



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

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

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

WAYNE A. FAUPEL, Code Editor
PHYLLIS BARRY, Deputy Code Editor
LAVERNE SWANSON, Administrative Code Assistant

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<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
7	Friday, September 10, 1982	September 29, 1982
8	Friday, September 24, 1982	October 13, 1982
9	Friday, October 8, 1982	October 27, 1982

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Iowa Administrative Bulletin

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Iowa Administrative Code

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

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
CITY FINANCE COMMITTEE[230] Budget amendments and fund transfers, ch 2 IAB 8/18/82 ARC 3122	Nebraska Room Stouffer's Five Seasons Hotel 350 1st Ave., N.E. Cedar Rapids, Iowa	September 15, 1982 1:00 p.m.
COMMERCE COMMISSION[250] Electric utilities peak load 20.11 IAB 9/1/82 ARC 3181	Commission Hearing Room First Floor Lucas State Office Bldg. Des Moines, Iowa	September 29, 1982 10:00 a.m.
CONSERVATION COMMISSION[290] Cost-sharing, wildlife habitat project, 23.4, 23.10 IAB 9/1/82 ARC 3159	Auditorium Wallace State Office Bldg. Des Moines, Iowa	October 8, 1982 10:00 a.m.
Certification, native prairie and wildlife habitat, ch 25 IAB 9/1/82 ARC 3160	Auditorium Wallace State Office Bldg. Des Moines, Iowa	October 8, 1982 10:00 a.m.
Zoning and watercraft use, 30.61 IAB 9/1/82 ARC 3161	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 22, 1982 10:00 a.m.
Fishing regulations, 108.2 IAB 9/1/82 ARC 3162	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	September 21, 1982 10:00 a.m.
EMPLOYMENT SECURITY[370] Claims and benefits, ch 4 amendments IAB 8/18/82 ARC 3144	Job Service Office 1000 E. Grand Ave. Des Moines, Iowa	September 15, 1982 9:30 a.m.
Federal Social Security, ch 9 amendments IAB 8/18/82 ARC 3146	Job Service Office 1000 E. Grand Ave. Des Moines, Iowa	September 15, 1982 9:30 a.m.
Forms, 10.9 IAB 8/18/82 ARC 3147	Job Service Office 1000 E. Grand Ave. Des Moines, Iowa	September 15, 1982 9:30 a.m.
IPERS, ch 8 amendments IAB 9/1/82 ARC 3163	Job Service Office 1000 E. Grand Ave. Des Moines, Iowa	September 22, 1982 9:30 a.m.
ENVIRONMENTAL QUALITY DEPARTMENT[400] Reuse of solid waste, ch 39 IAB 9/15/82 ARC 3211	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 5, 1982 10:00 a.m.
HOUSING FINANCE AUTHORITY[495] General revenue bond procedures, ch 4 Small business loan program, ch 5 IAB 9/15/82 ARC 3207	Housing Finance Authority Suite 550 Liberty Building Des Moines, Iowa	October 6, 1982 1:30 p.m.
NURSING, BOARD OF[590] Advanced registered nurse practitioners, ch 7 IAB 9/1/82 ARC 3170	Auditorium Wallace State Office Bldg. Des Moines, Iowa	September 23, 1982 7:30 p.m.
PLANNING AND PROGRAMMING[630] Block grant nonentitlement program, ch 23 IAB 9/1/82 ARC 3186	Hearing Room No. 1 First Floor Lucas State Office Bldg. Des Moines, Iowa	October 14, 1982 7:00 p.m.

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Board Office
Second Floor
Conference Room
507 Tenth Street
Des Moines, Iowa

October 7, 1982
10:00 a.m.

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Board Office
Second Floor
Conference Room
507 Tenth Street
Des Moines, Iowa

October 7, 1982
10:00 a.m.

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Board Office
Second Floor
Conference Room
507 Tenth Street
Des Moines, Iowa

October 7, 1982
10:00 a.m.

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Board Office
Second Floor
Conference Room
507 Tenth Street
Des Moines, Iowa

October 7, 1982
10:00 a.m.

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Blackhawk County
Social Services Office
KWWL Building
2nd Floor Conference Room
Waterloo, Iowa

September 22, 1982
10:00 a.m.

Purchase of service, ch 145
IAB 9/1/82 ARC 3168

Sioux City District Office
Second Floor Conference Room
808-5th Street
Sioux City, Iowa

September 23, 1982
1:00 p.m.

Highway Patrol Building
Highway 18 West
Spencer, Iowa

September 24, 1982
1:00 p.m.

Ottumwa Public Library
129 North Court
Ottumwa, Iowa

September 22, 1982
10:00 a.m.

Southeastern Community College
Mobile Unit 8
Gear Avenue
West Burlington, Iowa

September 23, 1982
1:30 p.m.

Mason City District Office
1531 South Monroe
Mason City, Iowa

September 22, 1982
1:30 p.m.

Social Services Office
23 North Seventh Street
Fort Dodge, Iowa

September 23, 1982
1:30 p.m.

Des Moines District Office
Conference Room
3619½ Douglas
P.O. Box 1556
Des Moines, Iowa

September 23, 1982
1:30 p.m.

Scott County Bicentennial Building
428 Western Avenue
Fifth Floor Conference Room
Davenport, Iowa

September 23, 1982
10:30 a.m.

Conlin Building
1473 Central Avenue
Third Floor Conference Room
Dubuque, Iowa

September 24, 1982
10:30 a.m.

SOCIAL SERVICES DEPARTMENT[770] (cont'd)

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Interstate Power Company 219 West Water Street Decorah, Iowa	September 28, 1982 1:30 p.m.
Social Services District Office Annex Room 206 West Eighth Marshalltown, Iowa	September 23, 1982 2:00 p.m.
United Way Building 712 Third S.E. Cedar Rapids, Iowa	September 28, 1982 2:00 p.m.
St. Anthony's Hospital Education Room Carroll, Iowa	September 24, 1982 10:00 a.m.
First Federal Savings & Loan Bldg. 301 North Pine Creston, Iowa	September 23, 1982 12:00 noon
Fire Station Community Room 200 South Fourth Street Council Bluffs, Iowa	September 23, 1982 10:00 a.m.

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Department of Transportation Complex Ames, Iowa	September 28, 1982
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OMVUI and implied consent,
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IAB 6/23/82 ARC 2973

Department of Transportation Complex Ames, Iowa	November 30, 1982
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ARC 3218**BLIND, COMMISSION FOR[160]
NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 601B.6(8), the Iowa Commission for the Blind hereby gives Notice of Intended Action to amend Chapter 1, "General Organization and Administration," Iowa Administrative Code.

Amendments are proposed to the required rules describing the agency's organization to eliminate the stipulation that the commission's director serve as secretary to the commission board.

Any interested person may make written suggestions or comments on this proposed amendment prior to October 8, 1982. Written materials should be directed to the Interim Director, Iowa Commission for the Blind, Fourth and Keosauqua Way, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Interim Director at (800) 362-2587, (515) 283-2601 or at the commission's offices at Fourth and Keosauqua Way in Des Moines.

The following amendment is proposed:

Rule 160—1.3(601B) is amended at the first line of the second paragraph as follows:

The director of the commission ~~serves as secretary to the commission and~~ is responsible for the overall administration of the program.

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

ARC 3211**ENVIRONMENTAL QUALITY
DEPARTMENT[400]****ENVIRONMENTAL QUALITY COMMISSION
NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 455B.78, the Environmental Quality Commission hereby gives Notice of Intended Action to adopt rules creating a new Chapter 39 "Reuse of Solid Waste" to allow for the beneficial use of coal combustion residue.

Coal combustion residue is the material that results from the burning of coal, and includes bottom ash, fly ash and slag. By definition in Iowa Code section 455B.75 and Chapter 25 "Definitions", Iowa Administrative Code, coal

combustion residue is solid waste. Iowa Code section 455B.78 authorizes the Commission to promulgate rules for the proper disposition of solid waste.

Although most coal combustion residue generated in Iowa is disposed, it can be used for certain purposes without adverse impact on the environment and the public health. The rules proposed by the Commission would allow for those uses without a permit from the Department. Any use not provided for by these rules would require a permit. The Department is in the process of developing criteria for the issuance of such permits. In the meantime, the Commission believes it is desirable to provide by rule for those uses that pose no adverse impact. In the absence of these rules, persons wishing to use coal combustion residue for any purpose must either obtain a variance or a developmental permit from the Department.

Any interested person may make oral or written comments on these proposed rules at a hearing that has been scheduled for October 5, 1982, at 10:00 a.m. in the fifth floor conference room of the Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa. Any interested person may also submit written comments through October 15, 1982, to the Executive Director, Iowa Department of Environmental Quality, Henry A. Wallace Building, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code section 455B.78.

The following rules are proposed:

**CHAPTER 39
REUSE OF SOLID WASTE**

400—39.1(455B) Scope. This chapter establishes the conditions under which certain solid wastes may be reused. Solid waste which is not reused in accordance with this chapter must be disposed, processed, composted, recycled or land applied in conformance with chapters 26 to 33 of these rules.

400—39.2(455B) Definitions. For the purposes of this chapter, the following terms shall have the meaning indicated in this rule.

39.2(1) "Coal combustion residue" means any solid waste produced by the burning of coal, either by itself or in conjunction with natural gas or other fossil fuels. It includes, but is not limited to, bottom ash, fly ash, and slag generated by coal combustion equipment.

39.2(2) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

400—39.3(455B) Coal combustion residue.

39.3(1) General conditions for reuse.

a. Coal combustion residue shall not be stored or used in a manner that will significantly degrade ground or surface water, create a public health hazard or create a nuisance.

b. Coal combustion residue shall not be placed or stored on any wetland or in any water of the state.

39.3(2) Uses for which no permit is required. Coal combustion residue may be stored or used for the following purposes without a permit:

a. Raw material. As a raw material in cement or concrete, filler in asphalt or plastic, and any other similar use where the coal combustion residue is bound up in

ENVIRONMENTAL QUALITY DEPARTMENT[400] (cont'd)

cementitious material so that leaching and dusting do not occur. Used as a raw material does not include pre-treating coal combustion residue for the purpose of disposal.

b. Fill base. As a fill base for roads, parking lots, and any other similar use, not to exceed an average of one ton for each twenty-five square feet of area covered or an average thickness of twelve inches.

c. Mineral recovery. As a raw material to be used in mineral recovery.

d. Other uses. Any single use of 500 dry tons or less.

ARC 3203

HEALTH DEPARTMENT[470]

BOARD OF BARBER EXAMINERS

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code sections 147.10, 147.76, and 147.80, the Board of Barber Examiners gives Notice of Intended Action to amend Chapter 160 of the Iowa Administrative Code.

The proposed rules increase the fee for a license to practice barbering from fifty to seventy-five dollars. The proposed rules also provide a penalty fee for failure to renew a license to practice barbering within thirty-one days from the due date.

Any interested person may make written comments concerning the proposed rules not later than 4:30 p.m. October 7, 1982 directed to Keith Rankin, Executive Secretary, Board of Barber Examiners, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rules are intended to implement Iowa Code sections 147.10 and 147.80.

ITEM 1. Subrule 160.6(1) is amended to read as follows:

160.6(1) License to practice barbering issued on basis of an examination is ~~fifty~~ *seventy-five* dollars.

ITEM 2. Subrule 160.6(3) is amended to read as follows:

160.6(3) Renewal of a license to practice barbering for the biennial period is sixty dollars. *The penalty fee for failure to submit the renewal application and fee within thirty-one days following the date due is twenty-five dollars, which shall be paid in addition to the renewal fees.*

ARC 3202

HEALTH DEPARTMENT[470]

BOARD OF MORTUARY SCIENCE EXAMINERS

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code sections 147.86 and 258A.3, the Board of Mortuary Science Examiners gives Notice of Intended Action to amend the rules in the IAC relating to funeral directors (Chapter 147). The proposed rules clarify that the funeral director shall sign the mandatory disclosure statement and define funeral services.

Consideration will be given to written comments concerning the proposed rules received by Peter J. Fox, Hearing Officer, State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319 not later than 4:30 p.m. October 6, 1982.

These rules are intended to implement Iowa Code sections 156.1(3)"b" and 258A.3.

ITEM 1. Rule 470—147.7(17A) is amended to read as follows:

470—147.7(17A) Mandatory disclosure. Each funeral director shall give or cause to be given to the person or persons making funeral arrangements or arranging for the disposition of a dead human body, at the time such arrangements are completed and prior to the time of rendering the service or providing the merchandise, a written statement *signed by the funeral director* showing:

ITEM 2. Rule 470—147.200(258A) is amended by adding the following new subrule:

147.200(3) "Funeral services" means any services which may be used to care for and prepare deceased human bodies for burial, cremation or other final disposition; and arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

ARC 3207

HOUSING FINANCE
AUTHORITY[495]

NOTICE OF INTENDED ACTION — HEARING

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

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

Pursuant to the authority of Iowa Code section 220.5, subsection 15, the Iowa Housing Finance Authority hereby gives Notice of Intended Action to amend 495 IAC by adding new chapters 4 and 5. New chapter 4 contains general revenue bond procedures and chapter 5 contains the small business loan program. The substance of these rules is also being submitted as emergency adopted rules

HOUSING FINANCE AUTHORITY[495] (cont'd)

ARC 3206, published in the Iowa Administrative Bulletin on September 15, 1982.

The purpose of this notice is to solicit public comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written suggestions or comments on these proposed rules prior to October 13, 1982. Such written materials should be directed to the General Counsel, Iowa Housing Finance Authority, 550 Liberty Building, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the General Counsel, George Cosson, at 515/281-4058 or in the office of the authority at Suite 550, Liberty Building. There also will be a public hearing on Wednesday, October 6, 1982, at 1:30 p.m. in the authority's offices at suite 550 Liberty Building. Persons may present their views at this public hearing either orally or in writing. The public hearing will be concluded at 2:30 p.m. or whenever all persons wishing to convey their views have finished, whichever is later.

hold a public hearing concerning the adoption of these proposed rules on Thursday, October 7, 1982 at 10:00 a.m. in the Public Employment Relations Board, 2nd Floor Conference Room, 507 Tenth Street, Des Moines, Iowa 50309. Any interested persons may present their views on the adoption of these proposed rules at the public hearing, either orally or in writing.

These rules are intended to implement Iowa Code chapter 20.

ITEM 1. Rule 660—2.13(20) is amended to read as follows:

660—2.13(20) Form of documents. All documents, other than forms provided by the board, which relate to any proceeding before the board should be typewritten on legal size paper and bear the docket number of the proceeding to which it relates. Such documents may be single or double spaced at the option of the submitting party.

ITEM 2. Subrule 2.15(1), paragraph "d" is amended to read as follows:

d. Upon the state of Iowa, or board, commission, council, office or agency thereof, by serving the governor or the individual designated by the governor to receive such service, the name and address of the latter to be registered with the board director, office of employment relations.

ARC 3220

**PUBLIC EMPLOYMENT
RELATIONS BOARD[660]
NOTICE OF INTENDED ACTION**

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

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

Pursuant to authority granted by Iowa Code section 20.6(5), the Public Employment Relations Board hereby gives Notice of Intended Action to amend Chapter 2, "General Practice and Hearing Procedures," Iowa Administrative Code.

Rule 660—2.13(20) is amended to eliminate the requirement that documents be filed on legal size paper.

Subrule 2.15(1), paragraph "d" is amended to clarify that the director, office of employment relations, may be served with documents required to be served on the state of Iowa or a board, commission, council, office or agency thereof.

Any interested person may submit written data, views or arguments concerning the adoption of these proposed rules. Such written materials should be directed to the Chairperson, Iowa Public Employment Relations Board, 507 Tenth Street, Des Moines, Iowa 50309, and must be received prior to 4:30 p.m. on Thursday, October 7, 1982. In addition, the Public Employment Relations Board will

ARC 3221

**PUBLIC EMPLOYMENT
RELATIONS BOARD[660]
NOTICE OF INTENDED ACTION**

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

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

Pursuant to authority granted by Iowa Code section 20.6(5), the Public Employment Relations Board hereby gives Notice of Intended Action to amend Chapter 5, "Elections," Iowa Administrative Code.

Subrule 5.4(1) is rescinded. A new subrule 5.4(1) is substituted. The new subrule includes new paragraphs "b" and "g" which explain the procedures to be followed, respectively, in a representation election in which the only employee organization on the ballot does not receive a majority, and in a decertification election in which a majority of employees cast their votes in the negative. Certain other paragraphs of former subrule 5.4(1) are relettered.

PUBLIC EMPLOYMENT RELATIONS BOARD[660] (cont'd)

Any interested person may submit written data, views or arguments concerning the adoption of these proposed rules. Such written materials should be directed to the Chairperson, Iowa Public Employment Relations Board, 507 Tenth Street, Des Moines, Iowa 50309, and must be received prior to 4:30 p.m. on Thursday, October 7, 1982. In addition, the Public Employment Relations Board will hold a public hearing concerning the adoption of these proposed rules on Thursday, October 7, 1982 at 10:00 a.m. in the Public Employment Relations Board, 2nd Floor Conference Room, 507 Tenth street, Des Moines, Iowa 50309. Any interested persons may present their views on the adoption of these proposed rules at the public hearing, either orally or in writing.

This rule is intended to implement Iowa Code chapter 20.

Subrule 5.4(1) is rescinded, and the following new subrule 5.4(1) is substituted:

5.4(1) Certification of results.

a. Upon completion of a valid election in which an employee organization received the votes of a majority of those employees voting, the board shall certify that employee organization as the exclusive bargaining representative of the employees in the bargaining unit.

b. Upon completion of a valid election in which only one employee organization appeared on the ballot and that employee organization did not receive the votes of a majority of those voting, the board shall serve notice of noncertification.

c. Upon completion of a valid election in which more than one employee organization appeared on the ballot and no choice on the ballot received the votes of a majority of those employees voting, the board shall conduct a runoff election between the two choices receiving the greatest number of votes. If the runoff election is held less than thirty days after the original election, those eligible to vote shall be those who were eligible to vote in the original election and are still employed in the bargaining unit on the day of the runoff election. If the runoff election is held more than thirty days after the original election, the board may direct the employer to submit a new eligibility list based upon a revised voter eligibility date.

d. Upon completion of a valid election, as provided for in paragraph "c" above, the board shall certify as the exclusive bargaining representative the employee organization receiving the votes of a majority of those employees voting; if no employee organization on the runoff ballot receives a majority of the votes of those employees voting, the board shall serve notice of noncertification.

e. If an employee organization fails to comply with the provisions of Iowa Code section 20.25 within ninety days of the completion of a valid election, the board shall serve notice of noncertification; provided, however, that extensions of time to comply may be granted by the board upon good cause shown.

f. Upon completion of a valid decertification election, in which a majority of employees voting cast their ballots in the affirmative, the board shall serve notice of decertification.

g. Upon completion of a valid decertification election, in which a majority of employees voting cast their ballots in the negative, the board shall serve notice of continued certification.

ARC 3222

**PUBLIC EMPLOYMENT
RELATIONS BOARD[660]
NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority granted by Iowa Code section 20.6(5), the Public Employment Relations Board hereby gives Notice of Intended Action to amend Chapter 6, "Negotiations and Negotiability Disputes," Iowa Administrative Code.

Rule 660—6.4(20) is amended to make clear that a public employer and an employee organization may mutually agree in writing to alter the time limits contained in that rule.

Any interested person may submit written data, views or arguments concerning the adoption of this proposed rules. Such written material should be directed to the Chairperson, Iowa Public Employment Relations Board, 507 Tenth Street, Des Moines, Iowa 50309, and must be received prior to 4:30 p.m. on Thursday, October 7, 1982. In addition, the Public Employment Relations Board will hold a public hearing concerning the adoption of these proposed rules on Thursday, October 7, 1982 at 10:00 a.m. in the Public Employment Relations Board, 2nd Floor Conference Room, 507 Tenth Street, Des Moines, Iowa 50309. Any interested persons may present their views on the adoption of this proposed rule at the public hearing, either orally or in writing.

This rule is intended to implement Iowa Code chapter 20.

Rule 660—6.4(20) is amended to read as follows:

660—6.4(20) Acceptance of proposed agreement. Where the parties have reached a proposed (or "tentative") collective bargaining agreement, the terms of that agreement shall be made public, and the employee organization shall give reasonable notice of the date, time and place of a ratification election on the tentative agreement to the public employees; provided, however, that such notice shall be at least twenty-four hours prior to the election and the election shall be within seven days of the date of the tentative agreement. The vote shall be by secret ballot and only members of the employee organization shall be entitled to vote; provided, however, that the employee organization may, pursuant to its internal procedures, extend voting rights to nonmember bargaining unit employees. The employee organization shall within twenty-four hours notify the public employer whether the proposed agreement has been ratified.

The public employer shall, within ten days of the tentative agreement, likewise meet to accept or reject the agreement, and shall within twenty-four hours serve notice on the employee organization of its acceptance or rejection of the proposed agreement; provided, however, that the public employer shall not be required to either accept or reject the tentative agreement if it has been rejected by the employee organization.

PUBLIC EMPLOYMENT RELATIONS BOARD[660] (cont'd)

The above time limits shall not apply to proposed agreements between the state and any bargaining unit of state employees. *The above time limits may be modified by a written mutual agreement between the public employer and the employee organization.*

ARC 3223

PUBLIC EMPLOYMENT
RELATIONS BOARD[660]

NOTICE OF INTENDED ACTION

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

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

Pursuant to authority granted by Iowa Code section 20.6(5), the Public Employment Relations Board hereby gives Notice of Intended Action to amend Chapter 7, "Impasse Procedures," Iowa Administrative Code.

Rule 660—7.2(20) is amended to raise its limitation on fees of neutrals to three hundred dollars per day of service, plus necessary expenses incurred.

Any interested person may submit written data, views or arguments concerning the adoption of the proposed rule. Such written material should be directed to the Chairperson, Iowa Public Employment Relations Board, 507 Tenth Street, Des Moines, Iowa 50309, and must be received prior to 4:30 p.m. on Thursday, October 7, 1982. In addition, the Public Employment Relations Board will hold a public hearing concerning the adoption of the proposed rule on Thursday, October 7, 1982 at 10:00 a.m. in the Public Employment Relations Board, 2nd Floor Conference Room, 507 Tenth Street, Des Moines, Iowa 50309. Any interested persons may present their views on the adoption of the proposed rule at the public hearing, either orally or in writing.

The rule is intended to implement Iowa Code chapter 20.

Rule 660—7.2(20) is amended to read as follows:

660—7.2(20) Fees of neutrals. Qualified fact-finders, arbitrators and teacher termination adjudicators appointed from a list maintained by the board may be compensated by a sum not to exceed ~~two hundred fifty~~ *three hundred* dollars per day of service, plus their necessary expenses incurred.

ARC 3214

REVENUE DEPARTMENT[730]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 39 "Filing Returns and Payment of Tax," Iowa Administrative Code.

The Internal Revenue Service has changed its automatic extension of time for filing individual income tax returns from two months to four months. Iowa has adopted similar extension provisions as the Internal Revenue Service and this rule change would incorporate a four month automatic extension for Iowa individual income tax purposes also.

In order that taxpayers may not request an automatic extension for four months to delay payment of tax, the proposed rule would require the balance of the estimated tax due not already covered by withholding or estimate payments to be paid with the extension request. This rule change would provide consistency with the corporation income tax extension request which requires that any estimated tax liability be paid with the extension request before an extension is approved. Again, this would make Iowa's extension procedures consistent with the federal extension requests which also require payments.

Any interested person may make written suggestions or comments on these proposed rules prior to October 15, 1982. Such written materials should be directed to the Director, Income Tax Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Director, Income Tax Division at 515/281-3254 or in the income tax offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 8, 1982.

These rules are intended to implement Iowa Code chapter 422.

The following amendments are proposed.

ITEM 1. Amend subrule 39.2(2) to read as follows:

39.2(2) Extension of time for filing returns. The taxpayer must render on or before the due date a return which is 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.

REVENUE DEPARTMENT[730] (cont'd)

Form IA 4868 (Application for Automatic Extension of Time to File Iowa Individual Income Tax Return) shall be used to request an initial ~~two~~ *four*-month extension of time for filing. Only one copy of form IA 4868 need be filed on or before the due date of the return. If the taxpayer wishes acknowledgment of receipt by the department of form IA 4868, two copies and a self-addressed envelope shall be filed with the department.

Form IA 2688 (Application for Extension of Time to File Iowa Individual Income Tax Return) shall be used to request an additional extension of time to file. Form IA 2688 must be submitted in sufficient time to enable the department to consider and to act on the application before the expiration of the previous extension of time to file.

