowa directly to the buyer in Iowa, the sale shall be deemed to be an intrastate sale; and the seller's receipts therefrom shall be subject to tax if the sale is at retail.

16.14(422) Owners or operators of buildings. Owners or operators of buildings who purchase items to be used by them in maintaining the building are the users or consumers and shall pay sales tax to their suppliers.

16.14(1) When owners or operators of buildings remeter and bill their tenants for electric current, gas or any other taxable service consumed by the tenants, such owners or operators shall be considered to be purchasing the electric current, gas or other taxable service for resale. These owners or operators shall hold permits and shall be liable for the tax upon the gross receipts from the sale of such service. When the building owners or operators purchase all of the electric current, gas or other services for resale and consume a portion in the operation of the building, they shall be liable for tax on that portion consumed, based upon the cost of the electric current or gas purchased for resale.

16.14(2) When the management of a building sells heat to other buildings or other persons and charges for such service as a sale of heat, such transactions are considered sales at retail and shall be subject to tax.

16.14(3) When heat is furnished to tenants as a service to them, incidental to the renting of the space, there shall be no tax. When heat is sold separately and billed to the tenants separately, such service shall be taxable.

16.14(4) When a building manager makes sales of tangible personal property or taxable services at retail, he shall be required to procure a permit and collect and remit tax.

16.15(422,423) Tangible personal property made to order. When a retailer contracts to fabricate items of tangible personal property from materials available in stock or through placing orders for materials which have been selected by customers, the total receipts from the sale of such fabricated articles shall be included in the taxable receipts. Such retailer shall not deduct fabrication or production charges, even though such charges are separately billed.

16.16(422,423) Blacksmith and machine shops. When a blacksmith or machine shop operator fabricates finished articles from raw materials and sells such articles at retail, tax shall apply on the total charge which includes the fabrication labor.

16.17(422,423) Sales of signs at retail. A person engaged in selling illuminated signs, bulletins or other stationary signs (whether manufactured by himself or by others) to users or consumers shall be selling tangible personal property at retail. The gross receipts from such sales shall be taxable, even when the purchase price of the sign includes a charge for maintenance or repair service, in addition to the charge for the sign.

16.18(422,423) Products sold by co-operatives to members or patrons. Sales by co-operatives to members or patrons shall be subject to tax. The gross receipts from the sale of butter or other products to stockholders or members of co-operative creameries or creamery associations shall be included in the receipts on which tax is computed.

16.19(422,423) Rural electrification co-operatives or associations. A rural electrical co-operative or association shall be required to collect and remit tax from the sale of electric energy to consumers. Such co-operatives or associations shall execute resale certificates to the companies from whom they purchased electric current and obtain certificates from consumers to whom they sell electric current for processing.

A co-operative or association shall be required to collect and remit tax on all sales of tangible personal property to users or consumers and pay sales tax on the purchase of all tangible personal property which it does not sell.

16.20(422,423) Sale of pets. A retailer selling pets shall procure a permit and report tax on the gross receipts from the sale of such pets.

16.21(422,423) Sale of bedding and litter. The sale of bedding and poultry litter, except straw, shall be subject to sales tax. Because of its dual purpose, straw shall be construed as feed and subject to the provisions of rule 18.14.

16.22(422) Meal tickets, coupon books and merchandise cards. When meal tickets, coupon books or merchandise cards are sold by persons engaged exclusively in selling taxable commodities or services, tax shall be levied at the time such items are redeemed by the customer. Tax shall not be added at the time of actual purchase of the meal ticket, coupon book or merchandise card.

16.23(422,423) Truckers engaged in retail business. Truckers or haulers engaged in the sale of tangible personal property to ultimate users or consumers shall be deemed as making taxable sales.

16.24(422,423) Foreign truckers selling at retail in Iowa. Foreign truckers or persons engaged in the sale of tangible personal property at retail in Iowa by means of hauling said property into the state shall be required to collect and remit tax on a nonpermit basis. To insure the remission of tax on Iowa sales, the department has the statutory authority to require a bond deposit from sellers classified in this rule. This right shall be exercised when necessary.

16.25(422) Admissions. Tax is imposed upon the gross receipts from the sale of admissions to places of amusement, athletic events including those of educational institutions, and fairs (whether by single ticket or by season or subscription tickets) to places at which amusement, entertainment or recreation is provided. The term "admission" includes that part of private club membership fees paid for the privilege of participating in various sports provided club members.

The charge for a booth reservation is an admission to a particular booth, in the same manner that a reserved seat is a special admission to a particular place in a circus, theater or like place of amusement and, therefore, subject to tax.

16.26(422) Amusements. The gross receipts from amusements of every kind and character and from games of every kind and character shall be taxable, unless exempt under rule 17.1.

16.26(1) Tax shall apply to both legal and illegal amusements. The collection of tax or the issuance of a permit shall not be construed to condone or legalize any games of skill or chance or slot-operated devices prohibited by law.

16.26(2) Gross receipts shall include all money taken in by the operator of any amusement, game or device in the state of Iowa.

16.26(3) Gross receipts from fortune telling and fortune tellers shall be taxable amusements within the meaning of the law. Every concession at a fair, carnival or like

place shall be considered an amusement when a charge is made or a voluntary contribution taken by the person operating the concession.

16.26(4) Gross receipts from the sale of games of skill, games of chance, raffles and bingo shall be taxable.

16.26(5) Gross receipts from swimming pools, golf courses, skating rinks and other playground and athletic activities shall be taxable.

16.27(422) Rental of personal property in connection with the operation of amusements. Gross receipts from equipment rental of personal property in connection with the operation of amusements shall be taxable. Such rentals shall include all tangible personal property or equipment used by patrons in connection with the operation of commercial amusements, notwithstanding the fact that the rental of such personal property may be billed separately. See rule 26.18.

16.28(422) Commercial amusement enterprises—companies or persons which contract to furnish show for fixed fee. Any circus, show, carnival company or person contracting with persons to put on a show for a fixed fee or on a percentage basis shall be liable for the current rate of tax on the amount received for such performances or operation of commercial amusement enterprises.

16.29(422) Admissions to state, county, district and local fairs. Gross receipts from admissions or the sale of tickets required for admission to state, district, county and local fairs shall be subject to tax.

16.30(422) River steamboats. River steamboats carrying passengers for pleasure rides on any river within the state or which forms a boundary line between Iowa and another state shall be an amusement enterprise. Gross receipts from the sale of such tickets sold in Iowa shall be taxable.

16.31(422) Pawnbrokers. Pawnbrokers are primarily engaged in the business of lending money for and accepting as security tangible personal property from the owner or pledgor.

In case the pledgor does not redeem the property pledged or pawned, such property is forfeited to the pawnbroker, to whom the title passes.

When pawnbrokers thereafter sell such articles at retail, they are making sales and shall collect and remit tax.

16.32(422,423) Druggists and pharmacists. Persons licensed to practice pharmacy in Iowa and registered prescription druggists in Iowa engaged in the business of selling drugs and medicines shall not be liable for tax on the applicable exemptions prescribed under the rules in chapter 20.

Unless otherwise exempt from tax, the purchase of tangible personal property for individual use or consumption by licensed pharmacists and registered prescription druggists shall be subject to tax. Furthermore, such persons shall hold a retail sales tax permit and collect and report all tax due from consumers and users in all transactions involving taxable retail sales.

16.33(422,423) Memorial stones. Persons engaged in the business of selling memorial stones are selling tangible personal property, the gross receipts from which shall be subject to tax. When the seller of a memorial stone agrees to erect a stone upon a foundation, the total gross receipts from such sale shall be taxable.

16.34(422) Communication services furnished by hotel to its guests. As a common practice, hotels in the state of Iowa purchase telephone communication service from telephone companies and furnish said services to the guests of the hotel. The hotel makes a charge for this communication service to its guests in an amount which exceeds the cost of such service to it from the telephone company. Tax shall apply to the entire charges which the hotel makes to its guests for such communication service, regardless of whether the guest's calls are local or long-distance within the state.

16.35(422) Private clubs. Private clubs, such as country clubs, athletic clubs, fraternal and other similar social organizations, are retailers of tangible personal property sold by them, even though the sales are made only to members. These organizations shall procure a permit and report and pay tax on the gross receipts of all sales by such clubs.

When clubs operate amusements or amusement devices or coin-operated machines, the gross receipts therefrom shall

be included with the gross receipts from other taxable sales on which tax is computed.

Tax-levying bodies operating golf courses, swimming pools and other types of amusement where a charge is made shall be subject to tax on their gross receipts.

16.36(422,423) Aircraft sales. The gross receipts from the sale of aircraft at retail in Iowa shall be subject to tax.

Persons engaged in selling aircraft in Iowa for the purpose of resale shall secure a certificate of resale from the purchaser.

16.37(422) Athletic events. The sale of tickets or admissions to athletic events occurring in the state of Iowa sponsored by educational institutions without regard to the use of the proceeds from such sales shall be subject to tax.

16.38(422,423) Iowa dental laboratories. Iowa dental laboratories are engaged in selling tangible personal property to Iowa dentists. Such laboratories shall hold a retail sales tax permit and collect and report all tax due from dentists in all transactions involving taxable retail sales.

Iowa dental laboratories shall not be subject to tax on those purchases of tangible personal property which (1) form a component or integral part of new work or repair work being furnished to Iowa dentists or other dentists or (2) would be exempt if purchased directly by the dentist's patient.

Iowa dental laboratories are deemed to be the final user or consumer of all tangible personal property, including tools, office supplies, equipment and any other tangible personal property not otherwise exempt. Sales tax shall be remitted to its Iowa supplier when purchasing in this state, and use tax shall be remitted directly to the department when such items are purchased from out-of-state suppliers, unless the out-of-state supplier is registered with the department and authorized to collect use tax for the state, in which case the use tax shall be paid to the registered supplier.

16.39(422,423) Dental supply houses. Dental supply houses are engaged in selling tangible personal property to dentists and dental laboratories. Such dental supply houses shall collect and report all tax due from purchasers in all transactions involving taxable retail sales. This shall not include sales of tangible personal property which (1) will form a component or integral part of new work or repair work being furnished to Iowa dentists or other dentists or (2) would be exempt if sold directly to an individual.

16.40(422) News distributors and magazine distributors. News distributors and magazine distributors engaged in intrastate sales of magazines and periodicals in Iowa to vendors who are engaged in part-time distribution of such magazines are deemed to be making sales at retail. The gross receipts from such sales shall be subject to sales tax.

16.41(422,423) Magazine subscriptions by independent dealers. The gross receipts from the sale of subscription magazines or periodicals derived by independent distributors or dealers in the state of Iowa who secure such subscriptions as independent dealers or distributors shall be subject to tax.

16.42(422,423) Sales by finance companies. A finance company who repossesses or acquires tangible personal property in connection with its finance business and sells tangible personal property at retail in Iowa shall be required to hold a permit and remit the current rate of tax on the gross receipts from such sales at retail in Iowa.

16.43(422,423) Sale of baling wire—binder twine. The sale of baling wire and binder twine to farmers shall be subject to tax. If baling wire or twine is used by a farmer in baling hay for sale on the public market, it shall be exempt from tax, as it is an item for resale.

Commercial balers who are employed to bale hay shall be subject to tax on all baling wire or twine acquired by them.

16.44(422,423) Snowmobiles and motor boats. Snowmobiles and motor boats shall be subject to tax when purchased and shall not be classified as vehicles subject to registration.

These rules are intended to implement chapters 422 and 423 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 925 to 979, relating to retail sales and use tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 17

EXEMPT SALES

17.1(422) Gross receipts expended for educational, religious and charitable purposes. When the entire proceeds of an organization are expended for educational, religious or charitable purposes, except receipts from games of skill, games of chance, raffles and bingo, such proceeds shall be exempt from sales tax. When the facts do not indicate that the entire proceeds are to be expended for any of the above-mentioned purposes, the gross receipts from such activities shall be taxable. Entire proceeds are those proceeds remaining after direct expenses have been deducted from the gross receipts derived from the activity or event. Direct expenses include, but are not limited to, such expenses as:

1. Cost of food, if for a fund raising meal or the selling of food items.

2. Cost of tickets, if the receipts from the tickets are the principal receipts for the activity or event.

3. Cost of entertainment, if the entertainment is the principal proceeds for the activity or event, such as a fund raising dance.

Organizations engaged in educational, religious or charitable activities who sell tangible personal property or render, furnish or perform taxable services at retail in Iowa in connection with such activities shall be exempt from the payment of sales tax on their gross receipts derived from such sales, provided two requirements are met:

1. The activity must be educational, religious or charitable.

2. The entire proceeds must be used for educational, religious or charitable purposes.

Organizations that qualify for an exemption shall be entitled to purchase tangible personal property which they resell in connection with such activities without being charged tax on such property. They shall give their suppliers a proper certificate of resale, indicating they are using the property for the exempt purpose as outlined and explaining they do not hold a permit for reason that their receipts from the sale of tangible personal property in connection with the activities are exempt from tax.

17.2(422) Fuel used in processing—when exempt. Receipts from the sale of tangible personal property which is to be consumed as fuel in creating power, heat or steam for processing, including grain drying or for generating electric current, shall be exempt from sales tax.

The exemption provided in the case of tangible personal property consumed as fuel in creating heat applies only when such heat is directly applied in the actual processing of tangible personal property intended to be sold ultimately at retail, as distinguished from heat which is used for the purpose of heating buildings, whether such buildings be manufacturing or processing plants, warehouses or offices.

Fuel used in processing is exempt to creameries, dairies or ice cream factories only to the extent that such fuel or electricity, as the case may be, is used in the actual processing of the finished product. This does not include fuel used for storage after the manufacturing process is completed.

17.3(422) Electricity or steam used in processing. Receipts from the sale of electricity or steam to be used in the processing of tangible personal property intended to be sold ultimately at retail shall be exempt from sales tax.

The exemption provided in the case of electricity or steam applies only upon the gross receipts from the sale of electricity or steam when such energy shall be consumed as power or used in the actual processing of tangible personal property intended to be sold ultimately at retail, as distinguished from electricity or steam which is consumed for the purpose of lighting, ventilating or

heating of manufacturing plants, warehouses or offices. When practicable, electricity or steam consumed as power or used directly in actual processing shall be separately metered and separately billed by the supplier thereof to clearly distinguish such energy so consumed from electricity or steam which is consumed for purposes or under conditions where the exemption would not apply. If it is impracticable to separately meter electricity or steam which is exempt from that electricity or steam upon which tax will apply, the purchaser may furnish a statement to his supplier with respect to electrical or steam energy used for processing which will enable the supplier to determine what percentage of electricity or steam in the case of each purchaser is subject to the exemption. Forms for this purpose are available to both suppliers and consumers upon request to the department. When such statement is accepted by the supplier as a basis for determining the exemption, any changes in the total active connected load affecting the percentage of exemption would necessitate the filing of a new and revised statement by the purchaser. When the electric or steam energy is separately metered enabling the supplier to accurately apply the exemption in the case of processing energy, the purchaser shall not be required to file a statement since the supplier, under such conditions, will separately record and compute the consumption of energy which is exempt from tax apart from that energy which is subject to tax.

17.4(422,423) Commercial fertilizer, agricultural limestone and plant hormones. Receipts from the sale of commercial fertilizer, agricultural limestone and plant hormones shall be exempt from tax.

The word "fertilizer" means a commodity containing one or more substances to increase the available plant food content of the soil and, as a result, becomes a part of the products grown which will ultimately be sold at retail.

17.5(422,423) Sales to the American Red Cross, Navy Relief Society and U.S.O. Receipts from the sale of tangible personal property to the American Red Cross, Navy Relief Society and U.S.O. shall be exempt from sales tax.

Purchases made by the Red Cross, Navy Relief Society or U.S.O. in interstate commerce for use in Iowa shall be exempt from use tax.

17.6(422,423) Sales of vehicles subject to registration—new and used—by dealers. Receipts derived from the sale at retail in Iowa of new and used vehicles subject to registration under the motor vehicle laws of Iowa shall be exempt from sales tax. When the vehicles are registered at the office of the county treasurer or the motor vehicle registration division, Iowa department of public safety, the tax is collected as use tax. Vehicle dealers selling tangible personal property or taxable services in Iowa, in addition to new or used vehicles, shall be required to hold a permit. Upon filing their quarterly returns, such dealers shall show the amount of their gross receipts derived from the sale of such new and used vehicles subject to registration and shall take appropriate deductions.

The purchaser of a new or used vehicle subject to registration shall be required to pay use tax when such vehicle is registered in Iowa under the Iowa motor vehicle law; and, the county treasurer or the motor vehicle registration division, department of public safety (whichever issues the registration) shall collect use tax.

17.7(422,423) Sales to certain federal corporations. The department holds that the following are some of the federal corporations immune from the imposition of sales and use tax in connection with their purchases:

1. Federal Land Bank
2. Federal Deposit Insurance Corporation
3. Commodity Credit Corporation
4. Federal Home Loan Bank
5. Federal National Mortgage Association
6. Farm Security Administration
7. Federal Credit Union
8. Federal Crop Insurance Corporation
9. Federal Intermediate Credit Bank
10. Federal Reserve Bank
11. Federal Savings & Loan Insurance Corporation
12. United States Housing Authority
13. United States Maritime Commission

The federal statutes creating the above corporations contain provisions substantially identical with section 26 of the Federal

Farm Loan Act which has been construed as barring the imposition of state and local sales taxes.

17.8(422) Sales in interstate commerce—goods shipped from this state. When tangible personal property is sold within the state and the seller is obligated to deliver it to a point outside the state or to deliver it to a common carrier or to the mails for transportation to a point without the state, sales tax shall not apply, provided the property is not returned to a point within the state.

17.8(1) Proof of transportation. The most acceptable proof of transportation outside the state shall be:

1. A waybill or bill of lading made out to the seller's order calling for delivery; or

2. An insurance or registry receipt issued by the United States postal department, or a post office department's receipts; or

3. A trip sheet signed by the seller's delivery agency which shows the signature and address of the person outside the state who received the delivered goods.

17.8(2) Certificate of out-of-state delivery. Iowa retailers making sales of tangible personal property and delivery out of state shall use a certificate in lieu of trip sheets. The certificate shall be completed at the time of sale, identifying the merchandise delivered and signed by the purchaser upon delivery.

17.8(3) Exemption not applicable. Sales tax shall apply when tangible personal property is sold and delivered in the state to the buyer or his agent, even though the buyer may subsequently transport that property out of the state and, also, when tangible personal property is sold in Iowa to a common carrier and then delivered by the purchasing carrier to a point outside of Iowa for the carrier's use.

17.9(422,423) Sales to farmers and others. Certain products relating to agricultural production shall be exempt.

17.9(1) Feeds sold for use in feeding livestock or poultry for market and antibiotics administered as an additive to feed or drinking water for livestock or poultry produced for market shall not be subject to tax.

17.9(2) Materials (excluding tools and equipment) used in disease control, weed control, insect control or health promotion of plants or livestock produced as part of agricultural production for market and fuel consumed in implements of husbandry engaged in agricultural production shall not be subject to tax.

17.9(3) Persons engaged in the business of exterminating insects or weeds, when used as a part of agricultural production for market, shall not be subject to tax on the material used, the same as to material sold directly to farmers for the same purposes.

17.9(4) Persons engaged in health promotion of plants or livestock, when used as a part of agricultural production for market, shall not be subject to tax on the material used, the same as to material sold directly to farmers for the same purposes.

17.10(422,423) Materials used for seed inoculations. All forms of inoculation, whether for promotion of better growth and healthier plants or for prevention or cure of mildew of plants or disease of seeds and bulbs, are intended for the same general purpose. Sales tax shall not be imposed on any material used for inoculation.

17.11(422,423) Purchases for sales by schools—sales tax. Goods, wares or merchandise purchased by any private, nonprofit educational institution in the state and used for educational purposes shall be exempt from sales tax. The gross receipts from the sale of textbooks and hot lunches to students shall be exempt from sales tax when the entire proceeds from such sales are used for educational purposes.

When purchases are made by any private, nonprofit educational institution and the institution is acting as an agent for the sale to any student or other person, such sales are taxable if the proceeds from the sale are not used for educational purposes.

17.12(422) Coat or hat checkrooms. The operation of a checkroom is not a taxable service or an admission to any amusement or athletic event; therefore, the gross receipts from this operation shall not be included in the gross receipts on which sales tax is computed.

17.13(422,423) Railroad rolling stock. Railroad rolling stock is that portion of railroad which is incapable of being affixed or annexed on any one place but is wholly intended for movement on rails as well as materials and parts used thereon. This shall

include locomotives, freight train cars and miscellaneous cars and equipment used in maintenance of way or other company service. Such stock shall not be subject to tax.

These rules are intended to implement chapters 422 and 423 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 925 to 979, relating to retail sales and use tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 18

TAXABLE AND EXEMPT SALES DETERMINED BY METHOD OF TRANSACTION OR USAGE

18.1(422,423) Tangible personal property purchased from the United States government. Tangible personal property purchased from the United States government or any of the governmental agencies shall be exempt from sales tax, but such purchases shall be taxable to the purchaser under the provisions of the use tax law. Persons making purchases from the United States government, unless exempt from the provisions of section 422.44 of the Code, shall report and pay use tax at the current rate on the purchase price of such purchases.

18.2(422,423) Sales of butane, propane and other like gases in cylinder drums, etc. Sales of butane, propane and other like gases in cylinder drums and other similar containers purchased for cooking, heating and other purposes shall be taxable.

When gas of this type is sold and motor vehicle fuel tax is collected by the seller, tax shall not be due. If Iowa motor vehicle fuel tax is not collected by the seller at the time of the sale, tax shall be collected and remitted to the department, unless the sale is specifically exempt.

If tax is not collected by the seller at the time of sale, any tax due shall be collected by the department at the time the user of the product makes application for a refund of the motor vehicle fuel tax.

The gross receipts from the rental of cylinders, drums and other similar containers, by the distributor or dealer of the gas shall be subject to tax when the title remains with the dealer. Gas converter equipment which might be sold to an ultimate consumer shall be subject to tax.

18.3(422,423) Chemical compounds used to treat water. Chemical compounds placed in water to be sold at retail are used in processing. Therefore, the receipts from the sale of such chemical compounds for that purpose are exempt from sales tax. Likewise, chemicals purchased for such purposes from out-of-state sources shall be exempt from use tax. Also, chemical compounds placed in water which is directly used in processing are exempt from tax, even if the water is consumed by the processor and not sold.

Chemical compounds used to treat water which is not to be sold at retail or used directly in processing shall be subject to tax. For example, this includes chlorine or other chemicals used to treat water for a swimming pool.

Special boiler compounds used by processors when live steam is injected into the mash or substance, whereby the steam liquefies and becomes an integral part of the product intended to be sold at retail and does become a part of the finished product shall be exempt from tax.

18.4(422) Mortgages and trustees. Pursuant to the provisions of a chattel mortgage, the receipts from the sale of tangible personal property at a public auction shall not be taxable if the sale is made by virtue of a court decree of foreclosure by an officer appointed by the court for that purpose or if the property is bid in by the mortgagee. Sales tax applies to receipts from other foreclosure sales when goods and chattels are sold at retail.

18.5(422,423) Sales to agencies or instrumentalities of federal, state, county and municipal government.

18.5(1) The gross receipts from the sale of tangible personal property or enumerated taxable services made directly by or to the

United States government or to recognized agencies or departments of the United States government shall not be subject to sales tax.

The gross receipts from sales at retail made directly to patients, inmates or employees of an institution or department of the United States government shall be taxable, since they are not made directly to the government. However, sales similarly made by post exchanges and other establishments organized and controlled by federal authority shall not be subject to sales tax.

18.5(2) The gross receipts from the sale of goods, wares, merchandise or services used for public purposes to any tax-certifying or tax-levying body of the state of Iowa or governmental subdivision thereof, and all divisions, boards, commissions, agencies or instrumentalities of the state, federal, county or municipal government which derive disbursable funds from appropriations or allotments of funds raised by the levying and collecting of taxes, except the sale of goods, wares or merchandise sold by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity or heat to the general public, shall be exempt from sales and use tax.

This tax exemption does not apply to construction contractors who create or improve real property for federal, state, county and municipal instrumentalities or agencies thereof. The contractors, therefore, shall be subject to sales and use tax on all tangible personal property they purchase regardless of the identity of their construction contract sponsor.

18.5(3) The gross receipts from sales to the United States government, state of Iowa or federal bureaus, departments or instrumentalities are not taxable.

18.6(422,423) Relief agencies. Sales of tangible personal property or services to relief agencies shall be subject to tax. The law provides that a relief agency may apply to the department for a refund for the amount of tax paid by it upon the purchase of goods, wares, merchandise or services rendered, furnished or performed that are used for free distribution to the poor and needy. Refund forms are available from the department upon request.

18.7(422,423) Containers, including packing cases, shipping cases, wrapping material and similar items. The gross receipts from the sale of containers, labels, cartons, packing cases, wrapping paper, wrapping twine, bags, bottles, shipping cases and other similar articles and receptacles sold to manufacturers, producers, wholesalers, retailers or jobbers which are used as containers to hold or encompass the tangible personal property which they are engaged in selling, either for resale or at retail, shall not be subject to sales tax. The charge made for the property sold shall include the container, and the title to the container shall pass to the purchaser when the merchandise is sold.

Manufacturers, producers, wholesalers, jobbers or retailers shall pay sales or use tax on containers purchased and used by them for the purpose of delivering tangible personal property to the consumer, when the title of the container remains with the manufacturer, producer, wholesaler, jobber or retailer and the container is used in making other deliveries to a manufacturer, producer, wholesaler, jobber or retailer. In this case, tax shall not apply if the container is purchased by the manufacturer, producer, wholesaler, jobber or retailer for use in processing and the container is used for the purpose of delivering the product for ultimate retail sale, even though the title to the container may remain with the manufacturer, producer, wholesaler, jobber or retailer.

18.7(1) *Sales to other than manufacturers, producers, wholesalers and jobbers are divided into three groups:*

a. Containers delivered with the merchandise sold to the final buyer or ultimate consumer shall be exempt when there is no separate charge. This group includes: Boxes, cartons, paper bags, wrapping paper, and, wrapping twine.

b. Packing paper, lining paper, paper used to line boxes and crates and like tangible personal property intended to be sold ultimately at retail and the title passes to the purchaser shall be exempt from sales and use tax.

c. Labels, tags and nameplates when attached to tangible personal property which is subject to sales tax shall be exempt from tax.

18.7(2) *Containers—wholesale bakeries.* Bakeries purchasing metal, plastic or

wooden containers for use in delivering bread or other bakery products to retailers are considered to be the consumer of such containers, unless title and possession passes to the retailer at the time of delivery. If bakery retailers contend the title or possession passes to their retail customers on any container used in delivering bakery products, proper showing shall be required by the bakeries to support that contention.

18.8(422) Public auctions. The gross receipts from the sale at retail through auctions are subject to sales tax unless otherwise exempt by law.

18.9(422) Sales by farmers. The sale of grain, livestock or any other farm or garden product by the producer thereof ordinarily constitutes a sale for resale, processing or human consumption and shall not be subject to tax.

Farmers selling tangible personal property not otherwise exempt to ultimate consumers or users shall hold a permit and collect and remit sales tax on the gross receipts from their sales.

18.10(422,423) Florists and nurserymen.

18.10(1) Florists are engaged in the business of selling tangible personal property at retail and shall be liable for payment of tax measured by the receipts from the sale of flowers, wreaths, bouquets, potted plants and other items of tangible personal property.

18.10(2) When a nurseryman or florist sells shrubbery, young trees and similar items, and as a part of the transaction transplants them in the land of the purchaser for a fixed amount, the entire gross receipts shall be subject to tax.

18.10(3) When florists conduct transactions through a florists' telegraphic delivery association, the following rules shall apply when computing tax liability:

a. On all orders taken by an Iowa florist and telegraphed to a second florist in Iowa for delivery in the state, the sending florist shall be liable for tax, measured at the current rate of tax on his gross receipts from the total amount collected from the customer, except the cost of a telegram when a separate charge is made therefore.

b. In cases where a florist receives an order pursuant to which he gives telegraphic instructions to a second florist located outside Iowa for delivery to a point outside Iowa, tax shall not be owing with respect to any receipts which he may realize from the transaction.

c. In cases where Iowa florists receive telegraphic instructions from other florists located either within or outside of Iowa for the delivery of flowers, the receiving florist will not be held liable for tax with respect to any receipts which he may realize from the transaction.

d. Fuel used by greenhouses and other related facilities for the purpose of growing plants is not deemed to be used for processing and, therefore, shall not be exempt from tax.

18.11(422,423) Sod and dirt. The gross receipts from the sale of uncut sod shall not be subject to sales or use tax. This is considered a sale of intangible property and not the sale of tangible personal property.

When a person sells either cut or uncut sod and the seller then either cuts, rolls or loads the sod, the original sale of the sod (entire sale price includes cutting, rolling and loading of sod) shall be considered a retail sale. The receipts from such sales shall be subject to sales or use tax, unless the sod is purchased for resale.

The receipts from the sale of cut sod shall be subject to sales or use tax, unless the sod is purchased for resale or otherwise exempt from tax.

Direct sales of cut sod to the final consumer are retail sales, and the gross receipts from such sales shall be subject to sales or use tax. Sales may be made by the grower of sod or by a person who purchases cut sod for resale or acquires the right to remove the sod from the grower of sod. "Final consumer" ordinarily means the owner of the land to which the sod is applied. Sod is not a building material; therefore, when a sod contractor uses sod to fulfill a contract, he is considered the retailer of the sod and shall be obligated to collect sales tax on his selling price to a general contractor, if the contract is with the landowner.

When a person or contractor sells and delivers cut sod directly to a final consumer, the entire gross receipts shall be taxable, including transportation charges, unless the transportation charges are separately stated.

The above rule shall also apply to the sale of excavated and unexcavated dirt.

18.12(422,423) Hatcheries. The gross receipts from the sale of egg-type cockerel chicks, broiler chicks and turkey poults shall be subject to tax.

When pullets and poults are sold for production purposes, the receipts from such sales shall be exempt from tax.

18.13(422,423) Bulbs and like property. Any person including producers selling flowers, trees, shrubs, roots, grass, bulbs and like property at retail shall be liable for tax on their gross sales unless such sales are made to a person engaged in the business of operating a nursery or commercial garden. The tax liability depends upon the use to which the items are to be utilized and not on the kind or variety of the items.

This rule applies regardless of whether such articles are sold from a store, curb, market greenhouse, farm or any other place.

This rule also applies to roots, grass, bulbs, flowers, trees, shrubs and like personal property purchased by farmers engaged in regular agriculture.

This rule does not apply to plants and seeds which are eligible for purchase with food coupons under rule 20.1.

18.14(422,423) Sales of livestock and poultry feeds. Tax shall not apply to the sale of feed for any form of animal life when the product of such animals constitutes food for human consumption. Tax shall apply on feed sold for consumption by pets.

Antibiotics, when administered as an additive to feed or drinking water, and vitamins and minerals sold for livestock and poultry shall be exempt from tax.

18.15(422,423) Student fraternities and sororities. Student fraternities and sororities are not considered to be engaged in the business of selling tangible personal property at retail within the meaning of the sales tax law when they provide their members with meals and lodging for which a flat rate or lump sum is charged. A person engaged in the selling of foods, beverages and other tangible personal property to such organizations for use in the preparation of meals is making exempt sales at retail and shall not be liable for tax.

Student fraternities or sororities engaged in the business of serving meals to persons other than members for which separate charges are made, or owning and operating canteens through which tangible personal property is sold are deemed to be making taxable sales.

When student fraternities or sororities do not provide their own meals but are provided by caterers, concessionaires or other persons, such caterers, concessionaires or other persons shall be liable for the collection and remittance of tax with respect to their receipts from meals furnished. A similar liability is attached to persons engaged in the business of operating boarding houses, whether for students or other persons.

18.16(422,423) Photographers and photostaters. Tax shall apply to the sale of photographs and photostat copies, whether or not produced to the special order of the customer and to charges for the making of photographs or photostat copies out of materials furnished by the customer. A deduction shall not be allowed for the expenses incurred by the photographer, such as rental of equipment or salaries or wages paid to assistants or models, whether or not such expenses are itemized in billings to customers.

Tax shall not apply to the sale of tangible personal property to photographers and photostat producers which becomes an ingredient or component part of photographs or photostat copies sold, such as mounts, frames and sensitized paper; but tax shall apply to the sale of materials to photographers or producers which is used in the processing of photographs or photostat copies.

18.16(1) *Sales of photographs to newspaper or magazine publishers for reproduction.* The sale of photographs by a person engaged in the business of making and selling photographs to newspaper or magazine publishers for reproduction shall be taxable.

18.16(2) Reserved.

18.17(422,423) Gravel and stone. When a contract is entered between a contractor and a governmental body and the contract calls for a stockpile delivery along a road to be improved, it is a sale of tangible personal property to the governmental body. Transactions of this type are exempt from tax. When a contract not only provides for the sale and

delivery of materials but also the conversion of such materials into realty improvements, the contractor is the ultimate consumer of the material used and shall be liable for tax. Tax shall apply on the purchase price of the material.

18.18(422,423) Sales of ice. The sale of ice for use for human consumption which may be purchased with food coupons, such as ice cubes, is exempt from tax. The sale of ice for use for cooling, such as block ice, is subject to tax.

18.18(1) The sale of ice for use in cooling devices or refrigerator units shall be taxable.

18.18(2) The gross receipts from the sale of ice sold to railroads or other persons to be used for icing or reicing cars for shippers are subject to tax.

18.19(422,423) Antiques, curios, old coins or collector's postage stamps. Curios, antiques, art work, coins, collector's postage stamps and such articles sold to or by art collectors, philatelists, numismatists and other persons who purchase or sell such items of tangible personal property for use and not primarily for resale are sales at retail and shall be subject to tax.

18.19(1) Stamps, whether canceled or uncanceled, which are sold by a collector or person engaged in retailing stamps to collectors shall be taxable.

18.19(2) The distinction between stamps which are purchased by a collector and stamps which are purchased for their value as evidence of the privilege of the owner to have certain mail carried by the United States government is that which determines whether or not a stamp is taxable or not taxable. A stamp becomes an article of tangible personal property having market value when, because of the demand, it can be sold for a price greater than its face value. On the other hand, when a stamp has only face value, as evidence of the right to certain services or an indication that certain revenue has been paid, it shall not be subject to either sales or use tax.

18.20(422,423) Commercial communication services. All telephone companies shall have a permit for each business office which they maintain. They shall collect and remit tax upon gross receipts from such operations.

18.20(1) *Taxable receipts.*

a. Tax shall apply to receipts from the transmission of messages and conversation wholly within the state for which the exchange collects the charge. In the case of a pay station, the exchange shall pay tax on the total receipts. When a minimum amount is guaranteed to the exchange from any pay station, tax shall be computed on the full amount collected.

b. Fees known as switchboard charges paid to a commercial telephone exchange by telephone lines, not operating switchboards, shall be included in the gross receipts of such commercial exchange.

c. Commercial telephone companies which levy assessments upon their subscribers on a quarterly, semi-annual, annual or any other basis shall include the amount of such assessments in their gross receipts.

d. In computing tax due, federal taxes separately billed the customer shall be excluded.

e. Purchases of tangible personal property by telephone companies shall be taxable.

f. The sale of service for the transmission of messages, night letters, day letters and all other messages of similar nature from person to person within the state shall be subject to sales tax.

18.20(2) Telegrams charged to the account of telephone subscribers and billed by the telephone company shall appear on the toll bill with tax added.

18.20(3) Receipts from telephone services rendered in connection with governmental functions of the United States, state of Iowa, counties, cities, school districts and other governmental subdivisions of the state of Iowa and private, nonprofit educational institutions in the state shall be exempt from tax, except sales to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public.

18.20(4) When one commercial telephone company furnishes another commercial telephone company services or facilities which are used by the second company in furnishing telephone service to its customers, such services or facilities furnished to the second company are in the nature of a sale for resale; and the charges shall be exempt from sales tax.

18.21(422,423) Morticians and funeral directors. The funeral director or undertaker is engaged in the business of selling tangible personal property such as caskets, grave vaults and, occasionally, grave clothing and flowers. He is likewise engaged in rendering such services as embalming and providing livery service and other accessories necessary and convenient in conducting funerals. He shall be liable for tax, measured only by his gross receipts from the sale of tangible personal property, as distinguished from services which he renders.

When funeral directors and undertakers charge lump sums to customers covering the entire cost of the funeral without dividing the charge for tangible personal property and the charge for services when rendering a bill to the customer, such persons shall report the full amount of the funeral bill, less any cash advanced by the funeral director or undertaker, with tax due on fifty percent of the difference. Cash advanced includes charges for purchasing a cemetery lot or grave; the opening and closing of the grave; remuneration to the clergy and choir; use of the church; press notices; and, other related items.

The funeral director shall maintain his books to show the receipts, cash advances, invoices, sales records and other such pertinent facts as may be required by the department.

The funeral director is considered to be purchasing caskets, grave vaults, grave clothing, embalming fluid, cosmetics and chemicals for resale and may purchase such items from his suppliers without being subject to tax.

The funeral director is considered to be using or consuming office furniture or equipment; funeral home furnishings; advertising calendars; booklets; motor vehicles and accessories; embalming instruments and equipment; grave equipment; stretchers; baskets; and, other items when title and possession do not pass to his customers. With respect to these items, the funeral director shall pay tax to his Iowa suppliers and remit use tax directly to the department when the items are purchased out of state, unless the out-of-state supplier is registered with the department and authorized to collect use tax for the state.

18.22(422,423) Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists and opticians. Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists and opticians shall not be liable for tax on services rendered such as examinations, consultations, diagnosis, surgery and other kindred services, nor on the applicable exemptions prescribed under the rules in Chapter 20.

The purchase of materials, supplies and equipment by such persons are subject to tax unless the particular item is exempt from tax when purchased by an individual for his own use. For example, the purchase by such persons for use in the office of prescription drugs would not be subject to tax nor would the purchase of prosthetic devices such as artificial limbs or eyes.

Sales of tangible personal property to dentists, which are to be affixed to the person of his patient as an ingredient or component part of a dental prosthetic device, are exempt from tax. These include artificial teeth, and facings, dental crowns, dental mercury and acrylic, porcelain, gold, silver, alloy and synthetic filling materials.

Sales of tangible personal property to physicians or surgeons, which are prescription drugs to be used or consumed by the person of his patient, are exempt from tax.

Sales of tangible personal property to ophthalmologists, oculists, optometrists and opticians, which are prosthetic devices designed, manufactured, or adjusted to fit the person of his patient, are exempt from tax. These include prescription eyeglasses, contact lenses, frames and lenses.

The purchase by such persons of materials such as pumice, tongue depressors, stethoscopes, which are not in themselves exempt from tax, would be subject to tax when purchased by such professions.

The purchase of equipment, such as an X-ray machine, X-ray photograph or frames for use by such persons is subject to tax. On the other hand, the purchase of an item of equipment that is utilized directly in the care of an illness, injury or disease, which item would be exempt if purchased directly by the patient, is not subject to tax.

18.23(422,423) Reserved.

18.24(422,423) Hospitals, infirmaries and sanatoriums. Hospitals, infirmaries, sanatoriums and like institutions are engaged

primarily in the business of rendering services. Such facilities shall not be subject to tax on their purchases of items of tangible personal property exempt under rules of chapter 20 when such items would be exempt if purchased by the individual and if the item is used generally for the tax exempt purpose.

Unless otherwise exempt from tax, hospitals, infirmaries and sanatoriums are deemed to be the purchasers for use or consumption of such tangible personal property that is used in furnishing services.

Such facilities shall not be liable for sales tax on their gross receipts from meals or other tangible personal property, when such items are used in rendering hospital service.

18.25(422,423) Maintenance and preventive maintenance contracts.

18.25(1) In a maintenance contract which requires the furnishing of taxable enumerated services and parts subject to tax at the time of purchase, tax shall not be due thereafter on parts or services when the machine covered under such contract requires repair.

18.25(2) The preventive maintenance contract is a contract which requires only visual inspection of equipment and no repair is or shall be involved. This type of contract shall not be subject to sales or service tax.

18.25(3) When a contract is entered to furnish taxable services for a certain price and requires an extra charge for parts, if needed, tax shall be due upon the contract price, and if any parts are used in fulfilling the contract, tax shall be due on the charge made for any parts used.

18.25(4) When a contract requires the replacement of parts which are under warranty, any additional charge for enumerated services shall be subject to tax.

18.26(422) Service charge and gratuity. When the purchase of any food, beverage or meals automatically and invariably results in the inclusion of a mandatory service charge to the total price for such food, beverage or meal, the amounts so included shall be subject to tax. The term "service charge" means either a fixed percentage of the total price of or a charge for food, beverage or meal.

The mandatory service charge shall be considered (1) a required part of a transaction arising from a taxable sale and a contractual obligation of a purchaser to pay to a vendor arising directly from and as a condition of the making of the sale and (2) a fixed labor cost included in the price for food, beverage or meal even though such charge is separately stated from the charge for the food, beverage or meal.

When a gratuity is voluntarily given for food, beverage or meal it shall be considered a tip and not subject to tax.

These rules are intended to implement chapters 422 and 423 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 925 to 979, relating to retail sales and use tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 19

MATERIALS, SUPPLIES AND EQUIPMENT USED IN CONSTRUCTION

19.1(422,423) Sales of building materials, supplies and equipment to construction contractors, subcontractors, owners or builders. Sales to or purchases by construction contractors or subcontractors of building materials, supplies or equipment for the erection of buildings or the alteration, repair or improvement of real property shall be subject to sales or use tax.

19.1(1) *Construction contract.* The term *"construction contract"* means a contract for erecting, altering or repairing a building or other structure or improvement of real property.

The term "construction contract" does not include a contract for the sale and installation of machinery or equipment which remains personal property after installation.

19.1(2) *Sponsors return of information.* Sponsors who have awarded contracts shall furnish full information as to all contracts let and shall furnish the name and address of the general and special contractors entering a contract with the sponsor and such other information as requested by the department.

When the owner, contractor, subcontractor or builder is also a retailer holding a retail sales tax permit and transacting retail sales of building materials, supplies, and equipment, he shall purchase such items exempt from tax if such tangible personal property will be subject to tax at the time of resale or at the time it is withdrawn from inventory for construction purposes. The tax shall be due in the reporting period in which the materials, supplies and equipment are sold at retail or withdrawn from inventory for construction purposes.

19.1(3) *General construction contractor.* A general construction contractor is a person who contracts to furnish the necessary materials and labor for the performance of a construction contract and is generally one who contracts for the entire project or a major portion thereof. The person with whom the general construction contractor contracts is ordinarily the owner of the land and structure thereon.

19.1(4) *Special construction contractor.* A special construction contractor is one who contracts directly with the sponsor of the project to furnish the necessary materials and labor to complete a special portion of a construction project which is not included in the general contract.

19.1(5) *Subcontractor.* A subcontractor is a person who contracts to furnish the necessary materials and labor for the completion of a portion of the general construction contract. The construction subcontractor ordinarily contracts with the general contractor to perform a certain part of the work which the general contractor has undertaken under the general construction contract, but sublets.

19.1(6) *Material supplier.* A person who sells tangible personal property in the form of building or structural material to a construction contractor when the person makes no erection or installation of the material at the job site shall not be regarded as a subcontractor. Such a person is a material supplier who is selling tangible personal property at retail.

19.1(7) *Classification of construction contracts.* Construction contracts are generally let under one of three classes of contracts:

a. "Lump sum" are contracts in which the contractor or subcontractor agrees to furnish the materials, supplies and necessary services for a lump sum.

b. "Cost plus" are contracts in which the contractor or subcontractor agrees to furnish the materials, supplies and necessary services at cost, plus a designated price or amount over cost.

c. "Time and material" are contracts in which the contractor or subcontractor agrees to furnish the materials, supplies and necessary services on a unit price basis.

19.2(422,423) Iowa and out-of-state suppliers selling to contractors. Iowa suppliers selling to contractors shall bill and collect from them sales tax and report and remit same to the state. Out-of-state suppliers required to collect use tax for the state shall, when selling to contractors, bill and collect use tax from such persons and remit the tax to the state on a quarterly basis.

19.2(1) Contractors purchasing, acquiring or manufacturing tangible personal property outside the state of Iowa for use in Iowa owe use tax on such out-of-state purchases, based on the purchase price.

When a person who is primarily engaged in business as a construction contractor, considering the totality of the business, uses or consumes building materials, supplies or equipment in such business, he shall be subject to tax on the cost of such building materials, supplies or equipment but not subject to tax on the fabricated cost of the items.

19.2(2) Sums paid to the owner of the land for the privilege of removing sand, gravel, rock, stone or other minerals from the land are not payments for the purchase of tangible personal property; therefore, the transaction shall not be subject to sales tax.

19.2(3) When sand, gravel, rock, stone or other minerals have been removed from their natural deposit and are then sold for use by the purchaser thereof as the ultimate customer, a sale of tangible personal property is involved and such sale shall be subject to sales or use tax.

19.3(422,423) Machinery and equipment sale contracts with installation involved. At times, persons contract to furnish and install machinery and equipment in plants, shops and factories and other places where the machinery or equipment is intended to be used primarily in the production, manufacture or processing of tangible personal property or other purposes not primarily essential to the building structure itself, but which incidentally may, on account of the nature of the machinery or equipment furnished, be more or less securely attached to the realty, and which does not lose its identity as a particular piece of equipment or machinery.

19.3(1) Such contracts normally shall not be considered as construction contracts for the purpose of sales and use tax regulations applicable to construction contracts. These transactions normally shall be considered sales of tangible personal property to a consumer or to any other person for any purpose other than resale.

19.3(2) If the sale transaction is one in interstate commerce to a consumer in Iowa or other person taxable under the definition of use, the transaction comes within the scope of the use tax law; and, the purchaser shall pay use tax.

19.3(3) If the installation charge on the job site is set out separately by the seller to the buyer, sales or use tax applies only to the purchase price of the machinery or equipment, except as provided in rule 26.16.

19.4(422,423) Distinguishing construction contracts from machinery and equipment sale contracts. The principles of application of sales and use tax vary with the type of contract. Under this rule, the director places these contracts into their proper category for the purpose of applying sales or use tax.

19.4(1) *Machinery and equipment sale contracts:*

1. Portable machines, equipment and tools
2. Furniture
3. Vehicles
4. Lathes
5. Drills
6. Presses
7. Cranes
8. Core ovens
9. Generators
10. Turbines (steam)
11. Electric motors (driving processing equipment)
12. Power switchboards
13. Telephone switching equipment
14. Boilers (not for space heating)
15. Stokers and furnaces (not for space heating)
16. Coal handling equipment (not for space heating)
17. Ash removal equipment (not for space heating)
18. Manufacturing equipment and machinery used to handle, fabricate and manufacture raw materials into finished products and which are not essential to the building structure itself
19. Paint booths and spray booths
20. Conveying systems handling raw materials or finished products
21. Diesel engines (for processing)
22. Coal pulverizing equipment (not for space heating)

There may be instances when these enumerated examples, and other contracts not listed, would receive a different classification depending upon the facts and surrounding circumstances in each contract.

19.4(2) There may be instances when the examples enumerated in subrule 19.4(1) and other contracts not listed in these subrules would be classified as either a construction or machinery and equipment sales contract. This would be dependent upon the circumstances in each contract and how they would be classified according to rule 19.3 and subrule 19.1(1).

19.5(422,423) Mixed contracts, construction contracts and machinery and equipment sale contracts. When a construction contract is mingled with a machinery and equipment sale contract, the following shall apply:

19.5(1) When a contractor performs such a mixed contract for a lump sum, he is the consumer, for the purpose of sales and use tax, of all structural or building materials supplied and installed. He shall be the retailer of the machinery and equipment furnished and installed.

19.5(2) When such a mixed contract is let for a lump sum amount, the machinery and equipment furnished and installed shall be considered, for the purpose of this rule only, as being sold by the contractor for an amount equal to his cost of the equipment.

19.6(422,423) When machinery or equipment sales contract with installation by seller is in interstate commerce and when in intrastate commerce. See provisions of rule 16.13.

19.7(422,423) Payment of final estimate must be withheld. The sponsor of a construction contractor, if the latter is a nonresident of Iowa, shall not make payment of the final estimate due the contract until such sponsor has received a release from the department showing that the contractor performing such contract has paid all sales and use tax due the state of Iowa and all required forms, returns and reports have been filed with the department.

19.8(422,423) Nonresident construction contractors required to make separate reports and returns on each individual Iowa construction contract. Construction contractors who are not residents of Iowa and do not maintain a place of business in Iowa where full records are kept concerning sales and use tax transactions shall make a report to the department concerning each individual construction contract performed by them in Iowa.

The nonresident contractor shall file quarterly use tax returns during the progress of the job.

A letter of release concerning sales and use tax will be sent by the department to the sponsor and a copy to the construction contractor, provided the required reports, returns and tax have been properly submitted.

19.9(422,423) Liability of sponsors for sales and use tax due the state from general and special contractors. A lien on personal property and rights to personal property belonging to the taxpayer is created for sale, use or service taxes due the state of Iowa without the necessity of recording.

19.10(422,423) Money due a contractor is a right to property. Money due a general or special contractor is a right to personal property on which a lien is attached for any sales or use tax owing the state.

19.11(422,423) Liability of sponsors who fail to withhold payment. Sponsors who pay general or special contractors in full shall be liable to the state for the payment of any sales or use tax not collected on which a lien has been imposed in favor of the state.

19.12(422,423) Release of sponsors. Sponsors who withhold payment due the general and special contractors are released from any liability created by the lien statutes of the state of Iowa when a written release is secured from the department.

19.13(422,423) Taxes paid by general and special construction contractors received subject to audit. A release to a sponsor does not operate as a final release to the general and special contractor or subcontractor, as all tax accounts are released subject to an audit of the taxpayer at any future date.

19.14(422,423) General construction contractors required to withhold payment. General construction contractors who pay subcontractors in full shall be liable to the state for the payment of any sales or use tax not collected from such subcontractor for the reason that such general contractor paid money to the subcontractor on which a lien has been imposed in favor of the state.

19.15(422,423) Release of general contractors. General construction contractors who withheld payment due subcontractors are released from any liability created by the lien statutes when such written release is secured from the department.

19.16(422,423) Taxes paid by subcontractors received subject to audit. A release to a general construction contractor does not operate as a final release of the subcontractor as all tax accounts are released subject to an audit of the taxpayer at any future date.

19.17(422,423) Iowa construction contractors must file prescribed reports. Iowa construction contractors who maintain a place of business in the state of Iowa where complete records are maintained concerning sales and use tax transactions shall not be required to file forms concerning each construction contract in Iowa, unless specifically requested to do so by the department.

Iowa construction contractors shall notify the department immediately whenever they sublet a construction contract to a nonresident subcontractor. The information shall include the name and out-of-state address of the subcontractor; the general nature of the work; the contract price; and, the date let, together with the name of the project where the subcontractor is to perform his contract.

The Iowa construction contractor shall file consumer's use tax returns reporting

and remitting any use tax due concerning all of his activities in the state of Iowa during the period covered by the returns.

19.18(422,423) Contracts with federal, state or local governments. A construction contractor performing a construction contract for the United States government; state of Iowa; counties; towns; school districts; or any other political subdivision of the state of Iowa or private, nonprofit educational institutions shall not be exempt from the payment of either sales or use tax on materials expended. A contractor performing such a contract for any of the above-mentioned shall file reports and returns for either sales or use tax as is required for contracts with private sponsors.

These rules are intended to implement chapters 422 and 423 of the Code.

[Effective December 12, 1974]

Chapters 21 to 25 Reserved.

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 992 to 997, relating to retail sales and use tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 26

SALES AND USE TAX ON SERVICES

26.1(422) Definition. The phrase *"persons engaged in the business of"* as used herein shall mean persons who offer the named service to the public or to others for a consideration whether such persons offer the service continuously, part time, seasonally or for short periods.

26.2(422) Enumerated services exempt. Tax shall not apply on any of the following services:

26.2(1) Services on or connected with new construction, reconstruction, alteration, expansion or remodeling of a building or structure, or the services of a general building contractor, architect or engineer.

26.2(2) A taxable service which is utilized in the processing of tangible personal property for use in taxable retail sales or services.

26.2(3) A service which is performed on tangible personal property delivered into interstate commerce or when such service is performed in interstate commerce in such a manner that imposition of tax would violate the commerce clause of the United States Constitution.

26.2(4) Services rendered, furnished or performed for an "employer" as defined in section 422.4(15) of the Code.

26.2(5) Those exemptions in chapter 17 applicable to both sale of services and sale of tangible personal property, excluding those exemptions pertaining only to the sale of tangible personal property.

26.3(422) Alteration and garment repair. Persons engaged in the business of altering or repairing any type of garment or clothing are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Included are the services rendered, furnished or performed by tailors, dressmakers, furriers and others engaged in similar occupations. When the vendor of garments or clothing agrees to alter same without charge when an individual purchases such garments or clothing, no tax on services, in addition to the sales tax paid on the purchase price of the article, shall be charged. However, if the vendor makes an additional charge for alteration, that additional charge shall be subject to the tax on the gross receipts from the services.

26.4(422) Armored car. Persons engaged in the business of either providing armored car service to others or converting a vehicle into an armored car are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Armored car" shall mean a wheeled vehicle affording defensive protection by use of a metal covering or other elements of ordinance. The exemption for transportation services shall not apply.

26.5(422) Automobile repair. Persons engaged in the business of repairing motor

vehicles are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include any type of restoration, renovation or replacement of any motor, engine, working parts, accessories, body or interior of the motor vehicles, but shall not include installation of new parts or accessories which are not replacements, added to the motor vehicles. "Motor vehicle" shall mean a vehicle commonly used on a highway propelled by any power other than muscular power. The exemption for transportation services shall not apply.

26.6(422) Battery, tire and allied. Persons engaged in the business of installing, repairing, maintaining, restoring or recharging batteries, and services joined and connected therewith, and persons engaged in the business of installing, repairing, maintaining tires, and services joined or connected therewith, for any type of vehicle or conveyance are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. The exemption for transportation services shall not apply.

26.7(422) Investment counseling. Persons engaged in the business of counseling others, for a consideration, as to investing in and disposition of both real and personal property, tangible as well as intangible, are engaged in and are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Persons engaged in the business of counseling others relative to investment in or disposition of property or rights, whether real, personal, tangible or intangible, where a charge is made for such counseling, are rendering, furnishing or performing services, the gross receipts from which are subject to tax. Where such services are rendered incidental to trust services, and in the case of trustees, guardians, executors, administrators and conservators, the gross receipts from such incidental services are not subject to tax. Investment counseling does not include the mere management of a business or property.

26.8(422) Bank service charges. The gross receipts from bank services rendered, furnished or performed by banks and charged to the customer are receipts which are subject to tax.

"Bank service charges" are all charges assessed to and collected from the depositor in cash or by debit in connection with and arising out of a periodic analysis of his checking account, whether based on activity, balance maintained, fixed maintenance cost allocation, or any combination thereof, and all service charges made in connection with checking accounts. For example, but not limited to:

Flat charge by account or activity.

Per check or average balance.

Thrifty accounts. PAYC (pay as you check) accounts.

Deposits. (Per item or out-of-town checks)

"Bank" is an institution empowered to do all banking business, such as power and right to issue negotiable notes, discount notes and receive deposits; and "banking business" consists in receiving deposits payable on demand and buying and selling bills of exchange.

26.9(422) Barber and beauty. Persons engaged in the business of hair cutting, hair styling, hair coloring, wig care, manicuring, pedicuring, applying facial and skin preparations, and all like activities which tend to enhance the appearance of the individual are rendering, furnishing, or performing a service, the gross receipts from which are subject to tax. Each "barber, beauty or other beautification shop or establishment" shall receive only one permit and remit tax as one enterprise, no matter what business arrangement exists between the owner of the shop and those who work therein.

26.10(422) Boat repair. Persons engaged in the business of repairing watercraft are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include any type of restoration, renovation or replacement of any motor, engine, working part, accessory, hull or interior of the watercraft, but shall not include installation of new parts or accessories which are not replacements added to such watercraft.

26.11(422) Car wash and wax. Persons engaged in the business of washing or waxing cars are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. The gross receipts from such service shall be taxable whether it is performed by hand, machine or coin-operated devices. "Cars" are defined as any motor

vehicle (self-propelled), as defined in chapter 321 of the Code.

26.12(422) Carpentry. Persons engaged in the business of repairing, as a carpenter, as the trade is known in the usual course of business, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Such structures may be either real or personal property.

26.13(422) Roof, shingle and glass repair. Persons engaged in the business of repairing, restoring or renovating roofs or shingles, or restoring or replacing glass, whether such glass is personal property or affixed to real property, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.14(422) Dance schools and dance studios. The gross receipts from services rendered, furnished or performed by dance schools or dance studios are subject to tax. A "dance school" is any institution established primarily for the purpose of teaching any one or more types of dancing. A "dance studio" is any room or group of rooms in which any one or more types of dancing are taught. If other activities such as acrobatics, exercise, baton twirling, tumbling or modeling are taught in dance schools, the gross receipts from the teaching of such activities are subject to tax.

26.15(422) Dry cleaning, pressing, dyeing and laundering. Persons engaged in the business of rendering, furnishing or performing dry cleaning, pressing, dyeing and laundering services, including those who engage in such business by means of coin-operated washers, ironers or manglers, dryers and dry cleaning machines are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.16(422) Electrical repair and installation. Persons engaged in the business of repairing or installing electrical wiring, fixtures, switches in or on real property or repairing or installing any article of personal property powered by electric current are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. For purposes of this rule only, that electrical portion of the repair and installation of personal property powered by electric current is subject to tax. "Repair" shall include mending or renovation of existing parts, replacing of defective parts or cleaning of the article. "Installation" shall include affixing electrical wiring, fixtures or switches to real property, affixing any article of personal property powered by electric current to any other article of personal property, or making any article of personal property powered by electric current operative with respect to its intended functional purpose. For purposes of subrule 26.2(1), service tax shall not apply on electrical installation or repair when such service is on or connected with a structural change to a building or similar structure, whether such structural change be internal or external to the building or structure. The electrical repair or installation on or connected with new construction on buildings or structures would not be subject to service tax.

26.17(422) Engraving, photography and retouching. Persons engaged in the business of engraving on wood, metal, stone or any other material, taking photographs, or renovating or retouching an existing likeness or design are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.18(422) Equipment rental. Persons engaged in the business of furnishing equipment to other persons for their use are rendering, furnishing or performing a service subject to tax measured by the gross receipts of fees charged for the use of such equipment. For this purpose, "equipment" is defined as any functional personal property, the function of which contributes to the purposes of the person who shall have obtained it for use, whether such use involves equipment which functions in a state of rest or in a state of motion. In order to determine whether a particular fee is charged for the use of equipment or for the rendering of a nontaxable service, the department looks at the substance, rather than the form, of the service being rendered. When the possession and use of equipment by the recipient is merely incidental as compared to the nontaxable service performed, all the gross receipts are derived from the furnishing of such nontaxable service and, unless a separate fee or charge is made for the possession and use of equipment, no gross receipts are derived from the service of equipment rental. When the nontaxable service is merely incidental to the possession and use of the equipment by the recipient, all the gross receipts are derived from the furnishing of

equipment rental and, unless a separate fee or charge is made for the nontaxable service, no gross receipts are derived from the nontaxable service. When an equipment rental agreement contains separate fee schedules for rent and for nontaxable service, only the gross receipts derived from the equipment rental service are subject to tax. This rule is not to be so construed as to be a variance with subsection 2 of section 422.45 of the Code concerning transportation.

26.19(422) Excavating and grading. Persons engaged in the business of excavating and grading for purposes other than new construction, reconstruction, alteration, expansion or remodeling are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.20(422) Farm implement repair of all kinds. Persons engaged in the business of repairing, restoring or renovating implements, tools, machines, vehicles or equipment, but not including installation of new parts or accessories which are not replacements, used in the operation of farms, ranches or acreages on which growing crops of all kinds, livestock, poultry or fur-bearing animals are raised or used for any purpose are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.21(422) Flying service. Persons engaged in the business of teaching a course of instruction in the art of operation and flying of an airplane, and instructions in repairing, renovating, reconditioning an airplane, or any other related service are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Flying service shall also include all other types of flying service, such as crop dusting and commercial and charter airline transportation, except those services exempt by subrule 26.2(3)

26.22(422) Furniture, rug, upholstery, repair and cleaning. Persons engaged in the business of repairing, restoring, renovating or cleaning furniture, rugs or upholstery are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Furniture" shall include all indoor and outdoor furnishings wherever used. "Rugs" shall include all types of rugs and carpeting. "Upholstery" shall include all materials used to stuff or cover any piece of furniture.

26.23(422) Fur storage and repair. Persons engaged in the business of storing for preservation and future use, refurbishing, repairing and renovating, including addition of new skins and furs, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. The term "furs" shall include both natural and manufactured simulated products resembling furs.

26.24(422) Golf and country clubs and all commercial recreation. All fees, dues or charges paid to golf and country clubs are subject to tax. "Country clubs" shall include all clubs or clubhouses providing golf and other athletic sports for members. Persons providing facilities for recreation for a charge are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Recreation" shall include all activities pursued for pleasure, including sports, games and activities which promote physical fitness, but shall not include admissions otherwise taxed under section 422.43 of the Code.

26.25(422) House and building moving. Persons engaged in the business of moving houses or buildings from one location to another, whether for repair or otherwise, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. For purposes of this rule only, the exemption for transportation services and subrule 26.2(1) shall not apply.

26.26(422) Household appliance, television and radio repair. Persons engaged in the business of repairing household appliances, television sets, or radio sets, but not including installation of new parts or accessories which are not replacements, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include mending or renovation of existing parts of such household appliances, television sets and radio sets, as well as replacing defective parts of such articles. "Household appliances" shall include all mechanical devices normally used in the home, whether or not used therein.

26.27(422) Jewelry and watch repair. Persons engaged in the business of repairing jewelry or watches are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Jewelry or

watch repair" shall include any type of mending, restoration or renovation of parts, or replacement of defective parts.

26.28(422) Machine operators. Persons engaged in the business of operating machines of all kinds, where a fee is charged, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Machine operator" is a person who exercises the privilege of managing, controlling and conducting a mechanical device or a combination of mechanical powers and devices used to perform some function and produce a certain effect or result.

26.29(422) Machine repair of all kinds. Persons engaged in the business of repairing machines of all kinds are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Machine" shall include all devices having moving parts and operated by hand, powered by a motor, engine, or other form of energy. It is a mechanical device or combination of mechanical powers and devices used to perform some function and produce a certain effect or result.

26.30(422) Motor repair. Persons engaged in the business of repairing motors powered by any means whatsoever are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include mending or renovation of parts, replacements of defective parts or subassemblies of the motor, but shall not include installation of new parts or accessories which are not replacements.

26.31(422) Motorcycle, scooter and bicycle repair. Persons engaged in the business of repairing motorcycles, scooters and bicycles are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include mending or renovation of parts, replacement of defective parts or subassemblies, but shall not include installation of new parts or accessories which are not replacements.

26.32(422) Oilers and lubricators. Persons engaged in the business of oiling, changing oils or lubricating and greasing vehicles and machines of all types having moving parts or powered by a motor or engine or other form of energy, heavy equipment vehicles or implements, whether such equipment functions in a state of rest or in a state of motion, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.33(422) Office and business machine repair. Persons engaged in the business of repairing office and business machines are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include mending and renovation of existing parts, replacement of defective parts or subassemblies, but shall not include installation of new parts or accessories which are not replacements.

26.34(422) Painting, papering and interior decorating. Persons engaged in the business of painting, papering and interior decorating are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Painting" shall mean covering of both interior and exterior surfaces of tangible personal or real property with a coloring matter and mixture of a pigment or sealant, with some suitable liquid to form a solid adherent when spread on in thin coats for decoration, protection or preservation purposes and all necessary preparations thereto, including surface preparation. "Papering" shall mean applying wallpaper or wall fabric to the interior of houses or buildings and all necessary preparations thereto including surface preparation. "Interior decoration" shall mean the service of designing or decorating the interiors of houses or buildings, counseling with respect to such designing or decoration or the procurement of furniture fixtures or home or building decorations. When any person provides interior decorating service without charge as an incident to the sale of real or personal property, no sales tax, in addition to that paid on the purchase price or any part thereof of the personal property, shall be charged.

26.35(422) Parking lots. Persons engaged in the business of providing parking space for any vehicle are rendering, furnishing or performing a service, the gross receipts from which are subject to tax, irrespective of the method of collection utilized. "Parking lots" shall include any facility used primarily for parking vehicles, whether an outdoor lot or building. "Parking lots" shall also include any parking facility provided by the lessor of a building to his lessees if the lessor makes a separate charge for the parking space above

and beyond the rental charge for other space in the building. "Parking lots" shall also include any facility used primarily for parking vehicles, even if such facility is used seasonally or for even shorter duration, such as providing parking space at the time of a show, fair, carnival or similar event.

26.36(422) Pipe fitting and plumbing. Persons engaged in the business of pipe fitting and plumbing are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Pipe fitting and plumbing" shall mean the trade of fitting, threading, installing and repairing of pipes, fixtures or apparatus used for heating, refrigerating, air conditioning or concerned with the introduction, distribution and disposal of a natural or artificial substance.

26.37(422) Wood preparation. Persons engaged in the business of wood preparation or treatment for others are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Wood preparation" shall include all processes whereby wood is sawed from logs into measured dimensions, planed, sanded, oiled or treated in any manner before being used to repair an existing structure or create a new structure or part thereof. But where such preparation is engaged in solely for the purpose of processing lumber or wood products for ultimate sale at retail, such "preparation" may not be deemed as rendering, furnishing or performing a service, the gross receipts from which would be subject to tax.

26.38(422) Private employment agencies. Persons engaged in the business of providing listings of available employment, counseling others with respect to future employment or aiding another in any way to procure employment are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.39(422) Printing and binding. Persons engaged in the business of printing or binding any printed matter other than for the purpose of ultimate sale at retail are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Printing" shall include any type of printing, lithographing, mimeographing, typing incidental to multiple reproduction(s) listed herein, photocopying and similar reproduction. The following activities are representative of services, the gross receipts from which are subject to tax: The printing of pamphlets, leaflets, stationery, envelopes, folders, bond and stock certificates, abstracts, law briefs, business cards, matches, campaign posters and banners for the users thereof.

26.40(422) Sewing and stitching. Persons engaged in the business of sewing and stitching are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.41(422) Shoe repair and shoeshine. Persons engaged in the business of repairing or shining any type of footwear, such as shoes, boots and sandals, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Repair" shall include the mending or renovation of existing parts and the replacement of defective parts, but shall not include installation of new parts or accessories which are not replacements of the footwear in any manner. "Shoeshine service" is meant to be the shining of any type of footwear.