A copy of the timely filed automatic extension request and any other Iowa approved extensions must be attached to the return at time of filing. A copy of an approved federal extension attached to the Iowa return will not be acceptable in lieu of an Iowa extension.

Extensions of time will not normally be granted for more than six months (~~two~~ *four* months for the automatic and ~~four~~ *two* months for the second extension), 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 will require that a tentative return be filed and that the full amount of estimated tax shown due on the 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. See rule 730—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. ~~A payment is not required when requesting an extension of time to file.~~

This rule is intended to implement *Iowa Code* section 422.21, ~~The Code.~~

ITEM 2. Amend rule 730—39.5(422) by inserting the following new subrule and renumber the remaining subrules accordingly:

39.5(3) 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.

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Iowa Department of Revenue hereby gives Notice of Intended Action to amend Chapter 39 "Filing Return and Payment of Tax," Chapter 40 "Determination of Net Income," Chapter 41 "Determination of Taxable Income," Chapter 43 "Assessments and Refunds," Chapter 52 "Filing Returns, Payment of Tax and Penalty and Interest," Chapter 53 "Determination of Net Income," Chapter 58 "Filing Returns, Payment of Tax, Penalty, and Interest, and Allocation of Tax Revenues," and Chapter 59 "Determination of Net Income," Iowa Administrative Code.

1982 Iowa Acts, House File 2171, House File 2474, Senate File 400, Senate File 2180, House File 396, House File 2486 and House File 2479 amended numerous sections of the Iowa Code relating to individual and corporation income tax and franchise tax. Specifically, these bills provided for the imposition of a minimum tax and a tax on lump sum distributions for individuals; a minimum tax for corporations and financial institutions; taxation of interest from all-savers certificates for Iowa purposes; a fifteen year carryforward of net operating losses for individuals, corporations and financial institutions; disallowance of the federal adoption expense deduction for Iowa tax purposes; disallowance of the federal deduction for two-earner married couples; a setoff of an individual's income tax refund against defaulted guaranteed student or parental loans; a designation of all or a portion of an individual's income tax refund to the Iowa Fish and Game Protection Fund; disallowance of federal deductions permitted under section 168(f)(8) of the Internal Revenue Code for safe-harbor lease transactions; and disallowance of the federal windfall profits tax deduction.

The present rules of the Department are either in conflict with those statutory mandates or do not presently reflect those statutory mandates. These rules are to bring the department's rules into compliance with the new statutes.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 15, 1982. Such written materials should be directed to the Director, Income Tax Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Director, Income Tax Division at 515/281-3254 or in the income tax offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 8, 1982.

These rules are intended to implement Iowa Code chapter 422, as amended by 1982 Iowa Acts, House Files 2171, 2474, 396, 2486 and 2479 and Senate Files 400 and 2180.

The following amendments are proposed:

ITEM 1. Subrule 39.5(7) is amended to read as follows:
39.5(7) Five thousand dollar exemption. Individuals whose net income, ~~including military income,~~ as computed under section 422.7, *plus the amount of a lump sum distribution for which the taxpayer has elected to be separately taxed for federal income tax purposes,* is five 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 five thousand dollars or less in order to qualify for the exemption.

ARC 3215

REVENUE DEPARTMENT[730]

NOTICE OF INTENDED ACTION

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

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

REVENUE DEPARTMENT[730] (cont'd)

b. An individual, claimed as a dependent on another person's return, with an income of at least three thousand dollars, but no more than five thousand dollars will be exempt from Iowa tax if:

(1) The person on whose return the dependent is claimed has a net income of five thousand dollars or less, or,

(2) The person on whose return the dependent is claimed and the person's spouse have a combined net income of five thousand dollars or less.

If the payment of tax would reduce the net income to less than five thousand dollars, the tax shall be reduced to that amount which would allow the taxpayer to retain a net income of five thousand dollars. For example: If a taxpayer's net income is five thousand twenty-five dollars, and the computed tax after personal exemption and out-of-state credit is forty-five dollars, the payment of forty-five dollars would reduce the net income below five thousand dollars; therefore, the amount of tax due is reduced to twenty-five dollars which enables the taxpayer to retain a net income of five thousand dollars.

This provision for reducing tax does not apply for the Iowa minimum tax.

This rule is intended to implement *Iowa Code* sections 422.5, 422.16, 422.17, 422.21, 422.24 and 422.25, *The Code and 1982 Iowa Acts, House File 2171, section 2 and Senate File 400.*

ITEM 2. Amend chapter 39 by adding the following new rules 39.6(422) and 39.7(422):

730—39.6(422) Minimum tax. For tax years beginning on or after January 1, 1982, an Iowa minimum tax is imposed in addition to the tax computed under Iowa Code section 422.5. The Iowa minimum tax on tax preference items is twenty-five percent of the state's apportioned share of the federal minimum tax(es) on tax preference items. For residents, the state's apportioned share of the federal minimum tax is one hundred percent. For part-year residents and nonresidents, see subrule 39.6(3). "Federal minimum tax" means the federal minimum tax(es) for tax preferences computed under sections 55 through 58 of the Internal Revenue Code of 1954 for the tax year.

39.6(1) Five thousand dollar exemption. The Iowa minimum tax is imposed without regard to the exemption from paying Iowa income tax under section 422.5 given to individuals whose net income as computed under section 422.7 is five thousand dollars or less. The Iowa minimum tax is not a payment of tax for purposes of the provisions of section 422.5 which limits the amount of tax on incomes slightly above \$5,000 to the amount the income exceeds \$5,000. The minimum tax may reduce the income to less than \$5,000.

39.6(2) Married filing separately. When a husband and wife file a joint federal return and elect to file separate Iowa income tax returns, the Iowa minimum tax shall be allocated between spouses in the ratio of the net income of each spouse to the total net income of both spouses, unless an alternative formula more accurately reflects the amount of Iowa minimum tax to be paid by each spouse.

39.6(3) Part-year residents and nonresidents. For part-year resident and nonresident taxpayers, the Iowa minimum tax is the federal minimum tax times twenty-five percent times the ratio of the net income allocable to Iowa under section 422.8 to the federal adjusted gross income, unless the taxpayer can show that an alternative

formula more accurately reflects the amount of minimum tax attributable to Iowa.

39.6(4) Penalty and interest. In computing penalty and interest for failing to file a timely return or to pay the minimum tax, refer to chapter 44 of the rules.

39.6(5) Personal exemption credits. Personal and dependent exemption credits may be applied against the separate minimum tax to the extent that the credits are not fully applied against the computed tax on income reported under Iowa Code section 422.7.

This rule is intended to implement 1982 Iowa Acts, House File 2171.

730—39.7(422) Tax on lump sum distributions. For tax years beginning on or after January 1, 1982, Iowa Code section 422.5 provides that in addition to the tax computed on the taxable income, a tax shall also be imposed on the amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal Revenue Code of 1954 to be separately taxed for federal income tax purposes for the tax year. The rate of this tax is twenty-five percent of the separate federal tax imposed on the amount of the lump sum distribution.

39.7(1) Five thousand dollar exemption. To be eligible for the five thousand dollar or less exemption as provided in Iowa Code section 422.5, the total amount of a lump sum distribution subject to the separate federal tax must be included in the net income. If this net income (including the lump sum distribution income) is less than \$5,000, then no tax (other than Iowa minimum tax) is due. The Iowa tax on lump sum distributions and the computed tax may be limited to the amount of income that exceeds \$5,000 (including the lump sum income). Example: If the net income including a lump sum distribution was \$5,030 and the computed tax and lump sum tax was \$50 after personal exemptions and out-of-state credit, the payment of \$50 tax would reduce the income below \$5,000; therefore the amount of tax due is reduced to \$30 which enables the taxpayer to retain a net income of \$5,000.

39.7(2) Nonresidents. A nonresident is liable for tax on a lump sum distribution or a portion of a lump sum distribution attributable to services performed within Iowa. If a distribution to a nonresident is attributable to services performed both within and outside Iowa, the tax must be allocated in the ratio of the income from services performed within Iowa to the total income from all services performed relating to the lump sum distribution unless it can be shown that another method of proration would result in a more equitable amount of tax on the distribution.

39.7(3) Penalty and interest. In computing penalty and interest for failing to file a timely return or to pay the lump sum tax, refer to chapter 44 of the rules.

39.7(4) Personal exemption credits. Personal and dependent exemption credits may be applied against the separate lump sum tax to the extent that the credits are not fully applied against the computed tax on income reported under Iowa Code section 422.7.

39.7(5) Out-of-state tax credit. When computing an out-of-state tax credit for a year in which tax on a lump sum distribution has been computed separately, the amount of the lump sum distribution on which the separate tax has been computed must be included on the Iowa gross income.

This rule is intended to implement 1982 Iowa Acts, Senate File 400.

REVENUE DEPARTMENT[730] (cont'd)

ITEM 3. Rule 730—40.6(422) is amended to read as follows:

730—40.6(422) Interest and dividends from foreign securities, and securities of state and other political subdivisions, and for tax years beginning on or after January 1, 1981 and before January 1, 1984, interest excluded from federal adjusted gross income under section 128 of the Internal Revenue Code of 1954. Interest and dividends from foreign securities, and from securities of state and their political subdivisions, and interest excluded from federal adjusted gross income under section 128 of the Internal Revenue Code of 1954, also known as "All-Savers Certificate" interest, 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.

This rule is intended to implement *Iowa Code* section 422.7, ~~The Code~~ and 1982 Iowa Acts, House File 2171, section 5.

ITEM 4. Rule 730—40.9(422) is amended by striking the entire rule and inserting in lieu thereof the following:

730—40.9(422) WIN, jobs tax credit, alcohol fuel credit. Where an individual claims the federal work incentive programs (WIN) credit under section 40 of the Internal Revenue Code, the jobs tax credit under section 44B of the Internal Revenue Code, or the alcohol fuel credit under section 44E of the Internal Revenue Code, the amount of credit allowable must be used to increase federal taxable income. The amount of credit allowable used to increase federal adjusted gross income is deductible in determining Iowa net income. The adjustment for the jobs tax credit is applicable for the tax years beginning on or after January 1, 1977. The adjustment for the WIN credit is applicable for the tax years beginning on or after January 1, 1979 through December 31, 1981. The adjustment for the alcohol fuel credit is applicable for tax years beginning on or after January 1, 1980.

This rule is intended to implement Iowa Code section 422.7.

ITEM 5. Rule 730—40.10(422) is amended by adding the following new subrule:

40.10(3) For tax years beginning on or after January 1, 1982, married taxpayers who file a joint federal income tax return but file separate returns or separately on a combined return for Iowa, may avail themselves of the dividend exclusion provisions of section 116(a) of the Internal Revenue Code of 1954 and shall compute the dividend exclusion subject to the limitations for joint federal income tax filers. Example: Husband has \$200 in dividends and wife has \$50 in dividends. For a joint federal return, the dividend exclusion is \$200. On separate Iowa returns, the wife may claim a \$50 exclusion and the husband may claim a \$150 exclusion.

This rule is intended to implement Iowa Code section 422.7, as amended by 1982 Iowa Acts, House File 2171, section 4.

ITEM 6. Chapter 40 is amended by adding the following new rule at 40.11(422) and renumbering the remaining rules accordingly:

730—40.11(422) Two-earner married couple deduction. A two-earner married couple may claim a deduction from federal taxable income under section 221 of the Internal Revenue Code for tax years beginning on or after January 1, 1982. The two-earner married couple deduction is not allowable for purposes of computing Iowa net income.

This rule is intended to implement 1982 Iowa Acts, House File 2171, section 6.

ITEM 7. Rule 730—40.14(422) first numbered paragraph is amended to read as follows:

1. Additional first-year depreciation or expensing of business assets. When a husband and wife elect to file separate Iowa income tax returns and file a joint federal return, the same amount of additional first-year depreciation or expensing of business assets claimed on the joint federal return shall be claimed on the Iowa returns subject to the provisions of allocation of income between spouses provided by subrules 40.14(1) through 40.14(4).

ITEM 8. Amend rule 730—40.14(422), implementation section as follows:

This rule is intended to implement *Iowa Code* section 422.7, ~~The Code~~, as amended by Acts of the Sixty-eighth General Assembly, chapter 1130 1982 Iowa Acts, House File 2171.

ITEM 9. Subrule 40.17(3) is amended to read as follows:

40.17(3) Loss carryback and carryforward. The net operating loss attributable to Iowa as determined in rule 40.17(422) shall be subject to the federal three-year carryback and seven fifteen-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 taxable 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. If the election under section 172(b)(3)(C) of the Internal Revenue Code of 1954 is made, the Iowa net operating loss shall be carried forward seven fifteen taxable years.

ITEM 10. Amend rule 730—40.17(422) implementation section as follows:

This rule is intended to implement *Iowa Code* sections 422.7 and 422.9(3)"c," ~~the Code~~, as amended by Acts of the Sixty-eighth General Assembly, chapter 1132 1982 Iowa Acts, House File 2171.

ITEM 11. Subrule 41.5(3) is amended to read as follows:

41.5(3) Adoption expense deduction.
a. Reduce federal itemized deductions by any amounts of adoption expenses allowed under section 222 of the Internal Revenue Code of 1954.

b. Unreimbursed amounts paid by the taxpayer in the adoption of a child if placed by a licensed agency under chapter 238, by an agency that meets the provision of the interstate compact in section 238.33 or by a person making an independent placement under chapter 600, which exceed three percent of the taxpayer's net income, or the combined net income of a husband and wife in the case of married taxpayers filing a joint return, will be allowed as a deduction in the year paid. Qualifying expenses include all medical, hospital, legal fees, welfare agency fees, and all other costs relating to the adoption of a child. Those expenses claimed for adoption purposes may not be claimed elsewhere on the individual income tax return. Adoption expenses paid or incurred prior to January 1, 1977, in connection with the adoption of a

REVENUE DEPARTMENT[730] (cont'd)

child, which exceeds three percent of the taxpayer's net income, will be allowed only if the child was placed by a licensed agency under chapter 238 or by an agency that meets the provisions of the interstate compact in Iowa Code section 238.33.

This rule is intended to implement *Iowa Code* section 422.9, *The Code and 1982 Iowa Acts, House File 2171, section 9*.

ITEM 12. Amend 730—43.3(422) by striking the existing rule in its entirety and inserting the following new rule: **730—43.3(422) Overpayments of 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) Child support setoff. When an overpayment is indicated on the face of the return, the overpayment will first be applied against any income tax or other tax liabilities owed by the taxpayer. Once all outstanding tax liabilities collectible by the department are satisfied, the balance of the overpayment or rebate shall be set off by the department to the extent of the taxpayer's debt due and owing for the care, support, and maintenance of a child, if the department has been properly notified by the department of social services pursuant to Iowa Code section 421.17, and rule 770—95.6 (421) of the Iowa Administrative Code.

Upon receipt of a list from the department of social services child support recovery unit of absent parents who are delinquent, the department of revenue shall notify the department of social services child support recovery unit of the amount of the refund or rebate and of the absent parent's address on the income tax return if the refund or rebate equals or exceeds fifty dollars.

Unless the department of social services is notified of a timely request by the absent parent or spouse of the absent parent to divide a joint refund or rebate, the department of revenue shall set off the above-mentioned debt against the absent parent's income tax refund or rebate if both the debt and the refund or rebate are at least fifty dollars and the department shall periodically transfer the amount set off to the child support recovery unit of the department of social services.

If the department of revenue is notified by the department of social services child support recovery unit of a timely request to divide a joint income tax refund or rebate resulting from a return using the filing status for married filing jointly, the refund will be divided based upon the adjusted gross income of each spouse to the total adjusted gross income as determined by Iowa Code section 422.7. If a timely request is received to divide a joint refund resulting from a return using the filing

status for married filing separately on a combined return, the refund will be divided as if separate returns had been filed. The refund of the absent parent will be set off while the refund of the absent parent's spouse will be refunded by the department of revenue.

43.3(4) College loan setoff. Once all outstanding tax liabilities collectible by the department are satisfied and any claim for child support received from the department of social services has been satisfied, the balance of an overpayment or rebate shall be set off by the department to be applied against an amount due because of default on a guaranteed student or parental loan made under Iowa Code chapter 261 if the department has been properly notified by the college aid commission pursuant to Iowa Code section 421.17.

Upon receipt of a list of defaulters from the college aid commission, the department of revenue shall notify the college aid commission of the amount of refund or rebate and the defaulter's address on the income tax return if the refund or rebate equals or exceeds fifty dollars.

Unless the college aid commission is notified by a timely request by the defaulter or the defaulter's spouse to divide a joint refund or rebate, the department of revenue shall set off the above-mentioned debt against the defaulter's income tax refund or rebate if both the debt and the refund or rebate are at least fifty dollars and the department shall periodically transfer the amount set off to the college aid commission.

If the department of revenue is notified by the college aid commission of a timely request to divide a joint refund resulting from a return using the filing status for married filing jointly, the refund will be divided based upon the net income of each spouse to the total net income as determined under Iowa Code section 422.7. If a timely request is received to divide a joint refund resulting from a return using the filing status for married filing separately on a combined return, the refund will be divided as if separate returns had been filed. The refund of the defaulter will be set off while the refund of the defaulter's spouse will be refunded by the department of revenue.

43.3(5) Overpayment credited to estimated tax. Any remaining balance of overpayment, at the election of the taxpayer, will be refunded to him or her or credited as a first payment of his or her declaration of estimated tax for the following year.

If an overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, such amount shall be considered as a payment of the income tax for the succeeding taxable year and no claim for credit or refund shall be allowed.

When a taxpayer elects to have an overpayment credited to estimated tax for the succeeding year, interest may properly be assessed on a deficiency of income tax for the year in which the overpayment arose. If a taxpayer elects to have all or part of an overpayment shown on the return applied to the estimated income tax for the succeeding taxable year, such election is binding to the taxpayer.

An overpayment of tax may be used to offset any outstanding tax liability owed by the taxpayer, but once an elected amount is credited as a payment of estimated tax for the succeeding year, it loses its character as an overpayment for the year in which it arose and thereafter cannot offset any subsequently determined tax liability.

43.3(6) Refunds—statute of limitations for years ending before January 1, 1979. The statute of limitations with respect to which refunds or credit may be claimed are:

REVENUE DEPARTMENT[730] (cont'd)

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.

43.3(7) Refunds—statute of limitations for tax years ending on or after January 1, 1979. The statute of limitations with respect to which refunds or credit may be claimed are:

a. The later of—

(1) Three 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 matter with respect to the particular tax year. The taxpayer, however, must have notified the department of such matter within six months after the specified three-year period, contained in paragraph "a" subparagraph (1) above. The term "matter" includes, but is not limited to, the execution of waivers and commencement of audits.

c. Three years after the date of the return for the year in which a net operating loss or capital loss occurs, which if carried back results in a reduction of tax in a prior period and an overpayment results.

This rule is intended to implement Iowa Code sections 422.16, 422.73, and 421.17, as amended by 1982 Iowa Acts, Senate File 2180.

ITEM 13. Chapter 43 is amended by adding the following new rule and renumbering the remaining rules accordingly:

730—43.4(422) Iowa fish and game protection fund. The taxpayer may designate a portion or all of the overpayment of tax indicated on the face of the return to be donated to the Iowa fish and game protection fund. The donation must be one dollar or more, and the designation must be made on the original return for the current year. The donation is allowed only after obligations of the taxpayer to the Iowa department of revenue, the child support recovery unit of the Iowa department of social services, and the college aid commission have been satisfied. The designation to the fund is irrevocable and cannot be made on an amended return. If the amount of refund as claimed on the original return is adjusted by the department, the amount of the designation to the fund may be adjusted accordingly.

Example A: Overpayment as shown on the original return is \$50. \$25 is designated to the fund. Due to an error on the return, only \$20 is an overpayment. The taxpayer would not receive any refund and all \$20 of the overpayment would be credited to the fund.

Example B: Overpayment as shown on the original return is \$50. \$25 is designated to the fund. Due to an error on the return, no overpayment occurred, but instead the taxpayer owes \$20. No money would be credited to the fund in this instance.

This rule is intended to implement 1982 Iowa Acts, House Files 396 and 2486.

ITEM 14. Amend chapter 52 by adding the following new rule and renumbering the remaining rules accordingly:

730—52.5(422) Minimum tax. Effective for tax years beginning on or after January 1, 1982, an Iowa minimum tax is imposed in addition to the tax computed under Iowa Code section 422.33. The Iowa minimum tax on tax preference items is twenty-five percent of the federal minimum tax on tax preference items. "Federal minimum tax" means the federal minimum tax for tax preferences computed under sections 55 through 58 of the Internal Revenue Code of 1954 for the tax year.

For a corporation conducting one hundred percent of its business within Iowa as defined in rule 54.1(422), the Iowa minimum tax is twenty-five percent of the federal minimum tax. For a corporation doing business both within and without Iowa, the state's portion of the federal minimum tax shall be determined based upon the apportionment provisions of rules 54.5(422) through 54.7(422) unless an alternative method more accurately reflects that portion of minimum tax attributable to Iowa.

In computing penalty and interest on unpaid minimum tax, refer to subrules 52.6(1) and 52.6(2).

This rule is intended to implement 1982 Iowa Acts, House File 2171, section 12.

ITEM 15. Subrule 53.2(3) paragraph "b" is amended to read as follows:

b. The net operating loss attributable to Iowa, as determined in rule 53.2(422), shall be subject to a three-year carryback and a ~~seven~~ *fifteen*-year carryover provision. 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. If the election under section 172(b)(3)(C) of the Internal Revenue Code of 1954 is made, the Iowa net operating loss shall be carried forward ~~seven~~ *fifteen* taxable years. A copy of the federal election made under section 172(b)(3)(C) of the Internal Revenue Code of 1954 must be attached to the Iowa corporation income tax return filed with the department.

ITEM 16. Amend rule **730—53.2(422)** implementation section as follows:

This rule is intended to implement *Iowa Code* section 422.35, ~~the Code~~, as amended by 1982 Iowa Acts, House File 2171.

ITEM 17. Amend chapter 53 by inserting the following new rules 53.7(422) and 53.8(422) and renumber the remaining rules accordingly:

730—53.7(422) Safe harbor leases. For tax years ending after January 1, 1981, deductions in determining federal taxable income taken as a result of the application of section 168(f)(8) of the Internal Revenue Code of 1954 shall be added in determining Iowa taxable income to the extent such deductions cannot be taken under provisions of sections 162, 163 and 167 of the Internal Revenue Code. The lessor shall add depreciation and interest expense. The lessee shall not be allowed a deduction for depreciation or rental expense because for federal tax purposes the lessor is considered to be the owner of the property and through adoption of the Internal Revenue Code of 1954 Iowa has also adopted the concept that the lessor is the owner of the property for Iowa tax purposes. Each lessor and lessee corporation shall include a copy of federal form 6793 in its Iowa corporation income tax return for the year in which a safe harbor lease is entered into.

REVENUE DEPARTMENT[730] (cont'd)

This rule is intended to implement Iowa Code section 422.35, as amended by 1982 Iowa Acts, House File 2171, section 15.

730—53.8(422). Windfall profits tax. For tax years beginning on or after January 1, 1981, add the amount of windfall profits tax deducted under section 164(a) of the Internal Revenue Code of 1954.

This rule is intended to implement Iowa Code section 422.35, as amended by 1982 Iowa Acts, House File 2479.

ITEM 18. Amend chapter 58 by inserting the following new rule and renumber the remaining rules accordingly:

730—58.5(422) Minimum tax. Effective for tax years beginning on or after January 1, 1982, an Iowa minimum tax is imposed in addition to the tax computed under Iowa Code section 422.60. The Iowa minimum tax on tax preference items is twenty-five percent of the federal minimum tax on tax preference items. "Federal minimum tax" means the federal minimum tax for tax preferences computed under sections 55 through 58 of the Internal Revenue Code of 1954 for the tax year.

In computing penalty and interest or unpaid minimum tax, refer to subrules 58.6(1) and 58.6(2).

This rule is intended to implement 1982 Iowa Acts, House File 2171, section 16.

ITEM 19. Subrule 59.2(3) is amended to read as follows:

59.2(3) The net operating loss attributable to Iowa, as determined in rule 59.2(422), shall be subject to a three-year carryback and a ~~seven~~ *fifteen*-year carryover provision. This loss shall be carried back or over to the applicable year as a reduction or a 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. If the election under section 172(b)(3)(C) of the Internal Revenue Code of 1954 is made, the Iowa net operating loss shall be carried forward ~~seven~~ *fifteen* taxable years. A copy of the federal election made under section 172(b)(3)(C) of the Internal Revenue Code of 1954 must be attached to the Iowa corporation income tax return filed with the department.