26.42(422) Storage warehouse and storage locker. Persons providing facilities for storing any type of tangible personal property are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Storage warehouses and storage lockers" shall include, but are not limited to, any facility provided for the purpose of storing household or building furnishings, foods, clothes, furs, luggage, automobiles, airplanes or any other tangible personal property. (See "Warehouses" rule 26.49.)

26.43(422) Telephone answering service. Persons engaged in the business of providing telephone answering service, whether by person or machine, are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.44(422) Test laboratories. Persons engaged in the business of providing laboratory testing of any substance for any experimental, scientific or commercial purpose are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.45(422) Termite, bug, roach and pest eradicators. Persons engaged in the business of eradicating or preventing the infestation

by termites, bugs, roaches and all other living pests are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Persons who eradicate, prevent or control the infestation of any type of pest by means of spraying are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.46(422) Tin and sheet metal repair. Persons engaged in the business of repairing tin or sheet metal, whether the same has or has not been formed into a finished product are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.47(422) Turkish baths, massage and reducing salons. Persons engaged in the business of operating turkish baths, reducing salons or in the business of massaging are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. "Turkish baths" shall mean any type of facility wherein the individual is warmed by steam or dry heat. "Reducing salons" shall mean any type of establishment which offers facilities or a program of activities for the purpose of weight reduction. "Massaging" shall include the kneading, rubbing or manipulating of the body to condition the body, but not include any body manipulation undertaken and incidental to the practice of one or more of the healing arts. Persons engaged in the business of operating health studios which, as a part of their operation, offer any or all of the services of turkish baths, massages or reducing facilities or programs shall be subject to tax upon the gross receipts from the above-named service.

26.48(422) Vulcanizing, recapping or retreading. Persons engaged in the business of recapping or retreading tires for any vehicle or vulcanizing any type of product for others are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.49(422) Warehouses. Persons engaged in the business of warehousing goods for others are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. A "warehouse" is a building or place adapted to the reception and storage of goods and merchandise and, in a more limited sense, is a building or place in which a warehouseman deposits the goods of others in the course of his business.

26.50(422) Weighing. Persons engaged in the business of weighing any item of tangible personal property are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.51(422) Welding. Persons engaged in the business of welding materials whether for the purpose of mending existing articles, adding to them or creating new articles are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.52(422) Well drilling. Persons engaged in the business of drilling or digging wells for extracting water, oil, natural gas or any other natural substance or for the introduction, distribution, storage or disposal of a natural or contrived substance are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. Subrule 26.2(1) does not apply.

26.53(422) Wrapping, packing and packaging of merchandise other than processed meat, fish, fowl and vegetables. Persons engaged in the business of wrapping, packing and packaging of merchandise other than processed meat, fish, fowl and vegetables are rendering, furnishing or performing a service, the gross receipts from which are subject to tax. If the person "wraps, packs or packages" merchandise as a service incidental to the sale of such merchandise and does not charge for the service, no sales or use tax, in addition to that paid on the purchase price of the merchandise, need be collected or remitted. However, if a separate charge be made for "wrapping, packing or packaging", the gross receipts therefrom are subject to tax.

26.54(422) Wrecking service. Persons engaged in the business of wrecking, tearing down, defacing or demolishing tangible personal or real property or any parts thereof are rendering, furnishing or performing a service, the gross receipts from which are subject to tax.

26.55(422) Wrecker and towing. Persons engaged in the business of towing any vehicle by means of pushing, pulling, carrying or freeing any vehicle from mud, snow or any other impediment, including hoisting incidental thereto, are rendering, furnishing or

performing a service, the gross receipts from which are subject to tax. The gross receipts from service charges made when any person travels to any place to lift, extricate or tow any vehicle or to salvage any vehicle are subject to tax. Towing does not include transporting operable vehicles from one location to another where no operative aspect of such vehicle is integral to such transporting. A "vehicle" is that in or on which a person or thing is, or may be, carried from one place to another. The exemption for transportation services shall not apply.

These rules are intended to implement chapter 422 of the Code.

[Effective December 12, 1974]

Chapter 27 Reserved.

REVENUE DEPARTMENT
(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 979 to 992, relating to use tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

TITLE IV

USE TAX

CHAPTER 28

DEFINITIONS

28.1(423) Taxable use defined. A "taxable use" is the exercise of any right of ownership over tangible personal property in Iowa by any person owning the property but does not include the right to sell the property in the regular course of business or the right to process or manufacture the property into another article of tangible personal property intended to be sold ultimately at retail.

A taxable use is also an enumerated taxable service rendered, furnished or performed for use in Iowa or the product or result of such enumerated service used in Iowa. For list of enumerated services and exemptions from tax, see chapter 26.

28.2(423) Processing of property defined. "Processing of property" is defined to include:

28.2(1) Personal property which forms an integral or component part of the manufactured product which is intended to be sold ultimately at retail.

28.2(2) Property which is consumed as fuel in creating power, heat or steam for processing, including grain drying or generating electric current, or consumed in implements of husbandry engaged in agricultural production.

28.2(3) Property which includes only chemicals, solvents, sorbents or reagents which are directly used, consumed or dissipated in processing personal property which is intended to be sold ultimately at retail, even though it does not become a component or integral part of the finished product. This shall not include any item of machinery, tools or equipment.

28.3(423) Purchase price defined. "Purchase price" means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise, provided that cash discounts and trade-in allowances allowed and taken on sales or purchases shall not be included.

These rules are intended to implement chapter 423 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT
(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 979 to 992, relating to use tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 29

CERTIFICATES

29.1(423) Certificate of registration. A retailer located outside the state who maintains a place of business in this state shall

apply to the department for a certificate of registration to collect use tax. (See rule 30.1) Each certificate of registration issued shall be assigned an individual number which shall appear immediately above the registrant's name on the certificate. When invoicing the purchase for use in Iowa, the holder of the certificate shall bill the use tax due as a separate item on the billing or invoice and indicate his registration number.

29.1(1) An application for a certificate of registration for a retailer located outside the state shall show the following:

a. Business identification name of the person to whom the certificate is to be issued.

b. Address of the location from which the use tax returns are to be filed.

c. Names and addresses of all officers, in the case of a corporation; the names of all partners, in the case of a partnership; the name of the owner, in the case of an individual ownership.

d. Date when the applicant, as a retailer maintaining a place of business in this state, will begin or has begun selling tangible personal property or rendering, furnishing or performing of enumerated taxable services in Iowa or for use in Iowa subject to use tax law.

e. Names and addresses of all offices, warehouses or other places of business in Iowa, either owned or controlled by the applicant or its subsidiary.

f. Names and addresses of all agents of the applicant operating in the state either permanently or temporarily.

g. Names and addresses of all out-of-state locations from which tangible personal property will be delivered in Iowa for use in Iowa and from which billing for the merchandise will be made.

h. Any other information the department may require.

It shall not be necessary for more than one certificate to be held in order to collect and remit all use tax due, even though shipments and billings may be made from several out-of-state locations.

29.1(2) Reserved.

29.2(423) Cancellation of certificate of registration. When the holder of a certificate of registration ceases to sell tangible personal property for use in Iowa, he shall immediately notify the department and request cancellation of the certificate of registration.

29.3(423) Certificates of resale or processing. When tangible personal property or service is sold in interstate commerce for delivery in Iowa, it shall be presumed that such property or service is sold for use in Iowa. The registered seller is required to collect use tax from the purchaser. If the tangible personal property or service sold for delivery in Iowa is not sold for use in Iowa and is not subject to use tax, the seller shall be required to secure a properly written certificate from the purchaser showing the exempt use to be made of the property or service.

When the registered seller repeatedly sells the same type of property or service to the same Iowa customer for resale or processing, the seller may, at his risk, accept a blanket certificate covering more than one transaction.

Suggested forms of certificate may be obtained from the department upon request.

These rules are intended to implement chapter 423 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 979 to 992, relating to use tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 30
FILING RETURNS, PAYMENT OF TAX, PENALTY AND INTEREST

30.1(423) Liability for use tax.

30.1(1) Collection responsibility is placed upon all interstate sellers who sell tangible

personal property or taxable services for use in Iowa, provided the seller maintains directly or by a subsidiary, an office, distribution house, sale house, warehouse or other place of business, or any agent operating within the state either permanently or temporarily. The seller shall be required to apply for and hold a certificate of registration and file a retailer's use tax return. The registered seller shall bill his Iowa customer, show tax as a separate item on the invoice and indicate thereon the seller's registration number.

30.1(2) The purchaser for use in this state shall pay tax to the seller, if the seller is registered with the department to collect use tax for the state. If the seller is not registered with the department to collect use tax for the state, the purchaser shall remit the tax directly to the department.

30.2(423) Measure of use tax. The current rate of tax shall be applied to the purchase price of:

30.2(1) Tangible personal property, less the amount of tangible personal property traded in on the purchase.

30.2(2) The use in Iowa of the product or result of enumerated services obtained outside this state or the use in Iowa of enumerated services rendered, furnished or performed in Iowa.

30.3(423) Consumer's use tax return. A person purchasing tangible personal property or taxable service from an out-of-state source for use in Iowa subject to the use tax law shall be liable for the payment of use tax. Such person shall be required to file a consumer's use tax return with the department, reporting and remitting use tax on all property or taxable service purchased for use in Iowa during the quarterly period covered by the return, unless the seller from whom the purchase is made is registered with the department and has collected use tax on the purchase.

30.4(423) Retailer's use tax return. A retailer's use tax return form shall be furnished by the department to each holder of a certificate of registration at the close of each quarterly period for use in reporting and remitting use tax due for the preceding quarterly period. The quarterly periods for the year end respectively on March 31, June 30, September 30 and December 31. One month shall be allowed immediately following the quarterly period in which to file returns and remit tax without becoming delinquent, unless the department shall otherwise provide.

30.4(1) If the certificate holder uses or consumes tangible personal property in the state of Iowa subject to the use tax law, the cost of such purchases made during a given quarterly period shall also be included on the retailer's use tax return.

30.4(2) If the certificate holder delivers property or products or results from more than one out-of-state location for use in Iowa and from which separate billings are made, a supplement to the return shall also be filed showing the amount of taxable sales made from each respective location.

30.4(3) The holder of a certificate of registration shall file a return for each quarterly period whether or not tax may be due. If no tax is due during a given quarterly period, the return shall be so noted, completed and filed.

30.5(423) Collection requirements of registered retailers. A retailer registered with the department shall collect from his customers and remit to the department all use tax due on all tangible personal property or enumerated services rendered, furnished or performed in Iowa or the products or results of enumerated taxable services rendered, furnished or performed, sold for use in Iowa, unless expressly authorized by the department to do otherwise.

30.6(423) Bracket system to be used by registered vendors. A registered vendor who has occasion to sell tangible personal property or enumerated services rendered, furnished or performed in Iowa or products or results of enumerated taxable services rendered, furnished or performed may use the bracket system specified in 14.2(422), which was adopted under the provisions of the Iowa retail sales tax law.

The registered seller shall be required to remit tax to the department at the current rate applied to the purchase price of all taxable property or enumerated services rendered, furnished or performed in Iowa or the products or results of all enumerated taxable services sold for use in Iowa.

30.7(423) Sales tax or use tax paid to another state. When a person has paid to any other state of the United States a state sales,

use or occupational tax on tangible personal property or taxable services on its sale or use, equal to or greater than the current rate of tax imposed by the Iowa use tax law, no additional use tax shall be due the state of Iowa by such person.

If the amount of tax paid by such person to any other state of the United States on specifically identified tangible personal property or taxable service is less than the current rate of tax imposed by Iowa law, use tax shall be due the state of Iowa on the difference in tax paid to the foreign state and the tax due under the Iowa law.

When a person claims exemption from payment of use tax on the grounds that he has paid tax to any other state of the United States with respect to the sale or use of the property or service in question, the burden of proof shall be upon such person to show the department, county treasurer or motor vehicle division, Iowa department of public safety, by document, that such tax has been paid.

Credit shall not be allowed for sales, use or occupational tax paid in any state of the United States when such tax is paid on the gross receipts of lease/rental payments of tangible personal property.

30.8(423) Registered retailers selling tangible personal property on a conditional sale contract basis. A retailer shall report and remit to the department the full amount of tax computed on the full sale price on the return for the quarterly period during which the sale was made.

30.9(423) Registered vendors repossessing goods sold on a conditional sale contract basis. A registered retailer repossessing tangible personal property which has been sold on a conditional sale contract basis and remitting use tax to the department on the full purchase price may take a deduction on his retailer's use tax return for the quarterly period in which the goods were repossessed in an amount equal to the credit allowed to the purchaser for the goods returned, if the retailer has returned use tax to the purchaser on the unpaid balance.

30.10(423) Penalties for late filing of use tax returns. Use tax returns shall be required to be filed on or before the last day of the month following the close of each quarterly period.

30.10(1) Failure to file a use tax return or a corrected return or to pay use tax due on or before the last day of the month following the close of the quarterly period shall result in a delinquent return and subject to penalty and interest.

30.10(2) Reserved.

30.11(423) Claim for refund of use tax. A claim for refund of use tax shall be made upon forms provided by the department. Each claim shall be filed with the department, properly executed and clearly stating the facts and reasons upon which the claim is based.

Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the person who collects the tax as his agent for purposes of receiving a refund of tax. Use tax paid to the county treasurer or motor vehicle division, Iowa department of public safety, on motor vehicles shall be refunded directly to the person paying the tax upon presentation of a properly documented claim.

These rules are intended to implement chapter 423 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 979 to 992, relating to use tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 31

RECEIPTS SUBJECT TO USE TAX

31.1(423) Transactions consummated outside this state. The Iowa use tax law is complementary to the Iowa sales tax law. The

general rule is that when a transaction would be subject to Iowa sales tax if consummated in Iowa, such transaction, although consummated outside the state of Iowa but involving tangible personal property sold for use in Iowa and so used in Iowa, is subject to Iowa use tax. Also, when a transaction involving taxable services is subject to Iowa sales tax if rendered, furnished or performed in Iowa, such transaction, although consummated outside the state of Iowa but the product or result of such service is used in Iowa, is subject to Iowa use tax.

31.2(423) Goods coming into this state. When tangible personal property is purchased outside the state of Iowa for use or consumption in this state, such sale shall be subject to use tax. Such sale is taxable regardless of the fact that the purchaser's order may specify that the goods are to be manufactured or procured by the seller at a point of origin outside the state, and the seller is required to report all such transactions and collect and remit to this state use tax on all taxable purchases.

31.3(423) Sales by federal government or agencies to consumers. A consumer purchasing tangible personal property or an enumerated taxable service for use in Iowa from the federal government or any of its agencies shall be liable for the payment of Iowa consumer's use tax and shall report and remit the tax due on a consumer's tax return which is furnished by the department.

These rules are intended to implement chapter 423 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 979 to 992, relating to use tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 32

RECEIPTS EXEMPT FROM USE TAX

32.1(423) Tangible personal property and taxable services subject to sales tax. The gross receipts from the sale of tangible personal property or taxable services which are subject to the imposition of sales tax under chapter 422 of the Code shall be exempt from use tax. This shall not apply to vehicles subject to registration.

32.2(423) Use tax exemptions applicable to sales tax exemptions. When an exemption is allowed for sales tax purposes under section 422.45 of the Code and any rule applicable to section 422.45, the same shall apply for use tax, except exemptions for casual sales for vehicles subject to registration.

These rules are intended to implement chapter 423 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 979 to 992, relating to use tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 33

RECEIPTS SUBJECT TO USE TAX DEPENDING ON METHOD OF TRANSACTION

33.1(423) Gifts and prizes. If a person awards a gift or prize and shows proof that he has paid the proper sales or use tax due on the tangible personal property awarded, no further tax shall be due from the recipient. If such proof is not supplied to the recipient, the recipient shall be liable for tax. The tax would be based on (1) the cost to the person awarding the gift or prize; (2) the amount shown on the information sheet provided the Internal Revenue Service; or (3) the fair market value, if neither of the above is available.

33.2(423) Federal manufacturer's or retailer's excise tax. Federal manufacturer's

excise tax shall be exempt from use tax on sales made by the manufacturer directly to the user or consumer, provided the federal manufacturer's excise tax is stated separately on the billing or invoice to the consumer customer.

When a retailer sells tangible personal property on which a federal manufacturer's excise tax has been paid, the federal manufacturer's excise tax shall be a part of the retailer's cost of merchandise and becomes a part thereof when the retailer fixes his selling price to the consumer. Use tax shall then be paid by the consumer on the retailer's selling price.

33.3(423) Fuel consumed in creating power, heat or steam for processing or generating electric current. Tangible personal property purchased outside the state and consumed in creating power, heat or steam for processing tangible personal property or for generating electric current intended to be sold ultimately at retail shall be exempt from use tax. If the property purchased to be consumed as fuel in creating power, heat or steam for processing is also used in the heating of the factory or office, ventilation of the building, lighting of the premises or for any use other than that of direct processing, that portion of the property so used shall be subject to use tax.

When buying tangible personal property, part of which is exempt as fuel under the provisions of the law, from an out-of-state seller registered to collect use tax for the state, the purchaser shall furnish to such registered seller a written certificate certifying the cost of the property which is to be used for processing and shall, therefore, be exempt. The certificate shall also show the cost of the property which is not to be used in processing and, therefore, taxable in order that the registered seller may properly bill the amount of use tax due. See rule 17.3(422).

33.4(423) Repair of tangible personal property outside the state of Iowa. A person who owns tangible personal property in the state of Iowa and sends such property or causes such property to be sent outside the state for the purpose of having it repaired and brings such property back into Iowa, shall be liable for the payment of use tax on the full charge if the service is enumerated.

When the repair is not an enumerated service subject to tax and is invoiced as a separate item from the materials furnished and used in the repair, tax shall be computed only on the charge made for the tangible personal property furnished by the repairman.

These rules are intended to implement chapter 423 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 979 to 992, relating to use tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 34

VEHICLES SUBJECT TO REGISTRATION

34.1(423) Definitions.

34.1(1) A *"vehicle subject to registration"* shall mean any vehicle subject to registration pursuant to section 321.18 of the Code. This includes every motor vehicle, trailer and semitrailer when driven or moved upon a highway with certain exceptions as stated in section 321.18 of the Code. This also includes new and used motor vehicles.

34.1(2) *"Dealers"* shall be persons licensed to sell vehicles subject to registration.

34.1(3) *"Taxable price"* shall be the total delivered price of the vehicle less cash discounts and trade-in allowances. The total delivered price shall include all accessories, additional equipment, services, freight and manufacturer's tax, valued in money, whether paid in money or otherwise. Gasoline, separately itemized, shall not be subject to use tax.

34.2(423) County treasurer shall collect tax. It shall be the duty of the county

treasurer to collect use tax when applicable on vehicles subject to registration. The departmental rules and regulations adopted shall apply in the collection of use tax on vehicles subject to registration registered in their respective counties.

34.3(423) Powers and duties of motor vehicle registration division, Iowa department of public safety. The motor vehicle registration division shall have all the powers and duties for the collection and remittance of use tax to the department which are delegated to county treasurers of Iowa.

34.4(423) Use tax collections required. The county treasurer or state motor vehicle registration division shall, before issuing a registration for a vehicle subject to registration, collect use tax due and issue a proper receipt furnished by the department of revenue. The issuing office shall remit such tax in its monthly report to the department.

34.5(423) Exemptions. If there is a proper basis for exemption, the complete facts shall be given on a properly executed affidavit.

Affidavits of exemption shall not be accepted unless the claim for exemption is clearly within the provisions of one of the exemptions set forth by laws or rules of the department. The burden of proof whether an exemption applies shall be upon the person claiming the exemption.

An original registration in Iowa may be issued for a vehicle subject to registration without the collection of use tax only in the following situations, unless exceptions are noted:

34.5(1) When the applicant for an Iowa registration for a vehicle subject to registration has paid to another state a state sales, use or occupational tax on that unit, credit shall be allowed against the Iowa tax due in the amount paid. Credit shall not be allowed when such tax is paid upon equipment rental receipts. If tax paid is equal to or greater than the Iowa tax due, no further tax shall be collected. If tax paid is less than the Iowa tax due, the difference shall be collected by Iowa.

34.5(2) When the consumer applies for registration of a "homemade vehicle subject to registration" built from parts purchased at retail, upon which the consumer paid a tax to the seller, and never before registered, the applicant shall execute and file an affidavit, in duplicate, establishing these facts with the office issuing the registration. The original shall be forwarded to the department along with the monthly report; and the copy shall be retained by the issuing office. The term "homemade vehicle subject to registration" shall include such things as homemade automobiles, trucks, trailers, motorcycles and motorbikes, but shall not include those vehicles subject to registration which are made by a manufacturer engaged in the business for the purpose of sales or rental.

34.5(3) When a nonresident of Iowa applies for a "nonresident-in-transit" registration for a new motor vehicle which he has purchased in Iowa but which he intends to permanently register in a state other than Iowa, such applicant shall execute and file an affidavit, in duplicate, with the office issuing the registration establishing these facts.

34.5(4) When vehicles are purchased by any federal or state governmental agency or tax-certifying or tax-levying body of Iowa or governmental subdivision thereof. The exemption shall not apply to vehicles purchased or used in connection with the operation of or by a municipally owned public utility engaged in selling as, electricity or heat to the general public and, therefore, shall be subject to use tax.

34.5(5) When the purchaser of a vehicle subject to registration in Iowa remits use tax on the taxable price, then moves the vehicle to a foreign state where it is registered in that state and subsequently returns the same vehicle to Iowa where it is again registered. The same purchaser shall have maintained ownership of the vehicle throughout the respective moves from and back to Iowa.

34.5(6) When a motor vehicle or trailer registered in another state or Iowa is received by an Iowa resident as an inheritance from a decedent. When a motor vehicle or trailer is inherited, the county treasurer shall require an affidavit, in duplicate, establishing these facts to be made before the inherited vehicle is registered.

34.5(7) When an applicant for an Iowa registration has moved from another state with intent of changing residency to Iowa and if the vehicle subject to registration was purchased for use in the state from which he

moved and was not, at or near the time of such purchase, purchased for use in Iowa.

34.6(423) Vehicles subject to registration received as gifts or prizes. See rule 33.1(423) for taxability. The county treasurer shall require an affidavit establishing the facts of each case.

34.7(423) Titling of used foreign vehicles by dealers. Licensed auto dealers shall not be required under the motor vehicle "title" law to register used foreign motor vehicles but shall be required to secure a title for such units within forty-eight hours after they arrive in this state. When applying for a title on such foreign used vehicles, dealers shall execute and file a dealer's resale affidavit, in duplicate, with the office issuing the title. The original shall be forwarded to the department along with the monthly use tax report, and the copy shall be retained by the issuing office.

34.8(423) Dealer's retail sales tax returns. Sales of new or used motor vehicles and trailers, as defined, shall be expressly exempt from sales tax, as the law imposes use tax on new or used motor vehicles and trailers. If the dealer holds a sales tax permit he shall include on his sales tax return the gross receipts from sales of new or used motor vehicles and trailers and take appropriate deductions in the section provided on the return.

34.9(423) Affidavit forms. Forms of affidavit required to establish purchase price or exemption shall be furnished by the department and shall be available upon request.

The affidavit for the total delivered purchase price of a motor vehicle or trailer shall be established by the application for certificate of title and registration and a manufacturer's statement of origin. Before a motor vehicle or trailer, purchased outside the state, is registered, the county treasurer must be satisfied that the information stated in the affidavit is true and correct.

Affidavits of exemption which are not correct in both substance and form shall not be accepted by the county treasurer, the motor vehicle division or the department in lieu of use tax. In case of doubt, the county treasurer or motor vehicle division shall collect tax. Claim for refund may be filed by the taxpayer if he believes tax has been erroneously collected.

These rules are intended to implement chapter 423 of the Code.

[Effective December 12, 1974]

Chapters 35 to 37 Reserved.

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 898 to 925, relating to income tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

TITLE V

INCOME TAX

CHAPTER 38

ADMINISTRATION

38.1(422) Definitions.

38.1(1) When the word *"department"* appears herein, the same refers to and is synonymous with the "Iowa department of revenue"; the word *"director"* is the "director of revenue".

The administration of the income tax is a responsibility of the income tax division created by the director. This division is charged with the administration of the individual income tax, fiduciary tax, withholding of tax and individual estimate declarations, subject always to the rules, regulations and direction of the director.

38.1(2) The term *"computed tax"* means the amount of tax remaining before deductions of personal exemption and credit for dependents and before the computation of the school district surtax.

38.1(3) The word *"taxpayer"* includes under this division:

a. Every resident of the state of Iowa.

b. Every estate and trust resident of this state whose income is in whole or in part subject to the state income tax.

c. Nonresident individuals, estates and trusts (those with a situs outside of Iowa) receiving taxable income from property in Iowa or from business, trade, or profession or occupation carried on in this state.

38.1(4) The term *"fiduciary"* shall mean one who acts in place of or for the benefit of another in accordance with the meaning of the term defined in section 422.4 of the Code. The term includes, but is not limited to, the executor or administrator of an estate, a trustee, guardian or conservator, or a receiver.

38.1(5) The term *"employer"* means those who have a right to exercise control as to the performance of services as defined in section 422.4 of the Code.

38.1(6) The term *"employee"* means and includes every individual who is a resident, or who is domiciled in Iowa, or any nonresident, or corporation performing services within the state of Iowa, the performance of which services constitutes, establishes, and determines the relationship between the parties as that of employer and employee. This includes officers of corporations, individuals, including elected officials, performing services for the United States government or any agency or instrumentality thereof, or the state of Iowa, or any county, city, municipality or political subdivision thereof.

38.1(7) The term *"wages"* means any remuneration for services performed by an employee for an employer, including the cash value of all such remuneration paid in any medium or form other than cash. Wages have the same meaning as provided by the Internal Revenue Code of 1954, as made applicable to Iowa income tax.

Wages subject to Iowa income tax withholding consist of all remuneration, whether in cash or other form, paid to an employee for services performed for his or her employer. For this purpose, the word "wages" includes all types of employee compensation, such as salaries, fees, bonuses, and commissions. It is immaterial whether payments are based on the hour, day, week, month, year or on a piecework or percentage plan.

Wages paid in any form other than money are measured by the fair market value of the goods, lodging, meals, or other consideration given in payment for services.

Where wages are paid in property other than money, the employer should make necessary arrangements to insure that the tax is available for payment. Vacation allowances and back pay including retroactive wage increases, are taxed as ordinary wages.

Tips or gratuities paid directly to an employee by a customer and not accounted for to the employer are not subject to withholding. However, the recipients must include them in their personal income tax returns.

Amounts paid specifically, either as advances or reimbursements, for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to these taxes. Traveling and other reimbursed expenses must be identified either by making a separate payment or by specifically indicating the separate amounts where both wages and expense allowance are combined in a single payment.

Wages are to be considered as paid when they are actually paid or when they are constructively paid, that is, when they are credited to the account of, or set apart for the wage earner so that they may be drawn upon by him or her at any time, although not then actually reduced to possession.

38.1(8) The term *"responsible party"* shall have the same meaning as withholding agent as defined in section 422.4, but shall also include an individual connected or associated with his or her employer in such a manner that he or she has the ultimate authority over the business or the power to assure that the withholding taxes are paid, or the power to determine which bills and creditors should be paid and when. A "responsible party" may be a corporate officer, employee, member of the board of directors, or a shareholder. An individual may be a "responsible party" regardless of whether he

or she does the actual mechanical work of keeping records, preparing returns, or writing checks.

An individual who is a "responsible party" by law cannot relieve himself or herself of that responsibility by attempting to delegate such responsibility to another corporate officer or employee.

Every business which is an employer must have some person who has the duty of withholding and paying those taxes which the law requires an employer to withhold and pay. There may be more than one such person, but there must be at least one. The fact that any individual may not have been the only responsible person would not excuse him or her from the responsibility of paying withholding taxes.

38.1(9) *Domicile.* For purposes of this division, "resident" has two meanings: *(a)* Any individual domiciled in this state and *(b)* any other individual who, although not domiciled in this state, maintains a permanent place of abode within the state. Therefore, as to the first meaning "resident" includes an individual who intends to permanently or indefinitely reside in this state, and who intends to return to this state whenever he or she may be absent from this state as well as those individuals who have moved into this state if the following three elements exist: *(a)* a definite abandonment of a former abode; *(b)* actual removal to, and physical presence in this state; *(c)* a bona fide intention to change and to remain in this state permanently or indefinitely.

Every person has one and only one domicile. Domicile, for purposes of determining "resident" when an individual is "domiciled in this state" is largely a matter of intention, which must be freely and voluntarily exercised. The intention to change one's domicile must be present and fixed and not dependent upon the happening of some future or contingent event. Because it is essentially a matter of intent, precedents are of slight assistance and the determination of the place of domicile depends upon all the facts and circumstances in each case. The director may require of an individual claiming domicile outside the state of Iowa a statement of information with respect to the particular case.

Unless shown to the contrary, an individual will be presumed "domiciled in this state" within the meaning of resident if he or she exercises the rights of citizenship in Iowa by meeting the requirements as a voter, or who enjoys the benefits of the homestead credit, or military exemption, or who otherwise exercises his or her rights or privileges of suffrage in this state. An individual domiciled in this state retains this status until such time as he or she takes positive action to become domiciled in another state or country and relinquishes his or her rights and privileges of residency in Iowa.

An individual who is simply passing through this state on his or her way to another state or country, or is here for a brief rest or vacation, or to complete a particular transaction, or fulfill a particular engagement which will require his or her presence in this state but for a short period of time will not be considered to be a resident or domiciled here by virtue of his or her presence within the state unless positive action is taken to establish residency.

Unless shown to the contrary a married woman has the same residence as her husband. The residence of a minor, ordinarily, is that of the person who has permanent custody over him or her.

As to the second meaning, even though an individual is not domiciled in this state, such individual will nevertheless be considered a "resident" if he or she maintains a permanent place of abode within this state.

Section 574 of the Soldiers and Sailors Civil Relief Act provides that members of the armed forces shall not be deemed to have lost a residence or domicile in any state solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in or of, any other state while, and solely by reason of being, so absent. Residents of Iowa who enter the military service remain residents of this state during the tenure of their military service or until such time as some positive action is taken to establish residence in some other state.

Service personnel who come into Iowa by reason of military or naval orders, but who later decide to become legal or actual residents of this state, or who purchase property for residential purposes, claiming homestead credit or military exemption for

tax purposes, are presumed to be residents of Iowa for income tax purposes. Military personnel who are not residents of the state of Iowa and who receive military pay while stationed in Iowa, shall not be deemed to have received such income for services performed within, or from sources within Iowa. The spouses of military personnel who earn income in Iowa and military personnel who earn nonmilitary income in Iowa are taxed on such income in the same manner as other nonresidents. Spouses of Iowa resident military personnel will not be considered residents of Iowa until they actually reside in the state with their spouse.

38.2(422) Statute of limitations.

38.2(1) *Periods of audit.*

a. The department has three years after a return has been filed to determine whether any additional tax other than that shown on the return is due. This three-year statute of limitation does not apply in the instances specified in paragraph *"b," "c," "d," "e,"* and *"f."*

b. If a taxpayer fails to include in his or her return such items of gross income as defined in the Internal Revenue Code of 1954 as amended, as will under that Code extend the statute of limitations for federal tax purposes to six years, the correct amount of tax due may be determined by the department within six years from the time the return is filed.

c. If a taxpayer files a false or fraudulent return with intent to evade tax, the correct amount of tax due may be determined by the department at any time after the return has been filed.

d. If a taxpayer fails to file a return, the statutes of limitation so specified in section 422.25 do not begin to run until the return is filed with the department.

e. While the burden of proof of additional tax owing under the six-year period or the unlimited period is upon the department, a prima facie case of omission of income, or of making a false or fraudulent return, shall be made upon a showing of a federal audit of the same income, a determination by federal authorities that the taxpayer omitted items of gross income or made a false or fraudulent return, and the payment by the taxpayer of the amount claimed by the federal government to be the correct tax or the admission by the taxpayer to the federal government of liability for that amount.

f. The department is allowed six months after notification by the taxpayer of the final disposition of any matter between the taxpayer and the Internal Revenue Service with respect to any particular tax year to make an examination and determination.

The notification shall be in writing, and attached thereto shall be a copy of the revenue agent's report and any schedules necessary to explain the federal adjustments.

38.2(2) *Waiver of statute of limitation.* If the taxpayer files with the department a request to waive the period of limitation, the limit of time for audit of the taxpayer's return may thereby be extended for a designated period. If the request for extending the period of limitation is approved, the additional tax or refund carries a limitation of thirty-six months interest from the due date that the return was required to be filed up to and including the expiration of the waiver agreement.

In the event that an assessed deficiency or overpayment is not paid within the waiver period, interest accrues from the date of expiration of the waiver agreement to the date of payment.

38.3(422) Authority for deductions. Whether and to what extent deductions shall be allowed depends upon specific legislative Acts, and only where there is a clear provision can any particular deduction be allowed. Therefore, a deduction will be allowed only if the taxpayer can establish the validity and correctness of such deduction.

38.4(422) Jeopardy assessments.

38.4(1) A jeopardy assessment may be made in a case where a return has been filed, and the director believes for any reason that collection of the tax will be jeopardized by delay; or in a case where a taxpayer fails to file a return, whether or not formally called upon to do so, in which case the department is authorized to estimate the income of the taxpayer upon the basis of available information, and to add penalty and interest.

38.4(2) A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by

seizure or sale of any property of the taxpayer may be instituted immediately.

38.5(422) Information deemed confidential. Sections 422.20 and 422.72 apply generally to the director, deputies, auditors, agents, officers or other employees of the department. Disclosure of information from a taxpayer's filed return or report to a third person is prohibited under the above sections. Other persons or entities having acquired information disclosed in a taxpayer's filed return or report, will be bound by the same rules of secrecy under these sections as any member of the department and will be subject to the same penalties for violations as provided by law.

38.6(422) Power of attorney. No attorney, accountant or other representative shall be recognized as representing any taxpayer in regard to any claim, appeal, or other matter relating to the tax liability of such taxpayer in any hearing before or conference with the department, or any member or agent thereof, unless there is first filed with the department a written authorization or unless it appears to the satisfaction of the department, or member or agent thereof, that the attorney, accountant or representative does in fact have authority to represent the taxpayer.

38.7(422) Delegation to audit and examine. Pursuant to statutory authority the director delegates to the director of the income tax division the power to examine returns and make audits; and to determine the correct amount of tax due, subject to review by or appeal to the director. The power so delegated may further be delegated by the director of the income tax division to such auditors, agents, clerks, and employees of the income tax division as he or she shall designate.

These rules are intended to implement chapter 422 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 898 to 925, relating to income tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

TITLE V

INCOME TAX

CHAPTER 39

FILING RETURN AND PAYMENT OF TAX

39.1(422) Who must file.

39.1(1) *Residents.* For each taxable year, every resident of Iowa, whose net income, as defined in section 422.7 of the Code, is two thousand dollars or over, or who is required to file a federal income tax return, must make, sign, and file a return. In determining whether returns must be filed, income from all sources, taxable under this division, must be considered.

39.1(2) *Nonresidents.* For each taxable year, every nonresident of Iowa, who is required to file a federal income tax return and who has net income, as defined in section 422.7, from sources within this state of two thousand dollars or over must make, sign, and file a nonresident return.

39.1(3) *Part-year residents.* Every part-year resident of Iowa whose net income earned from all sources during the time he or she was a resident and whose net income earned from Iowa sources for that portion of the year he or she was a nonresident, totals two thousand dollars or over, or every part-year resident who is required to file a federal income tax return, must make, sign and file an Iowa resident income tax return. See rules 40.16, 41.6 and subrule 42.2(7).

39.1(4) *Returns of the handicapped.* If a taxpayer is physically or mentally unable to make his or her own return, the return shall be made by a duly authorized agent, guardian or other person charged with the care of the person or property of such taxpayer. A power of attorney must accompany a return made by an agent or guardian.

39.1(5) *Minimum income requirement.* See rules 40.1 to 40.18 for the computation of net income to determine if a taxpayer meets the minimum filing requirement of two thousand dollars.

39.1(6) *Final return.* If a taxpayer has died during the year, see rule 48.8.

39.1(7) *Returns filed for refund.* A taxpayer with net income of less than two thousand dollars, must file a return to receive a refund of any tax withheld.

39.2(422) Time and place for filing.

39.2(1) *Returns of individuals.* A return of income must be filed on or before the due date. The due date is the last day of the fourth month following the close of the taxpayer's taxable year, whether the return be made on the basis of the calendar year or for a fiscal year, or the last day of the period covered by an extension of time granted by the department. When the due date falls on Saturday, Sunday or a legal holiday, the return will be due the first business day following such Saturday, Sunday or legal holiday. If a return is placed in the mails, properly addressed and postage paid, in ample time to reach the income tax division on or before the due date for filing, no penalty will attach should the return not be received until after that date. Mailed returns should be addressed to Iowa State Income Tax Division, Department of Revenue, Lucas State Office Building, Des Moines, Iowa 50319.

Farmers and fishermen have the same filing due date as other individual taxpayers, however, those farmers and fishermen who have elected not to file a declaration of estimated tax, shall file their returns and pay the tax due, on or before March 1, to avoid penalty for underpayment of estimated tax.

39.2(2) *Extension of time for filing returns.* The taxpayer must render on or before the due date a return as nearly complete and final as it is possible for him or her to prepare. However, when good cause exists because of sickness, unavoidable absence, or other legitimate reasons, the director is authorized to grant an extension of time in which to file such return, provided the taxpayer files the appropriate form as prescribed by the director. A copy of an approved federal extension attached to the Iowa return will not be acceptable in lieu of an Iowa extension.

An extension of time will not normally be granted for more than three months, except in instances where a completed federal return has not yet been filed and the additional time is necessary to file a complete Iowa return. The application for an extension must be made prior to the due date of the return, or before the expiration of an extension previously granted.

If the time for filing is extended, interest as provided by law, from the date the return originally was required to be filed to the date of actual payment of the tax, is to be computed on the unpaid tax. A payment is not required when requesting an extension of time to file.

39.3(422) Form for filing.

39.3(1) *Use of and completeness of prescribed forms.* Returns shall, in all cases, be made by residents and nonresidents on forms supplied by the department of revenue. Taxpayers not supplied with the proper forms shall make application for same to the department, in ample time to have their returns made, verified and filed on or before the due date. Each taxpayer shall carefully prepare his or her return so as to fully and clearly set forth the data required. For lack of a prescribed form, a statement made by a taxpayer disclosing his gross income and the deductions therefrom may be accepted as a tentative return, and if verified and filed within the prescribed time, will relieve the taxpayer from liability to penalties, provided that without unnecessary delay such a tentative return is replaced by a return made on the proper form. Each question shall be answered and each direction complied with in the same manner as if the forms and instructions were embodied in these regulations. Individual resident taxpayers shall enter the name of the school district of his or her residence on the return. If the school district is not supplied, the return shall be deemed incomplete.

A return not signed by the taxpayer or his or her agent or guardian, shall not be deemed completely executed and filed as required by law.

Failure to receive the proper form does not relieve the taxpayer from the obligation of making any return required by the statute.

39.3(2) *Optional method of filing.* The front and back page of the Iowa individual income tax return, if properly completed, may be filed as an optional return, if a complete facsimile or photocopy of the federal return and supporting schedules are attached.

39.3(3) *Copy of federal income tax return to be filed by nonresident.* A nonresident taxpayer shall file a copy of his or her federal income tax return for the current tax year with his or her Iowa nonresident income tax return. Such copy shall include full and complete copies of all farm, business, capital gains and other schedules that were filed with such federal return.

39.3(4) *Amended returns.* If it becomes known to the taxpayer that the amount of income reported to be federal net income or Iowa taxable income, was erroneously stated on the Iowa return, or changed by an Internal Revenue Service audit, or otherwise, the taxpayer shall file an amended Iowa return along with supporting schedules, to include the amended federal return if applicable. A copy of the federal revenue agent's report will be acceptable in lieu of an amended return. The assessment or refund of tax shall be dependent on the statute of limitations as set forth in subrule 38.2(1) and rule 43.3.

39.4(422) Filing status.

39.4(1) *Single taxpayers.* The term *"single person"* includes, for income tax purposes, an unmarried person, a widowed person not included in subrule 39.4(2), or a person legally separated under a decree of divorce or separate maintenance.

39.4(2) *Married taxpayers.* A taxpayer is considered married for the entire year if on the last day of the tax year he or she is *(a)* married and living together *(b)* married and living apart, but not legally separated under a decree of divorce or separate maintenance *(c)* living together in a common law marriage that is recognized by the state where the common law marriage exists or *(d)* widowed but the spouse died during the year.

39.4(3) *Common law marriage.* A common law marriage is a social relationship between a man and a woman that meets all the necessary requisites of a marriage except that it was not solemnized, performed or witnessed by an official authorized by law to perform marriages. The necessary elements of a common law marriage are: *(a)*, a present intent of both parties freely given to become married, *(b)* a public declaration by the parties or a holding out to the public that they are husband and wife, *(c)* continuous cohabitation together as husband and wife (this means consummation of the marriage), and *(d)* both parties must be capable of entering into the marriage relationship. No special time limit is necessary to establish a common law marriage. Iowa recognizes, for income tax purposes, all valid common law marriages.

39.4(4) *Married filing jointly.* Married taxpayers who file a joint return with the Internal Revenue Service may file a joint return with the Iowa department of revenue.

39.4(5) *Married filing separately on the same form.* Married taxpayers may file separately on the same form. This return is also known as the combined return. Each taxpayer may also claim the standard deduction of ten percent of his or her respective adjusted gross income or five hundred dollars, whichever is smaller. If a married taxpayer files a combined return with his or her spouse, any refund will be issued in both names.

39.4(6) *Married filing separately.* Married taxpayers, each having income in his or her own right, may file separate returns if they do not wish to file separately on the same form.

39.4(7) *Head of household.* The term *"head of household"* denotes a single individual and shall have the same meaning as defined in the Internal Revenue Code of 1954 as defined in the Iowa Code. An individual who is claiming "surviving spouse" status for federal income tax purposes may not claim "head of household" on the Iowa individual income tax return.

39.5(422) Payment of tax.

39.5(1) *Payment of tax for wage earners.* Withholding of tax on wage earners is required under section 422.16 of the Code. See chapter 46 of the rules.

39.5(2) *Payment of tax on income not subject to withholding.* Those taxpayers with income not subject to withholding which will produce a tax liability of fifty dollars or more, shall file and pay a declaration of estimated tax. See chapter 47 of the rules.

39.5(3) *Balance of tax due.* If the computation on the tax return shows additional tax due, it shall be paid in full with the filing of the return.

39.5(4) *Payment of tax by uncertified checks.* The income tax division will accept

uncertified checks in payment of income taxes, provided such checks are collectible for their full amount without any deduction for exchange or other charges. The date on which the income tax division receives the check will be considered the date of payment, so far as the taxpayer is concerned, unless the check is returned dishonored. If one check is remitted to cover two or more individuals' taxes, the remittance must be accompanied by a letter of transmittal stating: *(a)* The name of the drawer of the check; *(b)* the amount of the check; *(c)* the amount of any cash, money order or other instrument included in the same remittance; *(d)* the name of each individual whose tax is to be paid by the remittance; and *(e)* the amount of payment on account of each individual.

39.5(5) *Procedure with respect to dishonored checks.* If any check is returned unpaid, all expenses incidental to the collection thereof will be charged to the taxpayer. If any taxpayer whose check has been returned by the depository bank uncollected should fail at once to make that check good, the director will proceed to collect the tax as though no check has been given. A taxpayer who tenders a certified check in payment for taxes is not relieved from his or her obligation until the check has been paid.

39.5(6) *Penalty and interest.* In computing penalty and interest for failing to file a timely return or to pay the tax, refer to chapter 44 of the rules.

39.5(7) *Four thousand dollar exemption.* Individuals whose net income, including military income, as computed under section 422.7, is four thousand dollars or less are exempt from paying Iowa individual income tax subject to the following conditions:

a. Incomes of both husband and wife, are considered in determining the exemption. The combined income regardless of filing status must be four thousand dollars or less in order to qualify for the exemption.

b. A single person under twenty-one years of age with income of four thousand dollars or less will be exempt from Iowa tax if:

(1) He or she did not qualify as a dependent on his or her parents' return or

(2) He or she qualified as a dependent, but his or her parents' combined income was four thousand dollars or less.

If the payment of tax would reduce the net income to less than four thousand dollars, the tax shall be reduced to that amount which would allow the taxpayer to retain a net income of four thousand dollars. For example: If a taxpayer's net income is four thousand twenty-five dollars, and the computed tax after personal exemption and out-of-state credit is forty-five dollars, the payment of the forty-five dollars would reduce the net income below four thousand dollars; therefore, the amount of tax due is reduced* twenty-five dollars which enables the taxpayer to retain a net income of four thousand dollars.

These rules are intended to implement chapter 422 of the Code.

*According to original filed rule

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 898 to 925, relating to income tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

TITLE V

INCOME TAX

CHAPTER 40

DETERMINATION OF NET INCOME

40.1(422) Net income defined. Net income for state individual income tax purposes shall mean federal adjusted gross income as properly computed under the Internal Revenue Code of 1954 as amended, and shall include the adjustments in rules 40.2 to 40.10. The remaining provisions of this rule and rules 40.11 to 40.19 shall also be applicable in determining net income.

40.2(422) Interest and dividends from federal securities. For individual income tax purposes, the state is prohibited by federal law from taxing dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities. Therefore, if the

federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made deducting the amount of such dividend or interest.

Gains and losses from the sale or other disposition of federal securities, as distinguished from interest income, shall be taxable for state income tax purposes.

40.3(422) Interest from bonds issued by the Iowa Board of Regents. Interest and dividends from bonds issued by the Iowa board of regents for buildings and facilities as authorized by chapter 262 of the Code are exempt from taxation under sections 262.41 and 262.51. Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made, deducting the amount of such dividend or interest.

Gains and losses from the sale or other disposition of bonds issued by the Iowa board of regents, as distinguished from interest income, shall be taxable for state income tax purposes.

40.4(422) Certain pensions, annuities and retirement allowances. Pensions, annuities, or retirement allowances paid under the peace officers' retirement system, Iowa public employees' retirement system and the Iowa policemen and firemen retirement system plans provided for under chapters 97A, 97B, and 411 of the Code are exempt from taxation under sections 97A.12, 97B.39, and 411.13 of the Code. Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes income of this type, an adjustment must be made deducting the amount.

40.5(422) Military pay. An Iowa resident who is on active duty in the armed forces of the United States, as defined in Title 10, United States Code, section 101, for more than six continuous months, shall not include any income received for such service performed on or after January 1, 1969, in computing the tax imposed. Military income must be included in determining the four thousand dollar exemption under subrule 39.5(7). If the six-month continuous service runs from one tax year into another the department will recognize the applicable portion of service income earned in any given taxable year after January 1, 1969, if there is no break in the service. Therefore, if the federal taxable income of an individual, taxable by Iowa, includes active duty pay of this type, an adjustment must be made deducting the amount.

Federal active duty does not include a member of the national guard when called for training by order of the governor through order of the adjutant general. These members are in the service of the state and not on active duty of the United States. Federal active duty also does not include members of the various military reserve programs. A taxpayer must be on active federal duty to qualify for exemption. National guardsmen and reservists who undergo voluntary training are not on active duty in a federal status. National guard and reservist pay does not qualify for the military exemption and such pay is taxable by the state of Iowa.

Compensation received from the United States Government by nonresident members of the armed forces who are temporarily present in the state of Iowa pursuant to military orders is exempt from Iowa income tax.

40.6(422) Interest and dividends from foreign securities and securities of state and other political subdivisions. Interest and dividends from foreign securities and from securities of state and their political subdivisions are to be included in Iowa taxable income. Certain types of interest and dividends, because of specific exemption, are not included in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the item of income is specifically exempted from state taxation by the laws or constitutions of Iowa or of the United States, it must be added to Iowa taxable income.

40.7(422) Current year capital gains and losses. In determining short-term or long-term capital gain or loss the provisions of the Internal Revenue Code of 1954 as amended are to be followed.

40.8(422) Gains and losses on property acquired before January 1, 1934. When property was acquired prior to January 1, 1934, the basis as of January 1, 1934, for determining capital or other gains or losses is the higher of cost, adjusted for depreciation allowed or allowable to January 1, 1934, or fair market value as of that date.

If, as a result of this provision, a basis is to be used for purposes of Iowa individual income tax which is different from the basis used for purposes of federal income tax, appropriate adjustment must be made and detailed schedules supplied in the computation of Iowa taxable income.

40.9(422) Capital gain occurring prior to 1955 tax year. As capital gains and losses were not included in Iowa taxable income and not subject to Iowa individual income tax prior to 1955, any capital gains and losses on transactions occurring in such prior tax years are not to be reflected in "taxable income" for Iowa income tax purposes, even though, under the method of accounting adopted by the taxpayer for federal tax purposes a portion of the gain or loss is reflected in federal taxable income for years which begin in 1955 or thereafter. For example, if an individual sells a building on a forty-year contract in 1952, and reports his or her profit on the installment basis for federal income tax purposes, his or her Iowa return for 1955 and subsequent tax years should be adjusted so as to exclude that gain in determining Iowa taxable income.

40.10(422) Installment sales made prior to 1955 tax year. Taxpayers engaged in the business of selling personal property who kept records on the installment basis and reported on such basis for federal tax purposes were required to report for Iowa individual income tax purposes on the accrual basis for tax years beginning prior to January 1, 1955. To the extent that their returns for tax years beginning January 1, 1955, or thereafter reflect installment sales reported for Iowa income tax purposes on the accrual basis in those prior years, adjustments shall be made on the returns for those years beginning on or after January 1, 1955.

40.11(422) Income from partnerships. Residents engaged in a partnership, even if located or doing business outside the state of Iowa, are taxable upon their distributive share of net income of such partnership, whether distributed or not, and are required to include such distributive share in their return. A nonresident individual, who is a member of a partnership doing business in Iowa is taxable on that portion of net income which is applicable to the Iowa business activity whether distributed or not, see chapter 45.

40.12(422) Subchapter "S" income. Where a corporation elects under sections 1371-1379 of the Internal Revenue Code, to distribute the corporation's income to the shareholders, the corporation's income, in its entirety, is subject to individual reporting whether or not actually distributed. Both resident and nonresident shareholders shall report their share of the corporation's net taxable income on their respective Iowa returns. Residents shall report their distributable share in total while nonresidents shall report only the portion of their distributable share which was earned in Iowa. See chapter 54 of the rules for allocation and apportionment of corporate income.

40.13(422) Contract sales. Interest derived as income from a land contract is intangible personal property and is assignable to the recipient's domicile. Gains received from the sale or assignment of land contracts are considered to be gains from real property in this state and are assignable to this state. As to nonresidents, see rule 40.15.

40.14(422) Reporting of income by husband and wife. A husband and wife who have separate income and who have elected to file a joint federal income tax return are permitted to file separate Iowa income tax returns. The election by spouses to report income separately for Iowa income tax purposes is subject to the condition that such income is correctly allocated between husband and wife and reported in the same manner as they would have been required to report such income in separate federal returns. Thus, where a husband and wife determine their federal income tax for a particular year on a joint return and elect to determine their Iowa income taxes separately, they are required to compute their Iowa adjusted gross incomes separately, that is, in the same manner as if the federal adjusted gross income of each spouse had been determined on separate federal returns filed by them.

40.14(1) *Income from property in which only one spouse has an ownership interest but which is not used in business.* If ownership of property not used in a business is in the name of only one spouse and each files a separate state return, income derived from such property may not be divided between husband and wife but must be reported by only that spouse possessing the ownership interest.

40.14(2) *Income from property in which both husband and wife have an ownership interest but which is not used in a business.* A husband and wife who file a joint federal return and elect to file separate Iowa returns must each report his or her share of income from jointly or commonly owned real estate, stocks, bonds, bank accounts, and other property not used in a business in the same manner as if their federal adjusted gross incomes had been determined separately. The rules for determining the manner of reporting this income depend upon the nature of the ownership interest and, in general, may be summarized as follows:

a. Joint tenants. A husband and wife owning property as joint tenants with the right of survivorship, a common example of which is a joint savings account, should each report on separate returns one-half of the income from the savings account held by them in joint tenancy.

b. Tenants in common. Income from property held by husband and wife as tenants in common is reportable by them in proportion to their legally enforceable ownership interests in such property.

40.14(3) *Salary and wages derived from personal or professional services performed in the course of employment.* A husband and wife who file a joint federal return and elect to file separate Iowa returns must each report on his or her state return the salary and wages which are attributable to services performed pursuant to their individual employment. Such income must be reported on Iowa separate returns in the same manner as if their federal adjusted gross incomes had been determined separately. The manner of reporting wages and salaries by spouses is dependent upon the nature of the employment relationship and is subject to the following rules:

a. Interspousal employment—salary or wages paid by one spouse to the other. Wages or compensation paid for services or labor performed by one spouse with respect to property or business owned by the other spouse may be reported on a separate return if the amount of such payment is reasonable for the services or labor actually performed. It is presumed that such compensation or wages paid by one spouse to the other is not reasonable nor allowable for purposes of reporting such income separately unless a bona fide employer-employee relationship exists. For example, unless actual services are rendered, payments are actually made, working hours and standards are set and adhered to, unemployment compensation and workmen's compensation requirements are met, such payments may not be separately reported by the salaried spouse.

b. Wages and salaries received by a husband or wife pursuant to an employment agreement with one other than a spouse. Wages or compensation paid for services or labor performed by a husband or a wife pursuant to an employment agreement with some other employer is presumed income of only that spouse so employed and must be reported separately only by that spouse earning the same.

40.14(4) *Income from a business in which both husband and wife have an ownership interest.* Income derived from a business the ownership of which is in both spouses' name, as evidenced by record title or by the existence of a bona fide partnership agreement or by other recognized method of establishing legal ownership, may be allocated between spouses and reported on separate individual state income tax returns provided that the interest of each spouse is allocated according to the capital interest of each, the management and control exercised by each, and the services performed by each with respect to such business. Compliance with the conditions contained in paragraphs *"a"* or *"b"* of this subrule and consideration of paragraphs *"c," "d"* and *"e"* of this subrule must be made in allocating income from a business in which both husband and wife have an ownership interest.

a. Allocation of partnership income. Allocation of partnership income between spouses is presumed valid only if partnership information returns, as required for income tax purposes, have currently been filed with the state and federal government and compliance has been made with respect to the federal self-employment tax law. An oral understanding does not constitute a bona fide partnership nor is a partnership implied merely from a common ownership of property.

b. Allocation of income derived from a business other than a partnership in which both husband and wife claim an ownership interest. In the case of a business owned by a husband

and wife who filed a joint federal income tax return in which one of them claimed all of the income therefrom for federal self-employment tax purposes, it will be presumed for purposes of administering the state income tax law, unless expressly shown to the contrary by the taxpayer, that the spouse who claimed that income for federal self-employment tax purposes did, thereby, with the consent of the other spouse, claim all right to such income and that therefore such income must be included in the state income tax return of the spouse who claimed it for federal self-employment tax purposes if the husband and wife file separate state income tax returns.

c. Capital contribution. In determining the weight to be attributed to the capital contribution of each spouse to a business, consideration may be given only to that invested capital which is legally traceable to each individual spouse. Capital existing under the right, dominion, and control of one spouse which is invested in the business is presumed to be a capital contribution of that spouse. Sham transactions which do not affect real changes of ownership in capital between spouses in that such transactions do not legally disturb the right, dominion, and control of the assignor or the donor over the capital must be disregarded in determining capital contribution of the recipient spouse.

d. Management and control. Participation in the control and management of a business must be distinguished from the regular performance of nonmanagerial services. Contribution of management and control with respect to the business must be of a substantial nature in order to accord it weight in making an allocation of income. Substantial participation in management does not necessarily involve continuous or even frequent presence at the place of business, but it does involve genuine consultation with respect to at least major business decisions, and it presupposes substantial acquaintance with an interest in the operations, problems, and policies of the business, along with sufficient maturity and background of education or experience to indicate an ability to grasp business problems that is appreciably commensurate with the demands of the enterprise concerned. Vague or general statements as to family discussions at home or elsewhere will not be accepted as a sufficient showing of actual consultation.

e. Services performed. The amount of services performed by each spouse is a factor to be considered in determining proper allocation of income from a business in which each spouse has an ownership interest. In order to accord weight to services performed by an individual spouse, the services must be of a beneficial nature in that they make a direct contribution to the business. For example, for a business operation, whether it is a retail sales enterprise, farming operation or otherwise, in which both husband and wife have an ownership interest, the services contributed by the wife must be directly connected with the business operation. Services for the family such as planting and maintaining family gardens, domestic housework, cooking family meals, and routine errands and shopping, are not considered to be services performed or rendered as an incident of or a contribution to the particular business; such activities by a wife must be disregarded in determining the allocable income attributable to the wife.

40.15(422) Income of nonresidents. Except as otherwise provided in this section all income of nonresidents derived from sources within Iowa is subject to Iowa income tax.

Net income received by a nonresident taxpayer from his or her business, trade, profession, or occupation in Iowa must be reported.

Income from the sale of property, located in Iowa, including that which was used in connection with the trade, profession, business or occupation of the nonresident, is taxable to Iowa even though such sale is consummated outside of Iowa, and provided that said property was sold before subsequent use outside of Iowa. Any income from such property prior to its sale is also Iowa taxable income.

Income received from a trust or an estate, where such income is from Iowa sources, is taxable, regardless of the situs of the estate or trust. Dividends received in lieu of, or in partial or full payment of, an amount of wages or salary due for services performed in Iowa by a nonresident shall be considered taxable Iowa income. Annuities, interest on bank deposits and interest bearing obligations, and dividends are not allocated to Iowa except to the extent to which they are derived from a business, trade, profession, or occupation carried on within the state of Iowa by the nonresident.

Interest received from the sale of property, on an installment contract even though such gain from the sale of said property is subject to Iowa taxation, is not allocable to Iowa if the property is not part of the nonresident's trade, profession, business or occupation. As to residents, see rule 40.13.

40.15(1) *Nonresidents exempt from paying tax.* Nonresidents whose net income as computed under section 422.7 of the Code is four thousand dollars or less, including any income not allocated to Iowa, are exempt from paying individual income tax subject to the following conditions:

a. Incomes of both husband and wife, are considered in determining the exemption. The combined income regardless of filing status must be four thousand dollars or less in order to qualify for the exemption.

b. A single person under twenty-one years of age with income of four thousand dollars or less will be exempt from Iowa tax if:

(1) He or she did not qualify as a dependent on his or her parents' return or

(2) He or she qualified as a dependent, but his or her parents' combined income was four thousand dollars or less.

If the payment of tax would reduce the net income to less than four thousand dollars, the tax shall be reduced to that amount which would allow the taxpayer to retain a net income of four thousand dollars. For example: If a taxpayer's net income is four thousand twenty-five dollars, and the computed tax after personal exemption and out-of-state credit is forty-five dollars, the payment of the forty-five dollars would reduce the net income below four thousand dollars; therefore, the amount of tax due is reduced* twenty-five dollars which enables the taxpayer to retain a net income of four thousand dollars.

40.15(2) *Compensation for personal services of nonresidents.* The Iowa income of a nonresident must include compensation for personal services rendered within the state of Iowa. The salary or other compensation of an employee or corporate officer who performs services related to businesses located in Iowa, or has an office in Iowa, are not subject to Iowa tax, if said services are performed while the taxpayer is outside of Iowa. However, such salary earned while the nonresident employee or officer is located within the state of Iowa, would be subject to Iowa taxation. The Iowa taxable income of the nonresident shall include that portion of his or her total compensation received from his or her employer for personal services for the tax year which the total number of working days that he or she was employed within the state of Iowa bears to the total number of working days within and without the state of Iowa.

Compensation paid by an Iowa employer for services performed wholly outside of Iowa by a nonresident is not taxable income to the state of Iowa. However, all services performed within Iowa, either part-time or full-time, would be taxable to the nonresident and must be reported to this state.

Compensation received from the United States government by a nonresident member of the armed forces is explained in rule 40.5.

Income from commissions earned by a nonresident traveling salesman, agent or other employee for services performed or sales made and whose compensation depends directly on the volume of business transacted by him or her, will include that proportion of the compensation received which the volume of business transacted by such employee within the state of Iowa bears to the total volume of business transacted by him or her within and without the state. Allowable deductions will be apportioned on the same basis. However, where separate accounting records are maintained by a nonresident or his or her employer of the business transacted in Iowa, then the amount of Iowa compensation can be reported based upon separate accounting.

Nonresident actors, singers, performers, entertainers, wrestlers, boxers [and similar performers], must include as Iowa income the gross amount received for performances within this state.

Nonresident attorneys, physicians, engineers, architects [and other similar professions], even though not regularly employed in this state, must include as Iowa income the entire amount of fees or compensation received for services performed in this state.

If nonresidents are employed in this state at intervals throughout the year, as would be the case if employed in operating trains,

*According to original filed rule

planes, motor buses, trucks [and similar modes of transportation], between this state and other states and foreign countries, and who are paid on a daily, weekly or monthly basis, the gross income from sources within this state is that portion of the total compensation for personal services which the total number of working days employed within the state bears to the total number of working days both within and without the state. If paid on a mileage basis, the gross income from sources within this state is that portion of the total compensation for services which the number of miles traveled in Iowa bears to the total number of miles traveled both within and without the state. If paid on some other basis, the total compensation for personal services must be apportioned between this state and other states and foreign countries in such a manner as to allocate to Iowa that portion of the total compensation which is reasonably attributable to personal services performed in this state. Any alternative method of allocation is subject to review and change by the director.

40.15(3) *Income from business sources within and without the state.* When income is derived from any business, trade, profession, or occupation carried on partly within and partly without the state, only such income as is fairly and equitably attributable to that portion of the business, trade, profession, or occupation carried on in this state, or to services rendered within the state shall be included in the gross income of a nonresident taxpayer. In any event, the entire amount of such income both within and without the state is to be shown on the nonresident's return.

40.15(4) *Apportionment of business income from business carried on both within and without the state.*

a. If a nonresident, or a partnership or trust with a nonresident member, transacts business both within and without the state, the net income must be so apportioned as to allocate to Iowa a portion of the income on a fair and equitable basis, in accordance with approved methods of accounting.

b. The amount of net income attributable to the manufacture or sale of tangible personal property shall be that portion which the gross sales made within the state bears to the total gross sales. The gross sales of tangible personal property are in the state if the property is delivered or shipped to a purchaser within this state, regardless of the F.O.B. point or other conditions of the sale.

c. Income derived from business other than the manufacture or sale of tangible personal property shall be attributed to Iowa in that portion which the Iowa gross receipts bear to the total gross receipts. Gross receipts are attributable to this state in the portion which the income producing activity which gave rise to the receipts is performed within this state.

d. If the taxpayer believes that the gross sales or gross receipts method subjects him or her to taxation on a greater portion of his or her net income than is reasonably attributable to the business within this state he or she may request the use of separate accounting or another alternative method which he or she believes to be proper under the circumstances. In any event, the entire income received by the taxpayer and the basis for a special method of allocation shall be disclosed in his or her nonresident return.

40.15(5) *Income from intangible personal property.* Business income of nonresidents from rentals or royalties for the use of, or the privilege of using in this state, patents, copyrights, secret processes and formulas, goodwill, trademarks, franchises, and other like property is income from sources within the state.

Income of nonresidents from intangible personal property such as shares of stock in corporations, bonds, notes, bank deposits and other indebtedness is not taxable as income from sources within this state except where such income is derived from a business, trade, profession, or occupation carried on within this state by the nonresident. If a nonresident buys or sells stocks, bonds, or other such property, so regularly, systematically and continuously as to constitute doing business in this state, the profit or gain derived from such activity is taxable as income from a business carried on within Iowa.

Income of a nonresident beneficiary from an estate or trust, distributed or distributable to the beneficiary out of income from intangible personal property of the estate or trust, is not income from sources in this state and is not taxable to the nonresident beneficiary unless the property is so used by

the estate or trust as to create a business, trade, profession, or occupation in this state.

Whether or not the executor or administrator of an estate or the trustee of a trust is a resident of this state is immaterial, insofar as the taxation of income of beneficiaries from the estate or trust are concerned.

40.15(6) *Distributive shares of nonresident partners.* When a partnership derives income from sources within this state as determined in subrules 40.15(3) to 40.15(5), the nonresident members of the partnership are taxable only upon that portion of their distributive share of the partnership income which is derived from sources within this state.

40.15(7) *Interest and dividends from governmental securities.* Interest and dividends from federal securities subject to the federal income tax under the Internal Revenue Code of 1954, are not to be included in determining the Iowa net income of a nonresident, but any interest and dividends from securities and from securities of state and other political subdivisions exempt for federal income tax under the Internal Revenue Code of 1954, as amended are to be included in the Iowa net income of a nonresident to the extent that same are derived from a business, trade, profession, or occupation carried on within the state of Iowa by the nonresident.

40.15(8) *Gains from sales or exchange of property.* If a nonresident realizes any gains from sales or exchanges of property within the state of Iowa, such gains are subject to the Iowa income tax and shall be reported to this state by the nonresident. Gains attributable to Iowa will be determined as follows:

1. Gains or losses from sales of real property located in this state are allocable to this state.

2. Capital gains and losses from sales of tangible personal property are allocable to this state if the property had a situs in this state at the time of the sale.

3. Gains and losses from the sale of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

In determining whether a short-term or long-term capital gain is involved, the provisions of the Internal Revenue Code of 1954, as amended, are to be followed.

40.16(422) Income of part-year residents. A taxpayer who was a resident of Iowa for only a portion of the taxable year is subject to the following rules of reporting:

1. For that portion of the taxable year for which the taxpayer was a nonresident, he shall report only the income derived from sources within Iowa.

2. For that portion of the taxable year for which the taxpayer was an Iowa resident, he shall report all income earned whether from sources within or without Iowa.

A taxpayer moving into Iowa may adjust his or her gross income by the amount of the moving expense to the extent allowed by the Internal Revenue Code. Any reimbursement of moving expense shall be included in income. A taxpayer moving from Iowa to another state or country may not adjust his or her gross income by the amount of moving expense.

40.17(422) Net operating loss carrybacks and carryovers. In the years beginning after December 31, 1974, net operating losses shall be allowed or allowable for Iowa individual income tax purposes to the same extent they are allowed or allowable for federal individual income tax purposes for the same period, provided the following adjustments are made:

40.17(1) *Additions to income.*

a. Refunds of federal income taxes due to net operating loss carrybacks or carryovers shall be reflected in the following manner:

(1) Accrual basis taxpayers shall accrue refunds of federal income taxes to the year in which the net operating loss occurs.

(2) Cash basis taxpayers shall reflect refunds of federal income taxes in the return for the year in which the refunds are received.

b. Iowa income tax expensed on the federal return for the loss year shall be reflected as an addition to income in the year of the loss.

c. Interest and dividends received in the year of the loss on federally tax exempt securities shall be reflected as additions to income in the year of the loss.