ITEM 20. Amend rule **730—59.2(422)** implementation section as follows:

This rule is intended to implement Iowa Code sections 422.35 and 422.61, as amended by 1982 Iowa Acts, House file 2171.

ITEM 21. Amend chapter 59 by inserting the following new rule and renumbering the remaining rules accordingly:

730—59.7(422) Safe harbor leases For tax years ending after January 1, 1981, deductions in determining federal taxable income taken as a result of the application of section 168(f)(8) of the Internal Revenue Code of 1954 shall be added in determining Iowa taxable income to the extent such deductions cannot be taken under provisions of sections 162, 163 and 167 of the Internal Revenue Code. The lessor shall add depreciation and interest expense. The lessee shall not be allowed a deduction for depreciation or rental expense because for federal tax purposes the lessor is considered to be the owner of the property and through adoption of the Internal Revenue Code of 1954 Iowa has also adopted the concept that the lessor is the owner of the property for Iowa tax purposes. Each lessor and lessee corporation shall include a copy of

federal form 6793 in its Iowa franchise tax return for the year in which a safe harbor lease is entered into.

This rule is intended to implement Iowa Code sections 422.35 and 422.61, as amended by 1982 Iowa Acts, House File 2171, section 15.

ARC 3216

REVENUE DEPARTMENT[730]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue hereby gives Notice of Intended Action to amend Chapter 82, "Cigarette Tax", Iowa Administrative Code.

Iowa Code section 98.39 specifically provides that free cigarettes must be in packages of four or less cigarettes and the tax must be remitted by an Iowa distributor. The rule further provides the requirements for using cigarettes as promotion items, and the method where noncigarette promotion items and coupons may be used.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 15, 1982. Such written comments should be directed to the Director, Excise Tax Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

Persons who want to orally convey their views should contact the Director, Excise Tax Division at (515) 281-5476 or at Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 8, 1982.

These rules are intended to implement Iowa Code section 98.39.

The following amendments are proposed:

ITEM 1. Amend 730—chapter 82 by inserting the following new rule:

730—82.10(98) Manufacturer's samples.

82.10(1) Iowa Code section 98.39 provides a method for manufacturers to distribute free sample packages of cigarettes or little cigars. This method is to be followed to the exclusion of all others. (See 1982 O.A.G. #710.)

The cigarettes or little cigars must:

- a. Be in packages of four or less,
- b. Be sent to a licensed distributor,
- c. Be distributed through the manufacturer's factory representative,
- d. Have tax paid thereon by a distributor,
- e. Be clearly marked "sample", and
- f. Contain acknowledgment of tax being paid on each carton containing free samples.

The manufacturer must notify the department by affidavit of shipment and the distributor must notify the

REVENUE DEPARTMENT[730] (cont'd)

department by affidavit of receipt and separately remit the tax. The tax must be computed on a per cigarette basis rather than a per package basis.

82.10(2). Remittance of tax and acknowledgment of payment. Iowa Code section 98.39 provides that the tax will be paid by a licensed distributor. The payment of tax should accompany the distributor's affidavit (form #70-033).

The department will stamp the distributor's affidavit containing the remittance and return a copy of the affidavit to the distributor as the acknowledgment that taxes have been paid on the samples. After receiving the acknowledgment, and before the sample cigarettes are distributed, each distributor is requested to stamp the cartons of free samples with a stamp containing the following information:

IOWA STATE TAX PAID

Distributor's name

License number

The term "carton" is considered to mean a carton containing 200 cigarettes, 50 packages of sample 4's.

The department will make every effort to return a copy of the distributor's remittance report on the same day it is received. In the event the distributor needs acknowledgment sooner, he or she may so request that the department acknowledge by telephone or telegraph and follow up with the affidavit acknowledgment at a later date.

In the event sample cigarettes must be returned to the manufacturer for some reason, a refund of the taxes previously paid will be made to the distributor who actually remitted the tax to the department. The refund will be made in the same manner as regular cigarettes by filing the appropriate forms with the excise tax division.

82.10(3) Promotions using cigarettes, noncigarettes or coupons. Promotional situations are specifically covered by Iowa Code section 551A.4. A promotional situation as described in section 551A.4 is valid provided it is a promotion scheme complying with the procedural requirements that it be a sale. A sale is defined to "mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution in any manner or by any means whatsoever."

Once a sale has occurred, the gift may be any kind whatsoever.

a. Promotion using cigarettes. If a manufacturer wants to run a promotion where two packs of cigarettes are sold for the price of one, the manufacturer could give the complimentary cigarettes to a distributor to be stamped who would then give them to a retailer who gives the cigarettes away with the purchase of another pack. Provided the distributor is reimbursed for his or her cost of the tax stamps, there is no violation of Iowa Code chapter 551A by anyone. The following example illustrates what a manufacturer can do.

Example. A manufacturer ships packs of twenty, free of charge, to a licensed distributor with instructions to stamp them and send them to retail outlets or deliver them to one of the manufacturer's employees. The manufacturer reimburses the distributor for the cost of stamping the cigarettes. The manufacturer sends or furnishes the retailers instructions and display materials for the retail distribution of the cigarettes. This method of distribution would be proper.

The cost provisions of 551A.4 would not prevent the distribution of cigarettes in this example, since 551A.4 is

silent with respect to below cost combination sales by manufacturers. The cost of the cigarettes which are sold is controlled by section 551A.2(8). The cigarettes sold under the "buy one" portion of the promotion will have a cost of the lower of the true invoice or the lowest replacement cost. The cigarettes sold under the "get one free" portion of the promotion and which were obtained free of charge will have no invoice cost to the retailer.

b. Promotions using noncigarette items. A manufacturer wants to give away promotional items with the purchase of cigarettes at the regular price. Since section 551A.4 is silent with respect to below cost combination sales by manufacturers, the practice of the manufacturer providing a gift item such as cigarette lighters through wholesale channels to retailers which will be delivered to the customer at the time of the sale of the cigarettes, does not violate chapter 551A. (See 1958 O.A.G. #22.)

c. Coupons. A manufacturer distributes coupons to the general public to allow the purchase of cigarettes at a reduced price. Provided it is the manufacturer who absorbs the entire cost of the reduction in price, there would be no violation of chapter 551A. Coupons which are sent to the final consumer to be redeemed by a retailer who is reimbursed by a manufacturer do not violate chapter 551A. (See 1968 O.A.G. #68.) This would be true even though the coupon represented the full price of the cigarettes.

d. Replacement packages. A manufacturer wants to respond to a customer complaint by replacing a package of twenty cigarettes purchased by the customer with another package of twenty cigarettes. The replacement package must be clearly marked with the following information:

IOWA STATE TAX PAID

Manufacturer's name

The manufacturer may pay the tax directly to the department by submitting an affidavit to the department containing the number of replacement packages sent into the state during the previous month, along with the remittance. The number of replacement packages and remittance may be submitted as part of the manufacturer's affidavit required under Iowa Code section 98.39 (manufacturer's samples).

This rule is intended to implement Iowa Code sections 98.1, 98.13, 98.16, 98.22, 98.31, 98.39 and chapter 551A.

ARC 3217**REVENUE DEPARTMENT[730]****AMENDED NOTICE OF INTENDED ACTION**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue hereby gives Notice of Intended Action to amend Chapter 91, "Administration," Chapter 92, "Amusement Concessions," and Chapter 94, "Qualified Organization," of the department's rules relating to games of skill, chance, bingo and raffles, Iowa Administrative Code.

An amended notice is filed to make additional amendments to the department's gambling rules which were

REVENUE DEPARTMENT[730] (cont'd)

published under notice on August 18, 1982, as ARC 3156. Specific items amended are rule 91.4(99B) and subrule 91.6(1).

Iowa Code section 99B.2(3) provides that each licensee must file a quarterly gambling report. The due date of the report is established by rule 91.4(99B). The amendment to rule 91.4(99B) defines a delinquent gambling report. If a report is never filed, it is mandatory that the license be revoked. The amendment to subrule 91.5(2) gives the department discretionary authority for revocation if the report is late. The rule is further amended to provide that revocation of a gambling license, due to a violation of Iowa Code chapter 123, will only occur if the revocation or suspension of a liquor license resulted from a conviction or guilty plea to a criminal violation of Iowa Code chapter 123, as opposed to a revocation or suspension of the liquor license through administrative procedures.

Iowa Code section 99B.1 describes a person eligible for a gambling license. One requirement of an eligible applicant is a good reputation. Department rules define a good reputation in part as a person who has had no more than one delinquent quarterly gambling report in the last year. This rule amendment describes what is meant by delinquent. The change further reflects the position that a person who has had a liquor license suspended in a prior twelve-month period or has had a liquor license revoked is not an eligible applicant for a gambling license if the suspension or revocation resulted from a conviction or guilty plea to a criminal violation of Iowa Code chapter 123, as opposed to a revocation or suspension through administrative proceedings.

Rule 92.8(99B) is amended to reflect 1982 Iowa Acts, Senate File 387, which amended Iowa Code section 99B.5 to allow the retail value of prizes to be fifty dollars instead of twenty-five dollars. The amendment also allows licensees to conduct one raffle per year where the prize cannot exceed ten thousand dollars. The bill deletes the amount (\$5.00) that can be charged to participants in a raffle conducted at a fair for a chance or ticket. Therefore, section 99B.5(1)"d" is controlling and a ticket or chance cannot exceed \$1.00 in price for any raffle.

Rule 94.8(99B) is amended to reflect 1982 Iowa Acts, Senate File 387, which also amended section 99B.7, to allow for prizes of a greater value. However, there is no limit on the amount that can be charged for a chance or ticket for the one raffle per year where the prize cannot exceed ten thousand dollars.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 15, 1982. Such written comments should be directed to the Director, Excise Tax Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

Persons who want to orally convey their views should contact the Director of the Excise Tax Division at (515) 281-5476 or at Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 8, 1982.

These rules are intended to implement Iowa Code section 99B.7, as amended by 1982 Iowa Acts, Senate File 387.

The following amendments are proposed:

ITEM 1. Rule 730—91.4(99B), unnumbered paragraphs 4 and 5 are amended as follows:

Each licensee required to maintain records shall submit quarterly reports to the department on forms furnished

by the department. Quarterly reports will be submitted on a calendar quarter basis. The first quarter will be January 1 to March 31 each year; the second quarter will be April 1 to June 30 each year; the third quarter will be July 1 to September 30 of each year; and the fourth quarter will be October 1 to December 31 each year. Quarterly reports will be due no later than the last day of the month following the end of each quarter. *Quarterly reports received by the department after the due date will be considered delinquent.* However, upon a proper showing of good cause, the department is authorized to grant an extension of time in which to file a report. See rule 91.7(99B). The extension shall not be granted for a period longer than thirty days. The request for the extension must be received in writing on or before the original due date of the quarterly report.

This rule is intended to implement Iowa Code sections 99B.1 and 99B.2, ~~The Code~~, as amended by 1981 Iowa Acts, of the Sixty-ninth General Assembly, Senate File 519: Chapter 44.

ITEM 2. Amend subrule 91.5(2) to read as follows:

91.5(2) Discretionary revocation: The department may initiate revocation when the following nonconclusive conditions exist.

a. Licensee fails to file a timely gambling report.

~~a.b.~~ Licensee files a false or fraudulent application.

~~b.c.~~ Failure to file a properly completed sales tax return.

~~c.d.~~ Failure to remit the sales tax timely.

~~d.e.~~ Payment of tax with unhonored check.

~~e.f.~~ Licensee has incomplete or inadequate records.

~~f.g.~~ License issued under Iowa Code chapter 123, ~~The Code~~, is revoked or suspended as a result of a conviction or guilty plea to a criminal violation of Iowa Code chapter 123.

This rule is intended to implement Iowa Code section 99B.14.

ITEM 3. Subrule 91.6(1) is amended as follows:

91.6(1) "Eligible applicant" means an applicant who meets all of the following requirements. The term "eligible applicant" refers to all licenses, unless otherwise stated.

a. Financial standing.

(1) Good credit rating as evidenced by a credit reference from any entity with which applicant has done business within the last twelve months.

(2) No outstanding delinquent tax liens.

b. Good reputation.

(1) No more than two convictions or guilt pleas of serious or aggravated misdemeanors in last two years, or any combination thereof (excluding gambling offenses).

(2) No more than one delinquent quarterly gambling reports in the last year. *A delinquent quarterly gambling report is a report received by the department after the last day of the month following the reporting period.*

(3) Notify the chief of police or town marshal or county sheriff or his or her designee for each locality in which the applicant will be operating that an application has been applied for. Amusement concessionaires need only to obtain an endorsement from a sponsor of an event in which the concessionaire will be operating.

c. Status of applicant.

(1) A U.S. Citizen and Iowa resident or

(2) A corporation licensed to do business in the state or

(3) A business that has established a place of business in this state or

REVENUE DEPARTMENT[730] (cont'd)

(4) A business that is doing business in this state or
 (5) A qualified organization. See also subrule 94.2(2).

i. Place of business or location means: Office, warehouse, store, building or structure where goods, wares, merchandise or services are offered for sale, or where any taxable amusement is conducted.

ii. Doing business in this state is used in a comprehensive sense and includes all activities or transactions for the purpose of financial or pecuniary gain or profit.

d. No felony convictions federal or state unless conviction occurred more than five years before the date of the application and the governor restored citizenship rights.

e. Applicant has not held a liquor license that was suspended within the last twelve months: *as a result of a conviction or guilty plea to a criminal violation of Iowa Code chapter 123.*

f. Applicant has not held a liquor license that was revoked: *as a result of a conviction or guilty plea to a criminal violation of Iowa Code chapter 123.*

g. Applicant has not held a gambling license that was revoked.

h. Applicant has not been convicted of a gambling violation.

i. The location has not had a gaming or liquor license revoked within the preceding two years.

j. Any qualified organization conducting gaming activities must be eligible for tax exempt status under sections 501(c)3, 501(c)5, 501(c)6, 501(c)10 or 501(c)19 of the Internal Revenue Code, as defined in Iowa Code section 422.4.

(1) A letter of determination from Internal Revenue must be attached to the application or completed IRS form 1023 or 1024 must accompany the application, unless the department is satisfied that the organization is eligible for such 501(c) status.

(2) Subsection (1) above does not apply to political organizations or nonpolitical organizations that have qualified to place a candidate as its nominee for statewide office. Political parties and political organizations must attach to their application verification of their status from the secretary of state.

The requirements "a" through "h" apply to all officers, partners, controlling shareholders, or directors of an organization.

ITEM 4. Amend rule 730—92.8(99B) to read as follows:

730—92.8(99B) Raffles conducted by a fair. Raffles may be conducted at a fair but only by the sponsor of the fair. "Fair" means an annual fair and exposition held by the Iowa state fair board and any fair held by a county or district fair or agricultural society under the provisions of Iowa Code chapter 174. The sponsor of the fair must obtain a license for which the fee is fifteen dollars for each raffle. The rules for the raffle must be posted in the same manner as those for a game of skill or game of chance. Cash prizes may not be awarded and merchandise prizes may not be repurchased. The raffle may not be operated on a pyramid or buildup basis. The cost of each chance or ticket to the raffle cannot exceed one dollar and the aggregate retail value of any prize cannot exceed ~~twenty-five fifty~~ **twenty-five** dollars in merchandise. There is no limit as to the number of winners in a raffle provided no one person wins more than ~~twenty-five fifty~~ **twenty-five** dollars in merchandise.

In addition to the normal raffles, a fair may hold one raffle per year at a cost of no more than ~~five one~~ **five** dollar per chance or ticket. Under this raffle there may be only one

winner. The value of the prize in this raffle may be greater than ~~twenty-five fifty~~ **five ten** thousand dollars but not greater than ~~five ten~~ **five** ten thousand dollars as determined by the purchase price paid by the fair. The prize may be a single item or an aggregate of several items, the total value of which does not exceed ~~five ten~~ **five** ten thousand dollars.

This rule is intended to implement Iowa Code section 99B.5 as amended by 1982 Iowa Acts, Senate File 387.

ITEM 5. Amend rule 730-94.8(99B) to read as follows:

730—94.8(99B) Raffles. A licensee may conduct as many raffles during a license period as desired with no limit as to the number of winners or prizes, provided no one wins a prize with a value greater than ~~twenty-five fifty~~ **five ten** thousand dollars. The cost for a chance or a ticket in the raffle shall not exceed one dollar. However, once during a twelve-month period a licensee may conduct a raffle for which the prize with a value greater than ~~twenty-five fifty~~ **five ten** thousand dollars may be awarded as determined by the purchase price paid by the organization or donor. In this raffle there can be only one winner. The prize shall be merchandise only. See rule 92.8(99B) for explanation. The cost for a chance or ticket to a participant to this raffle is ~~unlimited. cannot exceed five dollars for a chance or ticket.~~

This rule is intended to implement Iowa Code section 99B.7 as amended by 1982 Iowa Acts, Senate File 387.

ARC 3197

**SOCIAL SERVICES
 DEPARTMENT[770]**

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Social Services proposes adopting the following rules relating to president's free food program (Chapter 73). This program will provide needy Iowans with surplus foods, donated by the U.S. Department of Agriculture, that might not be used or might be used more effectively by the needy.

Consideration will be given to written data, views, or arguments thereto received by the Bureau of Policy, Research and Analysis, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before October 8, 1982.

These rules are intended to implement Iowa Code sections 234.1, 234.6, 234.12, and 234.13.

**CHAPTER 73
 PRESIDENT'S FREE FOOD PROGRAM**

770—73.1(234) Definitions.

73.1(1) "Household" means a group of related or nonrelated individuals, exclusive of boarders, who are not residents of an institution, for whom food is customarily purchased in common. It also means a single individual,

SOCIAL SERVICES DEPARTMENT[770] (cont'd)

living alone or with others, who prepares food for home consumption.

73.1(2) "Charitable institution" means a facility that is:

a. Public or private, nonprofit, and tax exempt under the Internal Revenue Code as documented by a letter of exemption; and

b. Organized for charitable or public welfare purposes, and has provided and will continue to provide services at the same address without marked change; and

c. A provider of regular meal services at least once a week on a regular basis. An institution must serve meals rather than redistribute foods in the form donated, or allow clients to prepare their meals individually.

73.1(3) "District co-ordinator" means the person designated by the district administrator to co-ordinate the free food program in the district.

73.1(4) "Potentially hazardous food" means any food of the type or in a condition that it may spoil and which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, or other ingredients capable of supporting rapid and progressive growth of infectious or toxicogenic microorganisms.

770—73.2(234) Priority of distribution. When free food is available, it shall first be distributed to eligible needy households in the state and to adult correctional facilities without rehabilitation programs until all have been served. Any excess food shall then be given to other eligible charitable institutions.

770—73.3(234) Household eligibility. Household eligibility is determined by household size and income.

73.3(1) Household size. A household may be composed of any of the following individuals or group of individuals:

a. An individual living alone; or

b. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others; or

c. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

73.3(2) Income eligibility. Unless excluded, all earned and unearned income of the household shall be counted in determining eligibility.

a. **Income defined.** Income means all income received by an individual from sources identified by the U.S. Census Bureau in computing median income and includes money wages or salary, net income from nonfarm self-employment, net income from farm self-employment, social security, dividends, interest, income from estates or trusts, net rental income and royalties, public assistance or welfare payments, pensions and annuities, unemployment compensation, worker's compensation, alimony, child support, and veterans pensions.

b. **Determination of income.** Earned income shall be the net monthly income after mandatory deductions. Mandatory deductions are those deductions over which the earner has no control, such as, withholding tax, garnisheed wages, union dues, social security, and similar deductions. Biweekly earned income is to be multiplied by 2.15 to determine monthly income. Gross self-employment income minus the cost of producing that income is to be averaged over a twelve-month period. Income received from interest and dividends shall be counted in the month received. The amount of income which stops or starts during the month shall be estimated on the basis of the best information available. Any change in income shall be reported at the next distribution date.

c. **Income exclusions.** The following income shall be excluded in determining countable income:

(1) Social security, railroad retirement benefits, supplemental security income, or state supplementary assistance.

(2) Unemployment compensation benefits.

(3) Income from minors under sixteen years of age.

d. **Income guidelines.** Countable income must be at or below the following amounts:

Household Size	Yearly Income	Monthly Income	Weekly Income
1	\$ 8,660	\$ 722	\$167
2	11,510	959	221
3	14,360	1,197	276
4	17,210	1,434	331
5	20,050	1,671	388
6	22,900	1,908	440
7	25,750	2,146	495
8	28,600	2,383	550
For each additional household member add:	2,850	238	55

770—73.4(234) Notification of available food. The public will be informed of the availability of food and the location and times of distribution by announcements through local media.

770—73.5(234) Household certification procedure. A responsible member of the household or designated proxy shall complete and sign a Declaratory Statement of Eligibility, FP-1102-0, at the distribution site immediately prior to initially receiving food and at least every six months thereafter. The Declaratory Statement of Eligibility declares household size and income; that the household is not receiving food under this program as part of another household or at another distributionsite; acknowledges an understanding of possible prosecution, under current law, for accepting food for which the household may not be eligible; and indicates an understanding that the food received through this program is not to be sold or exchanged. The household will be given a Free Food Program Identification Card, FP-1305-0. Each month free food is received, the recipient shall sign the Household Participation Record, FP-1201-0.

73.5(1) Proxy designation. When a member of the household cannot be present to complete the Declaratory Statement of Eligibility due to disability, employment, or lack of transportation, the member may authorize a proxy to act on behalf of the household by completing the Proxy Request, FP-1103-0.

73.5(2) Reserved.

770—73.6(234) Distribution to households. The amount of food distributed to each needy household will be based on the type of food available and the individual household size. A household may request less than the amount of food it is entitled to receive.

770—73.7(234) Charitable institutions eligibility. Charitable institutions are eligible for free food when they meet the eligibility requirements of the regular food distribution program, except that adult correctional facilities do not need to have a rehabilitation program. Institutions not currently certified for the regular food distribution program may apply for this program on Free Food Institution Application, FP-1108-0.

770—73.8(234) Distribution requirements. Free food will be distributed in communities which have adequate

SOCIAL SERVICES DEPARTMENT[770] (cont'd)

facilities for the type of food available. Facilities for the handling, storage and distribution of free foods shall be such as to properly safeguard against theft, spoilage, and other loss.

770—73.9(234) Quality control. To ensure that only eligible needy are receiving free food, monthly every hundredth household shall be reviewed and income and household size verified. Households found to be ineligible shall be reported to the office of investigations in the department's central office.

770—73.10(234) Appeals. A household may appeal under 770—chapter 7 when its claim for food assistance is denied or not acted upon on the distribution date or it is aggrieved by the agency's interpretation of its policies. When the agency action is reversed, the household will be given the food it should have received no later than the next distribution date of that food in the district.

770—78.13(249A) Transportation to receive medical care. Payment will be approved for transportation to receive medical care services covered under the program only to the nearest institution or practitioner having appropriate facilities for care of the recipient when the following conditions are met.

78.13(3) The type of care is not available in the community in which the recipient resides, or he the recipient has been referred by his the attending physician to a specialist in another community; and

78.13(7) When meals and lodging or other travel expenses are required in connection with transportation, payment will be subject to the same conditions as for a state employee and the maximum amount payable shall not exceed the maximum payable to a state employee for the same expense in connection with official travel.

78.13(9) Payment will not be made in advance to a recipient or a provider of medical transportation.

78.13(10) Payment for transportation to receive medical care is made to the recipient unless the recipient is in danger of losing transportation from a source because payment has not been made in the past.

78.13(11) Medical Transportation Claim, MA-3022-1, shall be completed by the recipient and the medical provider and submitted to the local office for each trip for which payment is requested.

78.13(12) No claim shall be paid if presented after the lapse of three months from its accrual unless it is to correct payment on a claim originally submitted within the required time period.

ARC 3198**SOCIAL SERVICES
DEPARTMENT[770]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 249A.4 the Department of Social Services proposes amending rules appearing in the IAC relating to medical assistance (Chapter 78). These changes clarify the policies on medical transportation and add a claim form to be completed by the recipient and provider. More uniform documentation is now required by federal regulations.

Consideration will be given to written data, views, or arguments thereto, received by the Bureau of Policy, Research, and Analysis, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before October 8, 1982.

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

Rule 770—78.13(249A) and subrules 78.13(3) and 78.13(7) are amended to read as follows and new subrules added.

ARC 3199**SOCIAL SERVICES
DEPARTMENT[770]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Social Services proposes amending

SOCIAL SERVICES DEPARTMENT[770] (cont'd)

rules appearing in the IAC relating to social services block grant (Chapter 131). This rule limits reimbursement of expenses for attending state level advisory committee meetings to voting members or their designated alternates. The existing language does not specify who is eligible.

Consideration will be given to written data, views, or arguments thereto, received by the Bureau of Policy, Research, and Analysis, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before October 8, 1982.

These rules are intended to implement Iowa Code section 234.6.

Rule 770—131.7(234) is amended to read as follows:

770—131.7(234) Advisory committees. The department of social services shall maintain and utilize the state and district advisory committees established for providing recommendations on the allocation and uses of federal social services block grant funds during the fiscal year ending June 30, 1983. Persons interested in participating in the district advisory committees may contact the district administrator who will select the members. The statewide advisory committee shall consist of members from each of the district advisory committees. Two members shall represent each of the sixteen social service district offices as constituted prior to March 1982. Costs for meals, lodging, and travel for the state level advisory committee members (or designated alternates attending in the place of members) shall be paid by the department of social services at the same rate as state employees traveling within the state. For a one-day meeting, only one overnight expenditure will be allowed.

ARC 3200**SOCIAL SERVICES
DEPARTMENT[770]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Social Services proposes amending rules appearing in the IAC relating to foster care services (Chapter 136). These rules are updating the definitions needed in the program.

Consideration will be given to written data, views, or arguments thereto, received by the Bureau of Policy, Research, and Analysis, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before October 8, 1982.

These rules are intended to implement Iowa Code section 234.6.

ITEM 1. Subrule 136.1(1) is amended to read as follows:
136.1(1) "Department" shall mean the Iowa department of social services and includes the local, county, and ~~regional~~ district offices of the department.

ITEM 2. Subrules 136.1(2) and 136.1(4) are rescinded and the following inserted in lieu thereof:

136.1(2) "District administrator" shall mean the department offices and personnel within the district and for implementing policies and procedures of the department.
136.1(4) Reserved.

ARC 3219

AUDITOR OF STATE[130]

Pursuant to the authority of Iowa Code sections 534.41(2) and 17A.5(1) and 1982 Iowa Acts, Senate File 2300, section 30, the Supervisor of Savings and Loan Associations, under the direction of the Auditor of State, hereby adopts under emergency implementation new rules under the Savings and Loan Division. The new rules shall be placed under Chapter 6, and be entitled "Conversion from Mutual to Capital Stock Ownership."

The 1982 Iowa Acts, Senate File 2300, section 30, authorizes conversions from mutual to stock form of ownership of savings and loan associations. Presently, all associations in the state are mutually owned. The legislation is designed to provide new sources of capital infusion for associations to build net worth and future staying power. Associations have been suffering operating losses in 1981 and 1982 because of high cost, short term savings liabilities. These savings instruments are paying higher interest rates than the associations are earning on the majority of earning assets, which consist of mortgage loans. Because of a low turnover in mortgage portfolios, associations are handicapped in overcoming the high cost of the savings investments, and are also unable to seek new forms of capital through the sale of stock.

The plan of conversion is approved by the association's board of directors, its members, the supervisor and the Federal Savings and Loan Insurance Corporation (FSLIC). The requirements of the adopted rules are similar to those required by the FSLIC, except that the supervisor is authorized to ask for additional materials if warranted.

Notice of Intended Action was made under ARC 3071 which was published in the IAB on July 21, 1982. There was no participation in the public hearing which was held on August 12, 1982.

This rule as adopted shall become effective on August 27, 1982, pursuant to Iowa Code section 17A.5(2)"b"(2). This emergency implementation provides a benefit to the public, by allowing savings and loan associations to immediately proceed with plans of conversion. If some associations are forced to delay conversion plans, it may jeopardize their ability to successfully complete the transaction. Successful conversion in a timely manner will boost associations' staying power and ultimately serve to protect savings investments of the public in that association. The immediate realization of new capital into the system, via conversion to stock, will serve to instill more confidence in the public of the true strength of the financial community.

Changes from the Notice of Intended Action are as follows:

(1) Subrule 6.2(6) is added to define "supervisory case".

(2) Paragraphs "l", "m", and "n" are added to subrule 6.4(2), they were inadvertently omitted from the notice.

(3) Rule 6.5(534) is amended to identify to interested parties where to locate the requirements of the FSLIC for conversions.

(4) Subrule 6.7(3) is amended to provide direction if the cost of communicating with members is challenged as being excessive.

The adopted rules implement the 1982 Iowa Acts, Senate File 2300, section 30.

CHAPTER 6

CONVERSION FROM MUTUAL TO CAPITAL STOCK OWNERSHIP

130—6.1(534) Introduction. These rules shall govern the conversion of state-chartered savings and loan associations from mutual to stock form of ownership, pursuant to the 1982 Iowa Acts, senate file 2300, section 30, except as the supervisor of savings and loan associations may otherwise provide in supervisory cases.

130—6.2(534) Definitions.

6.2(1) "Applicant" means a mutual association, which is applying to the supervisor to convert to a capital stock association.

6.2(2) "Capital stock association" means an association which has authority to issue capital stock.

6.2(3) "FSLIC" means the Federal Savings and Loan Insurance Corporation.

6.2(4) "Mutual association" means an association which is organized on a mutual ownership basis and does not have authority to issue capital stock.

6.2(5) "Supervisor" means the supervisor of savings and loan associations.

6.2(6) "Supervisory case" means a case in which the applicant's operations and state of affairs are such that action is warranted by the supervisor pursuant to Iowa Code section 534.46.

130—6.3(534) Application to supervisor. An applicant shall file with the supervisor three copies of an "Application for Approval of Conversion", with supporting exhibits, in the form required by the FSLIC, including Forms AC, PS and OC. The applicant shall also furnish to the supervisor additional information as the supervisor may request which is not included in the applicant's filing with the FSLIC.

130—6.4(534) Content of restated articles of incorporation and bylaws.

6.4(1) As a part of the application, the applicant shall submit to the supervisor restated articles of incorporation and bylaws to operate as a capital stock association.

6.4(2) The restated articles of incorporation shall set forth:

- a. The name of the association;
- b. That the association is a capital stock association and became such by conversion from mutual to stock form in accordance with the Code of Iowa;
- c. That the association will operate under Iowa Code chapter 534.
- d. That the association will have perpetual duration;
- e. The designation by title of the officer or officers, authorized to sign instruments pertaining to real estate;
- f. Whether the association's corporate seal must be affixed to instruments pertaining to real estate;
- g. The amount of authorized capital stock, the classes of stock and number of shares authorized for each class, with the par value and conditions of each class of the shares, and the time when and conditions under which it is to be paid in;
- h. Reference to the liquidation account established for the benefit of eligible savings account holders upon conversion;
- i. Whether holders of capital stock shall be entitled to pre-emptive rights with respect to any shares of the association which may be issued;
- j. The minimum number of directors;

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- k. The manner in which the articles may be amended;
- l. The person to whom the certificate of incorporation should be mailed by the secretary of state after filing;
- m. The address of its registered office including street and number, if any, the name of the county in which the registered office is located, and the name of its registered agent or agents at the address;
- n. Any information applicable, as specified in Iowa Code section 496A.49, subsections 4, 5, 6 and 7;
- o. Other provisions that are not inconsistent with these rules and the Code of Iowa, and are approved by the supervisor.

130—6.5(534) Content of applicant's plan of conversion. The applicant's plan of conversion shall comply with the requirements of the FSLIC, pursuant to 12C.F.R. Part 563b, as amended through August 27, 1982. The plan of conversion shall include the determination of the eligibility record with respect to subscription rights to purchase the applicant's conversion stock, and shall state the effect of the conversion on each type of member of the converting association. The plan of conversion may also provide for employment contracts for the applicant's officers and employees upon conversion and for a stock option plan which shall be subject to approval by the supervisor. The supervisor may require provisions in an applicant's plan of conversion in addition to the requirements of the FSLIC if he determines that such additional provisions are necessary for an equitable conversion. An applicant shall attach to its plan of conversion, and incorporate by reference, the applicant's proposed restated articles of incorporation and proposed restated bylaws.

130—6.6(534) Approval of plan of conversion by supervisor. The plan of conversion must be submitted to the supervisor for approval. The supervisor will reject a plan of conversion if he finds that plan is inconsistent with applicable statutes or regulations, or does not contain all required information, or is inequitable to a class of members of the applicant. The supervisor will notify the applicant of his decision, and the reasons for rejection if the plan is rejected. If the plan of conversion is approved, the supervisor will also give preliminary approval to the applicant's proposed restated articles of incorporation and bylaws. In addition to approval of the plan by the supervisor, the plan must also be approved by the FSLIC, a majority of the board of directors of the converting association and a majority vote of the members of the association present in person or by proxy at an annual meeting or a special meeting of the members.

130—6.7(534) Vote by applicant's members on plan of conversion.

6.7(1) No plan of conversion shall be implemented unless it is approved at a meeting of the voting members of an applicant called to consider such action, by a majority vote of the total number of votes present, in person or by proxy. The board of directors shall cause written notice of the meeting at which the members will be asked to vote on the proposal, to be mailed by first-class mail, postage prepaid to each member of the association not less than thirty days prior to the date of the meeting. The board shall also cause a copy of this notice to be posted in a conspicuous location in each of the association's offices from the date of mailing until the date of the meeting. The mailed notice may be included in an envelope containing a periodic statement of account to the member.

6.7(2) The notice required in subrule 6.7(1) shall contain the date, time and purpose of the meeting. In addition, the following statement shall also be included in the notice:

In the event that any member or members desire to communicate with other members of the association, with reference to this special meeting, they shall:

1. Request of the association a statement of the approximate number of members of the association;
2. Request of the association an estimate of the cost of forwarding the communication to the members;
3. Submit the communication to the supervisor for review;
4. If approved by the supervisor, make payment to the association of the expenses for the preparation and mailing of the communication.

6.7(3) The supervisor shall approve the communication if he finds it to be appropriate, truthful and in the best interests of the association and all its members. He may also request that the association substantiate the cost of forwarding the communication, if it appears excessive.

6.7(4) The supervisor may require that the date for the meeting of the members be postponed to a date certain, not more than thirty days after the date originally prescribed, if the supervisor determines that additional time is necessary to enable members who have requested communication with other members, to properly exercise that right.

6.7(5) The applicant shall file with the supervisor promptly after the meeting of the applicant's voting members called to consider the plan of conversion, a certified copy of each resolution adopted at the meeting relating to the plan of conversion together with the following information:

- a. The total number of votes eligible to be cast;
- b. The total number of votes represented in person or by proxy at the meeting;
- c. The total number of votes cast in favor of and against each matter; and
- d. The percentage of votes present in person or by proxy cast in favor of and against each matter.

6.7(6) The applicant shall also file with the supervisor an opinion of counsel that the meeting was held in compliance with all applicable state and federal laws.

6.7(7) The certified copy of each resolution adopted at the meeting (being part of the minutes of the meeting), when filed, shall be presumptive evidence of the holding of the meeting and of the action taken.

130—6.8(534) Filing of offering circulars. The offering circulars for the applicant's subscription offering and any additional offering to the general public shall be prepared in compliance with regulations of the FSLIC and any additional requirements imposed by the supervisor. Three copies of each offering circular in preliminary form shall be filed with the supervisor, and no offering circular shall be distributed to the applicant's members or to the general public in final form unless it has first been declared effective by the supervisor.

130—6.9(534) Effective date of conversion. Subsequent to a meeting of the members, upon a finding by the supervisor that the procedures outlined in Iowa Code chapter 534 and these rules have been complied with, and prior to the execution of orders for the applicant's conversion stock, the supervisor shall issue to the applicant a certificate of conversion, which will include the name of the applicant before and after conversion and the

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effective date of conversion. The original of the certificate shall be filed by the supervisor with the secretary of state and the applicant's restated articles of incorporation and restated bylaws shall become effective. Concurrently, the applicant shall execute all orders received for its conversion stock.

[Filed emergency after notice 8/27/82, effective 8/27/82]
[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

the time period set by the commission exceed ten days from notification to the grain dealer. Such notification may be made verbally and verified by mail. Failure to provide the bond within ten days of suspension under Iowa Code section 542.3, shall cause the license to be revoked.

[Filed emergency 8/27/82, effective 8/27/82]
[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3224

COMMERCE COMMISSION[250]

The Iowa State Commerce Commission hereby gives notice that on August 27, 1982, the Commission issued an order in Docket No. RMW-82-1, In Re: Amendment of Iowa State Commerce Commission Rules Chapter 250—13, "Licensed Grain Dealers and Bargaining Agents," Iowa Administrative Code, "Order Adopting and Implementing Rules On An Emergency Basis," and, pursuant to the authority of Iowa Code sections 17A.4 and 17A.5, amended rules 250—Chapter 13, "Licensed Grain Dealers and Bargaining Agents," Iowa Administrative Code. The former rule required the filing of additional bond by a licensee within ten days notification by the Commission. In 1982 Iowa Acts, House File 2448, a new section, 542.3(7), was enacted which specified that a licensee shall file additional bond within thirty days after receiving written notice from the Commission. The new statutory section supersedes our agency rule; thus, our agency rule should be amended to conform to the statute.

In compliance with Iowa Code section 17A.4(2), the Commission finds that public notice and participation in this rulemaking is unnecessary, since the specific legislative enactment supersedes the Commission's rule.

In compliance with Iowa Code section 17A.5(2)"b"(1), the Commission finds that the normal effective date of the rule, thirty-five days after publication in the Iowa Administrative Bulletin, should be waived and the rules made effective upon filing with the Administrative Rules Coordinator. The legislature's amendment of the section 542.3 became effective May 21, 1982, and our rules must conform to the statutory requirement.

Amend rule 13.9(542) to read as follows:

250—13.9(542) Filing of bond. Bonds filed with the commission shall be on forms prescribed and furnished by the commission. The amount of bond to be filed to obtain and retain a grain dealer license shall be determined in accordance with the provisions of sections 542.3 and 542.4 of the Iowa Bonded Grain Dealer Law. When the net worth or current ratio of a licensee is less than required by Iowa Code section 542.3, the grain dealer may file additional bond with the commission to cover the deficiency as provided by *and within the time prescribed in Iowa Code section 542.3.* Unless the additional bond is filed within the time period as set by the commission, the grain dealer license shall be suspended. ~~In no event shall~~

ARC 3187

COMMERCE COMMISSION[250]

The Iowa State Commerce Commission hereby gives notice that on August 17, 1982, the Commission issued an order in Docket No. RMU-82-17, In Re: Repeal of Iowa State Commerce Commission Rules Chapter 250—26, "Certification of Gas Appliances," Iowa Administrative Code, "Order Adopting and Implementing Rules On An Emergency Basis," and, pursuant to the authority of Iowa Code sections 17A.4, 17A.5, 476.2 and 1982 Iowa Acts, Senate File 2240, 250—Chapter 26, "Certification of Gas Appliances," Iowa Administrative Code, is repealed. Chapter 26 contained specifications for certain gas appliances equipped with intermittent ignition devices for sale and installation in this state under Iowa Code sections 478A.1 to 478A.6. Senate File 2240 repealed these statutory provisions, and the rules contained in 250—Chapter 26, Iowa Administrative Code, no longer serve any purpose.

In compliance with Iowa Code section 17A.4(2), the Commission finds that public notice and participation in this rulemaking is unnecessary, since the specific legislative directive to the Commission to promulgate the rules has been repealed, and the rules now serve no purpose.

In compliance with Iowa Code section 17A.5(2)"b"(1) and (2), the commission finds that the normal effective date of the rule, thirty-five days after publication in the Iowa Administrative Bulletin, should be waived and the rules made effective upon filing with the Administrative Rules Coordinator. The legislature's repeal of statutory prohibition on the sale and installation of uncertified (standing pilot light) gas appliances and the directive to the Commission to develop specifications for certifying gas appliances became effective July 1, 1982. Since the rules no longer serve any purpose, a benefit is conferred on the public when unnecessary administrative rules are rescinded.

250—Chapter 26, "Certification of Gas Appliances," is repealed in its entirety.

[Filed emergency 8/18/82, effective 8/18/82]
[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3206

HOUSING FINANCE AUTHORITY[495]

Pursuant to the authority of Iowa Code section 220.5, subsection 15, the Iowa Housing Finance Authority emergency adopts rules by adding new chapters 4 and 5 to IAC establishing general revenue bond procedures and a small business loan program. The general revenue bond procedures, chapter 4, provide a uniform set of procedures for applying for revenue bond financing through the Housing Finance Authority. These procedures are applicable to small business loans under 1982 Iowa Acts, House File 2464. The small business loan program, chapter 5, contains eligibility and review criteria.

In compliance with Iowa Code section 17A.4(2), the authority finds that public notice and participation is impracticable or contrary to the public interest in that delays which said notice and participation would require would prevent the authority from implementing the statute, which had an effective date of July 1, 1982, for several additional months, thus denying or delaying the benefits of the program to eligible persons.

The authority also finds, pursuant to section 17A.5(2)"b"(2) that the normal effective date of these rules 35 days after publication should be waived and the rules be made effective upon filing with the Administrative Rules Coordinator [8/25/82] as they confer a benefit and remove a restriction on a segment of the public. These rules add a new program to assist in financing small businesses which is a benefit to the public.

The Housing Finance Authority adopted these rules at a regular open meeting held August 11, 1982.

These rules implement 1982 Iowa Acts, House File 2464. These rules have also been filed under Notice of Intended Action as ARC 3207.[IAB 9/15/82]

ITEM 1. The Housing Finance Authority adopts a new chapter 4 as follows:

CHAPTER 4 GENERAL REVENUE BOND PROCEDURES

495—4.1(220) Revenue bonds authorized. The authority may issue revenue bonds for any of the purposes for which such financing is authorized under Iowa Code chapter 220. Revenue bonds are limited obligations of the authority, and principal and interest thereon shall be payable solely out of the revenues derived from the loan to the borrower financed by the bond and the underlying collateral or other security furnished by or on behalf of the borrower. The principal and interest on the bond does not constitute an indebtedness of the authority nor a charge against its general credit or general fund. The lender acquiring the bond shall have no other recourse against the authority.

495—4.2(220) Participating lenders. The authority will disseminate a summary of the programs for which revenue bond financing is authorized to mortgage lenders located within Iowa. Any mortgage lender as defined in Iowa Code section 220.14, subsection 1, as amended by 1982 Iowa Acts, House File 2464, may apply to become a participating lender in an authority program providing financing through revenue bonds by submitting a signed letter of interest in a form prescribed by the authority to the authority. A letter of interest may be submitted at any time and upon approval by the authority the participating lender shall be obligated to abide by applicable

program guidelines. At its regular monthly meetings, the authority will review letters of interest received since the last board meeting and approve letters of interest from qualified mortgage lenders. After approval, such lenders shall be considered IHFA revenue bond participating lenders.

495—4.3(220) Procedures for project sponsors. Applications for revenue bond financing may be made with any IHFA revenue bond participating lender in the same lending area as the project to be financed. The project sponsor shall provide the lender with such information books, records, etc., as such lender may consider to be reasonably necessary to evaluate or underwrite the risk.

A project sponsor must meet the eligibility requirements established for a particular type of revenue bond financing, by applicable state law and the rules of the authority. If such eligibility requirements are met, the participating lender may nonetheless deny a loan, subject to all reporting and disclosure requirements of applicable state and federal law, for any reason premised on sound lending practice, including underwriting or risk evaluation, portfolio diversification, limitations or restrictions on investments or available funds, and the lender's degree of need for tax-exempt earnings. Any loan that is approved will be assigned to the participating lender.

If the loan is approved, the terms of the loan, including interest rate, length of loan, down payment, fees, origination charge and repayment schedule, shall not be any greater than those available to similar customers after taking into account the tax-exempt nature of interest on the bonds.

495—4.4(220) Authority review. The completed and approved loan application shall be submitted to the authority for its review and approval. The authority's review will include, though not be limited to consideration of whether (1) the project sponsor is qualified for the type of loan it is seeking; (2) the loan proceeds will be used for a qualified purpose under the Code of Iowa and the rules of the authority, and under the U.S. Internal Revenue Code and IRS regulations relating to industrial development bonds; and (3) the terms of the loan comply with these rules.

The authority may charge such reasonable and necessary fees as needed to defray its costs for processing the loan and bond.

Following such review, the authority shall either approve or deny each specific revenue bond proposal. If the proposal is approved, the authority shall issue a bond for that proposal, and shall enter into a loan agreement with the project sponsor. The authority shall then assign the loan without recourse to the participating lender.

495—4.5(220) Procedures following bond issuance. No bond proceeds may be used by a nonqualified user nor for a nonqualified purpose. Following disbursement of the bond proceeds, the participating lender and project sponsor shall certify to the authority that the proceeds were used by a qualified project sponsor for a qualified purpose.

4.5(1) Assumption of loans, substitution of collateral and transfer of property. Loans may not be assumed without the prior approval of the authority and then only if the purchaser of the property is an eligible project sponsor for IHFA revenue bond financing. In any situation where collateral is substituted, or property transferred other than a sale of the entire operation financed by IHFA revenue bonds, the benefits of the loan

HOUSING FINANCE AUTHORITY[495] (cont'd)

deriving from the tax-exempt rate of interest on the bonds must remain with the operation financed by the revenue bonds, and no transferee may thereby obtain the benefits of the IHFA loan.

4.5(2) Reserved.

495—4.6(220) Right to audit. The authority shall have at all times the right to audit the records of the participating lender and the operation financed by IHFA revenue bonds relating to such loan and bond to ensure that bond proceeds were used by a qualified user and for a qualified purpose.

These rules are intended to implement Iowa Code Chapter 220, as amended by 1982 Iowa Acts, House File 2464.

ITEM 2. The Housing Finance Authority adopts a new chapter 5 as follows.

CHAPTER 5
SMALL BUSINESS LOAN PROGRAM

PART I
GENERAL

495—5.1(69GA, HF2464) Program description. This program is intended to allow qualified small businesses to obtain loans at below market interest rates for qualified purposes through tax-exempt financing. Loans will be available from a participating lender under the IHFA small business loan program. Project sponsors shall apply directly to the participating lenders, who shall make credit and risk evaluations and otherwise make the decision, based on sound lending practices, whether or not to extend credit to the project sponsor.

After the decision to extend credit has been made by the participating lender, the authority will contemporaneously enter into a loan agreement with the project sponsor and will issue a small business development revenue bond, the interest on which is exempt from federal income taxation, in the amount of the loan. The authority will assign the loan to the participating lender, and the lender will purchase that bond. The proceeds will be used to fund the loan assigned to the lender.

Under the IHFA revenue bond procedures, the bond which is issued by the authority and purchased by the mortgage-lender is a nonrecourse obligation. The only security for the lender is the underlying security on the assigned loan.

495—5.2(69GA, HF2464) Waiver. The authority may by resolution waive or vary particular provisions of these rules to conform to requirements of the federal government in connection with a small business loan with respect to which federal assistance, insurance or guaranty is sought, provided such waiver does not conflict with Iowa Code chapter 220 as amended.

495—5.3(69GA, HF2464) Urban revitalization. To assist in improving the economy of areas which have been designated as a revitalization area under state law, applications for businesses located or to be located in such areas may be given priority by the authority.

5.4—5.9 Reserved

PART II
DEFINITIONS

495—5.10(69GA, HF2464) Definitions. As used in connection with the small business loan program, the following terms have meanings indicated.

5.10(1) "Annual gross revenues" means total sales, before deducting returns and allowances but after

deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with Generally Accepted Accounting Principles.

5.10(2) "Application" means those documents required by the participating lender and the authority, which shall include all of the information required by rule 5.20 (69GA, HF2464).

5.10(3) "Time of application" means the date by which a participating lender has received an application from a project sponsor.

5.10(4) "Eligible project sponsor" means a small business as defined in 1982 Iowa Acts, House File 2464.

5.10(5) "Operation of a farm" means the same as "farming" as defined in Iowa Code section 172C.1, subsection 6.

5.10(6) "Profession" means a vocation requiring specialized knowledge and preparation including but not limited to the following: Medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, cosmetology, barbering, mortuary science, law, architecture, engineering and surveying, accountancy and veterinary medicine.

5.10(7) "Participating lender" means a mortgage lender as defined in Iowa Code section 220.1, subsection 14, as amended, that has submitted a letter of interest to the authority which has been approved by the board of the authority.

5.10(8) "Full-time equivalent position" means any of the following:

a. An employment position requiring an average work week of forty or more hours;

b. An employment position for which compensation is paid on a salaried full-time basis without regard to the hours worked; or

c. An aggregation of any number of part-time positions which equal one full-time position. For purposes of this subrule each part-time position shall be categorized with regard to the average number of hours required per week as a one-quarter, half, three-quarter, or full-time position, as shown in the following table:

Average Number of Weekly Hours	Category
More than 0 but less than 15	1/4
15 or more but less than 25	1/2
25 or more but less than 35	3/4
35 or more	1 (full time)

5.11 to 5.19 Reserved.