40.17(2) *Reductions of income.*

a. Federal income tax paid in the year of the loss shall be reflected as a reduction to income to the extent that the federal income tax was the result of the taxpayer's trade or business. Federal income taxes paid which are not attributable to a taxpayer's trade or business shall be allowed as a deduction only to the extent of the amount of gross income not derived from such trade or business.

b. Iowa income tax refunds reported as income for federal income tax purposes in the loss year shall be reflected as reductions of income in the year of the loss.

c. Interest and dividends received from federal securities during the loss year shall be reflected in the year of the loss as a reduction of income.

40.17(3) *Nonresidents doing business within and without Iowa.* If a nonresident does business both within and without Iowa he or she shall make adjustments reflecting the apportionment of his or her operating loss on the basis of business done within and without the state of Iowa after adhering to the provisions of subrules 40.14(1) and 40.14(2). After making the adjustments to adjusted gross income as provided in subrules 40.14(1) and 40.14(2), the resulting income or loss so determined shall be subject to apportionment as provided in subrule 40.15(4). The apportioned income or loss shall be added or deducted, as the case may be, to any amount of other income attributable to Iowa for that year.

40.17(4) *Loss carryback and carryforward.* The net operating loss attributable to Iowa as determined in rule 40.14 shall be subject to the federal three-year carryback and five-year carryover provisions. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, a net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa.

40.17(5) *Loss not applicable.* No part of a net loss for a year for which the individual was not subject to the imposition of Iowa individual income tax shall be included in the Iowa net operating loss deduction applicable to any year prior to or subsequent to the year of the loss.

40.17(6) *Examples.* The computation of a net operating loss deduction is illustrated in the following examples:

a. Individual A had the following items of income for the taxable year—

Gross income from retail sales business	$125,000
Interest income from federal securities (nonbusiness)	2,000
Salary from another company (business)	12,500

He had the following deductions as shown on his federal return—

Business deductions (retail sales)		$150,000
Itemized (nonbusiness) deductions:		
Medical	$200	
Real estate tax	600	
Iowa income tax	800	
Charitable contributions	200	1,800

Individual A paid $3,000 federal income tax during the year which consisted of $2,500 (business) federal withholding and $500 (assume nonbusiness) for the balance of the prior year's federal tax liability.

The federal computations are as follows:

			Per return	Computed NOL
Income:				
Retail sales			$125,000	$125,000
Interest income			2,000	2,000
Salary			12,500	12,500
Subtotal			$139,500	$139,500
Deductions:				
Business	$150,000		$150,000	
Itemized deductions	1,800	151,800	1,800	151,800
(Loss) per federal return		$(12,300)		
Computed net operating (loss)				$(12,300)

Since the nonbusiness deductions do not exceed the nonbusiness income, the loss per the federal return and the computed net operating loss are the same. To determine the net operating loss for Iowa income tax purposes, it is necessary to make the following adjustments:

Computed federal NOL		$(12,300)
Additions to income:		
Iowa income tax	$ 800	
Itemized deductions	1,000*	1,800
Subtotal		$(10,500)
Reductions of income:		
Federal income tax (business)	$2,500*	
Interest from federal securities	2,000	(4,500)
Computed Iowa NOL		$(15,000)

*Itemized (nonbusiness) deductions are eliminated due to the lack of nonbusiness income. The only nonbusiness income, interest from federal securities, is not taxable for Iowa income tax purposes. The only federal tax deducted is that related to business activity.

b. Individual B had the following items of income for the taxable year—

Gross income from restaurant business	$300,000
Interest from municipal bonds (nonbusiness)	1,200
Dividends from securities	300

He had the following deductions as shown on his federal return—

Business deductions (restaurant)		$320,000
Itemized (nonbusiness) deductions:		
Medical	$400	
Real estate tax	800	
Iowa income tax	500	
Charitable contributions	400	2,100

Individual B paid $2,000 federal income tax during the year by estimating his federal liability from his business. He received a $500 federal income tax refund.

The federal computations are as follows:

		Per return	Computed NOL	
Income:				
Restaurant income		$300,000		$300,000
Municipal interest		N/A*		N/A*
Dividends (nonbusiness)		300		300
Subtotal		$300,300		$300,000 [$300,300]
Deductions:				
Business	$320,000		$320,000	
Itemized deductions(N/B)	2,100	322,100	300**	320,300
(Loss) per federal return		$(21,800)		
Computed net operating (loss)				$(20,000)

*Municipal securities are not subject to federal income tax.

**Nonbusiness itemized deductions are deductible only to the extent of nonbusiness income.

To determine the net operating loss for Iowa income tax purposes, it is necessary to make the following adjustments:

Computed federal NOL		$(20,000)
Additions to income:		
Federal income tax refund	$ 500	
Iowa income tax	500	
Municipal bond interest	1,200	2,200
Subtotal		$(17,800)
Reductions of income:		
Federal income tax	$2,000	
Itemized deductions	1,200*	(3,200)
Computed Iowa NOL		$(21,000)

*Itemized deductions are increased due to increase in Iowa nonbusiness income.

40.18(422) Casualty losses. Casualty losses may be treated in the same manner as net operating losses and may be carried back three years and forward five years in the event said casualty losses exceed income in the loss year.

40.19(422) Adjustments to prior years. When Iowa requests for refunds are filed, they shall be allowed only if filed within five years after the tax payment upon which a refund or credit became due, or one year after the tax payment was made, whichever time is later. Even though, a refund may be barred by the statute of limitations, a loss shall be carried back and applied against income in a previous year to determine the correct amount of loss carry forward.

These rules are intended to implement chapter 422 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 898 to 925, relating to income tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

TITLE V

INCOME TAX

CHAPTER 41

DETERMINATION OF TAXABLE INCOME

41.1(422) Verification of deductions required. Deductions from gross income, otherwise allowable, will not be allowed in cases where the department requests the taxpayer to furnish information sufficient to enable it to determine the validity and correctness of such deductions, until such information is furnished.

41.2(422) Federal rulings and regulations. In determining whether "taxable income", "net operating loss deduction" or any other deductions are computed for federal tax purposes under, or have the same meaning as provided by, the Internal Revenue Code of 1954, the department will use applicable rulings and regulations that have been duly promulgated by the commissioner of internal revenue, unless the director has created rules and regulations or has exercised his or her discretionary powers as prescribed by statute which calls for an alternative method for determining "taxable income", "net operating loss deduction" or any other deduction, or unless the department finds that an applicable internal revenue ruling or regulation is unauthorized according to the Iowa Code.

41.3(422) Optional standard deduction. An optional standard deduction is provided in the Iowa income tax law for both residents and nonresidents. Before determining the amount of the deduction, federal income tax payments, as adjusted in accordance with paragraph *"b"* of rule 41.4, must be subtracted from net income. The optional standard deduction is then computed as ten percent of the remaining balance, but may not exceed five hundred dollars. Where joint returns are filed, the optional standard deduction is limited to ten percent of net income after deduction of federal income tax, not to exceed five hundred dollars. Where spouses file separate returns, each may take the optional standard deduction. In the case of separate returns, if one spouse takes the optional standard deduction, the other spouse must also take the optional standard deduction. If the federal optional standard deduction was taken on the federal return, the optional standard deduction must be also used on the Iowa income tax return. For tax years beginning prior to January 1, 1974, the optional standard deduction was limited to five percent of net income, after deduction of federal income tax, not to exceed two hundred fifty dollars.

41.4(422) Itemized deductions. Deductions may be itemized on the Iowa return to the same extent that they are allowable on the federal return with the following exceptions:

a. To the extent that Iowa income taxes were included in deductions allowable for federal income tax purposes, they must be subtracted on the Iowa return.

b. Federal income taxes paid or accrued during the tax year are a permissible deduction for Iowa income tax purposes. Taxpayers who are not on an accrual basis of accounting shall deduct their federal income taxes in the year paid. Deductible federal income taxes for cash basis taxpayers shall include:

(1) The entire amount withheld during the taxable year from compensation of the taxpayer for the payment of federal tax. The actual federal tax withheld from wages earned by either or both spouses must be deducted by each in accordance with wage statement(s) and may not be prorated between the spouses.

(2) Tax paid at any time during the taxable year on a return of declared or estimated tax, or on any amendment to such return.

(3) Any additional assessment on a prior return paid during the taxable year. Tax paid on final and completed federal income tax return filed by the taxpayer for the preceding taxable year.

(4) Any refund of federal income tax received during the taxable year must be used to reduce the amount deducted for federal income tax, to the extent the refunded amount was deducted on the Iowa return in a prior year.

c. For federal income tax purposes, a taxpayer is allowed a limited deduction or a limited tax credit for political contributions. This political contribution deduction may be taken on the Iowa return, but, under no circumstances, may the taxpayer take an Iowa tax credit for political contributions. The maximum deduction allowed for federal tax purposes is fifty dollars in the case of single individual or married individual filing a separate return and one hundred dollars in the case of a joint return. Section 422.9(2)"*c*" of the Code allows a deduction for contributions to a political party or parties up to a maximum amount of one hundred dollars for a single individual or for married individuals filing a joint return. Each spouse may deduct up to one hundred dollars when filing separately on a combined return. For Iowa income tax purposes, a taxpayer may avail himself or herself of both the political contribution deduction allowed for federal income tax purposes and the political contribution deduction allowed for Iowa tax purposes, but, in no event, may the aggregate exceed the amount allowed for Iowa income tax purposes. If a taxpayer avails himself or herself of the federal tax credit for political contributions, this does not preclude him or her from a political contribution deduction on his or her Iowa return.

d. Unreimbursed amounts paid by the taxpayer in the adoption of a child, if placed by a licensed agency, under chapter 238 of the Code, which exceeds three percent of the taxpayers net income, or the combined net income of husband and wife in the case of married taxpayers, will be allowed as a deduction in the year paid. These amounts are not recognized as a medical deduction but will include all medical, hospital, legal expenses, welfare agency's fees and all other costs relating to the adoption of a child.

41.5(422) Itemized deductions—separate returns by spouses. Where both spouses itemize deductions, the deductions must be divided between them in the ratio that each spouse's separate net income bears to the total adjusted gross income unless each spouse can show that he or she paid for or is entitled to accrue the deduction.

41.6(422) Itemized deductions—part-year residents. Federal income tax and itemized deductions attributable to Iowa by part-year residents shall be determined by multiplying the totals by a fraction; the numerator of which is the Iowa adjusted gross income and the denominator of which is the federal adjusted gross income.

41.7(422) Itemized deductions—nonresidents. Federal income tax and itemized deductions attributable to Iowa by nonresidents shall be determined by multiplying the totals by a fraction, the numerator of which is the Iowa adjusted gross income and the denominator of which is the federal adjusted gross income.

If separate Iowa nonresident returns are filed by husband and wife, each spouse's Iowa adjusted gross income must be divided by the total federal adjusted gross income, if a joint federal return was filed. In any event, the ratio including the combined ratio of husband and wife, cannot exceed one hundred percent.

41.7(1) *Federal income tax.* A nonresident may deduct from his or her Iowa income the portion of federal income tax paid or

withheld in the year covered by his or her Iowa nonresident return, by the formula specified in rule 41.7.

Federal income taxes paid during the current year on prior years' federal income tax returns will not be allowable on the nonresident return unless nonresident returns have been filed for such prior years.

Any federal income tax, either paid by a nonresident or withheld from his or her compensation, which is later refunded to the taxpayer, shall be included as gross Iowa income by the nonresident for the year the refund is received, in the same portion that such federal tax was deducted by the nonresident in a prior Iowa income tax return.

41.7(2) *State income tax.* A nonresident shall also include in gross Iowa income, any state or local tax refunded to him or her, if such tax was deducted in a prior Iowa income tax return. The ratio of itemized deductions, as claimed for federal income tax purposes, must be adjusted to exclude any Iowa income tax.

41.7(3) *Itemized deductions.* If a nonresident had income for the tax year, from both within and without the state of Iowa, then after subtracting the deductions for Iowa income taxes, he or she is allowed the portion of itemized deductions which are computed according to the provisions of rule 41.7.

41.8(422) Annualizing income. Where a taxpayer is required to annualize his or her income for federal income tax purposes he or she must also annualize on his or her Iowa return.

41.9(422) Income tax averaging. There is no provision in the Iowa Code which allows income tax averaging.

These rules are intended to implement chapter 422 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 898 to 925, relating to income tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

TITLE V

INCOME TAX

CHAPTER 42

ADJUSTMENTS TO COMPUTED TAX

42.1(422) School district surtax. Iowa law provides for the implementation of an income surtax for increasing local school budgets. The surtax must be approved by the voters in a special election and the surtax rate shall be determined by the state comptroller.

42.2(422) Exemption credits. Section 422.12 of the Code provides for personal exemption credits which are deducted from computed tax. The total amount of exemption credits allowable cannot exceed the computed tax.

42.2(1) A single person may deduct from the computed tax a personal exemption credit of fifteen dollars. A single person is defined in subrule 39.4(1).

42.2(2) A married person living with husband or wife at the close of the taxable year, or living with husband or wife at the time of the death of that spouse during the taxable year, may, if a joint return is filed deduct from the computed tax a personal exemption of thirty dollars. Where such spouse files a separate return, each is entitled to deduct from the computed tax a personal exemption of fifteen dollars. The personal exemption may not be divided between the spouses in any other proportion.

42.2(3) A taxpayer may deduct from his or her computed tax an exemption of ten dollars for each dependent. "Dependent" has the same meaning as provided by the Internal Revenue Code of 1954, and the same dependents may be claimed for Iowa income tax purposes as the taxpayer is entitled to claim for federal income tax purposes. If each spouse furnished fifty percent, they may elect between them which spouse is to be entitled to claim the dependent. The dividing of dependent credits applies only to

the number of dependents and not to the money credits for a particular dependent.

42.2(4) A head of household as defined in subrule 39.4(6) is allowed an additional personal exemption credit of fifteen dollars in addition to any other credits allowed by this section.

42.2(5) A taxpayer who is sixty-five years of age on or before the first day following the end of the tax year is allowed an additional personal exemption credit of fifteen dollars in addition to any other credits allowed by this section.

42.2(6) A taxpayer who is blind as defined in section 422.12(5) is allowed an additional personal exemption credit of fifteen dollars in addition to any other credits allowed by this section.

42.2(7) A nonresident taxpayer or a part-year resident taxpayer will be allowed to deduct personal exemption credits as if they were residents for the entire year.

42.3(422) Out-of-state tax credits.

42.3(1) *General rule.* Iowa residents are allowed an out-of-state tax credit for taxes paid to another state or foreign country on income which is also reported on the taxpayer's Iowa return. The out-of-state tax credit is allowable only if the taxpayer files an Iowa resident income tax return.

42.3(2) *Limitation of out-of-state tax credit.* If an Iowa resident pays income tax to another state or foreign country on any of his or her income, he or she is entitled to a net tax credit; that is, he or she may deduct from his or her Iowa net tax (not from gross income) the amount of income tax actually paid to the other state or country, provided the amount deducted as a credit does not exceed the amount of Iowa net income tax on the same income which was taxed by the other state or foreign country.

42.3(3) *Computation of tax credit.* The limitation on the tax credit must be computed according to the following formula: Income earned in another state or country and taxed by such other state or country shall be divided by the total income of the Iowa resident taxpayer. Said quotient multiplied times the net Iowa tax as determined on the total income of the taxpayer as if entirely earned in Iowa shall be the maximum tax credit against the Iowa net tax.

42.3(4) *Proof of claim for tax credit.* The credit may be deducted from Iowa net income tax if written proof of such payment to another state or foreign country is furnished to the department. The department will accept any one of the following as proof of such payment:

a. A photocopy, or other similar reproduction of either

(1) the receipt issued by the other state or foreign country for payment of the tax, or

(2) the canceled check (both sides) with which the tax was paid to the other state or foreign country together with a statement of the amount and kind (that is, whether wages, salaries, property or business) of total income on which such tax was paid.

b. A copy of the income tax return filed with the other state or foreign country which has been certified by the tax authority of that state or foreign country and showing thereon that the income tax assessed has been paid to them.

42.4(422) Withholding and estimate tax credits. An employee from whose wages tax is withheld, shall claim credit for the tax withheld on his or her income tax return for the year during which the tax was withheld. Credit will be allowed only if a copy of the withholding statement is attached to the return. Taxpayers who have filed estimated income tax declarations shall claim credit for the estimated tax paid for the taxable year.

42.5(422) Motor fuel credit. An individual may elect to receive an income tax credit in lieu of the motor fuel tax refund provided by chapter 324 of the Code. An individual who holds a motor fuel refund permit under section 324.18 must cancel his or her permit before he or she becomes eligible to take a motor fuel credit on his or her individual income tax return. Once an election is made, it will continue for subsequent tax years unless a motor fuel refund permit is obtained within thirty days after the first day of the individual tax year.

The amount of income tax credit shall be the amount of Iowa motor fuel tax paid on qualifying fuel purchases as determined by chapters 324 and 422 of the Code. The credit shall be deducted on the tax return filed for the year in which the motor fuel tax was paid. If the motor fuel credit results in an

overpayment of income tax, the overpayment may be refunded or credited to income tax due in subsequent years. The motor fuel credit option shall only apply to individual income tax returns filed for tax years beginning on or after January 1, 1975.

These rules are intended to implement chapter 422 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 898 to 925, relating to income tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

TITLE V

INCOME TAX

CHAPTER 43

ASSESSMENTS AND REFUNDS

43.1(422) Notice of discrepancies.

43.1(1) *Notice of adjustments.* An agent, auditor, clerk or employee of the income tax division, designated by the director of the income tax division to examine returns and make audits, who discovers discrepancies in returns or learns that the income of the taxpayer may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the taxpayer of his or her discovery by ordinary mail. Such notice shall not be termed an assessment. It may inform the taxpayer what amount would be due from him or her if the information discovered is correct.

43.1(2) *Right of taxpayer upon receipt of notice of adjustment.* A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the taxpayer wishes to contest the matter, he or she should then file a claim for refund. However, payment will not be required until assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the taxpayer may discuss with the agent, auditor, clerk or employee who notified him or her of the discrepancy, either in person or through correspondence, all matters of fact and law which he or she considers relevant to the situation. Documents and records supporting his or her position may be required.

43.1(3) *Power of agent, auditor or employee to compromise tax claim.* No employee of the department has the power to compromise any tax claims. The power of the agent, auditor, clerk or employee who notified the taxpayer of the discrepancy is limited to the determination of the correct amount of the tax.

43.2(422) Notice of assessment. If after following the procedure outlined in subrule 43.1(2) no agreement is reached, and the taxpayer does not pay the amount determined to be correct, a notice of assessment shall be sent to the taxpayer by certified mail. If the period in which the correct amount of tax can be determined is nearly at an end, either a notice of assessment without compliance with subrules 43.1(2) and 43.1(3), or a jeopardy assessment may be issued. All notices of assessment shall bear the signature of the director.

43.3(422) Refund of overpaid tax. The following are provisions for refunding or crediting to the taxpayer's deposits or payments for tax in excess of amounts legally due.

43.3(1) *Claims for refund.* When an overpayment of tax is not indicated on the face of the return a claim for refund of individual income tax may be made on a form obtainable from the income tax division. Claims for refund should not be mailed in the same envelope or attached to the return. In the case of a claim filed by an agent of the taxpayer, a power of attorney must accompany the claim.

43.3(2) *Offsetting refunds.* A taxpayer shall not offset a refund or overpayment of tax for one year as a prior payment of tax of

a subsequent year on the return of a subsequent year without authorization in writing by the department. The department, may, however, apply an overpayment, or a refund otherwise due the taxpayer, to any tax due or to become due from the taxpayer.

43.3(3) *Overpayment indicated on the return.* When an overpayment is indicated on the face of the return, the overpayment will first be applied against any income tax of earlier years owed by the taxpayer. The balance, at the election of the taxpayer, will be refunded to him or her or credited as a first payment on his or her declaration of estimate tax for the following year.

43.3(4) *Refunds—statute of limitations.* The statute of limitations with respect to which refunds or credit may be claimed are:

a. The later of—

(1) five years after due date of payment upon which refund or credit is claimed; or

(2) one year after which such payment was actually made.

b. Six months from the date of final disposition of any federal income tax controversy with respect to the particular tax year. The taxpayer, however, must have notified the department of such controversy within the specified five-year period.

These rules are intended to implement chapter 422 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 898 to 925, relating to income tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

TITLE V

INCOME TAX

CHAPTER 44

PENALTY AND INTEREST

44.1(422) General rule. The computation of penalty, as outlined in this chapter, shall apply to individual, fiduciary, and withholding tax. The penalty for failure to file an estimated declaration of individual income tax or for underpaying an estimated declaration of individual income tax is computed according to the provisions of the Internal Revenue Code as authorized by section 422.16(11)*"e"* of the Code. The withholding and estimated tax provisions for waiver of penalty assessed on tax periods beginning before July 1, 1974, are authorized by section 422.16(13). For tax years beginning on or after July 1, 1974, the withholding tax provisions for waiver of penalty are authorized by section 422.16(10). For tax periods beginning on or after July 1, 1974, there is no authority in the Iowa Code to waive the penalty assessed for failure to file or for underpayment of an estimated declaration of individual income tax.

44.2(422) Computations for tax periods beginning before July 1, 1974. The filing of the return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed.

Although section 422.25 refers to a penalty for failure to file a return or pay the tax due, only one penalty will be added. The rate of the penalty shall be five percent per month or fraction thereof, not to exceed twenty-five percent, even though there is a failure to file a return and failure to pay the tax due or required on the return. Penalty is computed on the amount required to be shown as tax with the filing of the return. For purposes of computing the penalty in case of failure to file a return or failure to pay the tax required to be paid with the filing of the return, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then

the penalty will continue to be assessed on any additional amounts of tax found to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be limited to the percentage which had accrued when the initial penalty was assessed and paid.

All payments shall be first applied to the penalty and then the interest, and the balance, if any, to the amount of tax then due, in the order specified. Penalty on any additional tax determined to be due shall not exceed twenty-five percent in the aggregate on such additional tax.

A return filed within the period of an extension granted will not be considered delinquent.

In addition to the penalty computed above there shall be added interest, as provided by law, from the original due date of the return.

Interest on erroneous refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest, as provided by law, from the date of payment of such refund, considering each fraction of a month as an entire month.

44.3(422) Computations for tax periods beginning after June 30, 1974. The filing of the tax return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed.

Although section 422.25 refers to a penalty for failure to file a return or to pay the tax due, only one penalty will be added. The rate of penalty for failure to file shall be five percent per month or fraction thereof, not to exceed twenty-five percent in the aggregate. The rate of penalty for failure to pay the tax required to be paid with the filing of the return shall be five percent. If there is a failure with respect to both requirements as in the case where a tax is assessed by the department for failure to file and failure to pay, only the penalty for failure to file will be added. Penalty is computed on the amount required to be shown as tax with the filing of the return. For purposes of computing the penalty in case of failure to file a return or failure to pay the tax required to be paid with the filing of the return, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then the penalty shall continue to be assessed on any additional amounts of tax determined to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be limited to the percentage which had accrued when the initial penalty was assessed and paid.

All payments shall be first applied to the penalty and then the interest, and the balance, if any, to the amount of tax then due, in the order specified.

A return filed within the period of an extension granted will not be considered delinquent.

In addition to the penalty computed above there shall be added interest as provided by law from the original due date of the return. Interest on erroneous refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of such refund, considering each fraction of a month as an entire month.

If the amount of tax for any year is reduced as a result of a net operating loss carryback from another year, interest shall accrue on the refund resulting from the loss carryback beginning at the close of the taxable year in which the net operating loss occurred or sixty days after payment of the tax, whichever is later. If the net operating loss carryback to a prior year eliminates or reduces an outstanding assessment or underpayment of tax for the prior year, the full amount of the outstanding assessment or underpayment shall bear interest at the statutory rate from the original due date of the tax for the prior year to the last day of the taxable year in which the net operating loss occurred.

44.4(422) Request for waiver of penalty. Any taxpayer who believes he or she has good reason to object to any penalty imposed by the department for failure to timely file a return may submit a request for waiver seeking that the penalty be waived. If it can be shown to the director's satisfaction that

the failure was due to reasonable cause and not due to willful neglect, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to file a return as required by law.

There must be two showings. The first is that the failure to act was not due to willful neglect, and secondly, the failure to act was due to reasonable cause. A showing that the failure to act was not due to "willful neglect" does not presume that the failure was due to "reasonable cause".

Any taxpayer who believes he or she has good reason to object to any penalty imposed by the department for failure to timely pay may submit a request for waiver seeking that the penalty be waived. If it can be shown to the director's satisfaction that the failure was due to reasonable cause, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to pay the tax as required by law.

The following are examples of situations that may be accepted by the director as being reasonable cause:

a. Where the return or payment was filed on time, but filed erroneously with the Internal Revenue Service or another state agency.

b. A showing that the completed return was mailed in time (whether or not the envelope bore sufficient postage) to reach the department in normal course of mails, within the legal period. If the due date is a Saturday, Sunday or legal holiday, the following business day is within the legal period.

c. Where the delay was caused by death or serious illness of the taxpayer responsible for filing.

d. Where the delay was caused by prolonged unavoidable absence of the taxpayer responsible for filing.

e. Where the delinquency was caused by the destruction by fire or other casualty of the taxpayer's records.

f. A showing that the delay or failure was due to erroneous information given the taxpayer by an employee of the department.

A waiver of penalty for failure to pay any amount of any tax required to be shown on the return will generally apply to any additional taxes due except where the fifty percent penalty provisions are applicable, where the internal revenue service has assessed a negligence penalty, or where the taxpayer has substantially understated his or her Iowa taxable income. Where the taxpayer fails to remit the tax due with the filing of the return on or before the due date, penalty will be imposed on the unpaid balance unless it can be shown that reasonable cause for such failure existed.

These rules are intended to implement chapter 422 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 898 to 925, relating to income tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

TITLE V

INCOME TAX

CHAPTER 45
PARTNERSHIPS

45.1(422) General rule. An Iowa partnership or limited partnership required to file a return under the provisions of section 422.15(2) of the Code shall be a partnership or limited partnership required to file partnership return for purposes of federal income tax. A partnership engaged in carrying on business in this state is an Iowa partnership.

45.2(422) Partnership returns. Every partnership deriving income (1) from property owned within this state or (2) from a business, trade, profession or occupation carried on within the state, must make a return of income regardless of the amount of income or loss and regardless of the

residence of the partners. The return shall be made on the proper form and signed by one of the partners. The return shall be made on the same period basis, calendar or fiscal, as the partnership accounts are kept, irrespective of the fact the partners are reporting their incomes on a different period basis. The return shall be filed with the department on or before the last day of the fourth month after the expiration of the tax year.

45.3(422) Contents of partnership return. The return of a resident partnership or of a partnership with one or more nonresident members, but whose income is derived entirely or partially from sources within this state, shall state specifically (1) the net income, and the capital gains or losses reported on the federal partnership return, (2) the names and addresses of the partners, and (3) their respective shares in said amounts.

45.4(422) Distribution and taxation of partnership income. A partnership as such is not taxable but the members of a partnership (including limited partnerships organized under chapter 545 of the Code) are taxable (except as otherwise provided in subrule 40.15(5) respecting nonresident members) upon their distributable shares of the net income of the partnership whether distributed to them or not. If the result of the partnership operation is a net loss (i.e., excess of allowable deductions from gross income) the loss may be deducted by the partners (except as otherwise provided respecting nonresident members) in the same proportion that net income would have been taxable to the partners. If the partner reports his or her income on the same taxable year basis as that of the partnership, his or her distributable share of the net income (or loss) of the partnership for such taxable year shall be included in or deducted from gross income in his or her individual return for that year. If, however, the taxable year of the partner is different from that of the partnership, his or her distributable share shall be included in or his or her proportion of the loss deducted from gross income for the year in which the taxable year of the partnership ends.

Residents of Iowa shall report in total their distributable share of partnership income or loss on their Iowa income tax return. Nonresidents shall report for income tax purposes, their share of distributable partnership income or loss as determined under subrule 40.15(6).

These rules are intended to implement chapter 422 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 898 to 925, relating to income tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

TITLE V

INCOME TAX

CHAPTER 46

WITHHOLDING

46.1(422) Who must withhold.

46.1(1) *Requirement of withholding.*

a. General rule. Every employer maintaining an office or transacting business within this state and required under provisions of sections 3401 to 3404 of the Internal Revenue Code to withhold and pay federal income tax on compensation paid in this state to an individual is required to deduct and withhold from such compensation for each payroll period (as defined in section 3401 of the Internal Revenue Code) an amount computed in accordance with subrules 46.2(1) and 46.2(2). Iowa income tax is not required to be withheld on any compensation paid in this state of a character which is not subject to federal income tax withholding (whether or not such compensation is subject to withholding for federal taxes other than income tax, e.g., FICA taxes), except as provided in rule 46.4.

b. Examples. This section may be illustrated by the following examples:

Example (1). Temporary help. A is a typist in the offices of B corporation, where

she has worked regularly for two months. A is, however, supplied to B corporation by C, a temporary help agency located in Iowa. C renders a weekly bill to B corporation for A's services, and C then pays A. B corporation is not A's "employer" within section 3401(d) of the Internal Revenue Code and B corporation is therefore not required by the Internal Revenue Code to withhold a tax on A's compensation. Since B corporation is not required to withhold a tax for federal purposes on A's compensation, B is not required to do so for Iowa purposes. The temporary help agency, however, is required to withhold from A's compensation for federal purposes and must similarly do so for Iowa purposes.

Example (2). Domestic help. A is employed as a cook by Mr. and Mrs. B. The B's are required to withhold FICA (i.e., Social Security) tax from compensation paid to A, but are not required to withhold from such compensation for income tax under the Internal Revenue Code, because under section 3401(a)(3), A's compensation does not constitute "wages". Since the B's are not required to withhold income tax for federal purposes, they are not required to do so for Iowa purposes.

Example (3). Agricultural help. A is a full-time worker on B's farm. A's duties include soil cultivation, raising and harvesting corn and maintenance of farm tools and equipment. B is not required to withhold from A's compensation for federal income tax purposes since, under section 3401(a)(2) of the Internal Revenue Code, A's compensation does not constitute "wages". Therefore B is not required to withhold for Iowa tax purposes.

Example (4). Executives. A is a corporate executive. On January 1, 1968, A entered into an agreement with B corporation under which he was to be employed by B in an executive capacity for a period of five years. Under the contract, A is entitled to a stated annual salary and to additional compensation of $10,000 for each year. The additional compensation is to be credited to a bookkeeping reserve account and deferred, accumulated and paid in annual installments of $5,000 on A's retirement beginning January 1, 1973. In the event of A's death prior to exhaustion of the account, the balance is to be paid to A's personal representative. A is not required to render any service to B after December 31, 1972. During 1973, A is paid $5,000 while a resident of Iowa. The $5,000 is not excluded from "wages" under section 3401(a) of the Internal Revenue Code; therefore, B is required to withhold federal income tax, and, since it is compensation paid in this state, B must withhold Iowa income tax on A's deferred compensation.

c. Exemption from withholding. An employer may be relieved of his responsibility to withhold Iowa income tax on an employee who does not anticipate an Iowa income tax liability for the tax year.

An employee who anticipates no Iowa income tax liability shall file an "Exemption From Withholding" form with his or her employer. If the employee wishes to discontinue or is required to revoke the exemption from withholding, he or she must file an "Employee's Withholding Exemption Certificate". See subrule 46.3(2).

46.2(422) Computation of amount withheld.

46.2(1) *Amount withheld.*

a. General rules. Every employer required to deduct and withhold a tax on compensation paid in Iowa to an individual shall deduct and withhold for each payroll period an amount the total of which will approximate the employee's annual tax liability. "Payroll period" for Iowa withholding purposes shall have the same definition as in section 3401 of the Internal Revenue Code and shall include "miscellaneous payroll period" as that term is defined and used in that section and the regulations thereunder.

b. Methods of computations. Employers required to withhold Iowa income tax on compensation paid in this state shall compute the amount of tax to be withheld for each payroll period pursuant to the methods and rules provided herein.

(1) *Tables.* An employer may elect to use the withholding tables provided in the Iowa employer's "Withholding Tax Guide and Withholding Tables", which are available from the department.

(2) *Formulas.* Formulas are available upon request for employers who have a computerized payroll system.

(3) *Other methods.* An employer may use any other method for computing the amount of tax to be deducted and withheld for each payroll period which is permitted for withholding for federal income tax purposes provided it approximates the employees' tax liability. If any such other method for the computation of the amount of tax to be deducted and withheld for federal income tax purposes requires prior approval of the commissioner of Internal Revenue, then the department shall be notified of such federal approval by the submission of a copy of the employer's request and the commissioner's approval.

c. Supplemental wage payments. An employee's compensation may consist of wages paid for a payroll period and supplemental wages, such as bonuses, commissions, and overtime pay, paid for the same or a different period or without regard to a particular period. When such supplemental wages are paid, the amount of tax required to be withheld shall be determined in accordance with the same methods provided for withholding on such wages under the Internal Revenue Code and the regulations thereunder.

d. Vacation pay. Amounts of so-called "vacation allowances" shall be subject to withholding as though they were regular wage payments made for the period covered by the vacation. If the vacation allowance is paid in addition to the regular wage payment for such period, the allowance shall be treated as supplemental wage payments.

46.2(2) *Correction of underwithholding or overwithholding.*

a. Underwithholding. If an employer erroneously underwithholds an amount of Iowa income tax required to be deducted and withheld from compensation paid to an employee within a payroll period, he or she should correct the error within the same calendar year by deducting the difference between the amount withheld and the amount required to be withheld from any compensation still owed the employee, even though such compensation may not be subject to withholding. If the error is discovered in a subsequent calendar year, no correction shall be made by the employer.

b. Overwithholding. If an employer erroneously overwithholds an amount of tax required to be deducted and withheld from compensation paid to an employee, repayment of such overwithheld amount shall be made in the same calendar year. Repayment may be made in either of two ways: (1) the amount of overwithholding may be repaid directly to the employee, in which case the employer must obtain written receipt showing the date and amount of the repayment, or (2) the employer may reimburse the employee by applying the overcollection against the tax required to be deducted and withheld on compensation to be paid in the same calendar year in which the overcollection occurred. If the error is discovered in a subsequent calendar year, no repayment shall be made.

c. Cross-reference. For effect on reporting and remitting taxes deducted and withheld when there is an erroneous underpayment or overpayment, see paragraph *"h"* of subrule 46.3(4).

46.3(422) Forms, returns and reports.

46.3(1) *Employer registration.* Every employer required to deduct and withhold Iowa income tax must register with the department of revenue by filing an "Application for Withholding Agents Identification Number". Each application shall contain the employer's federal identification number. If an employer has not received a federal employer's identification number, he or she should obtain one before filing a state application. It must then be filed with the department within fifteen days of the date the federal employer's identification number is assigned.

Where initial payment of wages, subject to Iowa withholding tax occurs late in the calendar quarter, or before the employer's federal employer identification number is assigned by Internal Revenue Service, the application for Iowa withholding agent's identification number shall be forwarded along with the first quarterly withholding report. The name(s) of all responsible parties shall be listed on the application.

46.3(2) *Exemption certificate.*

a. General rules. On or before the date on which an individual commences employment with an employer, the individual shall furnish the employee with a signed Iowa withholding exemption certificate indicating the number of withholding exemptions which he or she claims, which in no event

shall exceed the number to which he or she is entitled. The employer is required to request a withholding exemption certificate from each employee, but if the employee fails to furnish such certificate, such employee shall be considered as claiming no withholding exemptions.

b. Form and content. The "Employee's Iowa Withholding Exemption Certificate", is the form prescribed to be filed under this section. A withholding exemption certificate shall be prepared in accordance with the instructions applicable thereto, and shall set forth fully and clearly the required data. The exemption form will be supplied to employers upon request to the department. In lieu of the prescribed form, employers may use the federal exemption certificate, however, it should be noted that Iowa law does not recognize the "special withholding allowance" and "allowance for itemized deductions" which are allowable for federal withholding tax purposes. These allowances cannot be claimed when computing the Iowa withholding tax liability.

c. Change in exemptions which affect the current calendar year.

(1) *Decrease.* If, on any day during the calendar year, the number of withholding exemptions to which an employee is entitled is less than the number of withholding exemptions claimed by him or her on a withholding certificate then in effect, the employee must furnish the employer with a new Iowa withholding exemption certificate relating to the number of withholding exemptions which the employee then claims, which must in no event exceed the number to which he or she is entitled on such day.

(2) *Increase.* If, on any day during the calendar year, the number of withholding exemptions to which an employee is entitled is more than the number of withholding exemptions claimed by him or her on the withholding exemption certificate then in effect, the employee may furnish the employer with a new Iowa withholding exemption certificate on which the employee must in no event claim more than the number of withholding exemptions to which he or she is entitled on such day.

d. Change in exemptions which affect the next calendar year. If, on any day during the calendar year, the number of withholding exemptions to which the employee will be, or may reasonably be expected to be, entitled to for his taxable year which begins in, or with, the next calendar year is different from the number to which the employee is entitled on such day, the following rules shall apply:

(1) If such number is less than the number of withholding exemptions claimed by an employee on an Iowa withholding exemption certificate in effect on such day, the employee must within a reasonable time furnish his or her employer with a new withholding exemption certificate reflecting the decrease.

(2) If such number is greater than the number of withholding exemptions claimed by the employee on an Iowa withholding exemption certificate in effect on such day, the employee may furnish his or her employer with a new withholding exemption certificate reflecting the increase.

e. Duration of exemption certificate. An Iowa withholding exemption certificate which is in effect pursuant to these regulations shall continue in effect until another withholding exemption certificate takes effect.

46.3(3) Reports and payments of income tax withheld.

a. Returns of income tax withheld from wages.

(1) *Quarterly returns.* Except as otherwise provided in paragraph *"b"* of subrule 46.3(3), every employer required to deduct and withhold tax on compensation paid in Iowa shall make a return for the first calendar quarter in which such tax is deducted and withheld and for each subsequent calendar quarter, whether or not compensation is paid therein, until a final return is filed. The "Employer's Quarterly Iowa Withholding Tax Return" is the form prescribed for making the return required under this paragraph. Monthly tax payments may also be required. See subparagraph (2) of this section. In some circumstances, only an annual return and payment of withheld taxes will be required; see paragraph *"c"* of subrule 46.3(3).

Payments shall be based upon the tax required to be withheld and must be remitted in full. Payment should not be deferred and should accompany the quarterly return.

An employer is not required to list the name(s) of his or her employee(s) when filing

quarterly returns, nor is the employer required to show on the employee's paycheck or voucher the amount of Iowa income tax withheld.

If an employer's payroll is not constant, and he or she finds that he or she has paid no wages or other compensation during the current quarter, he or she shall enter the word "none" on the return, sign, and submit the return as usual.

(2) *Monthly reports.* Every employer required to file a quarterly withholding return shall also file a monthly tax payment form if the amount of tax deducted and withheld during any calendar month exceeds $50. An employer need not file a monthly form if no monthly payment is due. No monthly form is required for the third month in any calendar quarter. The information otherwise required to be reported on the monthly form for the third month in a calendar quarter shall be reported on the quarterly return filed for that quarter and no monthly form need be filed for such month. "The Iowa Withholding Agent's Deposit Report" is provided for use with the payments required under this paragraph.

(3) *Final returns.* An employer, who in any return period permanently ceases doing business, shall file the returns and statements required by subparagraphs (1) and (2) of this section as final returns for such period. Each return shall be marked "Final Return". There shall be executed as part of each final return a statement showing the date of the last payment of compensation, the address of which the information in regard to withholding will be kept, the name of the person keeping such records, and if the business of the employer has been sold or otherwise transferred to another person, the name and address of such person and the date on which such sale or transfer took place. If no such sale or transfer took place or if the employer does not know the name and address of the person to whom the business was sold or transferred, that fact should be included in the statement.

b. Time for filing returns.

(1) *Quarterly return.* Each return required by subparagraph (1) of 46.3(3)*"a"* shall be filed on or before the last day of the first calendar month following the calendar quarter for which such return is made.

(2) *Monthly tax payments.* Monthly forms required by subparagraph (2) of 46.3(3)*"a"* shall be filed on or before the fifteenth day of the second and third months of each calendar quarter.

c. Reporting annual withholding. Every withholding agent employing not more than two individuals and who expects to employ either or both for the full calendar year, may pay with the withholding tax return due for the first calendar quarter of the year, the full amount of income taxes which would be required to be withheld from the wages for the full calendar year. The employer shall advise the withholding section of the Iowa department of revenue that annual reporting is contemplated, and shall also state the number of persons employed. The employer shall compute the annual withholding from wages by determining the normal withholding for one pay period and multiply this amount by the total number of pay periods within the calendar year. No lump sum of payment of withheld income tax shall be made without the written consent of all employee(s) involved. Consent may be affected by having the employee(s) complete the form "Iowa Employees Consent to Advance Annual Withholding". The withholding agent shall be entitled to recover from the employee(s) any part of such lump sum payment that represents an advance to the employee(s). If a withholding agent pays a lump sum with the first quarterly return, he or she shall be excused from filing further quarterly returns for the calendar year involved unless he or she hires other or additional employees. Information returns and the "Verified Summary Report" shall be filed at the end of the tax year.

d. Reports for employee.

(1) *General rule.* Every employer required to deduct and withhold tax from compensation of an employee must furnish to each employee with respect to the compensation paid in Iowa by such employer during the calendar year, a statement in duplicate containing the following information: The name, address, and federal employer identification number of the employer; the name, address, and social security number of the employee; the total amount of compensation paid in Iowa; the total amount deducted and withheld as tax under subrule 46.1(1).

(2) *Form of statement.* The information required to be furnished an employee under

the preceding paragraph shall be furnished on an Internal Revenue Service combined Wage and Tax Statement, Form W-2, hereinafter referred to as "combined W-2". Any reproduction, modification or substitution for a combined W-2 by the employer must be approved by the department.

(3) *Time for furnishing statement.* Each statement required by this section to be furnished for a calendar year, and each corrected statement required for any prior year shall be furnished to the employee on or before January 31 of the year succeeding such calendar year, or if an employee's employment is terminated before the close of a calendar year, without expectation that it will resume during the same calendar year, within thirty days from the day on which the last payment of compensation is made, if requested by such employee. See subrule 46.3(3)*"e"* for provisions relating to the filing of copies of combined W-2 with the Iowa Department of Revenue.

(4) *Corrections.* An employer must furnish a corrected combined W-2 to an employee if, after the original statement has been furnished an error is discovered in either the amount of compensation shown to have been paid in Iowa for the prior year or the amount of tax shown to have been deducted and withheld in the prior year. Such statement shall be marked "corrected by the employer". See subrule 46.3(3)*"e"* for provisions relating to the filing of a corrected combined W-2 with the department.

(5) *Undelivered combined W-2.* Any employee's copy of the combined W-2 which, after reasonable effort, cannot be delivered to an employee, shall be transmitted to the department with a letter of explanation.

(6) *Lost or destroyed.* If the combined W-2 is lost or destroyed, the employer shall furnish two substitute copies to the employee and one copy to the department. All such copies shall be clearly marked "Reissued by Employer".

e. Year-end verified summary reports.

(1) Every employer required to make a quarterly return of tax withheld from compensation for a period ending December 31, or for any period for which a return is made as a final return, shall submit as part of such return the department's copy of each wage and tax statement on the combined W-2 required under subrule 46.3(3).

(2) The copies of wage and tax statements for the current calendar year transmitted with the return required under subparagraph (1) of this section shall be accompanied by an information statement entitled "Verified Summary Report".

(3) The copies of wage and tax statements for the current calendar year transmitted with the "Verified Summary Report" shall be accompanied by a list of the amounts of tax withheld shown on such statements. If an employer's total payroll is made up on the basis of a number of separate units or establishments, the statements may be assembled accordingly and a separate list or tape submitted for each unit. In such case, a summary list or tape should be submitted, the total of which will agree with the corresponding entry made on the "Verified Summary Report". If the number of statements to be submitted is large, they may be forwarded in packages of convenient size. When submitted in this manner, the packages should be identified with the name of the employer and consecutively numbered, and the "Verified Summary Report" should be placed in package no. 1. The number of packages should be indicated immediately after the employer's name on the "Verified Summary Report".

(4) If an employer issues a corrected copy of a combined W-2 to an employee for a prior calendar year (see subrule 46.3(3)*"d"*) a copy shall be submitted to the department on or before the date fixed for filing the employer's quarterly return of tax withheld for the period ending December 31 of the year in which the correction is made, or for any period in such year for which the return is made as a final return. Such copies of the combined W-2 shall be accompanied by a statement explaining the corrections and submitted separately from the department's copies of the combined W-2 being submitted for the current calendar year.

(5) Upon obtaining consent of the Department of Revenue, an employer may submit the information contained on a combined W-2 on magnetic tape in lieu of the copies of the combined W-2 required to be submitted under subparagraph (1) of this section. Such consent shall be applied for in a written request to the Iowa Department of

Revenue, Withholding Tax Section, Lucas State Office Building, Des Moines, Iowa 50319.

f. Withholding deemed to be held in trust. Funds withheld from wages for Iowa income tax purposes are deemed to be held in trust for payment to the Iowa Department of Revenue. The state and department shall have a lien upon all the assets of the employer and all the property used in the conduct of the employer's business to secure the payment of the tax as withheld under the provisions of this section. An owner, conditional vendor, or mortgagee of property subject to such lien, may exempt the property from the lien granted to Iowa by requiring the employer to obtain a certificate from the department, certifying that such employer has posted with the department security for the payment of the amounts withheld under this section.

g. Payment of tax deducted and withheld. The amount of tax shown to be due on each return required to be filed under subrule 46.3(3) shall be due on or before the date on which such return is required to be filed.

h. Correction of underpayment or overpayment of taxes withheld.

(1) *Underpayment.* If a return is filed for a return period under this section and less than the correct amount of tax is reported on the return and paid to the department, the employer shall report and pay the additional amount due by reason of the underpayment on the next quarterly return. An explanation must be attached to the return for the period in which the underpayment is corrected, and the appropriate entry made on the quarterly withholding return.

(2) *Overpayment.* If an employer remits more than the correct amount of tax for a return period under this section and the overpayment is discovered in a subsequent return period under this section and within the same calendar year of the overpayment, the employer may correct the error on a subsequent return to be filed for a period within the same calendar year. An explanation must be attached to the return on which the error is corrected. If the overpayment is discovered in a subsequent calendar year, the employer may correct the error by filing a "Claim for Refund" form with the department.

46.4(422) Withholding on nonresidents.

46.4(1) *General rules.* Payers of Iowa income to nonresidents are required to withhold Iowa income tax and to remit such tax to the department. Withholding agents should use the following methods and rates in withholding for nonresidents:

a. Wages or salaries. Use the same withholding procedures and rates as used for residents.

b. Payments other than wages or salaries. Withholding on payments other than wages or salaries shall be computed using the current withholding tables on gross receipts remitted to the nonresident if the withholding agent has no control over related expenses; or on net income if proper books and records are available to the withholding agent.

46.4(2) *Income subject to withholding.* Listed below are various types of income paid to nonresidents which are subject to withholding tax. The list is for illustrative purposes only and is not deemed to be all inclusive.

1. Personal service, including salaries, wages, commissions and fees for personal service wholly performed within this state and such portions of similar income of nonresident traveling salesmen or agents as may be derived from services rendered in this state.

2. Rents and royalties from real or personal property located within this state.

3. Interest or dividends derived from securities or investments within this state, when such interests or dividends constitute income of any business, trade, profession or occupation carried on within this state and subject to taxation.

4. Income derived from any business of a temporary nature carried on within this state by a nonresident, such as contracts for construction and similar contracts.

5. The distributive share of a nonresident beneficiary of an estate or trust, limited, however, to the portion thereof subject to Iowa income tax in the hands of the nonresident.

6. Income derived from sources within this state by attorneys, physicians, engineers, accountants, etc., as compensation for services rendered clients in this state.

7. Compensation received by nonresident actors, singers, performers, entertainers and wrestlers for performances in this state.

8. Nonresident employees rendering regular services for interstate common carrier such as railroads, trucking firms, airlines, bus companies, towing firms, etc. in more than one state shall be subject to Iowa withholding on that portion of his or her wages for services in Iowa provided more than fifty percent of his or her compensation from said carrier in Iowa during the preceding calendar year, then withholding for Iowa income tax is not required. Similar provisions are likewise applicable to the wages received by nonresident employees of private property motor vehicle carriers. If the employee of the interstate common carrier or the private property carrier is a resident of Iowa withholding on the total wages of the resident employee is required if such resident employee does not earn more than fifty percent of his or her compensation from the carrier in any one state. (Additional information may be obtained by referring to P.L. 91-569 as passed by the U.S. Congress and signed by the President, effective January 1, 1971).

9. The gross income of a nonresident (not engaged in carrying on a business, trade, profession or occupation on his or her own account, but employed and receiving compensation for his or her services) includes compensation for personal services only, if and to the extent that such services are rendered within this state. Compensation for personal services rendered by a nonresident regardless of the fact that payment of such compensation may be made by a resident individual, partnership or corporation.

10. The gross income from commissions earned by a nonresident traveling salesman, agent or other employee for services performed or sales made whose compensation depends directly on volume of business transacted by him or her, includes that proportion of the total compensation received which the volume of business or sales by such employee within this state bears to the total volume of business or sales within and without the state.

11. Payments made to landlords by agents, including elevator operators, for grain or other commodities which have been received by the landlord as rent constitute taxable income of the landlord when sold by him or her.

46.4(3) *Nonresident certificate of release.* Where a nonresident payee makes the option to file a declaration of estimated Iowa income tax, a certificate of release from withholding will be issued by the Iowa department of revenue, estimate tax section to the designated payers. The certificate of release will be forwarded to the specified withholding agent(s) or payer(s), and will state the amount of income covered by the declaration of estimated tax. Any income paid in excess of the amount so stated will be subject to withholding tax at the current rate. See chapter 47 for information on making estimate declaration.

46.4(4) *Recovering excess tax withheld.* A nonresident payee may recover any excess Iowa income tax withheld from him or her by filing an Iowa nonresident income tax return after the close of the tax year and reporting income from Iowa sources in accordance with instructions thereon.

46.5(422) *Penalty and interest.* See chapter 44 for application and computation of penalty and interest on withholding taxes.

These rules are intended to implement chapter 422 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 898 to 925, relating to income tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

TITLE V

INCOME TAX

CHAPTER 47

DECLARATION OF ESTIMATED INCOME TAX BY INDIVIDUALS

47.1(422) Who must file a declaration.

47.1(1) *General rule.* Every taxpayer including nonresidents, other than an estate or trust, shall make a declaration of estimated tax in such form as the department shall prescribe, if their tax attributable to income other than salaries and wages subject to withholding, is reasonably expected to be fifty dollars or more for the calendar or fiscal year. The amount of estimated tax paid shall be used as a credit on the Iowa resident or nonresident individual income tax return.

47.1(2) *Joint declarations.* A husband and wife may make a joint declaration of estimated tax as if they were one taxpayer, in which case the liability with respect to the estimated tax shall be joint and several. If a joint declaration is made but the husband and wife elect to determine their taxes separately, the estimated tax for such year may be treated as the estimated tax of either husband or wife, or may be divided between them, as they may elect.

47.1(3) *Examples.* Listed below are examples of various types of taxpayers who may be required to make Iowa estimate tax declarations. The list is for illustrative purposes and is not deemed to be all inclusive.

1. *Self-employed.* An individual having taxable income working for oneself, with direct control over work, services rendered, fees and charges.

2. *Retiree.* An individual having taxable income from any source such as pensions, interest, dividends, stocks, capital gains, rents, royalties, farm or business, after having withdrawn from one's work, business, or career.

3. *Farmers and fishermen.* Individuals deriving at least two-thirds of their yearly income from farming or fishing.

4. *Nonresidents.* Any individual residing outside the boundaries of the state, receiving taxable income from an Iowa source.

5. *Beneficiaries of estates and trusts.* Any resident or nonresident individual who is the recipient of income from an estate or trust from an Iowa source.

6. *Those with income in addition to wages.* An individual currently drawing salary or wages subject to withholding, having any type of additional taxable income from an Iowa source, not covered by withholding.

47.2(422) Time for filing and payment of tax.

47.2(1) *Time for filing.*

a. General rule. The date for filing a declaration of estimated tax is on or before the last day of the fourth month of the tax year. The declaration of estimated tax form is to be filed with the Iowa Department of Revenue, Declaration Section, Lucas State Office Building, Des Moines, Iowa 50319.

b. Special rule for farmers and fishermen. If the estimated gross income from farming or fishing is at least two-thirds of the estimated gross income from all sources for the taxable year, three optional methods are available:

(1) File a declaration by April 30 of the current year and make the required estimated payments and file the Iowa individual income tax return in the customary manner.

(2) File a declaration on or before January 15 of the succeeding year, pay the indicated estimate tax for the entire year, and file an Iowa individual income tax return on or before April 30 of the succeeding year.

(3) File an Iowa individual income tax return and pay the tax in full on or before March 1 of the succeeding year. No estimate declaration is required under this option.

c. Amended declarations.

(1) *General rule.* Whenever a taxpayer filing a declaration has reason to believe that his or her, or their, Iowa income tax may increase or decrease either for purposes of meeting the requirement to file a declaration of estimated tax, or for the purpose of increasing or decreasing the original declaration, an amended estimate shall be filed at such time to reflect the increase or decrease in estimated Iowa income tax. The amended declaration shall be made on or before the next installment payment. The unpaid

balance after amending the declaration should be paid in equal installments on the remaining payment dates. If by January 31 of the succeeding year a taxpayer files his or her Iowa income tax return and pays in full the balance of tax due, he or she need not file any required amended declaration, nor an original declaration which would be due for the first time on January 31 of the succeeding year nor pay the last installment of estimate tax.

(2) *Example.* A married couple filing a joint declaration on a calendar year basis, estimating taxable income of eight thousand five hundred dollars, with an estimated tax liability of three hundred dollars, files and pays the first quarter installment of seventy-five dollars by the due date of April 30 of the current year. By June 30, the date of payment of the second installment, their income status remains unchanged, therefore a second installment payment of seventy-five dollars is remitted. However on July 15, real estate owned jointly by the taxpayers is sold, creating additional taxable income for the year of seven thousand five hundred dollars. An amended declaration is prepared indicating a new tax liability of nine hundred dollars, less one hundred fifty dollars already paid for the first and second quarters, leaving a balance of seven hundred fifty dollars to be paid in two equal installments of three hundred seventy five dollars each by September 30 of the current year, and January 31 of the succeeding year.

47.2(2) *Payment of estimated tax.*

a. General rule. Declarations may be paid in full at the time of the first filing or in four equal installments. The taxpayer may also elect to pay any installment prior to the date prescribed.

b. Calendar year. The first installment for a taxpayer filing on a calendar year basis is due by April 30, at the time of filing the declaration. The other installments, if applicable, shall be paid on or before June 30 and September 30 of the current year, and January 31.

c. Fiscal year. The installment dates for a taxpayer filing on a fiscal year basis are:

Installment No. 1. The last day of the fourth month of the fiscal year.

Installment No. 2. The last day of the sixth month of the fiscal year.

Installment No. 3. The last day of the ninth month of the fiscal year.

Installment No. 4. The last day of the first month of the next fiscal year.

47.3(422) Nonresident declaration of estimated tax.

47.3(1) *General rule.* Except as noted in subrule 47.3(2), payers of Iowa income to nonresidents are required to withhold Iowa income tax and to remit such tax to the department. See rule 46.5 for withholding on nonresidents.

47.3(2) *Estimate declaration.* Nonresidents who prefer to pay estimated tax in lieu of having Iowa income tax withheld by an Iowa withholding agent, must obtain a certificate of release from withholding. The nonresident declaration of estimated income tax must be accompanied by full and complete payment and shall include a list of the name(s) and address(es) of any tenant or farm manager, or co-operative elevator, or other Iowa agent or payer from which they anticipate receiving income. The total gross income anticipated for the year shall also be shown on the declaration form. Any income paid in excess of the amount so stated on the declaration will be subject to withholding tax.

Upon the department's receipt and approval of the completed declaration and the full payment of tax due thereon, the certificate of release from withholding will be forwarded to the designated withholding agent or payer. Since the declaration is filed for the purpose of obtaining a release from withholding, it must be filed prior to the time of the transactions which would subject the taxpayer to the Iowa withholding requirements. The declaration and payment shall be mailed to the Iowa Department of Revenue, Declaration Section, Lucas State Office Building, Des Moines, Iowa 50319.

47.3(3) *Example.* Nonresident declarations of estimated tax may be illustrated with the following example:

A nonresident individual owns a farm in Iowa which is operated by a farm manager. For tax purposes the farm manager is considered to be the Iowa withholding agent when distributing proceeds from the farms to the nonresident. A crop is sold through the local farm co-operative elevator and a check is issued to the farm manager, who then

sends the check to the nonresident. Before doing so, Iowa income taxes must be withheld from the gross proceeds and remitted to the Iowa department of revenue for deposit and credit to the income tax liability of the nonresident, unless the farm manager has in his or her possession a certificate of release from withholding issued to him or her by the department of revenue. In the event that the farm co-operative elevator sends the check for payment of the crops directly to the nonresident, the co-operative becomes the withholding agent.

47.4(422) Special declaration periods.

47.4(1) *Short taxable year.* A taxpayer having a taxable year of less than twelve months shall make a declaration if anticipating an Iowa tax liability of fifty dollars or more for that specific short taxable year.

47.4(2) *Part-year resident.*

a. General rule. Part-year residents moving into or out of the state shall determine their Iowa estimated tax on that portion of income from sources within Iowa.

b. Example. An individual moving into the state on April 15, having taxable income from an Iowa source and an expected tax liability of one hundred fifty dollars, must file his original declaration by June 30 along with remittance of fifty dollars, and pay the remaining balance of one hundred dollars in two equal installments of fifty dollars each by September 30, and January 31 of the succeeding year.

47.5(422) Reporting forms.

47.5(1) *Resident.* Individuals who have filed a prior year estimate tax declaration will receive by mail a preaddressed reporting form. Blank reporting forms are available from the department for those individuals declaring an estimate for the first time, or when the preaddressed form is misplaced or lost.

47.5(2) *Nonresident.* A special nonresident estimate tax declaration form with instructions is available from the department for any nonresident wishing to file a declaration and pay the tax, in lieu of having Iowa income tax withheld by an Iowa withholding agent.

47.6(422) Penalties: Failure to file and underpayment of estimated tax. The civil penalties provided by the Internal Revenue Code of 1954, as amended, for failure to file a declaration, or for underpayment of the tax payable, shall apply to persons required to file declarations and make payments of estimate tax under the provisions of the Iowa Code. See chapter 44 for application and computation of penalties.

These rules are intended to implement chapter 422 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 898 to 925, relating to income tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

TITLE V

INCOME TAX

CHAPTER 48
FIDUCIARY INCOME TAX

48.1(422) Filing returns.

48.1(1) *Who must file.*

a. Individual return for a decedent. See rule 48.8 for filing the final individual income tax return of a decedent.

b. Returns by estates and trusts. Every fiduciary, subject to taxation under the Iowa Code and amendments thereto, shall make and sign a return for the estate or trust for which he acts, if the taxable income thereof amounts to six hundred dollars or more. In regard to final returns see paragraph *"a"* of subrule 48.1(4).

c. Returns by guardians and conservators. A guardian or conservator of any person under legal disability must make an individual income tax return for his ward and pay the tax due thereon in those cases where the ward has net income of two thousand dollars or more or is required to file a federal income tax return, unless, in the case of a minor under guardianship, the minor proceeds to

make and file his or her return or causes it to be made and filed.

48.1(2) *When to file.*

a. Estates and trusts. A fiduciary return shall be filed with the Iowa Department of Revenue, Fiduciary Income Tax Section, Des Moines, Iowa 50319, on or before the last day of the fourth month after the expiration of the tax year. The due date is the last day upon which a return is required to be filed, or the last day of the period covered by an extension of time granted by the director. When the due date falls on a Saturday, Sunday or a legal holiday, the return will be due the first business day following such Saturday, Sunday or legal holiday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the Fiduciary Income Tax Section before the due date for filing, no penalty will attach should the return not be received until after that date.

A final fiduciary return shall be filed at the time a fiduciary applies for an income tax clearance certificate, whether or not there is any income to report. See paragraph *"a"* of subrule 48.1(4).

b. Guardians and conservators. A fiduciary return is to be filed in guardianships and conservatorships only in the case of a final return. All other returns for the wards are to be completed and filed on the individual income tax return.

48.1(3) *Form for filing.* Fiduciary returns of income are to be made on the form prescribed by the director. Each fiduciary return shall include detailed statements supporting the entries of all items included on the fiduciary return. In lieu of such statements copies of applicable federal schedules may be submitted.

Nonresident estates and trusts shall use the same return forms as resident estates and trusts. Nonresident fiduciaries shall also file a copy of the federal fiduciary return.

A copy of the probate inventory showing the items of real and personal property inventoried into the estate of a deceased person and their values as reported for state inheritance tax purposes, shall be filed with the first Iowa fiduciary return. If the decedent died testate a copy of the will shall also be filed with the initial fiduciary return. In the case of a trust, a list of the assets comprising the trust and a copy of the written instrument under which the trust was created shall be filed with the first Iowa fiduciary return.

In addition to the required trust instrument, there shall also be filed a statement by the fiduciary indicating the provisions that determine the taxability of the income to the trust beneficiaries or the grantor. If the trust instrument is amended, a copy of the amendments and a statement as to their effect on the taxability of the trust income, shall be attached to the return for the year to which such amendments apply.

An estate or trust is allowed to establish as its taxable year a calendar year or a fiscal year, depending on what basis the accounting records of the estate or trust are kept. In the case of an estate for a deceased person, the first fiduciary return of income shall commence with the day immediately following date of decedent's death, and in making such first return the estate may choose the same accounting period as the decedent. However, the Iowa fiduciary return shall cover the same period of time as the federal return for the estate or trust except in the case of a final fiduciary return of an ancillary estate. In such case the return shall cover the period ending with the closing of the Iowa ancillary estate.

48.1(4) *Final returns.*

a. Estates and trusts. When an estate or trust is to be closed a final fiduciary return of income shall be filed whether or not there is any income to be reported. All income must be shown as distributed, and taxable income shown as zero on a final return.

b. Guardians and conservators. In the case of a minor, an incompetent person or other ward, where it becomes necessary to terminate the fiduciary relationship and to have the certificate to file with the fiduciary's final report to the court, the fiduciary shall make a final fiduciary return. Such fiduciary return shall reflect the income, if any, received by the fiduciary during the period commencing with the ward's regular tax year to the date of termination of the fiduciary relationship. The fiduciary return shall also be filed in cases where death of the ward is the reason for requesting a certificate of acquittance. The income shown on the fiduciary return shall be shown as distributed to the ward and

will be taxable on the ward's current year individual income tax return, or on the final individual income tax return if the ward is deceased. Under no circumstance is tax due and payable on such fiduciary return. The return in these cases is merely an information return. In cases where more than one ward is under guardianship a separate fiduciary return shall be filed for each ward.

A final fiduciary return must be accompanied by an inventory of the assets in the guardianship or conservatorship.

c. Certificate of acquittance. When a fiduciary applies for a certificate of acquittance a final return of income shall be filed for the estate, trust, guardianship or conservatorship, regardless of whether or not there is income to be reported. Where there is no income to be reported such return is an information return.

Issuance of the certificate of acquittance is entirely dependent on the fulfillment of the obligations imposed on the fiduciary under applicable sections of the law and rules created thereunder. Failure to comply with the requirements of these rules or relative sections of the law will result in denial of the certificate of acquittance until such requirements are met, or ordered by the court.

48.2(422) Payment of tax. Payment in full is required to be made with the filing of the fiduciary return.

48.3(422) Penalty and interest. See chapter 44 for penalty and interest provisions applicable to fiduciary returns.

48.4(422) Income to be reported.

48.4(1) *Estates and trusts.* The fiduciary of every estate shall report to the department, all income received or chargeable to him or her, that derives from personal property owned by the decedent at the time of his death, until such time as the property is sold, distributed or otherwise disposed of. The fiduciary shall also report to the department the income from real estate owned by the decedent at the time of his or her death, if, in fact, the fiduciary assumes control and takes charge of the real estate. It shall be presumed the fiduciary is responsible for reporting the income derived from real estate, if, in fact, the income is deposited in an estate bank account and expenses relating to the real estate are paid from estate funds. Income derived from property held in joint tenancy by the decedent with another person is to be reported by the surviving joint tenant on his or her individual income tax return.

A fiduciary in making an Iowa fiduciary return for an estate or trust shall include thereon all items of income reported or reportable for federal income tax purposes under the Internal Revenue Code. In determining the Iowa taxable income of the fiduciary, the personal exemption deduction of the fiduciary for federal income purposes cannot be taken. See chapter 40 for adjustments to income.

When resident estates and trusts have income from other states, or foreign countries, such income shall be considered taxable income to the state of Iowa and reported on the fiduciary return.

48.4(2) *Nonresident beneficiaries of estates and trusts.* Where income of an estate or trust is distributed or distributable to nonresident beneficiaries, the beneficiaries to whom the income was paid or credited shall include their respective shares of such income on their individual tax returns in reporting to this state.

Income of a nonresident beneficiary from an estate or trust, distributed or distributable to the beneficiary out of income from intangible personal property of the estate or trust, is not income from sources in this state and is not taxable to the nonresident beneficiary unless the property is so used by the estate or trust as to create a business, trade, profession, or occupation in this state.

A fiduciary shall act as a withholding agent and make withholdings for the Iowa income tax in accordance with the provisions of chapter 46, in those cases where Iowa income of an estate or trust is distributed to a nonresident beneficiary. Such withholding shall be reported on the forms prescribed by the director and the applicable schedule of the fiduciary tax return.

48.4(3) *Nonresident estates and trusts.* A nonresident estate or trust shall report to the state of Iowa for taxation that portion of its taxable income that is derived from Iowa sources.

The basis for gain or loss on the sale or disposition of property in an estate or trust is the basis established for federal estate tax

purposes and not the value as established for Iowa inheritance tax purposes.

Nonresident estates and trusts shall report to Iowa for taxation the gain on principal payments received on Iowa contracts of sale of real estate or tangible personal property. The interest on such contracts of sale is considered to be intangible personal property and is only reportable to Iowa for taxation if it has acquired a business situs in the state of Iowa.

The fiduciary shall prorate those deductions which apply to the total taxable income on the basis that the Iowa taxable income bears to the total taxable income for federal tax purposes. A nonresident estate or trust is not allowed a credit for income taxes paid to another state on income from Iowa sources.

48.4(4) *Guardianships and conservatorships.* A fiduciary return is required only in the case of a final return requesting a certificate of acquittance. These are to be information returns only showing all income distributed to the ward, and reported on the ward's individual tax return.