PART III
LOAN CRITERIA AND DOCUMENTATION

495—5.20(69GA, HF2464) Application. Eligible project sponsors for small business loans shall apply directly to participating lenders in the IHFA small business loan program in accordance with the procedures in chapter 4 of these rules.

495—5.21(69GA, HF2464) Public benefit. Before approving a small business development revenue bond issue for any project sponsor, the authority must find that the proposed project will result in one or more of the following:

1. Creation of jobs in Iowa;
2. Increased revenues for the borrower from a more modern or expanded facility located in Iowa;
3. Providing a service facility needed in the Iowa community where the project will be located.

HOUSING FINANCE AUTHORITY[495] (cont'd)

495—5.22(69GA, HF2464) Loan criteria.

5.22(1) Evaluation. The participating lender shall evaluate each application for a small business loan to assure that the following criteria are met:

a. The project sponsor shall show evidence that it is able to operate the business successfully. This shall include an overall business management plan including, but not limited to the following:

1. A generalized projection of revenues and expenditures for the three-year period beginning the month of anticipated loan closing;

2. Capital formation plans, if any, other than from the small business loan program;

3. To the extent possible, identification and analysis of risks;

4. Plans for recordkeeping, personnel and financial management;

5. Plans for marketing;

b. The project sponsor shall have enough capital in the business so that, with assistance from the small business loan program, the project sponsor will be able to operate the business on a financially sound basis. The project sponsor shall provide the participating lender access to its financial records including, but not limited to information concerning the identity of all persons having an ownership interest in the small business, its capital structure, and its present and projected debt structure.

c. The loan shall be so secured or of such sound value as to reasonably assure repayment. The participating lender may require any collateral, security or mortgage documents or other filings or protection as are reasonably necessary to assure such security.

d. The business' past earnings record and future prospects shall indicate an ability to repay the loan out of income from the business. The project sponsor shall provide a summary of past earnings and future earnings prospects for the business, and allow the participating lender reasonable access to its books and records.

5.22(2) Small business qualifications. For the purpose of meeting the employment position test of the Act, a project sponsor, to be an eligible project sponsor, shall not have had more than twenty full-time positions during each of the twenty-six consecutive weeks within the fifty-two-week period immediately preceding the date on which the project sponsor files an application with the participating lender and shall not have more than twenty full-time equivalent positions on the date of application.

5.22(3) Business dominant in its field of operation. For the purposes of the employment position test and the gross revenue test of the Act, a business shall be considered dominant in its field of operation if:

a. It has had more than twenty full-time positions during each of twenty-six consecutive weeks within the fifty-two-week period immediately preceding the date on which the project sponsor, which is an affiliate or is a subsidiary of the business to which the test is being applied, files an application with a participating lender, or has more than twenty full-time equivalent positions on the date of application; and

b. It has had more than one million dollars in annual gross revenues during the preceding fiscal year.

495—5.23(69GA, HF2464) Good character. A project sponsor must be of good moral character, to be determined in the following manner by the participating lender:

1. The project sponsor has not been convicted of a felony.

2. The participating lender may inquire at appropriate local, county, state and federal law enforcement agencies, in making the above determination.

3. The participating lender shall terminate an application upon determination that the project sponsor has been convicted of a felony.

4. Other reasons. If the lender believes the project sponsor is not of good character for any reason not stated above, the lender shall notify the authority for further guidance. A determination by the authority that the project sponsor is not of good character for reasons other than those stated above may be made, but only after contested case proceedings initiated by the authority.

5. This rule shall not apply in a case in which the project sponsor has been restored to full rights of citizenship by the governor pursuant to Iowa Code section 248.12.

These rules are intended to implement Iowa Code Chapter 220, as amended by 1982 Iowa Acts, House File 2464.

[Filed emergency 8/25/82, effective 8/25/82]
[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3210**PHARMACY EXAMINERS,
BOARD OF[620]**

Pursuant to the authority of Iowa Code section 155.19, and 1982 Iowa Acts, the Iowa Board of Pharmacy Examiners hereby rescinds the first paragraph of rule 6.10 (69GA, SF2304) adopted under Item 1 in ARC 3113. The rescission is necessary because the Notice of Intended Action published in IAB 19, March 17, 1982, as ARC 2784 related to prior legislative enactment. A procedural question is therefore raised as to the authority of the board to adopt the language in this portion of the rule. At the same time, the Board of Pharmacy Examiners adopts and emergency implements that same rescinded first paragraph of rule 6.10(69GA, SF2304) pursuant to the authority of 1982 Iowa Acts, Senate File 2304, section 96.

The requirements of Iowa Code sections 17A.4 (public input) and 17A.5(2)"b" (waiting period for effective date) are waived by 1982 Iowa Acts, SF 2304, section 96 and the rule shall become effective on September 22, 1982.

The Board of Pharmacy Examiners adopted this rule at a regular meeting on July 13, 1982.

ITEM 1. Rule 620—6.10(69GA, SF2304), first paragraph is rescinded.

ITEM 2. Rule 620—6.10(69GA, SF2304) is amended to read as follows:

620—6.10(69GA, SF2304) Medical assistance Act participation. Pharmacies licensed under Iowa Code section 155.10, who participate in the medical assistance Act, Iowa Code, chapter 249A, shall collect copayments from eligible recipients as set out under IAC 770, subrule

PHARMACY EXAMINERS, BOARD OF[620] (cont'd)

79.1(4), paragraph "a". In addition, those medical assistance Act participating pharmacies who also participate in private third-party payer prescription drug insurance or benefit plans shall also collect the applicable co-payment from beneficiaries or subscribers of those insurance or benefit plans. Pharmacies who reduce charges to persons participating in private third-party payer prescription drug insurance or benefit plans by the distribution of free merchandise directly or indirectly through coupon or rebate programs shall provide the same reductions to the beneficiaries of the medical assistance Act, Iowa Code chapter 249A, except that payments of free merchandise or its cash equivalent shall be made directly to the state agency administering the medical assistance Act. The state agency responsible for administering the medical assistance Act shall be deemed to be participating in such coupon or rebate programs immediately upon their offering and shall continue to participate for the full period of their existence.

[Filed emergency 8/26/82, effective 9/22/82]
[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3192**SOCIAL SERVICES
DEPARTMENT[770]**

Pursuant to the authority of Iowa Code section 249A.4, rules of the Department of Social Services appearing in the IAC relating to medical assistance are hereby amended. This rule changes the method of reimbursing hospitals in the Medicaid program.

Notice of Intended Action regarding these rules was published in the IAB June 23, 1982 as ARC 2980.

The Department of Social Services finds that 1982 Iowa Acts, Senate File 2304 requires this rule to be effective October 1, 1982. Therefore, this rule is filed pursuant to Iowa Code section 17A.5(2)"b"(1),

The year for the cost report was changed and information added on determining the applicable rate, times for establishing rates, and provisions for changes in service.

The Council on Social Services adopted this rule August 18, 1982.

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

This rule shall become effective October 1, 1982.

Rule 770—79.1(249A), first paragraph, is amended to read as follows and a new unnumbered paragraph added before the current second unnumbered paragraph:

770—79.1(249A) Principles governing reimbursement of providers of medical and remedial care. Payment for services of providers of care participating in

the medical assistance program will be made on the basis of "reasonable cost" for institutional providers (hospitals, skilled nursing facilities, home health agencies, rehabilitation agencies, and independent laboratories). The determination of reasonable cost for institutional providers will be made utilizing the methods and criteria in effect for these providers in the Medicare program. (Title XVIII of the Social Security Act)

Effective for services rendered on and after October 1, 1982, general hospitals participating in the program will be reimbursed according to a per diem rate established on a prospective basis. The per diem rate will be calculated for each participating hospital by establishing a base year per diem rate to which will be applied an annual index. The base rate shall be the medical assistance per diem rate as determined by the individual hospital cost report for the hospital's 1981 fiscal year as adjusted by Medicare except that no recognition will be given to the routine nursing salary cost differential allowed by Medicare. The annual index will be calculated by the department based on the average percent change in a standard category of hospital expenses to which will be applied forecasted increases. For hospitals where medical assistance recipients account for fifty-one percent or more of the hospital's total bed days the hospital and the department will negotiate an appropriate per diem rate. Hospitals shall be reimbursed the lower of actual charges or the medical assistance cost per diem rate. The determination of the applicable rate shall be based on the hospital fiscal year aggregate of actual charges and medical assistance cost per diem rate. If an overpayment exists the hospital will refund or have the overpayment deducted from subsequent billings. Hospital prospective reimbursement rates shall be established as of October 1, 1982, for the remainder of the applicable hospital fiscal year. Prior to the beginning of each succeeding hospital fiscal year, inpatient hospital prospective reimbursement rates shall be established and become effective for the period of one year. A hospital may at times offer to the public new or expanded services including capitals which require certificate of need approval, or permanently terminate a service. Within sixty days after such an event, the hospital shall submit a budget which shall take into consideration new, expanded, or terminated services. These budgets will be subject to desk review and audit. Upon completion of the desk review, reimbursement rates may be adjusted, if indicated. Failure to submit budgets within sixty days shall require disallowances of all expenses, direct and indirect, associated with the service until the following cost reporting period. The new rate will be retroactive to the beginning of the new or expanded service or the termination of an existing service. The current method for submitting billing and cost reports shall be maintained. All cost reports will be subject to desk review audit and if necessary a field audit.

[Filed emergency after notice 8/20/82, effective 10/1/82]

[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3191**SOCIAL SERVICES
DEPARTMENT[770]**

Pursuant to the authority of Iowa Code sections 217.6 and 234.6, rules of the Department of Social Services appearing in the IAC relating to payments for foster care (chapter 137) are hereby amended. This rule establishes a temporary payment system to provide additional assistance to shelter care facilities while alternatives to methods of payment are being explored.

The Department of Social Services finds that notice and public participation are contrary to the public interest. Because of the financial hardships being experienced by juvenile shelter care facilities due to the uneven cash flow caused by fluctuating usage of the facilities, this rule is needed immediately to alleviate that problem temporarily until a long term solution can be found. Therefore, this rule is filed pursuant to Iowa Code section 17A.4(2).

The Department of Social Services finds that this rule confers a benefit on the public by evening out the cash flow from department payments to shelter care facilities, thus allowing those facilities some financial relief while alternative payment mechanisms are being developed. Therefore, this rule is filed pursuant to Iowa Code section 17A.5(2)“b”(2).

The Council on Social Services adopted this rule August 18, 1982.

This rule is intended to implement Iowa Code section 234.38.

This rule shall become effective September 1, 1982.

Subrule 137.11(3) is amended to read as follows:

137.11(3) Public and private agency group facilities and approved juvenile shelter care facilities may be designated to provide emergency care and shall be paid according to rule 770—137.9(234), *except that from September 1, 1982, through June 30, 1983, public and private juvenile shelter care facilities approved or licensed in Iowa shall have the option of being paid a monthly sum which is calculated by multiplying the agency's unit cost (as discussed in 137.9(1)) by the utilization factor by thirty days. The utilization factor shall be either the average department of social services monthly utilization for the last twelve-month period or the department of social services projected utilization, whichever is greater.*

a. As of June 30, 1983, for those units of service provided for which the department of social services is authorized to pay in excess of the number of units of service covered in paragraph “a”, the agency shall be reimbursed by multiplying the agency's unit cost by the excess units.

b. The total reimbursement to the agency shall not exceed the agency's allowable costs. The utilization factor shall not exceed the licensed capacity of the facility.

[Filed emergency 8/20/82, effective 9/1/82]

[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3225**COMMERCE COMMISSION[250]**

The Iowa State Commerce Commission hereby gives notice pursuant to Iowa Code section 17A.4, that on August 27, 1982, the Commission issued an order in Docket No. RMU-82-6, In Re: Disposition of Capital Gains and Losses on Utility Property, "Order Adopting Rules," amending 250—Chapter 16, "Accounting," Iowa Administrative Code. [Notice of Intended Action was published in the May 12, 1982, Iowa Administrative Bulletin as ARC 2880.]

The finally adopted rules have modified the rules proposed under Proposal I. The adopted rules provide for allocation of both the risk of capital loss and the benefit from capital gains below the line unless otherwise ordered by the Commission for good cause shown. The amendments adopted by the Commission are more fully discussed in the Commission's "Order Adopting Rules," issued August 27, 1982, in Docket No. RMU-82-6, In Re: Disposition of Capital Gains and Losses On Utility Property. The rule is intended to change our accounting rules in 250—Chapter 16, IAC in order that capital gains and losses will be afforded below-the-line treatment unless otherwise ordered.

This rule will become effective October 20, 1982.

ITEM 1. Amend rule 250—16.2(476) by adding the following new subrules:

16.2(9) Account 421.1 or 421.2 as they are defined and exist in the uniform system of accounts, shall be used to account for the gain or loss on the sale, conveyance, exchange, or transfer of utility or other property, including land and land rights, unless otherwise authorized or required by the Commission for good cause shown.

16.2(10) Account 105 of the uniform systems of accounts Section 101 is modified in subparagraph "D" by deleting the following language: "in accounts 411.6 or 411.7, as appropriate except when determined to be significant by the Commission. Upon such a determination, the amounts shall be transferred to account 256, Deferred Gains from Disposition of Utility Plant, or account 187, Deferred Losses from Disposition of Utility Plant, and amortized to accounts 411.6, Gains from Disposition of Utility Plant, or 411.7, Losses from Disposition of Utility Plant, as appropriate" and substituting in lieu thereof: "in accounts 421.1 or 421.2, as appropriate unless otherwise authorized or required by the Commission for good cause shown."

ITEM 2. Amend rule 250—16.3(476) by adding the following new subrules:

16.3(9) Account 421.1 or 421.2 as they are defined and exist in the uniform system of accounts, shall be used to account for the gain or loss on the sale, conveyance, exchange, or transfer of utility or other property, including land and land rights, unless otherwise authorized or required by the Commission for good cause shown.

16.3(10) Accounts 105 and 105.1 of the uniform system of accounts Section 201 is modified in subparagraph "D" by deleting the following language: "in account 411.6 or 411.7, as appropriate except when determined to be significant by the Commission. Upon such a determination, the amounts shall be transferred to account 256, Deferred Gains from Disposition of Utility Plant, or account 187, Deferred Losses from Disposition of Utility Plant, and amortized to accounts 411.6, Gains from Disposition of Utility Plant, or 411.7, Losses from Dis-

position of Utility Plant, as appropriate" and substituting in lieu thereof: "in accounts 421.1 or 421.2, as appropriate, unless otherwise authorized or required by the Commission for good cause shown."

ITEM 3. Amend rule 250—16.4(476) by adding the following subrule:

16.4(2) Account 422 as defined and existing in the uniform system of accounts, shall be used to account for the gain or loss on the sale, conveyance, exchange, or transfer of utility or other property to another, unless otherwise authorized or required by the Commission for good cause shown.

[Filed 8/27/82, effective 10/20/82]
[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3226**COMMERCE COMMISSION[250]**

The Iowa State Commerce Commission hereby gives notice, pursuant to Iowa Code section 17A.4, that on August 27, 1982, the Commission issued an order in Docket No. RMU-82-8, In Re: Revisions to Uniform System of Accounts For Class A and B Telephone Companies, "Order Adopting Rules," amending 250—Chapter 16, "Accounting," Iowa Administrative Code. Notice of Intended Action was published in the June 9, 1982 Iowa Administrative Bulletin as ARC 2955.

The finally adopted rules include minor modifications proposed by the Iowa State Commerce Commission staff. The adopted rules provide for specific accounting treatment of station connections, sales of terminal equipment, inside wiring and repairs of customer-owned equipment. The amendments adopted by the Commission are more fully discussed in the Commission's "Order Adopting Rules," issued August 27, 1982, in Docket No. RMU-82-8, In Re: Revisions to Uniform System of Accounts for Class A and B Telephone Companies.

The rule is intended to implement Iowa Code sections 476.1 and 476.8.

This rule will become effective October 20, 1982.

ITEM 1. Amend subrule 16.5(15), paragraph "a" to read as follows:

(a) This account shall include the original cost of the company's investment in customer leased telephone equipment. This account shall be maintained with sufficient subaccounts to allow the classification and segregation of the equipment and ~~installation costs~~ consistent with the accounting requirements for telephone plant accounts. The cost of materials in stock purchased for use as leased telephone equipment shall be included in this account ~~only upon installation~~. Otherwise, the cost of such equipment shall be included in account 124, Telephone equipment held for ~~lease or sale~~.

ITEM 2. Amend subrule 16.5(16) by dropping the words "lease or." Subrule 16.5(16), as amended, will read:

16.5(16) Amend Note E at section 31.122 as follows:

NOTE E: This account shall not include items in stock which are includable in account 231, "Station apparatus" or account 124, "Telephone equipment held for ~~lease or sale~~."

COMMERCE COMMISSION[250] (cont'd)

ITEM 3. Subrule 16.5(17) is amended to read as follows:

16.5(17) Add new section 31.124 as follows:

31.124 Telephone equipment held for ~~lease or~~ sale.

This account shall include the cost of all station equipment purchased for ~~lease or~~ resale and the cost of material and supplies held for use in the provision of repair service on such equipment. (Note account 231). The cost shall include applicable transportation charges, sale and use taxes, cash and other purchase discounts. Inventory shortage and overages shall be charged and credited, respectively, to account 319 or 320.

NOTE: The cost of material used to install and connect *customer-owned* station apparatus shall be charged to account 320, "Cost and expenses of selling ~~and leasing~~ telephone equipment."

ITEM 4. Subrule 16.5(18) is amended to read as follows:

16.5(18) Delete from paragraph (b) of section 31.138, the words, "inside wires, and drop and block wires," and the words, "or wires" from paragraph (c). Paragraphs (b) and (c), as amended, will read:

(b) This account shall include also the cost of extensive replacements of station apparatus, in accordance with the provisions of §31.6-64. (Note also account 605).

(c) Charges provided in paragraphs (a) and (b) of this section shall be included in this account only after permission of this commission has been obtained. The company's application to this commission for such permission shall give full particulars concerning the property retired or of the extensive replacements of apparatus, the amounts chargeable to operating expenses, and the period over which, in its judgment, the amount of such charges should be distributed.

ITEM 5. Amend subrule **16.5(20)** as follows:

Delete all of paragraph "c". Renumber paragraph "d" with letter "c".

ITEM 6. Subrule 16.5(34) is amended to read as follows:

16.5(34) Add new sections 31.319 and 31.320 with items listed as follows:

31.319 Revenues from telephone equipment sales. ~~and leases.~~

31.320 Cost and expenses of selling ~~and leasing~~ telephone equipment.

(a) These accounts shall include, respectively, all revenues derived from the sale, installation, ~~lease~~ and maintenance of *customer-owned* telephone equipment and all expenses incurred in such activities.

(b) Records in support of these accounts shall be so kept as to permit ready summarization of revenues, costs and expenses by major items such as equipment sales, repair revenues, cost of goods sold, sales labor, installation labor, repair labor, materials and supplies for installation, maintenance and repair billing costs, advertising and promotions, administrative and supervisory labor, office supplies and expenses, rents, insurance, pensions and benefits, depreciation and taxes.

ITEMS—(Note §31.01-8)

Account 319:

1. Revenues from sale and installations of telephone equipment.

2. Revenue from the lease of telephone equipment.

3. Revenues from repair of customer-owned telephone equipment.

Account 320:

Labor—

1. Canvassing and demonstrating telephone equipment for the purpose of selling.

2. Demonstrating and selling activities in salesrooms.

3. Installing ~~leased or~~ customer-owned equipment.

4. Preparing advertising materials for equipment ~~lease or~~ sales purposes.

5. Receiving and handling orders for the sale, ~~lease,~~ installation and maintenance of customer-owned ~~or leased~~ telephone equipment.

6. Cleaning and tidying salesrooms.

7. Maintaining display counters and other equipment used in telephone equipment merchandising.

8. Arranging merchandise in salesrooms and decorating display windows.

9. Reconditioning repossessed and returned equipment.

10. Bookkeeping and other clerical work in connection with equipment sales ~~and leasing~~ activities.

11. Supervising telephone equipment sales ~~and leasing~~ activities.

12. Repair and maintenance of customer-owned ~~or leased~~ equipment.

Materials and Expenses—

13. Advertising in newspapers, periodicals, radio, television, etc.

14. Cost of merchandise sold and of materials used.

15. Stores' expenses on telephone equipment stocks held for sale ~~or lease~~.

16. Fees and expenses of advertising and commercial artists' agencies.

17. Printing booklets, dodgers and other advertising data.

18. Premiums given as inducement to buy ~~or lease~~ telephone equipment.

19. Light, heat and power.

20. Depreciation on equipment used for installation, repair or maintenance of customer-owned ~~or leased~~ telephone equipment.

21. Rent of salesrooms or of equipment.

22. Transportation expense in delivery and pickup of customer-owned ~~or leased~~ equipment by utility's facilities or by others.

23. Stationery and office supplies and expenses.

24. Losses from uncollectible accounts associated with the sale ~~and lease~~ of telephone equipment.

ITEM 7. Subrule 16.5(38) is amended to read as follows:

16.5(38) Delete from section 31.6-64 the words "inside wires, or drop block wires," following the word "apparatus." Section 31.6-64, as amended, will read:

31.6-64 Extensive replacements.

When it becomes necessary to replace the majority of station apparatus in any given central office district, together with any number of such items in contiguous districts, the cost of the replacements chargeable to account 605, Repairs of station equipment, if so authorized by this Commission upon application to it, shall be charged to account 138, Extraordinary maintenance and retirements, and cleared to account 605 over the period specified in the authority.

ITEM 8. Subrule **16.5(40)** is deleted in its entirety.

ITEM 9. Renumber subrule 16.5(41) to 16.5(40). Amend to read as follows:

COMMERCE COMMISSION[250] (cont'd)

~~16.5(41)~~ 16.5(40) Amend Note B of section 31.604 as follows:

After the word "test-board", delete the word "men" and substitute the word "personnel".

After the words "such as testing with station", delete the terms "repairmen, cablemen" and substitute the term "repair personnel, cable personnel".

Add ~~two~~ one sentences to Note B, so that, as amended, it will read:

NOTE B: The pay and expenses of test-board personnel and other employees in central offices engaged in testing circuits in connection with the maintenance of plant, such as testing with station repair personnel, cable personnel, etc., shall be charged to account 603. Similar costs in connection with construction projects shall be included in the telephone plant accounts appropriate for the class of plant tested. Similar costs in connection with service orders shall be charged to account 603. ~~Similar costs in connection with testing or service orders for customer-owned equipment shall be charged to account 620.~~

ITEM 10. Renumber subrule 16.5(42) to 16.5(41). Amend to read as follows:

~~16.5(42)~~ 16.5(41) Amend section 31.605 and related item list and delete Notes A and B. As amended, section 31.605 will read:

31.605 Repairs of station equipment.

(a) This account shall include the cost of repairing station apparatus, inside station wiring and large private branch exchanges.

(b) This account shall include also amortization of costs of extensive replacements of station apparatus, ~~inside wires,~~ and service wires, which, under conditions provided in §31.6-64 have been included in account 138, Extraordinary maintenance and retirements.

ITEMS—(Note §31.01-8) Cleaning station apparatus and large private branch exchange equipment.

House service for public telephones.

Inspecting, testing and reporting on condition of equipment to determine the need for repairs or replacements (See also account 603.)

Materials normally used as repair parts for station apparatus.

Number plate changes not incident to station removals and changes.

Removing sediment from and cleaning batteries.

Repainting and other repairs of booths.

Repairing used station equipment for reuse.

Replacing defective station apparatus.

Replacing dry-cell batteries.

Replacing minor items of large private branch exchanges, including labor and material used and the removal and recovery of the items retired less salvage recovered, except when such items are replaced through the replacement of retirement units. (Note also §31.2-25.)

Supply expense applicable to station apparatus being reused.

Testing for, locating and clearing trouble in station apparatus and large private branch exchanges. (See also account 603.)

ITEM 11. Renumber subrule 16.5(43) to 16.5(42).

ITEM 12. Renumber subrule 16.5(44) to 16.5(43). Amend as follows:

~~16.5(44)~~ 16.5(43) In section 31.8, delete the title "232 Station connections" and parenthetical reference

"(See §§31.2-25, 31.232, and 31.605.)", and add titles and lists for account 232, Services and account 233, Inside station wiring, as follows:

232 Services.

A service complete from its attachment with the general overhead or underground system up to and including the protector. ~~Separate unit property records should be maintained for characteristically different types of services, i.e., overhead versus underground.~~

233 Inside station wiring.

Each inside wiring installation. ~~Separate unit property records should be maintained for characteristically different types of inside wiring installations, i.e., commercial vs. residential and single main station vs. 1 extension or 2 extensions, etc.~~

This rule is intended to implement Iowa Code sections 476.2 and 476.9.

[Filed 8/27/82, effective 10/20/82]

[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3212

CREDIT UNION DEPARTMENT[295]

Pursuant to the authority of Iowa Code section 533.2 the Credit Union Department adopts Chapter 12, "Bylaw Amendment Voting Procedure - Mailed Ballot" as approved by the Credit Union Review Board on June 21, 1982.

Notice of Intended Action was published in IAB July 21, 1982, as ARC 3051 and simultaneously emergency adopted as ARC 3049.

These rules set forth the procedure requirements pertaining to the membership voting by mail ballot on proposed amendments to the bylaws.

A public hearing was held on August 12, 1982 at 2:00 p.m. No one appeared at the public hearing and no written comments were received by the department. Therefore these rules are identical to those published as Notice of Intended Action [Identical to Filed emergency, IAB 7/21/82, ARC 3049].

These rules are intended to implement Iowa Code section 533.2.

These rules will become effective on October 20, 1982.

Add the following new chapter:

CHAPTER 12

BYLAW AMENDMENT VOTING PROCEDURE —
MAILED BALLOT

295—12.1(533) Authority for mailed ballots. At an annual or special meeting a majority of the members present must have approved amending bylaw Section 19.1 to include the balloting by mail provision.

12.1(1) Any and all amendments to the bylaws must be approved by the administrator before they become operative.

12.1(2) Reserved.

295—12.2(533) Notice to voting members.

12.2(1) The proposed amendment(s) shall be set forth in its entirety in a notice mailed to all members eligible to vote at least twenty days but not more than thirty days prior to the close of balloting by mail.

CREDIT UNION DEPARTMENT[295] (cont'd)

12.2(2) The notice shall state the date of the close of the balloting. Such closing date shall be not less than twenty days nor more than thirty days from the date of the notice.

12.2(3) The notice shall contain a summary of the board's reasons for recommending the bylaw amendment.

295-12.3(533) Balloting procedure.

12.3(1) A ballot shall be included with the notice to all eligible voting members of the credit union.

12.3(2) Ballots must be returned to the credit union by the date of the closing of the balloting.

12.3(3) Ballots hand delivered to the credit union must be received by the closing date.

12.3(4) Ballots returned to the credit union by mail must be postmarked no later than the closing date in order to be valid.

12.3(5) The ballot must be signed by the member.

295-12.4(533) Balloting in conjunction with membership meeting.

12.4(1) Should the board of directors determine that balloting by mail will be done in conjunction with an annual or special meeting such ballots must be mailed to the members at least twenty days but not more than thirty days prior to the meeting.

12.4(2) The board shall inform the members they have the right to vote on the proposed amendment(s) in person at the meeting or by written ballot.

12.4(3) Written ballots must be postmarked or received in the credit union office no later than the date of the meeting in order to be valid.

12.4(4) Notice requirements shall be identical to those set forth in 295-12.2(533).

295-12.5(533) Ballot.

12.5(1) Ballots referred to in this chapter shall be substantially in the following form:

SAMPLE

SAMPLE

BALLOT

I, the undersigned member of XYZ Credit Union acknowledge receipt of the notice containing proposed amendment(s) to the bylaws and herewith cast my vote.

Shall the proposed amendment to the following be adopted?

- Section 6.2 Yes ___ No ___
Section 7.4 Yes ___ No ___
Section 18.1 Yes ___ No ___

Signature of Member

Account Number

Date

12.5(2) Each proposed amendment must be listed separately on the ballot so that the member has the opportunity to vote on each proposal.

12.5(3) Bifold post cards which can be sealed by the member may be used as ballots.

12.5(4) Ballots shall be delivered to the election committee unopened.

295-12.6(533) Confidentiality of ballots.

12.6(1) The board shall appoint from the membership an election committee of not less than five members to be in charge of counting the ballots and verifying that no eligible member voted more than once. No member of the board may serve on the election committee.

12.6(2) Returned ballots become the property and responsibility of the election committee.

12.6(3) No director or employee or member of the election committee shall reveal the manner in which any member voted on the proposed amendment(s).

295-12.7(533) Certification of ballots in support of department approval.

12.7(1) No sooner than five days after the close of the balloting period the election committee shall certify the vote count to the board.

12.7(2) The following documentation shall be submitted by the board to the administrator in support of their request for approval:

- a. A certified copy of the board minutes which contain the recommendation to submit the proposed amendment(s) to the membership.
b. A certified copy of the notice.
c. A certified copy of the ballot.
d. A certified statement, including the vote count that a majority of the eligible members voted in favor of the proposed amendment(s).

295-12.8(533) Reporting the results of the vote to the membership.

12.8(1) The board shall inform the membership of the results of the vote and whether the amendment received the approval of the administrator by conspicuously posting such notice in the credit union office for a period of sixty days and by one of the following methods:

- a. Include the results in the next mailing of the member's statements of account, or
b. Include the results in the credit union newsletter, or
c. Include the results in the sponsor newsletter, or
d. A notice in a newspaper of general circulation within the credit union's area of operation.

295-12.9(533) Preservation of ballots.

12.9(1) Immediately upon certification of the vote by the election committee the ballots shall be sealed and appropriately labeled.

12.9(2) Ballots shall be retained in the credit union for a period of sixty days from the date of final approval or denial of the amendment(s) by the administrator.

This rule is intended to implement Iowa Code section 533.2.

[Filed 8/27/82, effective 10/20/82]
[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3213**CREDIT UNION DEPARTMENT[295]**

Pursuant to Iowa Code section 533.30(1) the Credit Union Department adopts Chapter 13, "Merger Voting Procedure - Mailed Ballot" as approved by the Credit Union Review Board on June 21, 1982.

Notice of Intended Action was published in IAB, July 21, 1982 as ARC 3051 and simultaneously emergency adopted as ARC 3050.

These rules set forth the procedure requirements pertaining to the membership voting by mail ballot on a merger proposal.

A public hearing was held on August 12, 1982 at 2:00 p.m. No one appeared at the public hearing and no written comments were received by the department. Therefore these rules are identical to those published as Notice of Intended Action [Identical to Filed emergency, IAB 7/21/82 ARC 3050]

These rules are intended to implement Iowa Code section 533.30(1).

These rules will become effective on October 20, 1982. Add the following new chapter:

**CHAPTER 13
MERGER VOTING PROCEDURE —
MAILED BALLOT**

295—13.1(533) Notice to voting members.

13.1(1) Pursuant to a plan agreed upon by the majority of the board of directors of each credit union joining in the merger and approved by the administrator the board of each credit union shall provide each eligible voting member at least twenty days but not more than thirty days advance notice of the meeting at which the merger proposal is to be submitted.

13.1(2) The notice shall specify the purpose of the meeting and date, time and place.

13.1(3) The notice shall include a summary of the merger plan which shall contain, but not necessarily be limited to, current financial reports for each credit union, analysis of share values, explanation of any proposed share adjustments, explanation of any changes relative to insurance of member accounts.

13.1(4) The notice shall state the reason for the proposed merger.

13.1(5) The notice shall provide the name and address (and include branches) of the continuing credit union.

13.1(6) The notice shall inform the members they have the right to vote on the merger proposal in person at the meeting or by written ballot to be postmarked no later than the date of the meeting called for that purpose.

13.1(7) The notice shall be accompanied by a Ballot for Merger Proposal.

13.1(8) The merger proposal must be approved by an affirmative vote of a majority of the members of the credit union who vote on the proposal.

295—13.2(533) Ballot.

13.2(1) Ballots referred to in this chapter shall be substantially in the following form:

SAMPLE

SAMPLE

Ballot for Merger Proposal

I, the undersigned member of XYZ Credit Union acknowledge receipt of the notice containing the proposed merger of ABC Credit Union into XYZ Credit Union. I hereby state that I will not be present at the annual/special meeting of the membership of XYZ Credit Union held at Anytown, Iowa on 4/3/82, and I hereby cast my vote.

Shall the proposed merger take place?

Yes _____ No _____

Signature of Member

Account Number

Date

13.2(2) Ballots must be signed by the member.

13.2(3) Bifold post cards which can be sealed by the member may be used as ballots.

13.2(4) Ballots shall be delivered to the election committee unopened.

295—13.3(533) Confidentiality of ballots.

13.3(1) The board of each credit union shall appoint from the membership an election committee of not less than five members to be in charge of counting the ballots and verifying that no eligible member voted more than once. No member of the board may serve on the committee.

13.3(2) Returned ballots become the property and responsibility of the election committee.

13.3(3) No director or employee or member of the election committee shall reveal the manner in which any member voted on the proposed merger.

295—13.4(533) Certification of ballots.

13.4(1) No sooner than five days but no more than ten days after the close of the balloting period the election committee shall count the ballots and certify the vote count to the board.

13.4(2) The following documentation shall be submitted by each board to the administrator in support of their request for approval:

a. One completed copy, including the notary element of the affidavit certifying the vote count.

b. Certified copy of the board minutes authorizing the merger action.

c. Certified copy of the notice of the annual/special meeting.

d. Certified copy of the minutes of the annual/special meeting.

e. Most recent copy of financial statement and delinquent loan schedule.

CREDIT UNION DEPARTMENT[295] (cont'd)

295—13.5(533) Reporting the results of the vote to the members.

13.5(1) The board of the continuing credit union shall immediately inform the membership of the results of the vote and whether the merger proposal received the approval of the administrator by conspicuously posting notice in the credit union office for a period of sixty days and by one of the following methods:

- a. Include the results in the next mailing of the member's statement of accounts, or
- b. Include the results in the credit union newsletter, or
- c. Include the results in the sponsor newsletter, or
- d. A notice in a newspaper of general circulation within the credit union's area of operation.

13.5(2) No more than ten days following the date of the meeting the board of the merging credit union shall inform the membership by mail the results of the vote and the date the merger is to take place.

295—13.6(533) Preservation of ballots.

13.6(1) Immediately upon certification of the vote by the election committee the ballots shall be sealed and appropriately labeled.

13.6(2) Ballots shall be retained in the continuing credit union for a period of sixty days following the issuance of a Certificate of Merger.

This rule is intended to implement Iowa Code section 533.30(1).

[Filed 8/27/82, effective 10/20/82]
[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3208**EMPLOYMENT SECURITY[370]**

(JOB SERVICE)

Pursuant to Iowa Code sections 96.11(1) and 17A.3, the Iowa Department of Job Service hereby adopts an amendment to Chapter 3, "Employer's Contribution and Charges", Iowa Administrative Code.

This rule change is identical to that published in IAB Number 2, July 21, 1982, as ARC 3069, except that a colon replaces the period at the end of subrule 3.40(7).

This rule explains that the emergency tax will be added to the employer's regular rate during any quarter of 1983 in which the emergency tax is in effect. It explains how the department will break out the emergency tax to credit it to the temporary emergency tax fund and that the employer will not be given credit toward future contribution rates.

This rule is intended to implement Iowa Code section 96.7(15), as amended by 1982 Iowa Acts, Senate File 2273.

The agency adopted this rule August 25, 1982. It will become effective October 20, 1982.

Amend rule 370—3.40(96) by adding new subrule 3.40(7) to read as follows:

3.40(7) Temporary emergency tax for 1983. If it becomes necessary to implement a temporary emergency tax on all employers (except zero rated employers, government employers, and nonprofit organizations as described in the U.S. Internal Revenue Code, 26 U.S.C. 501(c)(3)) for any quarter of 1983 to pay interest on

moneys borrowed from the federal government to pay job insurance benefits, the emergency tax shall be collected and credited in the following manner:

a. The emergency tax rate (not to exceed one-tenth of one percent) will be added to the regular contribution (tax) rate on the employer's quarterly reporting form. A message printed on the form will state that the rate shown includes the temporary emergency tax and shall give the emergency tax rate.

b. The portion of each tax payment which is attributable to the emergency tax that is received from an employer for a quarter in which the emergency tax is in effect, shall be credited to the temporary emergency tax fund.

c. The portion of the employer's tax payment credited to the temporary emergency tax fund shall not be used in the computation of the employer's future contribution (tax) rates.

This rule is intended to implement Iowa Code section 96.7(15), as amended by 1982 Iowa Acts, Senate File 2273.

[Filed 8/26/82, effective 10/20/82]
[Published 9/15/82]

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ARC 3209**EMPLOYMENT SECURITY[370]**

(JOB SERVICE)

Pursuant to Iowa Code sections 96.11(1) and 17A.3, the Iowa Department of Job Service hereby adopts amendments to Chapter 4, "Claims and Benefits", Iowa Administrative Code.

These rules are identical to those published in IAB, Number 2, dated July 21, 1982, as ARC 3070, except that the word "said" has been eliminated from subrule 4.59(7), paragraph "c".

These amendments are to rules 370—4.41(96) and 370—4.42(96) which contain the procedure for the unemployed parent to follow in contacting Job Service. The unemployed parent must register for work and file a claim for job insurance. If eligible for job insurance payments, the job insurance payments must be collected before receiving AFDC-UP benefits.

New rule 370—4.59(96) specifies that Job Service shall notify the child support recovery unit of Iowa Department of Social Services of the persons filing new claims that owe child support payments. The Iowa Department of Social Services will either obtain a voluntary agreement for deductions from the claimant and, if no agreement is reached, shall use garnishment procedures to have Job Service make the deductions from job insurance payments.

These rules are intended to implement Iowa Code chapter 91, as amended by 1982 Iowa Acts, Senate File 2304 and Public Law 94-566; and Iowa Code section 96.3, as amended by 1982 Iowa Acts, House File 2347 and Public Law 97-35.

The agency adopted these rules August 25, 1982. They will become effective October 20, 1982.

ITEM 1. Amend rule 370—4.41(96) to read as follows:

EMPLOYMENT SECURITY[370] (cont'd)

370—4.41(96) Unemployed fathers parents program (ADC-UF AFDC-UP). Unemployed fathers parents program (ADC-UF AFDC-UP) under Public Law 94-566, an unemployed father parent who is eligible for both unemployment insurance and aid to dependent children-unemployed father parent program (ADC-UF AFDC-UP) shall be required to collect any unemployment insurance to which he the individual is entitled before receiving any payments under the ADC-UF AFDC-UP program.

This rule is intended to implement Iowa Code chapter 91, as amended by 1982 Iowa Acts, Senate File 2304 and Public Law 94-566 section 509.

ITEM 2. Amend rule 370—4.42(96) as follows which includes deleting in their entirety subrules 4.42(1), 4.42(2) and 4.42(3) and inserting new subrules 4.42(1) and 4.42(2) to read as follows:

370—4.42(96) Retention of DSS referral form. When an unemployed father parent presents his the DSS referral form PA-2138-5 to the job insurance service representative, the representative will take the form, sign it and complete a form IESC 201. The representative shall notate the form IESC 550 with an ADC-UF and retain the DSS form plus the self-addressed envelope in this form until the IESC 204, Iowa monetary records (determination), is returned.

4.42(1) The weekly benefit amount and maximum benefit amount of the claimant will be entered in job service comments on the form PA-2138-5. If the person is not monetarily eligible, that notation will be entered and the form mailed to social services.

4.42(2) An AFDC-UP claimant may have the claim protested which can affect eligibility. Social services may request additional information on a subsequent form PA-2138-5 concerning nonmonetary allowances or disqualifications on the claim, which will be furnished in the comments section of the form.

This rule is intended to implement Iowa Code chapter 91, as amended by 1982 Iowa Acts, Senate File 2304 and Public Law 94-566.

ITEM 3. Add new rule 370—4.59(96) to read as follows:

370—4.59(96) Child support intercept. An individual who owes a child support obligation and who has been determined to be eligible for job insurance benefits under Iowa Code chapter 96, shall have this information furnished to the child support recovery unit. Job service shall deduct and withhold from benefit payments the amount which is specified by the child support recovery unit. The term "benefits" for child support intercept purposes shall be defined as meaning any compensation payable under Iowa Code chapter 96, including any amounts payable pursuant to any job service agreement under any federal law administered by job service.

4.59(1) Information furnished to child support recovery unit. Job service shall furnish information to the child support recovery unit concerning all new claims filed that are monetarily eligible for benefits under any state or federal program administered by job service.

4.59(2) Action taken by child support recovery unit. The child support recovery unit shall contact the claimant so that an opportunity is afforded to the claimant for a

signed agreement to have a specified amount deducted and withheld from the claimant's benefits. The child support recovery unit shall submit a copy of the signed agreement to job service and job service shall deduct and withhold the amount specified in the agreement.

4.59(3) Garnishments. Failure of the child support recovery unit to reach an agreement with the claimant for a specified amount to be deducted may result in the child support recovery unit initiating a garnishment action through legal process under Iowa Code chapter 642. Job service shall deduct and withhold from the claimant's benefits the amount specified. Notwithstanding section 96.15, benefits under chapter 96 are not exempt from garnishment, attachment, or execution if garnished by the child support recovery unit as established in Iowa Code section 252B.2, to satisfy the child support obligation of an individual who is eligible under this chapter. Child support obligation is defined as only those obligations which are enforced pursuant to the plan as described in section 454 of the Social Security Act under part D of Title IV entitled "State Plan for Child Support".

4.59(4) Treatment of amount deducted for child support. Any amount deducted from unemployment insurance payments for child support obligations shall be treated as if it were paid to the individual as benefits under Iowa Code chapter 96.

4.59(5) Processing of payments. The child support recovery unit shall furnish to job service the name and address of the designated public official to which the amount deducted must be mailed. After the deduction, the remaining balance shall be mailed to the claimant.

4.59(6) Notice to claimant. Job service shall mail a notice to the claimant which explains the beginning date and the amount of the deduction from the claimant's weekly benefit amount which satisfies the individual's child support obligation to the child support recovery unit. This notice will be issued when the first deduction is made from the benefit warrant. The notice shall explain the authority for the deduction and include the claimant's right of appeal.

4.59(7) Appeal rights on the child support deduction.

a. Any appeal on a child support deduction is limited to either the validity of job service authority to make the deduction or the accuracy of the amount deducted.

b. The claimant will be advised to seek remedy either through the child support recovery unit or through the court system whenever the question of reasonableness or fairness of the deducted amount is raised in terms of ability to pay.

c. Job service does not have the authority under Iowa Code chapter 96, to change the amount of the deduction as specified by garnishment or voluntary agreement or to adjudicate any appeal from garnishment or voluntary agreement.

This rule is intended to implement Iowa Code section 96.3, as amended by 1982 Iowa Acts, House File 2347 and Public Law 97-35.

[Filed 8/26/82, effective 10/20/82]

[Published 9/15/82]

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ARC 3201**HEALTH DEPARTMENT[470]**

BOARD OF MORTUARY SCIENCE EXAMINERS

Pursuant to the authority of Iowa Code sections 147.86, 258A.2, and 258A.3, the rules of the Board of Mortuary Science Examiners appearing in the IAC relating to unembalmed bodies and license renewal (chapters 146 and 147) are hereby amended. The Board adopted the amendments August 11, 1982.

Notice of Intended Action regarding these rules was published in the IAB May 26, 1982 as ARC 2891.

The rules are identical to those published under notice except Item 1 was changed to remove the requirement for burial within the state of Iowa. The rules remove the requirement that an unembalmed body be buried within the local health jurisdiction. They remove the provision that photostatic copies of the diploma and transcript will be accepted for licensure. The rules also make some corrective amendments.

The rules are intended to implement Iowa Code sections 147.86, 258A.2, and 258A.3.

The rules shall become effective October 21, 1982.

ITEM 1. Subrule 146.1(7) is amended to read as follows:

146.1(7) Preparation of the body when death occurs from any other cause than the above-specified diseases. The preparation of the body when death occurs from a noncommunicable disease should be the same as in 146.1(6), paragraphs "a", "b", and "c", except that in case of religious objections or impracticability of any nature, specified arterial and cavity injections may be omitted, provided that interment is to be made ~~within the local health jurisdiction where the death occurred~~ and within forty-eight hours after death. Nothing in this subrule shall be construed as preventing any school of funeral directing, recognized by the state department of health, from embalming bodies in the presence of their enrolled students.

ITEM 2. Subrule 147.2(3) is amended to read as follows:

147.2(3) Applicants must present a diploma and official transcript of grades to the state department of health with their application, showing the completion of training in a college of mortuary science, approved by the Iowa state board of mortuary science examiners. ~~(Photostatic copies of the diploma and transcript of grades will be accepted)~~

ITEM 3. Subrule 147.2(9) is rescinded.

ITEM 4. Subrule 147.98(3) is amended to read as follows:

147.98(3) Beginning July 1, ~~1978, 1983~~, the fee for renewal of a funeral director's license is sixty dollars which shall expire on June 30 of each odd-numbered year. The fee for renewal for the years beginning July 1, 1981 and ending June 30, 1982 and beginning July 1, 1982 and ending June 30, 1983 is thirty dollars per year.

ITEM 5. Subrule 147.101(4) is amended to read as follows:

147.101(4) A licensee desiring to obtain credit for one or more succeeding calendar years, not exceeding three such years, for completing more than twelve hours of approved continuing education during any one calendar year shall report the carry-over credit at the time of filing the annual report to the board on or before April 1 of the year following the calendar year during which the

claimed additional continuing education hours were completed.

Carry-over credit of continuing education hours will not be permitted into the continuing education period beginning January 1, 1983 and ending December 31, ~~1985 1984~~ or subsequent thereto.

[Filed 8/23/82, effective 10/21/82]

[Published 9/15/82]

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ARC 3188**REGENTS, BOARD OF[720]**

Pursuant to the authority of Iowa Code sections 262.9(3) and 19A.3, the state Board of Regents adopted amendments to Chapter 3, "Personnel Administration," Iowa Administrative Code. These revisions were adopted on August 11, 1982, to (1) define "days" when used in this chapter and when not defined otherwise as being work days; (2) define "days" for purpose of appeal to a classification review committee as calendar days; and (3) provide one year duration for re-employment eligibility lists as called for in Iowa Code chapter 19A.

Notice of Intended Action was published in IAB on June 23, 1982, under ARC 2987.

This rule is identical to that published as Notice of Intended Action.

This rule is intended to implement Iowa Code section 19A.9.

This rule will become effective October 20, 1982.

ITEM 1. Rule 3.14(19A) is amended by adding a new subrule as follows:

3.14(27) "Days" means working days unless designated otherwise.

ITEM 2. Rule 720—3.127(19A) is amended as follows:

720—3.127(19A) Appeals on position classification. Permanent employees and department heads may initiate an appeal on position classification and such appeal shall be in written form. The department head will forward the employee's appeal with his or her recommendation within ten working days of date of appeal to the resident director. The resident director shall review the employee's and department head's request and with a recommendation forward the appeal to the merit system director within fifteen working days. The merit system director shall review and respond within thirty working days to the resident director who will inform the employee and department head. If the employee or department head is not satisfied with the merit system director's decision, that person may appeal the decision in writing within fifteen working days of the merit system director's decision to a qualified classification review committee appointed in accordance with procedures approved by the board of regents.

The classification review committee will conduct such investigation as it deems necessary to determine the proper allocation of the position, and will notify the involved parties of its decision within forty-five calendar days after receipt of the appeal the committee receives the appeal. Any further appeals of the same position must be

REGENTS, BOARD OF [720] (cont'd)

presented to the resident director in compliance with this section and will be considered a new appeal. An appeal will be considered on the basis of duties and responsibilities assigned at the time of the appeal, and in no case will the assignment of additional duties and responsibilities following the resident director's investigation of the appeal be considered during the process of appeal as outlined above.

ITEM 3. Subrule 3.67(2) is amended as follows:

3.67(2) Duration of eligibility lists. *Employment Eligibility lists will exist for a period of time no less than one year and no more than three year as designated by the resident director. Re-employment eligibility lists will exist for a period of one year.* Names may be added to or deleted from eligibility lists in accordance with these rules. The names of applicants who have not been appointed or otherwise removed from lists will be removed at the termination of the designated period of time.

[Filed 8/20/82, effective 10/20/82]

[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3189**REGENTS, BOARD OF [720]**

Pursuant to the authority of Iowa Code sections 262.9(3) and 19A.3, the state Board of Regents adopted an amendment to Chapter 3, "Personnel Administration," Iowa Administrative Code. This revision was adopted on August 11, 1982, to provide for one appointment of up to a year rather than the current six-month appointment which is renewable for a second six months. The adopted change also will remove the reference to "other fringe benefits" from the existing language on project appointments.

Notice of Intended Action was published in IAB on June 23, 1982, under ARC 2988.

This rule is identical to that published as Notice of Intended Action.