48.4(5) *Other fiduciaries.* Trustees in bankruptcy, referees in actions for partition, and other fiduciary relationships not specifically referred to in the preceding rules shall follow the rules set out for trusts.

48.5(422) Adjustments to income. See chapter 40 for adjustments to income.

48.6(422) Adjustments to computed tax.

48.6(1) *Exemption credit.* After computing the Iowa tax there shall be allowed an exemption credit of fifteen dollars. This amount will also be allowed on returns which cover a period of less than twelve months.

48.6(2) *Out-of-state tax credit.* A resident estate or trust is allowed a credit against Iowa tax on that portion of its reported income on which income tax has been paid to another state or foreign country. This credit is computed in the same manner as for an individual. See rule 42.3.

48.7(422) Assessments and refunds. See chapter 43 in regard to assessments and refunds.

48.8(422) Individual return of a decedent. An executor or administrator of the estate of a deceased person shall file a final individual income tax return for the decedent for the year of the decedent's death. Such return is due on or before the last day of the fourth month after the expiration of the decedent's normal tax year.

A return for the period starting with the decedent's normal tax year to the date of death may be submitted in advance of its regular due date however, and, in some cases, may be necessary in order to obtain the certificate of acquittance as provided in paragraph *"c"* of subrule 48.1(4).

In making such return the fiduciary shall use the same method of computing the income, either the cash or accrual basis, as was last used by the decedent in reporting income prior to death. If the department discovers from an examination of such return or of the fiduciary return for decedent's estate, or otherwise, that decedent had not filed Iowa individual returns for prior years, and where it appears that decedent may have had sufficient taxable income to require returns for him, the fiduciary shall be responsible for making and filing individual returns for the decedent for the preceding taxable years. Such accounting of a decedent's income will be required before a certificate of acquittance will be issued.

A joint return may be filed where one or both spouses die during the year, and where the taxable year of both begins on the same day, whether such year is a fiscal or calendar year. The fiduciary of decedent's estate may join with the surviving spouse in the filing of a joint return. In the case of a joint return, it is made for the regular taxable year of the survivor and the short period of the decedent.

A joint return cannot be filed with the decedent where the surviving spouse remarries before the close of the taxable year in which the decedent died, nor can such joint return be filed in those cases where it is necessary to file a return for the decedent (for a short period) in advance of its regular due date as provided above.

Deductions of a decedent are not to be accrued on his or her final individual return unless the accounting method requires it. Items allowable under section 691(b) of the Internal Revenue Code are deductible to the estate, trust or person succeeding to the property, when paid.

In general, the same rules shall be applied to a final individual return for a decedent as in the case of any living taxpayer.

A final individual return for the year that death occurred is required for a decedent if his taxable income amounts to two thousand dollars or more. If a final individual return is not required the fiduciary shall so state at the time of filing the initial fiduciary return for the decedent's estate.

No proration of the personal exemption credit is required because of the death of the decedent during the taxable year. On the final return of the decedent the deceased is entitled to the personal exemption credit of the surviving spouse only if a joint return is filed for the full taxable year. The exemption of the surviving spouse will not be allowed on a return required to be filed (for a short period) in advance of its regular due date as provided above. A decedent, who furnished over half the support to a person otherwise qualifying as a dependent, would be entitled to the full exemption for such dependent, without proration.

The final individual return of income for a decedent or the joint return of a surviving spouse and a decedent shall be mailed to or delivered to the Iowa Department of Revenue, Lucas State Office Building, Des Moines, Iowa 50319.

These rules are intended to implement chapter 422 of the Code.

[Effective December 12, 1974]

Chapters 49 and 50 Reserved.

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 898 to 925, relating to income tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

TITLE VI

CORPORATION INCOME TAX

CHAPTER 51

ADMINISTRATION

51.1(422) Definitions.

51.1(1) When the word "department" appears herein, the same refers to and is synonymous with the "Iowa Department of Revenue"; the word "director" is the "Director of Revenue"; the word "division" is the "Income Tax Division, Iowa Department of Revenue"; the word "tax" is the "corporation income tax"; and the word "return" is the "corporation income tax return".

The administration of the corporation income tax is a responsibility of the income tax division created by the director. This division is charged with the administration of the corporation income tax, subject always to the rules, regulations and direction of the director.

51.1(2) The term "corporation" as used in divisions II and III of chapter 422 of the Code and in these regulations includes not only corporations which have been created or organized under the laws of Iowa, but also those which are qualified to do, or are doing business in Iowa, in a corporate or organized capacity, by virtue of creation or organization under the laws of the United States or some state, territory or district or of a foreign country. The term "corporation" is not limited to the artificial entity usually known as a corporation, but includes also an association, a trust classed as an association because of its nature or its activities, a joint stock company, and certain kinds of partnerships. Any association or organization which is required to report as a corporation, for federal income tax purposes under the Internal Revenue Code, as amended, shall be considered to be a corporation for the purposes of Iowa income tax on corporations.

51.1(3) The term "association" is not used in the law in any narrow or technical sense. It includes any organization created for the

transaction of designated affairs, or the attainment of some object, which like a corporation continues notwithstanding that its members or participants change, and the affairs of which, like corporate affairs, are conducted by a single individual, a committee, a board, or some other group, acting in a representative capacity. It is immaterial whether such organization is created by an agreement, a declaration of trust, a statute, or otherwise. It includes a voluntary association, a joint stock association or company, a business trust, a Massachusetts trust, a common law trust, a partnership association, and any other type of organization, by whatever name known, which is not, within the meaning of the law, a trust or an estate, or a partnership. An investment trust of the type commonly known as a management trust is an association, and a trust of the type commonly known as a fixed investment trust, is an association if there is power under the trust agreement to vary the investment of the certificate holders. If the conduct of the affairs of a corporation continues after the expiration of its charter, or the termination of its existence, it becomes an association.

51.2(422) Statutes of limitation.

51.2(1) *Periods of audit.*

a. The department has three years after a return has been filed to determine whether any additional tax other than that shown on the return is due and owing. This three-year statute of limitation does not apply in the instances specified in subsections *"b," "c," "d," "e"* and *"f"*.

b. If a taxpayer fails to include in his return such items of gross income as defined in the Internal Revenue Code of 1954, as amended, as will under that Code extend the statute of limitations for federal tax purposes to six years, the correct amount of tax due may be determined by the department within six years from the time the return is filed.

c. If a taxpayer files a false or fraudulent return with intent to evade tax, the correct amount of tax due may be determined by the department at any time after the return has been filed.

d. If a taxpayer fails to file a return, the statutes of limitation so specified in section 422.25 of the Code do not begin to run until the return is filed with the department.

e. While the burden of proof of additional tax owing under the six-year period or the unlimited period is upon the department, a prima facie case of omission of income, or of making a false or fraudulent return, shall be made upon a showing of a federal audit of the same income, a determination by federal authorities that the taxpayer omitted items of gross income or made a false or fraudulent return, and the payment by the taxpayer of the amount claimed by the federal government to be the correct tax or the admission by the taxpayer to the federal government of liability for that amount.

f. The department is allowed six months after notification by the taxpayer of the final disposition of any matter between the taxpayer and the Internal Revenue Service with respect to any particular tax year to make an examination and determination.

The notification shall be in writing, and attached thereto shall be a copy of the revenue agent's report and any schedules necessary to explain the federal adjustments.

When a taxpayer's income or loss is included in a consolidated federal corporation income tax return, notification shall include a schedule of adjustments to the taxpayer's income, a copy of the revenue agent's tax computation, a schedule of revised foreign tax credit on a separate company basis if applicable, and a schedule of consolidating income statements after federal adjustments.

51.2(2) *Waiver of statute of limitation.* If the taxpayer files with the department a request to waive the period of limitation, the limit of time for audit of the taxpayer's return will thereby be extended for a designated period. An approved request carries a limitation of thirty-six months interest from the due date that the return was required to be filed up to and including the expiration of the waiver agreement.

In the event that an assessed deficiency or overpayment is not paid within the waiver period, interest accrues from the date of expiration of the waiver agreement to the date of payment.

51.3(422) Cancellation of authority to do business. If a corporation required by section 422.40 of the Code to file any report or return (including returns of information at source) or to pay any tax or fee, fails to do so within ninety days after the time prescribed

for making such returns or payment, the director may certify such fact to the secretary of state, who shall thereupon cancel the articles of incorporation or certificate of authority (as the case may be) of such corporation, and the rights to such corporation to carry on business in the state of Iowa as a corporation shall thereupon cease. The statute provides for a penalty of not less than one hundred dollars, nor more than one thousand dollars for any person or persons who continues to exercise or attempt to exercise any powers, privileges, or franchises granted under articles of incorporation or certificate of authority after cancellation of the same.

51.4(422) Authority for deductions. Whether and to what extent deductions shall be allowed depends upon legislative grace, and only where there is a clear provision can any particular deduction be allowed. Therefore, a deduction will be allowed only if the taxpayer can establish to the satisfaction of the department the validity and correctness of such deduction.

51.5(422) Jeopardy assessments.

51.5(1) A jeopardy assessment may be made in a case where a return has been filed, and the director believes for any reason that collection of the tax will be jeopardized by delay; or in a case where a taxpayer fails to file a return, whether or not formally called upon to do so, in which case the department is authorized to estimate the income of the taxpayer upon the basis of available information, and to add penalty and interest.

51.5(2) A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

51.6(422) Information confidential. Sections 422.20 and 422.72 apply generally to the director, deputies, auditors, agents, officers or other employees of the department. Disclosure of information from a taxpayer's filed return or report to a third person is prohibited under the above sections. Other persons or entities having acquired information disclosed in a taxpayer's filed return or report, will be bound by the same rules of secrecy under these sections as any member of the department and will be subject to the same penalties for violations as provided by law.

51.7(422) Power of attorney. No attorney, accountant or other representative shall be recognized as representing any taxpayer in regard to any claim, appeal or other matter relating to the tax liability of such taxpayer in any hearing before or conference with the department, or any member or agent thereof, unless there is first filed with the department a written authorization or unless it appears to the satisfaction of the department or member or agent thereof, that the attorney, accountant or other representative does in fact have authority to represent the taxpayer.

51.8(422) Delegation of authority to audit and examine. Pursuant to statutory authority the director delegates to the director of the income tax division the power to examine returns and make audits; and to determine the correct amount of tax due, subject to review by or appeal to the director. The power so delegated may further be delegated by the director of the income tax division to such auditors, agents, clerks, and employees of the income tax division as he or she shall designate.

These rules are intended to implement chapter 422 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 898 to 925, relating to income tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 52

FILING RETURNS, PAYMENT OF TAX AND PENALTY AND INTEREST

52.1(422) Who must file. Every corporation, organized under the laws of Iowa or

qualified to do business within this state or doing business within Iowa, regardless of net income, shall file a true and accurate return of its income or loss for the taxable period. The return shall be signed by the president or other duly authorized officer. If the corporation was inactive or not doing business within Iowa, although qualified to do so, during the taxable year, the return must contain a statement to that effect.

52.1(1) *Definition—doing business.* The term *"doing business"* is used in a comprehensive sense and includes all activities or any transactions for the purpose of financial or pecuniary gain or profit. Irrespective of the nature of its activities, every corporation organized for profit and carrying out any of the purposes of its organization shall be deemed to be "doing business". In determining whether a corporation is doing business, it is immaterial whether its activities actually result in a profit or loss.

Whether a foreign corporation is doing business in Iowa is determined by the facts in each case. Consideration is given to such factors as:

a. The nature and extent of the activities of the corporation in Iowa;

b. The location of its offices and other places of business;

c. The continuity, frequency and regularity of the activities of the corporation in Iowa;

d. The employment in Iowa of agents, officers and employees;

e. The location of the actual seat of management for control of the corporation;

f. The maintenance of a stock of goods in Iowa from which deliveries to customers are made.

The above listing of factors is not to be considered as all inclusive.

Public Law 86-272, 15 U.S.C.A., sections 381-385, in general, prohibits any state from imposing an income tax on income derived within the state from interstate commerce if the only business activity within the state consists of the solicitation of orders of tangible personal property by or on behalf of a corporation by its employees or representatives. Such orders must be sent outside the state for approval or rejection and if approved, must be filled by shipment or delivery from a point outside the state to be within the purview of Public Law 86-272.

Activities in Iowa of a type not within the purview of Public Law 86-272 include but are not limited to: Maintenance of a sales office, warehouse, inventory, repair shop, parts department, purchasing office, employment office, meeting place for directors, ownership of television films, ownership or rental of real or tangible personal property.

Other activities which may result in the loss of immunity under Public Law 86-272, depending on the facts in each case, include such activities as pick up of damaged or returned merchandise, execution of contracts, approval of credit, collection of accounts, supervision of personnel, installation of products, inspection of products installed, handling of complaints, approval of orders, conducting of training courses or lectures, investigation or appointment of agents or distributors, repossession of company's products, securing of deposits on sales, providing of engineering functions, etc.

52.1(2) *Taxation of subchapter "S" corporations, domestic international sales corporations and real estate investment trusts.* Certain corporations and other types of entities, which are taxable as corporations for federal purposes, may by federal election and qualification have a portion or all of their income taxable to the shareholders or the beneficiaries. Generally, the state of Iowa follows the federal provisions (with adjustments provided by Iowa law) for determining the amount and to whom the income is taxable. Examples of entities which may avail themselves of pass-through provisions for taxation of at least part of their net income are real estate investment trusts, small business corporations electing to file under sections 1371-1378 of the Internal Revenue Code, Domestic International Sales Corporations as authorized under sections 991-997 of the Internal Revenue Code, and certain types of co-operatives and regulated investment companies. The entity's portion of the net income which is taxable as corporation net income for federal purposes is generally also taxable as Iowa corporation income (with adjustments as provided by Iowa law) and the shareholders or beneficiaries will report on their Iowa

returns their share of the organization's income reportable for federal purposes as shareholder income (with adjustments provided by Iowa law). Nonresident shareholders or beneficiaries are required to report their distributive share of said income reasonably attributable to Iowa sources. Schedules shall be filed with the individual's return showing the computation of the income attributable to Iowa sources and the computation of the nonresident taxpayer's distributive share thereof. Entities with a nonresident beneficiary or shareholder shall include a schedule in the return computing the amount of income as determined under chapter 54 of the rules. It will be the responsibility of the entity to make the apportionment of the income and supply the nonresident taxpayer with information regarding his Iowa taxable income.

52.1(3) *Exempted corporations and organizations filing requirements.*

a. Any organization claiming exemption from taxation pursuant to section 422.34 must file an affidavit with the director of the income tax division in such form and manner as may be prescribed by the director of the income tax division containing such information as is necessary to enable him or her to determine the exempt status of the organization. Affidavits made on the basis of a calendar year shall be filed on or before the thirtieth day of April following the close of the calendar year and affidavits made on the basis of a fiscal year shall be filed on or before the last day of the fourth month following the close of the fiscal year.

b. Affidavit deemed a return. The affidavits, when accompanied by the supporting data called for thereon, shall be deemed to constitute a corporation income tax return.

c. Amended return required. If the exemption is denied or revoked by the director of the income tax division then an amended return on an Iowa corporation income tax return form within such time as the director of the income tax division may specify shall be required to be filed and any tax shown to be due shall be paid together with interest thereon from the original due date of a return as prescribed in section 422.21 through the month in which tax and interest is paid.

d. Information returns. Every corporation shall file returns of information as provided by sections 422.15 and 422.16 of the Code, and any regulations regarding the filing of information returns.

52.1(4) *Income tax of corporations in liquidation.* When a corporation is in the process of liquidation, or in the hands of a receiver, the income tax returns must be made under oath or affirmation of the persons responsible for the conduct of the affairs of such corporations, and must be filed at the same time and in the same manner as required of other corporations.

52.1(5) *Income tax returns for corporations dissolved.* Corporations which have been dissolved during the income year must file income tax returns for the period prior to dissolution which has not already been covered by previous returns. Officers and directors are responsible for the filing of the returns and for the payment of taxes, if any, for the audit period provided by law.

Where a corporation dissolves and disposes of its assets without making provision for the payment of its accrued Iowa income tax, liability for the tax follows the assets so distributed and upon failure to secure the unpaid amount, suit to collect the tax may be instituted against the stockholders and other persons receiving the property, to the extent of the property received, except bona fide purchasers or others as provided by law.

52.2(422) Time and place for filing return.

52.2(1) *Returns of corporations.* A return of income for all corporations must be filed on or before the due date. The due date for all corporations excepting co-operative associations as defined in section 6072(d) of the Internal Revenue Code, is the last day of the fourth month following the close of the taxpayer's taxable year, whether the return be made on the basis of the calendar year or the fiscal year; or the last day of the period covered by an extension of time granted by the director. When the due date falls on a Saturday, Sunday or a legal holiday, the return will be due the first business day following such Saturday, Sunday or legal holiday. If a return is placed in the mails, properly addressed and postage paid in ample time to reach the income tax division on or before the due date for filing, no penalty will attach should the return not be received

until after that date. Mailed returns should be addressed to Corporate Income Tax Processing, Lucas State Office Building, Des Moines, Iowa 50319.

52.2(2) *Returns of co-operatives.* A return of income for co-operatives, defined in section 6072(d) of the Internal Revenue Code, must be filed on or before the fifteenth day of the ninth month following the close of the taxpayer's taxable year.

52.2(3) *Extension of time for filing returns.* The taxpayer must render on or before the due date a return as nearly complete and final as it is possible for him to prepare. However, when good cause exists because of sickness, unavoidable absence, or other legitimate reasons, the director is authorized to grant an extension of time in which to file such return, provided the taxpayer files the appropriate form as prescribed by the director. A copy of an approved federal extension attached to the Iowa return will not be acceptable in lieu of an Iowa extension.

An extension of time will not normally be granted for more than three months, except in instances where a completed federal return has not yet been filed and the additional time is necessary to file a complete Iowa return. The application for an extension must be made prior to the due date of the return, or before the expiration of an extension previously granted. As a condition to granting an extension of time, the director may require that a tentative return be filed and that the full estimated tax shown due on that return be paid.

If the time for filing is extended, interest as provided by law, from the date the return originally was required to be filed to the date of actual payment of the tax is to be computed on the unpaid tax. When filing an application for extension of time, subrule 52.4(2) shall apply regarding payment of taxes.

52.3(422) Form for filing.

52.3(1) *Use and completeness of prescribed forms.* Returns shall be made by corporations on forms supplied by the department. Taxpayers not supplied with the proper forms shall make application for same to the department in ample time to have their returns made, verified and filed on or before the due date. Each taxpayer shall carefully prepare his return so as to fully and clearly set forth the data required. For lack of a prescribed form, a statement made by a taxpayer disclosing his gross income and the deductions therefrom may be accepted as a tentative return, and if verified and filed within the prescribed time, will relieve the taxpayer from liability to penalties, provided that without unnecessary delay such a tentative return is replaced by a return made on the proper form. Each question shall be answered and each direction complied within the same manner as if the forms and instructions were embodied in these rules.

Failure to receive the proper forms does not relieve the taxpayer from the obligation of making any return required by the statute.

52.3(2) *Form for filing—domestic corporations.* A domestic corporation, as defined by subsection 422.32(2), is required to file a complete Iowa return for each year of its existence regardless of whether the corporation has income, loss, or inactivity. However, the corporation may substitute a copy of the true and accurate federal income tax return as filed with the Internal Revenue Service in lieu of certain Iowa return schedules. This substitution is optional, but in all instances a detailed computation of the federal tax liability actually due the federal government shall be required as a part of the Iowa return. The Iowa schedules subject to the substitution provision are: income statement, balance sheet, reconciliation of income per books with income per return, and analysis of unappropriated retained earnings per books.

When a domestic corporation is included in the filing of a consolidated federal income tax return, the Iowa corporation income tax return shall include a schedule of the consolidating income statements as properly computed for federal income tax purposes showing the income and expenses of each member of the consolidated group, and a schedule of capital gains on a separate basis.

If a domestic corporation claims a foreign tax credit, investment credit, or work incentive credit on its federal income tax return, a detailed computation of the credits claimed shall be included with the Iowa return upon filing. In those instances where the domestic corporation is involved in the filing of a consolidated federal income tax return, the credit computations shall be reported on a separate entity basis.

Similarly, where a domestic corporation is charged with a holding company tax, minimum tax, or tax from recomputing a prior year's investment credit, the details of the taxes levied shall be put forth in a schedule to be included with the Iowa return. Furthermore, these taxes shall be identified on a separate company basis where the domestic corporation files as a member of a consolidated group for federal purposes.

52.3(3) *Form for filing—foreign corporations.* Foreign corporations as defined by subsection 422.32(3) must include a true and accurate copy of their federal corporation income tax return as filed with the Internal Revenue Service with the filing of their Iowa return. At a minimum this includes the following federal schedules: income statement, balance sheet, reconciliation of income per books with income per return, analysis of unappropriated retained earnings per books, dividend income and special deductions, cost of goods sold, capital gains, tax computation and tax deposits, investment credit computation and recapture, work incentive credit computation, foreign tax credit computation, minimum tax computation, and statements detailing other income and other deductions.

When a foreign corporation whose income is included in a consolidated federal income tax return files an Iowa return, federal consolidating income statements as properly computed for federal income tax purposes showing the income and expenses of each member of the consolidated group shall be required together with the following additional schedules on a separate basis:

a. Capital gains.

b. Investment credit computation.

c. Investment credit recapture.

d. Work incentive credit computation.

e. Foreign tax credit computation.

f. Holding company tax computation.

g. Minimum tax computation.

h. Schedules detailing other income and other deductions.

52.3(4) *Amended returns.* If it becomes known to the taxpayer that the amount of income reported to be federal net income or Iowa taxable income, was erroneously stated on the Iowa return, or changed by Internal Revenue Service audit, or otherwise, the taxpayer shall file an amended Iowa return along with supporting schedules, to include the amended federal return and a copy of the federal revenue agent's report if applicable. A copy of the federal revenue agent's report will be acceptable in lieu of an amended return. The assessment or refund of tax shall be dependent on the statute of limitations as set forth in subrule 51.2(1) and rule 55.3.

52.4(422) Payment of tax.

52.4(1) *Quarterly estimated payments not applicable for corporations.* There is no provision in the Iowa corporation income tax law to allow corporations to make quarterly estimated payments of Iowa income tax to the department.

52.4(2) *Full estimated payment on original due date.* When an extension is requested as provided by section 422.21 the total amount of estimated tax must be paid on or before the due date for filing the return.

52.4(3) *Penalty and interest on unpaid tax.* In computing penalty and interest on unpaid tax, refer to subrules 52.5(1) and 52.5(2).

52.4(4) *Payment of tax by uncertified checks.* The income tax division will accept uncertified checks in payment of income taxes, provided such checks are collectible for their full amount without any deduction for exchange or other charges. The date on which the income tax division receives the check will be considered the date of payment, so far as the taxpayer is concerned, unless the check is dishonored. If one check is remitted to cover two or more corporations' taxes, the remittance must be accompanied by a letter of transmittal stating: (a) The name of the drawer of the check; (b) the amount of the check; (c) the amount of any cash, money order or other instrument included in the same remittance; (d) the name of each corporation whose tax is to be paid by the remittance; and (e) the amount of payment on account of each corporation.

52.4(5) *Procedure with respect to dishonored checks.* If any check is returned unpaid, all expenses incidental to the collection thereof will be charged to the taxpayer. If any taxpayer whose check has been returned by the depository bank uncollected should fail at once to make the check good, the director will proceed to collect the tax as

though no check had been given. A taxpayer who tenders a certified check in payment for taxes is not relieved from his obligation until the check has been paid.

52.5(422) Penalty and interest.

52.5(1) *Computation for tax periods beginning before July 1, 1974.* The filing of the return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed.

Although section 422.25 refers to a penalty for failure to file a return or to pay the tax due, only one penalty will be added. The rate of the penalty shall be five percent per month or fraction thereof, not to exceed twenty-five percent, even though there is a failure as to both requirements as in the case where a tax is assessed by the department for failure to file. Penalty is computed on the amount required to be shown as tax with the filing of the return. For purposes of computing the penalty in case of failure to file a return or failure to pay the tax required to be paid with the filing of the return, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then the penalty will continue to be assessed on any additional amounts of tax found to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be limited to the percentage which had accrued when the initial penalty was assessed and paid.

All payments shall be first applied to the penalty and then the interest, and the balance, if any, to the amount of tax then due, in the order specified. Penalty on any additional tax determined to be due shall not exceed twenty-five percent in the aggregate on such additional tax.

A return filed within the period of an extension granted will not be considered delinquent.

In addition to the penalty computed above there shall be added interest, as provided by law, from the original due date of the return.

Interest on erroneous refunds of any portion of the tax imposed by statute or any interest or penalty which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of such refund, considering each fraction of a month as an entire month.

52.5(2) *Computation for tax periods beginning after June 30, 1974.* The filing of the tax return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed.

Although section 422.25 of the Code refers to a penalty for failure to file a return or to pay the tax due, only one penalty will be added. The rate of penalty for failure to file shall be five percent per month or fraction thereof, not to exceed twenty-five percent in the aggregate. The rate of penalty for failure to pay the tax required to be paid with the filing of the return shall be five percent. If there is a failure with respect to both requirements as in the case where a tax is assessed by the department for failure to file and failure to pay, only the penalty for failure to file will be added. Penalty is computed on the amount required to be shown as tax with the filing of the return. For purposes of computing the penalty in case of failure to file a return or failure to pay the tax required to be paid with the filing of the return, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then the penalty shall continue to be assessed on any additional amounts of tax determined to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be limited to the percentage which had accrued when the initial penalty was assessed and paid.

All payments shall be first applied to the penalty and then the interest, and the balance, if any, to the amount of tax then due, in the order specified.

A return filed within the period of an extension granted will not be considered delinquent.

In addition to the penalty computed above there shall be added interest as provided by law from the original due date of the return. Interest on erroneous refunds of any portion of the tax imposed by statute or any interest or penalty which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of such refund, considering each fraction of a month as an entire month.

If the amount of tax for any year is reduced as a result of a net operating loss or net capital loss carryback from another year, interest shall accrue on the refund resulting from the loss carryback beginning at the close of the taxable year in which the net operating loss or net capital loss occurred or sixty days after payment of the tax, whichever is later. If the net operating loss or net capital loss carryback to a prior year eliminates or reduces an outstanding assessment or underpayment of tax for the prior year, the full amount of the outstanding assessment or underpayment shall bear interest at the statutory rate from the original due date of the tax for the prior year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

52.5(3) *Request for waiver of penalty.* Any taxpayer who believes he has good reason to object to any penalty imposed by the department for failure to timely file a return may submit a request for waiver seeking that the penalty be waived. If it can be shown to the director's satisfaction that the failure was due to reasonable cause and not due to willful neglect, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to file a return as required by law.

There must be two showings. The first is that the failure to act was not due to willful neglect, and secondly, the failure was due to reasonable cause. A showing that the failure to act was not due to "willful neglect" does not presume that the failure was due to "reasonable cause".

Any taxpayer who believes he has good reason to object to any penalty imposed by the department for failure to timely pay may submit a request for waiver seeking that the penalty be waived. If it can be shown to the director's satisfaction that the failure was due to reasonable cause, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to pay the tax as required by law.

The following are examples of situations that may be accepted by the director as being reasonable cause:

a. Where the return or payment was filed on time, but filed erroneously with the Internal Revenue Service or another state agency.

b. A showing that the completed return was mailed in time (whether or not the envelope bore sufficient postage) to reach the department in normal course of mails, within the legal period. If the due date is a Saturday, Sunday, or legal holiday, the following business day is within the legal period.

c. Where the delay was caused by death or serious illness of the officer responsible for filing.

d. Where the delay was caused by prolonged unavoidable absence of the officer responsible for filing.

e. Where the delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

f. A showing that the delay or failure was due to erroneous information given the taxpayer by an employee of the department.

g. A waiver of penalty will generally apply where a taxpayer has timely filed his return under the provisions of Internal Revenue regulation 1.1502 - 76(c).

A waiver of penalty for failure to pay any amount of any tax required to be shown on the return will generally apply to any additional taxes due except where the fifty percent penalty provisions are applicable, where the Internal Revenue Service has assessed a negligence penalty, or where the taxpayer has substantially understated his Iowa taxable income. Where the taxpayer fails to remit the tax due with the filing of the return on or before the due date, penalty will be imposed on the unpaid balance unless it can be shown that reasonable cause for such failure existed.

These rules are intended to implement chapter 422 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 898 to 925, relating to income tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 53

DETERMINATION OF NET INCOME

53.1(422) Computation of net income for corporations. Net income for state purposes shall mean federal taxable income, before deduction for net operating losses, as properly computed under the Internal Revenue Code of 1954, as amended, and shall include the adjustments in rules 53.2 to 53.11. The remaining provisions of this rule and rules 53.12 to 53.14 shall also be applicable in determining net income.

In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated income tax return for the taxable year for federal income tax purposes, but files a separate return for state purposes, taxable income as properly computed for federal purposes is determined as if such corporation had filed a separate return for federal income tax purposes for the taxable year and each preceding taxable year for which it was a member of an affiliated group. For purposes of this paragraph, the taxpayer's separate taxable income shall be determined as if the election provided by section 243(b)(2) of the Internal Revenue Code had been in effect for all such years.

When a federal short period return is filed and the federal taxable income is required to be adjusted to an annual basis, the Iowa taxable income shall also be adjusted to an annual basis. This adjustment shall apply only to income attributable to business carried on within the state of Iowa.

53.2(422) Net operating loss carrybacks and carryovers. In years beginning after December 31, 1954, net operating losses shall be allowed or allowable for Iowa corporation income tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes for the same period, provided the following adjustments are made:

53.2(1) *Additions to income.*

a. Refunds of federal income taxes due to net operating loss and investment credit carrybacks or carryovers shall be reflected in the following manner:

(1) Accrual basis taxpayers shall accrue refunds of federal income taxes to the year in which the net operating loss occurs.

(2) Cash basis taxpayers shall reflect refunds of federal income taxes in the return for the year in which the refunds are received.

b. Iowa income tax expensed on the federal return for the loss year shall be reflected as an addition to income in the year of the loss.

c. Interest and dividends received in the year of the loss on federally tax exempt securities shall be reflected as additions to income in the year of the loss.

53.2(2) *Reductions of income.*

a. Federal income tax paid or accrued during the year of the net operating loss shall be reflected to the extent allowed by law as an additional deduction in the year of the loss.

b. Iowa income tax refunds reported as income for federal return purposes in the loss year shall be reflected as reductions of income in the year of the loss.

c. Interest and dividends received from federal securities during the loss year shall be reflected in the year of the loss as a reduction of income.

53.2(3) If a corporation does business both within and without Iowa it shall make adjustments reflecting the apportionment and allocation of its operating loss on the basis of business done within and without the state of Iowa after completing the provisions of subrules 53.2(1) and 53.2(2).

a. After making the adjustments to federal taxable income as provided in subrules 53.2(1) and 53.2(2), the total net

allocable income or loss shall be added to or deducted from, as the case may be, the net federal income or loss as adjusted for Iowa tax purposes. The resulting income or loss so determined shall be subject to apportionment as provided in rules 54.5, 54.6 and 54.7. The apportioned income or loss shall be added or deducted, as the case may be, to the amount of net allocable income or loss properly attributable to Iowa. This amount is the taxable income or net operating loss attributable to Iowa for that year.

b. The net operating loss attributable to Iowa, as determined in rule 53.2, shall be subject to the federal three-year carryback and five-year carryover provisions. This loss shall be carried back or over to the applicable year as a reduction or part of a reduction of the net income attributable to Iowa for that year. However, an Iowa net operating loss shall not be carried back to a year in which the taxpayer was not doing business in Iowa.

53.2(4) No part of a net loss for a year for which the corporation was not subject to the imposition of Iowa corporation income tax shall be included in the Iowa net operating loss deduction applicable to any year prior to or subsequent to the year of the loss.

53.3(422) Capital loss carryback.

53.3(1) Capital losses shall be allowed or allowable for Iowa corporation income tax purposes to the same extent they are allowed or allowable for federal corporation income tax purposes. Capital loss carrybacks shall be treated as an adjustment to federal taxable income to arrive at net allocable and apportionable income.

a. For accrual basis taxpayers the federal income tax refund shall not be accrued to the loss year but rather treated as a reduction in federal income tax paid in the carryback year.

b. Cash basis taxpayers shall include the federal income tax refund in Iowa taxable income in the year received.

53.3(2) When the carryback year has both allocable and apportionable capital gains, the capital loss carryback shall be applied pro rata on a percentage basis of the specific gain to the total gains.

EXAMPLE: Assume a taxpayer has a 1973 capital loss carryback available of $2,000. The loss would be applied in the following manner:

1970 Total Capital Gain	1970 Allocable Gain	1970 Apportionable Gain
$16,000	$4,000	$12,000

Allocable gain -$ 4,000
Total capital gain - 16,000 = 1/4 or 25% of carryback to allocable gain

1970 allocable capital gain after application of loss carryback:

$4,000 less ($2,000 x 25%) = $3,500 net allocable capital gain.

53.4(422) Net operating and capital loss carrybacks and carryovers. If the taxpayer has both a net operating loss and a capital loss carryback to a prior tax year, the capital loss shall be carried back first and then the net operating loss offset against any remaining income.

53.5(422) Interest and dividends from federal securities. For corporate income tax purposes, the state is prohibited by federal law from taxing dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies and instrumentalities. Therefore if the federal taxable income of a corporation taxable by Iowa includes dividends or interest of this type an adjustment must be made on the Iowa return, deducting the amount of such dividend or interest.

Gains and losses from the sale or other disposition of federal securities, as distinguished from interest income, shall be taxable for state income tax purposes.

Interest received on federal tax refunds are taxable for Iowa income tax purposes.

53.6(422) Interest and dividends from foreign securities, and securities of state and other political subdivisions. Interest and dividends from foreign securities and from securities of state and their political subdivisions are to be included in Iowa taxable income. Certain types of interest and dividends, because of specific exemption, are not includable in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the item of income is specifically exempted from state taxation by the laws or constitution of Iowa or of the United States, it must be added to Iowa taxable income.

53.7(422) Gains and losses on property acquired before January 1, 1934. Where property was acquired prior to January 1, 1934, the basis as of January 1, 1934, for determining capital or other gains or losses is the higher of cost, adjusted for depreciation allowed or allowable to January 1, 1934, or fair market value as of that date.

If as a result of this provision a basis is to be used for purposes of Iowa corporation income tax which is different from the basis used for purposes of federal income tax, appropriate adjustment must be made and detailed schedules supplied in the computation of Iowa taxable income.

53.8(422) Capital gain occurring prior to 1955 tax year. As capital gains and losses were not included in taxable income and not subject to tax, for any tax year of a taxpayer prior to the tax year beginning in 1955 any capital gains and losses on transactions occurring in such prior tax years are not to be reflected in "taxable income" for Iowa income tax purposes even though under the method of accounting adopted by the taxpayer for federal income tax purposes a portion of the gain or loss is reflected in federal taxable income for years which begin in 1955 or thereafter. For example, if a corporation sells a building on a forty-year contract in 1952, and reports its profit on the installment basis for federal income tax purposes, its Iowa return for 1955 and subsequent tax years should be so adjusted as to exclude that gain in determining Iowa taxable income.

53.9(422) Installment sales made prior to 1955 tax year. Corporations engaged in the business of selling personal property which kept records on the installment basis and reported on such basis for federal tax purposes were required to report for Iowa corporation income tax purposes on the accrual basis for tax years beginning prior to January 1, 1955. To the extent that their returns for tax years beginning January 1, 1955, or thereafter reflect installment sales reported for Iowa income tax purposes on the accrual basis in those prior years, adjustments shall be made on the returns for those years beginning on or after January 1, 1955.

53.10(422) Federal income tax deduction. "Federal income taxes" shall mean those income taxes paid or payable to the United States Government and shall not include taxes paid or payable or taxes deemed to have been paid to a foreign country.

53.10(1) *Cash basis taxpayer.*

a. When a taxpayer is reporting on the cash basis, fifty percent of the amount of federal income taxes actually paid during the taxable period is allowable as a deduction, whether or not such taxes represent the preceding year's tax or additional taxes for prior years. Fifty percent of a federal tax refund shall be reported as income in the year received.

b. A corporation reporting on the cash basis may deduct fifty percent of the federal income tax on the accrual basis if an election is made upon filing the first return. If the corporation claims an accrual deduction on the first return, it shall be considered as an election. Once the election is made the corporation may change the basis of federal income tax deduction only with the permission of the director.

c. The federal income tax deduction on the return for the year for which an election or a change is permitted in subrule 53.10(1)"*b*" shall be limited to fifty percent of the actual federal income tax liability for that year, and the rules relative to an accrual basis taxpayer will apply to that return and to all subsequent returns.

53.10(2) *Accrual basis taxpayer.*

a. The amount of federal income tax to be allowed as a deduction for an accrual basis taxpayer is limited to fifty percent of the actual federal income tax liability for that year.

b. Additional federal income taxes and refunds of federal income taxes (except for

subrule 53.10(2)"*c*") shall be a part of the tax liability accrued for such prior years.

c. Refunds resulting from net operating loss carrybacks, investment credit carrybacks, unused excess profits tax credits, and similar items shall be included in income for Iowa corporation income tax purposes in the year in which such refunds are legally accrued.

53.10(3) *Hybrid basis taxpayers.* Taxpayers using a hybrid method authorized under the Internal Revenue Code section 446(c) and regulation 1.466-1(c)(1)(iv) shall for the purposes of this rule be considered as accrual basis taxpayers.

53.10(4) *Consolidated federal income tax allocation.*

a. When a corporation joins with at least one other corporation in the filing of a consolidated federal income tax return, the allowable deduction shall be fifty percent of the consolidated federal income tax liability allocable to that corporation. The allocation of the consolidated federal income tax shall be determined as follows: The net consolidated federal income tax liability is multiplied by a fraction, the numerator of which is the taxpayer's federal taxable income as computed on a separate basis, and the denominator of which is the total federal taxable incomes of each corporation included in the consolidated return. If the computation of the taxable income of a member results in an excess of deductions over gross income, such member's taxable income shall be zero.

b. If a corporation joins with at least one other corporation in the filing of a consolidated federal income tax return, the federal income tax deduction allowed the Iowa taxpayer shall not exceed fifty percent of the consolidated federal income tax liability.

53.11(422) Iowa income taxes. Iowa corporation income taxes paid or accrued during the tax year, as may be applicable under the method of filing, are permissible deductions for federal corporation income tax purposes, but are not for purposes of determining Iowa net taxable income. To the extent such taxes were deducted in the determination of federal taxable income, they shall be added to federal taxable income for Iowa corporation income tax purposes.

53.12(422) Method of accounting, accounting period. The return shall be computed on the same basis and for the same accounting period as the taxpayer's return for federal corporation income tax purposes. Permission to change accounting methods or accounting periods for corporation tax purposes is not required provided the taxpayer furnishes the department with a copy of the federal consent.

53.13(422) Consolidated returns. The fact that one or more corporations are owned or controlled by another or others, or that two or more corporations are owned or controlled by the same interests, does not of itself necessitate the disregarding of the corporate entities. Such corporations may be required, at the discretion of the director, to file a consolidated return in those cases where the department deems the filing of such a return necessary for a determination of the income properly attributable to this state. Corporations should not seek permission to file consolidated returns.

Generally speaking, corporations which carry on a nonunitary business or businesses wholly within the state are not required to file a consolidated return even though they are affiliated.

A "unitary business" is one where the business activities within Iowa are integrated with, dependent upon or contribute to the business activities outside the state. In such instances the income from Iowa business activities will be determined by the apportionment method. Whether the Iowa activities engaged in for a financial net profit actually result in a financial profit or loss is not determinative.

Factors which have been considered in determining whether a business is "unitary" include (1) unity of ownership; (2) unity of operations as evidenced by centralized purchasing, advertising, and management divisions; and (3) unity of use in its centralized executive force and general systems of operations.

A unitary business may be carried on by a single corporation (example: Butler Bros. v. McColgan, 17 Cal., 2d 664, 111 P. 2d 334 Aff'd, 315 U.S. 501) or by a group of affiliated corporations (example: Edison California Stores v. McColgan, 30 Cal. 2d 472, 183 P. 2d 16).

If a consolidated return is required for any taxable year, a consolidated return must be made for each subsequent taxable year unless the director grants permission to change or a consolidated return is precluded under the provisions of this rule. The director will not require the filing of consolidated returns on the mere fact that the affiliated group of corporations constitute a unitary business.

Supporting schedules shall be filed with the consolidated return. The statement of gross income and deductions and other schedules required for each corporation shall be prepared and filed in columnar form so that the details of the items of gross income, deductions, and credits for each member may be readily ascertained. A column shall also be provided giving effect to any eliminations and adjustments. The items included in the column for eliminations and adjustments should be symbolized to identify contra items affected, and suitable explanations appended, if necessary. Similar schedules shall contain in columnar form a reconciliation of surplus for each corporation, together with a reconciliation of consolidated surplus. Consolidated balance sheets at the beginning and close of the taxable year of the group shall accompany the consolidated return prepared in a form similar to that required for other schedules. Transactions with a subsidiary which is not included as part of the Iowa consolidated return shall not be considered as intercompany transactions for elimination purposes in computing the consolidated Iowa taxable income for the return period.

53.14(422) Federal rulings and regulations. In determining whether "taxable income", "net operating loss deduction" or any other deductions are computed for federal tax purposes under, or have the same meaning as provided by, the Internal Revenue Code of 1954, the department will use applicable rulings and regulations that have been duly promulgated by the Commissioner of Internal Revenue, unless the director has created rules and regulations or has exercised his discretionary powers as prescribed by statute which call for an alternative method for determining "taxable income", "net operating loss deduction", or any other deductions, or unless the department finds that an applicable Internal Revenue ruling or regulation is unauthorized according to the Iowa Code.

These rules are intended to implement chapter 422 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 898 to 925, relating to income tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 54

ALLOCATION AND APPORTIONMENT

54.1(422) Basis of corporate tax. Section 422.33 of the Code imposes a tax on all corporations incorporated under the laws of Iowa and upon every foreign corporation doing business in Iowa. For corporations, or other entities subject to the tax (as corporations), the tax is levied and collected only on such income as may accrue or be recognized to the corporation from business done or carried on in the state plus net income from certain sources without the state which by law follows the commercial domicile of the corporation.

If a corporation carries on its trade or business entirely within the state of Iowa, no allocation or apportionment of its income may be made. The corporation will be presumed to be carrying on its business entirely within the state of Iowa if its sales or other activities are carried on only in Iowa, even though it received income from sources outside the state in the form of interest, dividends, royalties and other sources of income from intangibles.

54.2(422) Allocation of interest, dividends, rents and royalties. Interest, dividends, rents and royalties (less related expenses) shall be allocated within and without the state in the following manner:

54.2(1) Interest and dividends not received in connection with or incidental to the taxpayer's trade or business operations are allocable to this state if the taxpayer's commercial domicile is in this state.

54.2(2) Interest income, finance charges, carrying charges or time-price differential charges incidental to gross receipts attributable to this state from sales to customers in this state, or with the financing of the customer to enable him to do business, shall be allocated to this state by means of the business activity formula prescribed in rule 54.5, unless it can be demonstrated that an alternative method of allocation more accurately depicts the receipt of such income within or without the state.

54.2(3) *Rents and royalties.*

a. Rents and royalties received from real property located in this state are allocable to this state.

b. Rents and royalties received from tangible personal property are allocable to this state:

(1) If and to the extent that the property is utilized in this state; or

(2) In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

c. The rental income from real and tangible personal property shall be allocated within and without Iowa in accordance with rule 54.5 where expenses related to the rental income cannot be determined or properly segregated with respect to those expenses related to other allocable or unitary apportionable income, unless it can be demonstrated that an alternative method of allocation more accurately depicts the receipt of such income within or without the state.

54.2(4) Patent and copyright royalties are business income where the patent or copyright with respect to which the royalties were received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the patent or copyright is incidental to such trade or business operations. Business patent or copyright royalty income shall be allocated by rule 54.5. Any other patent or copyright royalties shall be allocated to the taxpayer's commercial domicile.

54.3(422) Application of related expense to allocable interest, dividends, rents and royalties. Rule 54.2 deals with the separation of "net" income, therefore, determination and application of related expenses must be made, as hereinafter directed, before allocation and apportionment within and without Iowa.

The word "related" shall mean those expenses which are directly related and those indirectly related. A directly related expense shall mean an expense which can be specifically attributed to an item of income. Any expense directly attributable to allocable interest, dividends, rents and royalties shall be deducted from such income to arrive at net allocable income.

Where a corporation having invested money in assets producing interest, dividends, rents or royalties borrows money for other corporate purposes, the cost of such borrowing shall be deemed an expense indirectly related to the production of interest, dividends, rents and royalties and in essence represents opportunity costs of the assets producing the income. Other examples of expenses which are indirectly related to the production of interest, dividends and royalty income are officer's salaries and other general and administrative expenses.

All expenses of an indirect nature shall be prorated to allocable interest, dividends, rents and royalties on the basis that the

average net assets producing allocable income bear to the total average net assets, unless it can be demonstrated that an alternative method more properly reflects indirectly related expense.

EXAMPLE: The taxpayer during 1974 has an average investment of two hundred fifty thousand dollars in securities producing allocable interest income in the amount of twenty thousand dollars. The taxpayer also has an average investment of one million dollars in common stocks of corporations from which it received dividend income of forty thousand dollars. The total average net assets of the taxpayer for the year amounted to five million dollars. Indirect expense for the year totaled eighty thousand dollars. The share of indirect expense deemed related to allocable interest and dividend income is determined as follows:

Indirect expense deemed related to interest income:

$$\frac{\$250,000}{\$5,000,000} \times \$80,000 = \$4,000$$

Indirect expense deemed related to dividend income:

$$\frac{\$1,000,000}{\$5,000,000} \times \$80,000 = \$16,000$$

Schedules detailing expenses attributed to the production of income from interest, dividends, rents and royalties, separating the direct from the indirect expense, and the amount of each expense attributed to each item of income shall be attached to the Iowa return.

54.4(422) Net gains and losses from the sale of assets.

54.4(1) Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property, if the property while owned by the taxpayer was used in the taxpayer's trade or business, shall be apportioned as follows:

Corporations determining Iowa taxable income by a ratio of sales, gross receipts, or other business activity ratio, shall apportion gain or loss from the sale or exchange of assets used in the trade or business by the business activity ratio applicable to the year the gain or loss is determined.

Corporations having only assignable income shall allocate gain or loss from the sale or exchange of assets used in the trade or business in accordance with subrule 54.4(2).

54.4(2) Gain or loss from the sale, exchange or other disposition of property not used in the taxpayer's trade or business shall be allocated as follows:

a. Gains or losses from sales or real property located in this state are allocable to this state.

b. Capital gains and losses from sales of tangible personal property are allocable to this state if:

(1) The property had a situs in this state at the time of the sale; or

(2) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

c. Gains and losses from the sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

54.5(422) Where income is derived from the manufacture or sale of tangible personal property. The law specifically provides but one method for apportioning net income derived from the manufacture or sale of tangible personal property. The part of such income attributable to business within the state shall be that proportion which the gross sales made within the state bear to the total gross sales.

In determining the total net taxable income, the apportionable income attributable to this state, as determined by use of the apportionment fraction, shall be added to the nonapportionable income allocable to this state.

When a taxpayer is engaged in manufacturing and selling or purchasing and reselling goods or products "gross sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances. Federal and state excise taxes shall be included as part of such receipts if such taxes are passed on to the buyer or in-

cluded as part of the selling price of the product.

54.5(1) Sales of tangible personal property are in this state if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of the sales.

54.5(2) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

EXAMPLE: The taxpayer, with inventory in State A, sold one hundred thousand dollars of its products to a purchaser having branch stores in several states including this state. The order for the purchase was placed by the purchaser's central purchasing department located in State B. Twenty-five thousand dollars of the purchase order was shipped directly to purchaser's branch store in this state. The branch store in this state is the "purchaser within this state" with respect to twenty-five thousand dollars of the taxpayer's sales.

54.5(3) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

EXAMPLE: The taxpayer makes a sale to a purchaser who maintains a central warehouse in this state at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of the taxpayer's products shipped to a purchaser's warehouse in this state is property "delivered or shipped to a purchaser within this state".

54.5(4) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

EXAMPLE: A taxpayer in this state sold merchandise to a purchaser in State A. Taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in this state pursuant to purchaser's instructions. The sale by the taxpayer is in this state.

54.5(5) When property being shipped by a seller from the state or origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

EXAMPLE: The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While en route the produce is diverted to the purchaser's place of business in this state. The sale by the taxpayer is attributed to this state.

54.6(422) Apportionment of income derived from business other than the manufacture or sale of tangible personal property. Income derived from business other than the manufacture or sale of tangible personal property shall be attributed to Iowa in the proportion which the Iowa gross receipts bear to the total gross receipts. Gross receipts are attributable to this state in the proportion which the income-producing activity which gave rise to the receipts is performed within this state.

54.6(1) Gross receipts for the performance of services are attributable to this state to the extent such services of income-producing activities are performed in this state. If with respect to a specific contract or item of income the income-producing activity which gives rise to the receipts is performed wholly within Iowa, the gross receipts are attributed to this state. If the income-producing activity relating to the contract or items is performed partly within and partly without this state, such receipts shall be attributed to this state based upon the ratio which the time spent in performing such services in this state bears to the total time spent in performing such services on the contract everywhere. Time spent in negotiating the contract or obligation and activities performed on the corporation's behalf by an independent contractor are excluded from the computation.

EXAMPLE (i): The taxpayer, a road show corporation, gave theatrical performances at various locations in State X and in Iowa during the tax period. All gross receipts from performances given in Iowa are attributed to Iowa.

EXAMPLE (ii): The taxpayer, a public opinion survey corporation, conducted a poll by its employees in State X and in this state for the sum of ten thousand dollars. The project

required five hundred man hours to obtain the basic data and prepare the survey report. Two hundred of the five hundred man hours were expended in this state. The receipts attributable to this state are four thousand dollars computed as shown below:

$$\frac{200 \text{ man hours}}{500 \text{ man hours}} \times \$10{,}000 = \$4{,}000$$

54.6(2) If the business activity consists of providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commission, and similar items.

In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, gross receipts include the entire reimbursed cost, plus the fee.

54.6(3) Business income of a financial organization, excepting a financial institution exempted from the corporation income tax under section 422.34(1) of the Code, attributable to Iowa shall be:

a. In the case of taxable income of a taxpayer whose income-producing activities are confined solely to this state, the entire net income of such taxpayer.

b. In the case of taxable income of a taxpayer who conducts income-producing activities as a financial organization partially within and partially without this state, that portion of its net income as its gross business in this state is to its gross business everywhere during the period covered by its return, which portion shall be determined as the sum of:

(1) Fees, commission or other compensation for financial services rendered within this state;

(2) Gross profits from trading in stocks, bonds or other securities managed within this state;

(3) Interest income from a loan on real property located in this state. It will be presumed that interest on loans on personal property is assignable to the office making the loan. Other interest and income from service charges, fees, gains from the sale of assets and other miscellaneous earnings will be presumed assignable to the office charging for the services or earning the income.

(4) Interest charged to customers at places of business maintained within this state for carrying debit balances of margin accounts, without deduction of any costs incurred in carrying such accounts; and

(5) Any other gross income resulting from the operation as a financial organization within this state.

A *"financial organization"* means an association, joint stock company or corporation a substantial part of whose assets consist of intangible personal property and a substantial part of whose gross income consists of dividends or interest or other charges resulting from the use of money or credit.

54.6(4) A corporation's distributive share of net income or loss from a joint venture or partnership is subject to apportionment within and without the state. If the income of the partnership or joint venture is received in connection with the taxpayer's regular trade or business operations, the partnership income shall be apportioned within and without Iowa on the basis of the taxpayer's business activity ratio. In the absence of evidence to the contrary, it will be presumed that partnership or joint venture income received by a taxpayer is business income and therefore subject to apportionment.

54.6(5) Any other net income must be specifically allocated or equitably apportioned within and without Iowa on a basis which the taxpayer can substantiate to the satisfaction of the director, as fair and equitable.

54.7(422) Apportionment of income of transportation, communications, and certain public utilities corporations. Net income of these corporations, other than interest, dividends, rents and royalties, which is not specifically assigned by rules 54.2 and 54.6.

54.7(1) *Railroads.* Where net income is derived from railroad operations, the part thereof attributable to business within the state shall be that proportion which the trackage owned and operated within the state, bears to the total trackage owned and operated, as reported to the Interstate and Iowa State Commerce Commissions.

54.7(2) Air line, truck and bus line companies, freight car and equipment companies shall determine their Iowa proportion of gross receipts or gross revenues by taking the proportion of mileage traveled in Iowa to the

total mileage traveled within and without the state. This provision is applicable to corporations only.

54.7(3) Oil, gasoline, gas and other pipeline companies shall determine the proportion of transportation revenue derived from interstate business that is attributable to Iowa by the proportion of Iowa traffic units to total traffic units. The "traffic unit" of an oil pipeline is defined as the transportation of one barrel of oil for a distance of one mile; the "traffic unit" of a gasoline pipe line is defined to be the transportation of one barrel of gasoline for a distance of one mile; and a "traffic unit" of a gas pipeline is defined to be the transportation of one thousand cubic feet of natural or casinghead gas for a distance of one mile. Any other pipeline company will use the definition of the "traffic unit" which would most nearly describe the substance transported.

54.7(4) Telephone and telegraph companies shall determine the Iowa proportion of revenues by taking the proportion of gross revenues attributable to Iowa sources to the total company gross revenues.

54.8(422) Separate accounting. Any corporation deriving income from business operations partly within and partly without Iowa must determine the net business income attributable to this state by the prescribed formula for apportioning net income, unless the department determines upon application of the taxpayer, that the business is not unitary and that the actual amount of net income derived from business in Iowa is determinable by separate accounting.

A "unitary business" is one where the business activities within Iowa are integrated with, dependent upon or contribute to the business activities outside the state. In such instances the income from Iowa business activities will be determined by the apportionment method. Whether the Iowa activities engaged in for a financial net profit actually result in a financial profit or loss is not determinative.

Factors which have been considered in determining whether a business is "unitary" include (1) unity of ownership; (2) unity of operations as evidenced by centralized purchasing, advertising, and management divisions; (3) unity of use in its centralized executive force and general systems of operations; and (4) intra-company transfers of inventory or supplies (example: Butler Bros. v. McColgan, 17 Cal.,2d 664, 111 P. 2d 334 Aff'd, 315 U.S. 501).

If there is a material change in the business operations or accounting procedures from those in existence at the time the taxpayer was permitted to determine the net income within this state by separate accounting, the corporation shall apprise the department of such changes prior to filing its return for the current year. After reviewing the information submitted, the department will notify the taxpayer if separate accounting is deemed applicable.

In any case where use of the separate accounting method is requested by the taxpayer, the burden shall be upon the taxpayer to show that such method is appropriate and that the statutory apportionment method is not.

54.9(422) Allocation of income in special cases. If a taxpayer feels that the allocation and apportionment as prescribed by subsection 422.33(1), in his case results in an injustice, such taxpayer may petition the director for permission to determine the taxable net income, allocable and apportionable, to the state on some other basis. Such petition must be in writing and shall set forth in detail the facts upon which the petition is based. The burden of proof will be on the taxpayer as to the validity of the method and its results.

The taxpayer must first file his return as prescribed by subsection 422.33(1) and pay the tax shown due thereon. If a change to some other method is desired, a statement of objections and schedules detailing such alternative method shall be submitted to the director. The director shall require detail and proof within such time as he may reasonably prescribe. If the director concludes that the statutory method is in fact both inapplicable and inequitable, the director shall prescribe a special method. The use of an alternative method would only be applicable to the years under consideration at the time the special method is prescribed. The taxpayer's continued use of a prescribed method will be subject to change within the statutory, or legally extended period(s).

These rules are intended to implement chapter 422 of the Code.

[Effective December 12, 1974]

REVENUE DEPARTMENT

(continued)

Pursuant to the authority of sections 421.14 and 422.68(1) of the Code, the rules appearing in 1973 IDR, pages 898 to 925, relating to income tax are rescinded and the following adopted in lieu thereof.

[Filed December 12, 1974]

CHAPTER 55

ASSESSMENTS, REFUNDS, APPEALS

55.1(422) Notice of discrepancies.

55.1(1) *Notice of adjustment.* An agent, auditor, clerk or employee of the income tax division, designated by the director of the income tax division to examine returns and make audits, who discovers discrepancies in returns or learns that the income of the taxpayer may not have been listed, in whole or in part, or that no return was filed when one was due, is authorized to notify the taxpayer of his discovery by ordinary mail. Such notice shall not be termed an assessment. It may inform the taxpayer what amount would be due from him if the information discovered is correct.

55.1(2) *Right of taxpayer upon receipt of notice of adjustment.* A taxpayer who has received notice of an adjustment in connection with a return may pay the additional amount stated to be due. If payment is made, and the taxpayer wishes to contest the matter, he should then file claim for refund. However, payment will not be required until assessment has been made (although interest will continue to accrue if payment is not made). If no payment is made, the taxpayer may discuss with the agent, auditor, clerk or employee who notified him of the discrepancy, either in person or through correspondence, all matters of fact and law which he considers relevant to the situation. Documents and records supporting his position may be required.

55.1(3) *Power of agent, auditor, etc., to compromise tax claims.* No employee of the department has the power to compromise any tax claims. The power of the agent, auditor, clerk or employee who notified the taxpayer of the discrepancy is limited to the determination of the correct amount of the tax.

55.2(422) Notice of assessment. If after following the procedure outlined in subrule 55.1(2) no agreement is reached, and the taxpayer does not pay the amount determined to be correct, a notice of assessment shall be sent to the taxpayer by certified mail. If the period in which the correct amount of tax can be determined is nearly at an end, either a notice of assessment, without compliance with subrules 55.1(2) and 55.1(3), or a jeopardy assessment may be issued. All notices of assessment shall contain the signature of the director.

55.3(422) Refund of overpaid tax. The following are provisions for refunding or crediting to the taxpayer deposits or payments for tax in excess of amounts legally due.

55.3(1) A claim for refund of corporation income tax may be made on a form obtainable from the income tax division. Claims for refund should not be mailed in the same envelope or attached to the return. In the case of a claim filed by an agent of the taxpayer, a power of attorney must accompany the claim.

55.3(2) A corporate taxpayer shall not offset a refund or overpayment of tax for one year as a prior payment of tax of a subsequent year on the return of a subsequent year without authorization in writing by the department. The department may however apply an overpayment, or a refund otherwise due the taxpayer, to any tax due or to become due from the taxpayer.

55.3(3) When an overpayment of estimated tax is indicated on the face of the return, the overpayment will ordinarily be refunded to the taxpayer by the department without the filing of a formal claim for refund. If a refund of the indicated overpayment is not received within a reasonable period of time, a claim for refund may be filed by the taxpayer on an official form obtainable from the Iowa Department of Revenue, Corporation Audit Section, Lucas State Office Building, Des Moines, Iowa 50319.

55.3(4) The statutes of limitation with respect to which refunds or credit may be claimed are:

a. The later of -

(1) Five years after the due date of the payment upon which the refund or credit is claimed; or

(2) One year after which such payment was actually made.

b. Six months from the date of final disposition of any federal income tax controversy with respect to the particular tax year. The taxpayer, however, must have notified the department of such controversy within the specified five-year period.

These rules are intended to implement chapter 422 of the Code.

[Effective December 12, 1974]

SOCIAL SERVICES DEPARTMENT

Pursuant to the authority of section 239.18 of the Code, rules appearing in 1973 IDR, pages 1019 through 1022, as amended October 24, 1973, March 20, 1974, and July 1, 1974, relating to aid to dependent children (chapter 44) are amended as follows:

[Filed December 2, 1974]

ITEM 1. Rule 44.1 is amended by striking all of subrule 44.1(3).

ITEM 2. Subrule 44.1(2), line five, is amended by inserting after the word "Act" the words "or the applicant or recipient has elected to exclude an eligible child as specified under 44.1(4)".

ITEM 3. Subrule 44.1(4) is amended by adding paragraphs *"g," "h,"* and *"i."*

g. When a child is under the age of eighteen and not attending school, the payee shall have the choice of whether or not that child is included in the eligible group. When the child is not included, such child, his income, and resources, shall not be considered in determining aid to dependent children benefits for the rest of the family.

h. When a child is receiving child support payments from an absent parent, the payee shall have the choice of whether or not that child is included in the eligible group. When such child is not included in the eligible group he shall be treated in the same manner as specified in 44.1(4)*"b."*

i. When the payee does not wish a referral to the county attorney to be made, the payee shall have the choice of whether or not the child for whom the referral is to be made is included in the eligible group. When the child is not included, such child, his income, and resources, shall not be considered in determining aid to dependent children benefits for the rest of the family.

[Effective December 2, 1974]

SOCIAL SERVICES DEPARTMENT

(continued)

Pursuant to the authority of section 217.6 of the Code, rules appearing in 1973 IDR, pages 1022 through 1026 relating to fair hearings and appeals are amended as follows.

[Filed December 2, 1974]

ITEM 1. Rule 53.13 is amended by striking from line four the word "sixty" and inserting the word "ninety" in lieu thereof.

Further amend said rule by inserting in line five after the word "cases" the words "except appeals concerning the food stamp program which shall have a maximum of sixty days,".

ITEM 2. Rule 53.16 is amended by striking from line three the word "sixty" and inserting the word "ninety" in lieu thereof.

Further amend said rule by inserting in line three after the word "appeal" the words "except for appeals concerning the food stamp program which shall have a maximum of sixty days for final administrative action".

Further amend said rule by striking from line nine the words "sixty days" and inserting the words "maximum time for final administrative action" in lieu thereof.

[Effective December 2, 1974]

SOCIAL SERVICES DEPARTMENT

(continued)

Pursuant to the authority of section 249C.15 of the Code, rules appearing in 1973 IDR, pages 1026 and 1027, relating to work and training programs are amended as follows.

[Filed August 26, 1974]

Rule 58.4 is amended by striking from line seven the words "$44" and inserting the words "sixty dollars" in lieu thereof.

Further amend said rules by striking from line ten the words "twenty-five" and inserting the words "thirty" in lieu thereof.

Further amend said rule by striking from line ten the words "in training".

Further amend said rule by striking from line twelve the word "ten" and inserting the word "fifteen" in lieu thereof.

Further amend said rule by striking from line fourteen the words "$44" and inserting the words "$45" in lieu thereof.

[Effective August 26, 1974]

SOCIAL SERVICES DEPARTMENT

(continued)

Pursuant to the authority of the Acts of the Sixty-Fifth General Assembly, chapter 1162, the following rules related to Abuse of Children are adopted.

[Filed August 26, 1974]

TITLE IX

SOCIAL SERVICE RESOURCES

CHAPTER 81

ABUSE OF CHILDREN

81.1(235A) Definitions.

81.1(1) *Acts.* Whenever "acts" is used it shall mean anything done to produce physical injury of a child.

81.1(2) *Omissions.* Whenever "omissions" is used it shall mean something omitted which results in physical injury of a child and relates directly to injury resulting from indifference or carelessness.

81.2(235A) The central registry shall accept initial reports from mandated reporters and any other person believing a child has had physical injury inflicted upon him. Initial reports may also be made directly to the county department.

81.3(235A) Central registry records shall be kept in the name of the child and cross-referenced in the name of the parents, guardian, or other person responsible for the child's care.

81.4(235A) Reports by the central registry to the appropriate office of the department of social services or law enforcement agency shall include assessment of the nature and extent of previous injury sustained by the child named in the report or any other child in the same home. All other information shall be available to departmental employees designated to investigate the report.

81.5(235A) When a child must be removed from the home, information from the central registry shall be immediately available to the appropriate law enforcement agency directly from the central registry. Each law enforcement agency shall be assigned an identification number which shall be used in contact with the central registry.

81.6(235A) Examination of information contained in the central registry can be made at the site of the central registry between the hours of 8:00 a.m. and 12:00 p.m. or 1:00 p.m. and 4:00 p.m., Monday through Friday, excepting state authorized holidays.

The person, or that persons' attorney, requesting to examine the information in the registry which refers to that person, shall be allowed to inspect the information after providing appropriate identification.

[Effective August 26, 1974]

SOCIAL SERVICES DEPARTMENT

(continued)

Pursuant to the authority of Acts of the Sixty-fifth General Assembly, ch 1161, the following rules relating to Children's Boarding Homes are adopted.

[Filed September 4, 1974]

CHAPTER 114

PAYMENT FOR FOSTER CARE

114.6(234) Rate of payment. A monthly payment for foster family home care shall be made to the operator of the foster care facility based on the following schedule. For any year in which the legislature appropriates sufficient funds, the schedule shall be adjusted to reflect cost of living levels.

Age of child	Monthly rate
0 through 5	$100
6 through 11	$130
12 through 15	$160
16 through 20	$170

114.7(234) Specialized care.

114.7(1) When a child has a special need for care and supervision due to a handicapping condition of a physical, mental, emotional, social, or educational nature which requires activities on the part of the foster parent above and beyond those normally required in caring for a child, upon recommendation of the social worker, an additional amount may be authorized with the approval of the county director or social service administrator. Such amount shall be based on the severity of the child's handicap and the amount of extra effort required on the part of the foster parents.

Such additional payment may be in the amount of forty-five dollars per month for a mild handicap, requiring a moderate amount of extra effort by the foster parents, sixty-five dollars per month for a moderate handicap requiring a substantial amount of extra effort by the foster parents, or eighty-five dollars per month for a severe handicap requiring almost constant extra effort on the part of the foster parents.

114.7(2) When a child is receiving care in a licensed custodial or nursing home, and is not eligible for supplemental security income or state supplementary assistance, the department will pay for such care in accordance with departmental standards for such care.

114.8(234) Clothing allowance. When in the judgment of the worker clothing is needed at the initial placement of a child in foster care, an allowance may be authorized, not to exceed seventy-five dollars, to purchase such clothing.

114.9(234) Public and private agency group care. The payment rate for licensed or approved public or private agency group care shall be the agency's unit cost as determined by the department's accounting and reporting procedure for purchase of service contracts. The department will retain the option to utilize such facilities based upon the needs of children, programs available, and comparability of costs.

114.10(234) Emergency care. When emergency care is approved by the department, such payment shall be the same as for regular foster care. Emergency care shall not exceed thirty days. Homes that maintain beds for emergency care shall receive a subsidy of fifty dollars per month per bed. No emergency care home shall be approved for more than five beds under subsidy.

114.11(234) When a child under the legal custody or guardianship of the department is living in an independent living situation, an amount not to exceed the rate which would be paid for the child in a foster family home, may be paid to the child or another payee, other than a department employee, for the child's care.

114.12(234) When the amount paid for a child in foster care prior to July 1, 1974 is higher than the rates set forth in these rules, such higher amount may be paid until the child's placement in that home is terminated.

[Effective September 4, 1974]