This rule is intended to implement Iowa Code sections 19A.9 and 79.1.

This rule will become effective October 20, 1982.

Rule 3.85(19A) is amended as follows:

720—3.85(19A) Project appointment. When it is known that a particular job, project, grant or contract will require the services of an employee for a limited duration, a project appointment may be made. Such an appointment will not be made for more than *one year six months, however with the approval of the resident director it may be extended for one additional six month period. Any* While an extension beyond one year *may* must be approved by the merit system director on the basis of a limited need that could not otherwise be efficiently and effectively filed. ~~S~~successive project appointments will not be allowed.

Such appointments will not confer to the individual any right of position, transfer, demotion, or promotion, but incumbents shall be eligible for vacation and sick leave ~~and other employee benefits~~, except that a project appointment made for less than 120 days or 960 hours will be considered a temporary appointment under rule 3.82(19A) without conferring rights or eligibility for vacation; ~~or sick leave or other benefits.~~

This rule is intended to implement Iowa Code sections 19A.9 and 79.1.

[Filed 8/20/82, effective 10/20/82]

[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3190**REGENTS, BOARD OF [720]**

Pursuant to the authority of Iowa Code sections 262.9(3) and 19A.3, the state Board of Regents adopted amendments to Chapter 3, "Personnel Administration," Iowa Administrative Code. These revisions were adopted on August 11, 1982, to (1) provide that, rather than the current three-month probation upon promotion, a six-month probation can be used with prior approval; and (2) place the name of an employee who fails a promotional probation on the re-employment list for the classification previously held by that employee.

Notice of Intended Action was published in IAB on June 23, 1982, under ARC 2989.

This rule is identical to that published as Notice of Intended Action.

This rule is intended to implement Iowa Code section 19A.9.

This rule will become effective October 20, 1982.

ITEM 1. Subrule 3.90(2) is amended as follows:

3.90(2) Duration of probation. A candidate who is certified from an employment list and appointed to a permanent position will be on probation until he or she completes six months of active service in the class to which appointed. If a probationary employee is not dismissed during this time, he or she will, at the conclusion of the probationary period, have permanent status in that class. A period of temporary employment immediately preceding a permanent appointment to the same class may, at the request of the employing department, be counted as probationary service. Employees who are promoted from one class to another, or who transfer out of class, will serve a period of probation for *either three or six months* during which time they will retain all of their rights under the merit system except that of permanency in the new class. *The duration of said probation shall be three months unless prior to the promotion the employee's department head requests and receives approval of the resident director to provide a six-month probationary period, and so informs the employee.*

ITEM 2. Subrule 3.90(4) is amended as follows:

3.90(4) Dismissal during probation. A certified employee who is rejected and dismissed during his or her probationary period, may be returned to the eligibility list from which he or she was appointed *or placed on the re-employment list for a previously held classification in the case of a promotional probationary if, in the judgment of the resident director, he or she may be able to perform satisfactorily in another position.*

[Filed 8/20/82, effective 10/20/82]

[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3193
SOCIAL SERVICES
DEPARTMENT [770]

Pursuant to the authority of Iowa Code sections 217.6, 356.36 and 356A.3, rules of the Department of Social Services appearing in the IAC relating to jail facilities (chapter 15) are hereby amended. The Council on Social Services adopted these rules August 18, 1982.

Notice of Intended Action regarding these rules was published in the IAB June 23, 1982 as ARC 2976. These changes specify the standard, rather than the advanced, first aid course in required training and they reduce the number of training hours for personnel working in holding facilities.

These rules are identical to those published under notice.

These rules are intended to implement Iowa Code section 356.36.

These rules shall become effective October 20, 1982.

ITEM 1. Subrule 15.11(2), paragraph "a" subparagraph (1), is amended to read as follows:

(1) The individual shall hold a Red Cross ~~advanced standard~~ first aid certificate or the equivalent; or

A crash injury management certificate from the Iowa state department of health; or

Be certified as having completed an emergency medical technician program; or

Be licensed to practice as a physician's assistant, licensed practical nurse, registered nurse or medical doctor in the state of Iowa.

ITEM 2. Subrule 15.11(2), paragraph "b", is amended to read as follows:

b. Successful completion of a forty-hour classroom training program appropriately documented to reflect course content, length of session and instructor(s) *shall be applicable to jailers and administrators employed in all jails except temporary holding facilities. Jail administrators and jailers employed in holding facilities shall receive ten hours of training within the first year of employment. This training shall include the following or comparable course content:*

(1) *Introduction to Iowa criminal procedure and criminal law as applicable to the temporary holding facility setting including laws relating to the use of force.*

(2) *Security procedures, to include procedures regarding the proper methods of transporting inmates.*

(3) *Supervision of inmates, to include instruction on the basic civil rights of an inmate which would be applicable to a temporary holding facility.*

(4) *Recognizing symptoms of mental illness, retardation or substance abuse.*

ITEM 3. Subrule 15.11(3) is amended to read as follows:

15.11(3) Continuing education. During each full year of employment following completion of the required training as set forth in subrule 15.11(2), paragraphs "a" and "b", a jailer and appointed administrator of a jail *except a temporary holding facility* shall complete twenty hours of inservice training, not to include hours spent in maintaining required certifications or proficiency in first aid, life support and handling of firearms. *Administrators and jailers of holding facilities shall complete five hours of inservice training, not to include hours spent in maintain-*

ing required certification or proficiency in first aid, life support, and handling of firearms.

[Filed 8/20/82, effective 10/20/82]

[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3194
SOCIAL SERVICES
DEPARTMENT [770]

Pursuant to the authority of Iowa Code section 234.6, rules of the Department of Social Services appearing in the IAC relating to the food stamp program (chapter 65) are hereby amended. The Council on Social Services adopted this rule August 18, 1982.

Notice of Intended Action regarding this rule was published in the IAB June 23, 1982 as ARC 2978. This amendment adopts federal regulations published in the Federal Register March 19, 1982, amendment number 208. These regulations amend 7 CRF Part 273 and defer the adjustment of the amount of the thrifty food plan from April 1, 1982 to October 1, 1982. Adjustment would continue to be made in October of each year thereafter. P.L. 97-98 mandates this adjustment.

The date was changed to incorporate rules adopted while this change was under notice.

This rule is intended to implement Iowa Code section 234.12.

This rule shall become effective October 20, 1982.

Rule 770—65.3(234), first paragraph, is amended to read as follows:

770—65.3(234) Administration of program. The food stamp program shall be administered in accordance with the Food Stamp Act of 1977 and in accordance with federal regulation, Title 7, Parts 270 through 282 as amended to ~~December 8, 1981 and amendments of April 23, 1982, April 27, 1982, and~~ May 14, 1982.

[Filed 8/20/82, effective 10/20/82]

[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3195
SOCIAL SERVICES
DEPARTMENT [770]

Pursuant to the authority of Iowa Code section 249A.4, rules of the Department of Social Services appearing in the IAC relating to intermediate care facilities (chapter 81) are hereby amended. The Council on Social Services adopted these rules August 18, 1982. This rule is being adopted to reconcile the rules with the law, and it is the sense of the council that the general assembly should review the maximum rate to increase it.

Notice of Intended Action regarding these rules was published in the IAB June 23, 1982 as ARC 2981. These

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rules redefine the basis for determining the maximum reimbursement rate for intermediate care facilities.

These rules are identical to those published under notice.

These rules are intended to implement Iowa Code sections 249A.2(6) and 249A.3(2)"a".

These rules shall become effective October 20, 1982.

Subrule 81.6(16), paragraphs "b" and "c" are amended to read as follows:

b. The maximum allowable cost ceiling shall be established at the beginning of the state's fiscal year. The maximum allowable cost ceiling shall be determined at a level where seventy-four percent of the participating facilities are receiving one hundred percent of their allowable costs. The ~~most recent~~ *June 30, 1981* report of "Unaudited Compilation of Various Costs and Statistical Data" shall be the basis of the calculation.

c. An incentive factor shall be determined at the beginning of the state's fiscal year based upon the ~~most recent~~ *June 30, 1981* "Unaudited Compilation of Various Costs and Statistical Data". The incentive factor shall be equal to one half the difference between the forty-sixth percentile of allowable costs and the seventy-fourth percentile of allowable costs. Notwithstanding the foregoing, under no circumstances shall the incentive factor be less than \$1.00 per patient day or more than \$1.75 per patient day.

[Filed 8/20/82, effective 10/20/82]

[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3196**SOCIAL SERVICES
DEPARTMENT[770]**

Pursuant to the authority of Iowa Code chapter 237A, and 1982 Iowa Acts, House File 303, rules of the Department of Social Services appearing in the IAC relating to family day care homes (chapter 110) are hereby amended. The Council on Social Services adopted these rules August 18, 1982.

Notice of Intended Action regarding these rules was published in the IAB June 23, 1982 as ARC 2982. These rules set forth the standards to be met by group day care homes. Also, two minor changes are being made in safety standards.

These rules are identical to those published under notice.

These rules are intended to implement 1982 Iowa Acts House File 303, section 4.

These rules shall become effective November 1, 1982.

ITEM 1. Change the chapter title to read as follows:
FAMILY AND GROUP DAY CARE HOMES

ITEM 2. Subrule 110.5(1) is amended by rescinding paragraphs "j" and "k" and inserting the following in lieu thereof:

j. Emergency plans in case of fire or tornado written and posted.

k. Fire drills practiced once a month and recorded and tornado drills practiced and recorded quarterly.

ITEM 3. Add the following new rule:

770—110.9(237A) Additional requirements for group day care homes.

110.9(1) The group day care home shall provide a separate quiet area for sick children.

110.9(2) Group day care home fire safety requirements.

a. Fire extinguisher. The group day care home shall have not less than one 2A 10 BC rated fire extinguisher located in a visible and readily accessible place on each child occupied floor.

b. Smoke detectors. The group day care home shall have a minimum of one single station battery operated UL approved smoke detector in each child occupied room and at the top of every stairway. Each smoke detector shall be installed according to manufacturer's recommendations. Each smoke detector shall be tested monthly by the provider and a record kept for inspection purposes.

c. Two exits. The group day care home shall have a minimum of two direct exits to the outside from the main floor. Both a second story child occupied floor and a basement child occupied floor shall have in addition to one inside stairway at least one direct exit to the outside. All exits shall terminate at grade level with permanent steps. Occupancy above the second floor shall not be permitted for child care. A basement window may be used as an exit if the dimensions of the window are a minimum thirty inches by thirty inches with permanent steps inside leading up to the window.

[Filed 8/20/82, effective 11/1/82]

[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3204**TRANSPORTATION,
DEPARTMENT OF[820]
06 HIGHWAY DIVISION**

Pursuant to the authority of Iowa Code section 307.10, the Transportation Commission, on August 17, 1982, adopted amendments to 820, division 06 entitled "Highway Division".

A Notice of Intended Action for these rule amendments was published in the July 7, 1982 Iowa Administrative Bulletin as ARC 3029.

These amendments rescind two chapters of rules which are being transferred to division 10, "Railroad Division".

These rule amendments are identical to the ones published under notice.

These rule amendments are intended to implement Iowa Code chapters 307 and 327G.

These rule amendments are to be published as adopted in the September 15, 1982 Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective October 20, 1982.

Pursuant to the authority of Iowa Code section 307.10, the rules in Division 06, entitled "Highway Division", articles A and C are hereby amended.

ITEM 1. Rescind all of [06,A] chapter 1 entitled "Guidelines for Safety Evaluation of Rural Railroad-Highway Grade Crossings" and reserve the number for future use.

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ITEM 2. Rescind all of [06,C]chapter 3 entitled "Highway-Railroad Crossing Projects" and reserve the number for future use.

[Filed 8/24/82, effective 10/20/82]

[Published 9/15/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

ARC 3205**TRANSPORTATION,
DEPARTMENT OF[820]**

10 RAILROAD TRANSPORTATION DIVISION

Pursuant to the authority of Iowa Code section 307.10, the Transportation Commission, on August 17, 1982, adopted amendments to 820, division 10 entitled "Railroad Transportation Division".

A Notice of Intended Action for these rule amendments was published in the July 7, 1982 Iowa Administrative Bulletin as ARC 3030.

The administrative rules for the department's railroad division are being revised because of Iowa Code changes, federal government preemptions of authority and departmental reorganization.

Five chapters of rules and four rules have been deleted. These rules and the reasons for their deletion are:

A. 820—[10,D]chapter 10, "Railroad Clearances", and 820—[10,E]chapter 9, "Catwalks and Handrails", concern topics of minimum departmental responsibility under the Iowa Code and are competently covered by AREA (American Railway Engineering Association) manual of standards.

B. 820—[10,E]chapter 7, "Railroad Operating Signals and Safety Devices", and 820—[10,E]chapter 8, "Railroad-Highway Grade Crossing Signal Protection", are duplicates of federal rules in 49 CFR 236 and departmental rules 820—[06,C]chapter 3.

C. Rules 820—[10,B]1.4(307), "Formal complaints", and 820—[10,B]1.5(307), "Applications and petitions on railroad matters", and 820—[10,C]chapter 11, "Abandonment or Reductions of Stations and Service", are responsibilities of the transportation regulation authority, not the railroad division.

D. Rules 820—[10,B]1.2(307), "Relationship of the division to the transportation regulation board", and 820—[10,B]1.3(307), "Informal complaints", are mere repetitions of the Iowa Code.

Two chapters of rules are being transferred to this division of rules because of a departmental reorganization which transferred responsibilities to the railroad division. 820—[06,A]chapter 1, "Guidelines for Safety Evaluation of Rural Railroad-Highway Grade Crossings", and 820—[06,C]chapter 3, "Highway-Railroad Crossing Projects", have been updated, edited and renumbered as 820—[10,B]chapters 3, 4 and 5.

The title of division 10 has been shortened to "Railroad Division".

One chapter has been revised to reflect legislative changes to Iowa Code chapter 327H, as amended by the 1981 Iowa Acts, chapter 116.820—[10,F]chapter 1, "General Requirements for Implementing the Rail

Assistance Program", has been amended and renumbered as 820—[10,C]chapter 1.

A new chapter has been written because of legislative changes to Iowa Code subsection 307B.7(5), as amended by the 1981 Iowa Acts, Second Extraordinary Session, chapter 3, section 7. 820—[10,C]chapter 2, "Relationship with Iowa Railway Finance Authority", defines an enforceable undertaking.

All of the rules have been edited for clarity and for language and have been updated to reflect current practices and procedures.

These rule amendments are identical to the ones published under notice except for the following:

1. All references to "The Code" have been changed to "Iowa Code".

2. Subrule [10,B]1.2(1): This subrule has been revised to require presentation of a state identification card only when requested.

3. Subrule [10,B]4.3(3) paragraph "a": References to the interstate commerce commission's uniform system of accounts for railroad companies have been updated.

4. Subrule [10,B]4.5(6): In the last sentence of this subrule, "any rules adopted pursuant thereto" has been changed to "pursuant rules" as requested by the Administrative Rules Review Committee.

5. Subrules [10,B]6.1(1), 6.1(2) and 6.1(3): The reporting deadlines have been revised to concur with federal reporting deadlines.

6. The first unnumbered paragraph of rule 820—[10,B]6.2(327C): The type of accident/incident and the extent of a reportable personal injury have been clarified.

7. Rule 820—[10,C]1.2(327H): References to the rail plan and railroad analysis update have been clarified; the latter's date of publication has been revised. Project eligibility through public hearing has also been clarified.

These rule amendments are intended to implement Iowa Code chapters 17A, 307, 307B, 327C, 327G and 327H.

These rule amendments are to be published as adopted in the September 15, 1982 Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective October 20, 1982.

Pursuant to the authority of Iowa Code section 307.10, the title of division 10, "Railroad Transportation Division", and Articles A through F of division 10 are hereby rescinded and the following new division title and articles are adopted in lieu thereof.

10 RAILROAD DIVISION

ARTICLE A

RAIL ADMINISTRATION

CHAPTER 1

ITEMS OF GENERAL APPLICATION

820—[10,A]1.1(307) Definitions. The following terms when used in this division of rules shall have the following meanings:

1.1(1) Department. The state department of transportation.

1.1(2) Railroad. Persons who own rail facilities or who are responsible for their operation and maintenance.

1.1(3) Crossing. The point where the railroad tracks and highway meet at the same location.

This rule is intended to implement Iowa Code sections 307.1 and 307.26.

820—[10,A]1.2(17A) Location and submission of documents. All documents, including applications, petitions,

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complaints, notices, reports, and forms, which must be submitted to the railroad division shall be submitted to this address: Department of Transportation, Railroad Division, 800 Lincoln Way, Ames, Iowa 50010. This includes all documents concerning railroad matters which, according to statute, must be submitted to the department.

This rule is intended to implement Iowa Code section 17A.3.

820—[10,A]1.3(327C) Financial and statistical reports. The department hereby adopts the accounting rules and regulations of the interstate commerce commission for railroad companies found in 49 CFR 1201 (1981). A copy of each annual report submitted to the interstate commerce commission by the railroad under 49 CFR 1201 and 1241 (1981) shall also be submitted to the railroad division.

This rule is intended to implement Iowa Code sections 327C.38, 327C.41, and 327C.42.

ARTICLE B

RAIL SAFETY AND CONSTRUCTION

CHAPTER 1

RAILROAD TRACK SAFETY STANDARDS

820—[10,B]1.1(307,327C) Track standards. The department adopts the railroad track safety standards contained in 49 CFR 213 (1981).

This rule is intended to implement Iowa Code sections 307.26, 327C.2, and 327C.4.

820—[10,B]1.2(327C) Track inspection.

1.2(1) Credentials required. Authorized departmental employees shall be admitted to any railroad property to conduct safety inspections of the track and track structures and shall present state identification cards upon request.

1.2(2) Measurement tools and vehicles. Authorized employees shall be permitted by the railroad to use the measurement tools and vehicles deemed necessary by the railroad division for the conduct of inspections. To ensure safe operating conditions for measurement vehicles and trains on the segment of track being inspected, the railroad shall provide the employees with all information and assistance necessary.

This rule is intended to implement Iowa Code section 327C.4.

CHAPTER 2

RAILROAD-HIGHWAY GRADE CROSSING
WARNING DEVICES

820—[10,B]2.1(307,327G) Standards. All railroad-highway grade crossing warning devices installed shall be in conformance with "Part VIII Traffic Control Systems for Railroad-Highway Grade Crossings" of the "Manual on Uniform Traffic Control Devices for Streets and Highways" (1978), published by the United States Department of Transportation. Information for obtaining the manual is available from the railroad division.

This rule is intended to implement Iowa Code sections 307.26, 327G.2, 327G.23 and 327G.28

CHAPTER 3

GUIDELINES FOR SAFETY EVALUATION OF
RURAL RAILROAD-HIGHWAY GRADE CROSSINGS

820—[10,B]3.1(307,327G) Purpose. The purpose of this chapter of rules is to provide guidelines for the uniform safety evaluation of rural railroad-highway grade crossings and for the use of traffic control or warning devices

in addition to existing crossbuck signs, advance warning signs, and pavement markings.

This rule is intended to implement Iowa Code sections 307.26, 327G.2, 327G.15, 327G.23, and 327G.28.

820—[10,B]3.2(307) Definitions. The following terms when used in this chapter of rules shall have the following meanings:

3.2(1) Highway AADT. The average annual daily traffic on the highway at the crossing.

3.2(2) Number of trains per day. The average daily number of through trains using the crossing.

3.2(3) Crossing angle factor. A factor established for the angle at which the highway and railroad intersect. Crossing angle factors are:

Angle of Highway-Railroad Grade Crossing	Crossing Angle Factor
0° - 29°	2.0
30° - 59°	1.2
60° - 90°	1.0

3.2(4) Train speed factor. A factor for the maximum train speed over the crossing. Train speed factors shall be computed as follows:

Train Speed Limit (MPH)	Train Speed Factor
60 or greater	1.0
40 - 59	0.9
25 - 39	0.8
below 25	0.7

3.2(5) Highway speed factor. A factor for the posted speed limit on the highway at the crossing. Highway speed factors shall be computed as follows:

Highway Speed Limit (MPH)	Highway Speed Factor
45 - 55	1.0
35 - 40	0.8
25 - 30	0.6
below 25	0.5

3.2(6) Number of tracks factor. A factor for the number of tracks present at the crossing. Number of tracks factors shall be computed as follows:

Number and Type of Tracks	Number of Tracks Factor
Two or more mainline tracks	1.0
One mainline plus other	0.85
One mainline	0.80
Other	0.675

3.2(7) Crossing rating number. The number derived by applying the following formula:

$$\begin{aligned} &(\text{Highway AADT}) \times (\text{number of trains per day}) \\ &\times (\text{crossing angle factor}) \times (\text{train speed factor}) \times \\ &(\text{highway speed factor}) \times (\text{number of tracks factor}) \\ &= \text{crossing rating number.} \end{aligned}$$

This rule is intended to implement Iowa Code section 307.26.

820—[10,B]3.3(307,327G) Procedures.

3.3(1) Elements used to evaluate crossing safety. The authority having jurisdiction over the highway at the crossing shall consider the following elements to evaluate the safety at a crossing. If one or more of these elements are present, the crossing may qualify for traffic control devices such as temporary stop signs, flashing signals, or flashing signals with gates in addition to the crossbuck signs, advance warning signs, and pavement markings.

a. The crossing rating number is equal to or greater than fifteen hundred.

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b. The view up or down the track is blocked by trackside development or other obstructions so that a motorist must proceed beyond the normal stopping point (approximately fifteen feet from the nearest rail) to see an approaching train.

c. The ambient noise level outside a motor vehicle in the vicinity of the crossing is so high that audio train signals are ineffective.

d. The highway surface through the crossing is in a condition or state of disrepair that requires complete attention from a vehicle driver, or the potential exists for a vehicle to become stalled on the crossing.

e. The crossing has experienced an accident rate equal to or in excess of 0.5 accidents per year over the five-year period preceding the date of the latest accident of record.

3.3(2) Rumble strips. Rumble strips may be installed at the crossing as an auxiliary warning device to supplement stop signs, flashing signals, or flashing signals with gates if the crossing is judged to have an unusually high potential for accidents or in fact has an established accident experience. Rumble strips may also be used in conjunction with crossbucks and standard advance warning signs when the view of a railroad crossing from the approaching highway is less than the following distances for the indicated posted speed limits:

Posted Speed Limit (MPH)	Distance (Feet)
Less than 35	No rumble strips
35	500
40	600
45	700
50	800
55	1000

3.3(3) Rumble strip design. Rumble strips shall be the grooved rather than the raised design and shall allow a clear path for bicycle travel as shown in the department's Design Aids Manual #2613 (1977).

This rule is intended to implement Iowa Code sections 307.26, 327G.2, 327G.23, and 327G.28.

820—[10,B]3.4(307) Applicability. This chapter of rules shall not apply to crossings located within the corporate limits of municipalities, except crossings that are generally rural in nature, such as, but not limited to, those involving one or two tracks, rural speeds, agricultural land areas, etc. Municipal crossings frequently involve a more complex group of study variables than rural crossings, such as higher vehicle volumes, lower and more variable vehicle and train speeds, groups of switch and mainline tracks with the associated mixture of switching and through train movements, and closely adjacent buildings. These crossings require individual study and analysis by an engineer with special attention directed to the unique group of safety related elements present at each crossing.

This rule is intended to implement Iowa Code subsection 307.26(5).

CHAPTER 4

HIGHWAY GRADE CROSSING SAFETY FUND

820—[10,B]4.1(327G) Definitions. The following terms when used in this chapter of rules shall have the following meanings:

4.1(1) Active warning devices. Traffic control devices activated by the approach or presence of a train, such as flashing light signals, flashing light signals with canti-

lever assemblies, and flashing light signals with automatic gate arms, all of which actively warn motorists of a train.

4.1(2) Maintenance costs of active warning devices. Costs incurred by a railroad associated with the repair or replacement of obsolete, worn out, damaged, or missing component parts of an approved active warning device. Maintenance costs shall include repair or replacement of damaged, vandalized, or stolen component parts only for that amount which exceeds the amount recovered from the liable party or the liable party's insurer.

4.1(3) AAR signal unit. The relative maintenance difficulty value assigned to component parts of an active warning device. Units and interpretations are designated by the Association of American Railroads Signal Manual, Part 203 (1981).

4.1(4) Safety fund. The highway grade crossing safety fund established in Iowa Code section 327G.19, and administered by the department.

This rule is intended to implement Iowa Code sections 327G.15 and 327G.19.

820—[10,B]4.2(327G) Use of fund. The safety fund may be used for participation in a portion of maintenance costs associated with active warning devices, the installation of new active warning devices, or the replacement of obsolete ones.

This rule is intended to implement Iowa Code sections 327G.15 and 327G.19.

820—[10,B]4.3(327G) Use of fund for maintenance costs.

4.3(1) Maintenance cost participation. The safety fund may be used to participate in the annual maintenance costs of active warning devices ordered or agreed to be installed on or after July 1, 1973, as stated in the individual order or agreement.

a. Orders or agreements which provide for revision in the maximum amount that can be expended from the safety fund, by reason of amendment of Iowa Code section 327G.15, shall be binding.

b. Orders or agreements which contain that provision were amended to read: The fund's participation for calendar years preceding 1977 shall be equal to that of the railroad but limited to a maximum of four hundred and fifty dollars for any one year, for any one crossing, and for calendar year 1977 and subsequent years, the fund may participate in an amount up to seventy-five percent of annual maintenance costs of active warning devices based upon a cost for each eligible AAR signal unit.

c. Orders or agreements issued on or after March 8, 1978, shall provide that the safety fund may be used to participate in up to seventy-five percent of the annual maintenance costs of active warning devices, based upon a cost for each eligible AAR signal unit.

4.3(2) Determination of eligible AAR signal units.

a. The railroad shall tabulate the number of AAR signal units for each warning device which is eligible under subrule 4.3(1) of this chapter, and shall furnish the number to the railroad division.

b. The railroad division shall review the railroad's tabulation for conformance with AAR guidelines.

4.3(3) Determination of unit maintenance costs.

a. Each railroad having eligible warning device installations shall compile the actual maintenance costs for its entire warning device system in Iowa for the calendar year. A portion of the railroad's warning device system in adjacent states may be included if the railroad's signal

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districts are not wholly within Iowa. The maintenance costs to be compiled shall be one hundred percent of allowable costs under account numbers 11-11-19, 21-11-19, 39/40-11-19, 41-11-19, and 61-11-19 plus fifty percent of allowable costs under account numbers 11-31-59, 21-31-59, 41-31-59, and 61-31-59 of the interstate commerce commission's uniform system of accounts for railroad companies, subpart A, 49 CFR 1201 (1981). The compiled costs may include applicable labor additives and materials handling charges allowed in federal highway administration directives. Each railroad shall also tabulate the number of AAR signal units in its system.

b. For each calendar year, each railroad shall compile the actual maintenance costs and number of AAR units in accord with 4.3(3)"a" of this chapter. The compilation shall be submitted to the railroad division by February 15 of each year for the preceding year and may be audited by the department.

c. The department shall compute an average unit maintenance cost for the preceding year to be used by all railroads for billing purposes.

d. The average unit cost computed for the preceding year shall be the basis for determining the safety fund's participation in the annual maintenance costs of all active warning devices eligible for participation in that year. However, the fund's percentage of participation shall not exceed seventy-five percent of the annual maintenance costs.

e. Before April 15 of each year, each railroad shall submit one billing to the railroad division covering maintenance costs for the preceding year for all eligible warning device installations. Prior to reimbursement the department may perform an audit to determine conformity of the billed costs with the order or agreement. The department shall make proper reimbursement to each eligible railroad; however, if a railroad fails to submit a billing before April 15, the railroad may not be reimbursed. If, when all billings are received, it is determined that the safety fund is inadequate to reimburse all railroads in the amount of their total billings, the department shall reimburse each railroad on a prorated basis.

f. If a warning device has been installed less than one calendar year, the maintenance costs shall be prorated from the date the installation was placed in operation to the end of that calendar year.

4.3(4) Cost to railroad. The balance of the annual maintenance costs not paid from the safety fund shall be the responsibility of the railroad.

This rule is intended to implement Iowa Code sections 327G.15 and 327G.19.

820—[10,B]4.4(327G) Use of fund for warning device installation/replacement.

4.4(1) Percentage of participation. After reimbursement of annual maintenance costs, any balance in the safety fund may be used to participate in a maximum of ninety percent of the project costs to install or replace active warning devices. The remaining ten percent of the costs shall be paid by the jurisdiction having primary authority over the highway, street or alley at the crossing, unless otherwise agreed upon by the parties to the agreement.

4.4(2) Priorities. Use of the balance in the fund shall be determined as follows: Priority one — installation of new active warning devices; priority two — replacement of obsolete active warning devices.

This rule is intended to implement Iowa Code sections 327G.15 and 327G.19.

820—[10,B]4.5(327G) Procedures to use safety funds.

4.5(1) Project application. The board of supervisors of a county, the council of a city, or the highway division of the department, hereinafter referred to as the jurisdiction, may submit candidate projects to the railroad division.

4.5(2) Selection of projects. The railroad division shall identify all candidate projects as either priority one or priority two as defined in rule 4.4(327G) of this chapter and shall evaluate these projects in accordance with subrule [10,B]3.3(1).

a. Priority two projects may be considered ahead of priority one projects if the railroad division determines that a more hazardous condition exists at a priority two project location.

b. The railroad division shall notify the jurisdiction whether or not the project is selected and whether funds are available. Projects not selected shall be considered by the railroad division for funding in the following year.

4.5(3) Request for negotiations. If a project is selected and funds are available, the jurisdiction shall submit a written request to the department to enter into negotiations with the railroad. The written request from a city or county shall be in the form of a resolution of the council or board of supervisors.

4.5(4) Negotiations for agreements. Upon receipt of the resolution or written request, the railroad division shall initiate negotiations with the railroad. When concurrence is attained, a written agreement shall be consummated between the railroad, the railroad division, and the jurisdiction.

a. Prior to execution of the agreement, the department may perform a preaudit evaluation of the railroad.

b. The preaudit evaluation may include: An examination of the railroad's accounting methods and procedures to determine the railroad's ability to segregate and accumulate costs to be charged against the project and to be charged for subsequent maintenance of active warning devices; an examination of the railroad's cost factors to assure their propriety and allowability; and examination of any other general information available which might be pertinent or necessary in determining the railroad's auditability.

4.5(5) Provisions to be contained in the agreement. The written agreement shall specify the portion of the expenses which shall be paid by each party to the agreement including the costs associated with subsequent maintenance of the active warning device. The agreement shall specify the contract period and the method of payment from the safety fund. The installation, inspection, operation, and maintenance responsibilities of each party to the agreement for the active warning device shall be stated. The agreement may contain other provisions unique to a particular installation.

4.5(6) Resolution of disagreement. When agreement cannot be reached, either the railroad or the jurisdiction may apply to the transportation regulation authority as provided in Iowa Code section 327G.16. A hearing may be held in accordance with Iowa Code section 327G.17, and pursuant rules.

4.5(7) Processing of executed agreement. Upon final execution by the railroad division, the agreement shall be transmitted to the jurisdiction by the railroad division. The jurisdiction shall transmit the agreement to the railroad and authorize the railroad to order necessary materials and proceed with the work.

4.5(8) Inspection and certification of installed warning devices. Upon completion of the project, the railroad shall notify the railroad division. If, upon inspection, the active

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warning device satisfies applicable specifications and standards, the railroad division shall issue a letter of approval to the railroad.

4.5(9) Final billing. The railroad shall submit a final detailed billing for the project work to the railroad division to be reviewed by the railroad division and the jurisdiction for reasonable conformance with the agreement. The billing shall then be processed by the railroad division for payment from the safety fund to the railroad.

4.5(10) Payments and audits. Payment from the safety fund shall be made as provided in the agreement. Before payment is authorized, the department may perform an audit to determine the conformity of the billed construction or maintenance costs with the agreement.

This rule is intended to implement Iowa Code sections 327G.15, 327G.16, 327G.17, and 327G.19.

CHAPTER 5
HIGHWAY-RAILROAD
GRADE CROSSING SURFACE
REPAIR FUND

820—[10,B]5.1(327G) **Definitions.** The following terms when used in this chapter of rules shall have the following meanings:

5.1(1) Grade crossing surface repair. Repair or maintenance of that portion of the grade crossing surface above the top elevation of the ties, unless it is determined that the surface cannot be improved without complete renovation of the crossing in which case the renovation shall constitute surface repair.

5.1(2) Jurisdiction. The authority having primary control over a highway, street, or alley.

5.1(3) Repair fund. The grade crossing surface repair fund established in Iowa Code section 327G.29, and administered by the department.

This rule is intended to implement Iowa Code sections 327G.29 and 327G.30.

820—[10,B]5.2(327G) **Procedures for the use of grade crossing surface repair funds.**

5.2(1) Notification to department. If a railroad and a jurisdiction enter into negotiations for grade crossing surface repair and desire to use the repair fund, written notification of the action shall be sent to the railroad division by both parties.

a. The notification may be in the form of a single statement signed by both parties and shall include the total estimated cost of the anticipated repair.

b. The notification shall include the American association of railroads — department of transportation (AAR-DOT) crossing number.

c. Notification shall be accepted by the railroad division in order of receipt.

5.2(2) Availability of funds. The railroad division shall notify the jurisdiction if funds are available in the repair fund. If funds are available, the railroad division shall furnish the jurisdiction with three copies of a standard draft agreement for grade crossing surface repair.

5.2(3) Submission of agreement to the department. If the jurisdiction and the railroad reach an agreement for grade crossing surface repair whereby each contributes one-third of the cost, all three copies of the agreement shall be transmitted to the railroad division by the jurisdiction. The agreement shall include the AAR-DOT crossing number.

5.2(4) Allocation of funds. If funds are available, the department shall allocate one-third of the total estimated cost of the repair from the repair fund, after receipt of a fully executed agreement.

5.2(5) Resolution of disagreement. If the railroad and the jurisdiction cannot reach agreement on grade crossing surface repair, either party may appeal to the transportation regulation authority as provided in Iowa Code section 327G.31.

5.2(6) Need for additional information. The department shall determine if the agreed-upon work constitutes surface repair of the crossing and shall consult with the jurisdiction or the railroad if further justification or information is needed.

5.2(7) Approval and preaudit of the agreement. If the agreed-upon work constitutes surface repair of the crossing, the department shall approve the agreement. An amount equal to one-third of the cost of the agreed-upon work shall then be obligated from the repair fund.

a. Prior to approval of the agreement, the department may perform a preaudit evaluation of the railroad.

b. The preaudit evaluation may include: An examination of the railroad's accounting methods and procedures to determine the railroad's ability to segregate and accumulate costs to be charged against the surface repair project; an examination of the railroad's cost factors to assure their propriety and allowability; and an examination of any other general information available which might be pertinent or necessary in determining the railroad's auditability.

5.2(8) Work authorization. Upon approval by the railroad division, two copies of the agreement shall be transmitted to the jurisdiction. The jurisdiction shall then transmit one copy of the approved agreement to the railroad and authorize the railroad to order necessary materials and proceed with the work. The third copy shall be retained by the railroad division.

5.2(9) Certification of project completion. Upon completion of the agreed-upon work, the jurisdiction shall complete form 640003, "Certificate of Completion and Final Acceptance of Agreement Work", certifying project completion and shall send it to the railroad division.

5.2(10) Project billing. The railroad shall submit to the jurisdiction a final detailed billing covering the actual and necessary costs incurred by the railroad for the agreed-upon work. The jurisdiction shall review the billing for reasonable conformance with the agreement. The billing, if approved by the jurisdiction, shall be sent to the railroad division for payment from the repair fund.

5.2(11) Final payment — department. The department, prior to approval of the billing, may perform an audit of the submitted billing to determine the allowability and propriety of the billing costs in accordance with the executed agreement. Upon approval of the billing, the department shall pay to the railroad from the repair fund an amount equal to one-third of the actual cost of the agreed-upon work.

5.2(12) Final payment — jurisdiction. Upon approval of the billing, the railroad division shall notify the jurisdiction of the approval. The jurisdiction shall pay to the railroad an amount equal to one-third of the actual cost of the agreed-upon work.

This rule is intended to implement Iowa Code sections 327G.29, 327G.30, and 327G.31.

CHAPTER 6
REPORTING OF RAILROAD
ACCIDENTS/INCIDENTS

820—[10,B]6.1(327C) **Monthly reports.** The department hereby adopts the reporting requirements contained in 49 CFR 225 (1981) unless otherwise noted by rule.

TRANSPORTATION, DEPARTMENT OF [820] (cont'd)

6.1(1) Grade crossing accident/incident. The railroad shall file a report with the railroad division within thirty days following the month of each occurrence of any impact between railroad on-track equipment and a highway user, such as an automobile, bus, truck, motorcycle, bicycle, farm vehicle, or pedestrian at or adjacent to a railroad-highway grade crossing. This report shall be filed on the federal railroad administration's form FRA F 6180.57, "Rail-Highway Grade Crossing Accident/Incident Report".

6.1(2) Rail equipment accident/incident. The railroad shall file a report with the railroad division within thirty days following the month of each occurrence of damage to railroad or track equipment, signals, structures, track or roadbed in accordance with 49 CFR 225 (1981). This report shall be filed on the federal railroad administration's form FRA F 6180.54, "Rail Equipment Accident/Incident Report". If a grade crossing accident/incident also qualifies as an equipment accident/incident, both forms shall be filed.

6.1(3) Death, injury and occupational illness accident/incident. The railroad shall file a report with the railroad division within thirty days following the month of any death, injury or occupational illness arising from the operation of the railroad. The report shall be filed on the federal railroad administration's form FRA F 6180.55, "Railroad Injury and Illness Summary".

This rule is intended to implement Iowa Code section 327C.41.

820—[10,B]6.2(327C) Immediate reporting of personal injury or death. Any accident/incident involving train movement which results in personal injury requiring hospitalization or death shall be reported immediately to the railroad division.

6.2(1) Content of immediate report. The immediate report of an accident/incident shall provide the date and time it occurred, the nearest city, the location as accurately as possible, the number of fatalities or injuries, the train(s) involved, the nature and cause insofar as known, the name of the individual filing the report, and the name of the railroad involved.

6.2(2) Method of immediate reporting. During normal business hours the immediate report shall be filed with the railroad division by telephone at (515) 239-1367. At other times the report shall be filed with the office of operating authority of the motor vehicle division of the department by telephone at (515) 281-5827. This twenty-four-hour number allows railroad division personnel to be notified immediately at all times.

This rule is intended to implement Iowa Code section 327C.37.

ARTICLE C
RAIL DEVELOPMENT

CHAPTER 1
GENERAL REQUIREMENTS FOR
IMPLEMENTING THE
RAIL ASSISTANCE PROGRAM

820—[10,C]1.1(327H) Definitions. The following terms when used in this chapter of rules shall have the following meanings:

1.1(1) Branchline. A rail line which carries less than five million gross tons per mile per year.

1.1(2) Rail facilities. Fixed rail facilities including track, roadbed, and related structures; terminal and yard facilities; sidings, switches and connections with existing tracks used in rail freight transportation services.

1.1(3) Shippers. Direct users of rail facilities for freight transportation services.

1.1(4) Rehabilitation projects. Any project involving restoration, improvement or conservation of rail facilities.

1.1(5) Installation projects. Any project involving the construction of new rail facilities.

1.1(6) State funds. Rail assistance funds established in Iowa Code chapter 327H, as amended by the 1981 Iowa Acts, chapter 116, for use in the construction and rehabilitation of rail facilities.

1.1(7) Federal funds. Funds available for rail assistance in accordance with 49 USC 1654 (1981).

1.1(8) Other sources. Cities, counties, shippers, railroads or any other financial participants in rail assistance program projects, excluding those state and federal funds in subrules 1.1(6) and 1.1(7) of this chapter.

1.1(9) Construction costs. Costs associated with the improvement, restoration, or conservation of rail facilities or with the installation of new rail facilities. Expenses incurred by other sources necessary to the administration of their contract obligations and any costs associated with the acquisition of rail facilities or acquisition of right-of-way shall not be eligible for reimbursement from funds administered by the department.

This rule is intended to implement Iowa Code section 327H.20, as amended by the 1981 Iowa Acts, chapter 116.

820—[10,C]1.2(327H) Project eligibility. Eligible projects are identified in the 1982 Iowa Railroad Analysis Update of the Iowa Rail Plan (1978), a copy of which may be obtained from the department. Projects may also become eligible following a public hearing to amend the 1982 Iowa Railroad Analysis Update. Other sources may submit written requests to the department for the evaluation of proposed projects for future inclusion in the program. Projects using federal funds must meet the eligibility requirements of 49 CFR 266.7 (1981).

This rule is intended to implement Iowa Code sections 327H.20 and 327H.21, as amended by the 1981 Iowa Acts, chapter 116.

820—[10,C]1.3(327H) Project selection. The department shall select projects from the list of eligible projects defined in rule 1.2(327H) of this chapter, based on the availability of funding, a favorable benefit/cost ratio and agreed-upon financial participation by other sources. First priority shall be given to previously funded rehabilitation projects requiring additional construction for completion. Second priority shall be given to new branchline rehabilitation projects. Third priority shall be given to installation projects. Fourth priority shall be given to mainline, switching yards and siding rehabilitation projects.

This rule is intended to implement Iowa Code sections 327H.20 and 327H.21, as amended by the 1981 Iowa Acts, chapter 116.

820—[10,C]1.4(327H) Administration of funds. The department shall administer state and federal funds and determine the percentage of these funds to be used for each project. State funds shall not be used for installation projects. Costs eligible for reimbursement shall comply with appropriate federal and state guidelines. Any negotiated subcontracts to be billed as reimbursable project costs by other sources shall be approved by the department, and the federal railroad administration when appropriate, before the work is performed.

TRANSPORTATION, DEPARTMENT OF [820] (cont'd)

This rule is intended to implement Iowa Code sections 327H.18, 327H.20, and 327H.21, as amended by the 1981 Iowa Acts, chapter 116.

820—[10,C]1.5(327H) Project participation requirements.

1.5(1) Rehabilitation projects. Rehabilitation projects using state funds shall require from other sources a minimum participation of two-thirds of construction costs. Projects using federal funds or a combination of state and federal funds shall require a minimum participation of one-half of construction costs from other sources. State participation shall not exceed one-third of construction costs for each project.

1.5(2) Installation projects. Federal participation shall not exceed seventy percent of eligible construction costs for installation projects, provided federal participation shall not exceed fifty percent of the total of construction and acquisition costs.

This rule is intended to implement Iowa Code sections 327H.20 and 327H.21, as amended by the 1981 Iowa Acts, chapter 116.

820—[10,C]1.6(327H) Implementation.

1.6(1) Contract approval required. Contract obligations of the state under this chapter shall be negotiated by the railroad division of the department with final contract approval by the state transportation commission. Project contracts using federal funds require approval by both the commission and the federal railroad administration. The department shall submit the contracts to the federal railroad administration and make appropriate application for federal funds.

a. Prior to execution of the contract, the department may perform a preaudit evaluation of the railroad.

b. The preaudit evaluation may include: An examination of the railroad's accounting methods and procedures to determine the railroad's ability to segregate and accumulate costs to be charged against the project and to be charged for subsequent maintenance of the rail line; an examination of the railroad's cost factors to assure their propriety and allowability; and an examination of any other general information available which might be pertinent or necessary in determining the railroad's auditability.

1.6(2) Project reporting. Railroads shall submit to the railroad division written notice when work begins on a project, monthly progress reports, itemized billing statements pursuant to the contract, written notice of project completion, and a final billing statement of all project costs.

1.6(3) Project monitoring. The railroad division shall monitor the project work through periodic on-site inspections and shall conduct a final inspection of work completed and materials used. The department shall conduct a final audit of all project costs.

This rule is intended to implement Iowa Code sections 327H.20 and 327H.21, as amended by the 1981 Iowa Acts, chapter 116.

**CHAPTER 2
RELATIONSHIP WITH IOWA
RAILWAY FINANCE AUTHORITY**

820—[10,C]2.1(307B) Definitions.

2.1(1) "Enforceable undertaking to operate a facility", as used in Iowa Code subsection 307B.7(5), as amended by the 1981 Iowa Acts, Second Extraordinary Session, chapter 3, section 7, shall mean a contract or agreement enforceable in the courts of Iowa between a railroad and the department in which the railroad agrees to provide a level of rail service acceptable to the state transportation commission and in accordance with applicable United States statutes, rules and regulations. The review of the level of rail service provided shall include a review of the frequency of operation, maintenance of facility, and locomotive and car supply. The contract or agreement may provide for economic incentives or penalties to encourage satisfaction of the terms and conditions of the contract or agreement and to ensure the operation of the facility.

2.1(2) Reserved.

This rule is intended to implement Iowa Code subsection 307B.7(5), as amended by the 1981 Iowa Acts, Second Extraordinary Session, chapter 3, section 7.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/15/82.

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA
Filed - August 25, 1982

NOTE: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA 50319, for a fee of 40 cents per page.

No. 65863. GRAZIANO v. BOARD OF ADJUSTMENT.

Appeal from Polk District Court, Van Wifvat, Judge. Decision of court of appeals vacated; district court ruling reversed; remanded with directions. Considered by Reynoldson, C.J., and Harris, McCormick, Larson, and Schultz, JJ. Opinion by Reynoldson, C.J. (10 pages \$4.00)

Plaintiffs filed this Iowa Code section 414.15 certiorari action to challenge the legality of the Des Moines zoning board of adjustment's issuance of a zoning variation. District court affirmed the board's action. The court of appeals affirmed, with two judges dissenting, and this court granted further review. OPINION HOLDS: I. Both Iowa Code section 414.12(3) and the applicable city zoning ordinance require a showing of unnecessary hardship before a board of adjustment can grant a variance. II. The burden to show unnecessary hardship is on the variance applicant; the applicant did not show the unnecessary hardship that would justify a variance. III. The above determination does not require us to reach plaintiffs' strong assertion that the unnecessary hardship must be shown for the lot for which the variance is applied rather than a proposed lot.

No. 67133. STATE v. BEAR.

Appeal from Black Hawk District Court, L. D. Lybbert, Judge. Affirmed. Considered by Reynoldson, C.J., and LeGrand, Uhlenhopp, Harris, and Larson, JJ. Per Curiam. (5 pages \$2.00)

Defendant appeals from his bench trial convictions for kidnapping in the first degree, an Iowa Code section 710.2 violation, and sexual abuse in the third degree, a violation of Iowa Code section 709.4. OPINION HOLDS: I. The evidence was sufficient to support the convictions appealed from. II. Failure to furnish prior to trial allegedly exculpatory evidence in the form of the victim's written statement taken during the investigation did not deny defendant a fair trial and the court did not err in overruling his pretrial motion to produce that statement.

No. 66495. I.G.L. RACQUET CLUB V. MIDSTATES BUILDERS, INC.

Appeal from Dickinson District Court, Tom Hamilton, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and LeGrand, Uhlenhopp, Harris, and Larson, JJ. Opinion by Harris, J. (7 pages \$2.80)

Plaintiff appeals from rulings dismissing the plaintiff's construction contract action against the defendant and awarding judgment against the plaintiff on defendant's counterclaim. OPINION HOLDS: I. The parol evidence rule should not have been employed here to preclude plaintiff from attempting to show the writing was induced in part by an agreement about a specific completion date; the challenged rulings sustaining the motion for partial summary judgment on ground that the evidence of a specific completion date was barred by the parol evidence rule and the motion in limine for prohibition from mentioning the date before the jury were in error. II. The challenged ruling, in which the trial court refused plaintiff's request for permission to amend its petition under Iowa R. Civ. P. 88 to seek advantage of the rule that, where no time for performance is fixed in a contract, the law supplies a requirement that performance be within a reasonable time, if an abuse of discretion, ought to have been harmless; plaintiff's petition asserted the delay and specific items of damage for which relief was sought; this was ample notice pleading under Iowa R. Civ. P. 69 to support the theory for which amendment was later sought. III. Since the motion for partial summary judgment was improperly sustained, the trial court's basis for sustaining the motion on the counterclaim was taken away; plaintiff's claim and defendant's counterclaim must both be retried upon remand.

No. 66815. STATE V. MANNING.

Appeal from Jackson District Court, J. Hobart Darbyshire, Judge. Affirmed. Considered by Reynoldson, C.J., and LeGrand, Uhlenhopp, Harris, and Larson, JJ. Opinion by Harris, J. (5 pages \$2.00)

Defendant appeals from conviction of first degree murder. Sections 707.1, 707.2, The Code 1981. OPINION HOLDS: I. Defendant's claim he was denied the effective assistance of counsel should be presented in an application for postconviction relief. II. The trial court did not err in refusing to suppress evidence seized in a warrantless search of defendant's jail cell.

No. 66081. IN RE BOSWORTH TRUST.

Appeal from Cerro Gordo District Court, John F. Stone, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, McCormick, Larson, and Schultz, JJ. Per Curiam. (3 pages \$1.20)

The income beneficiaries of a testamentary trust challenge the trial court's approval of an annual report of a trustee. OPINION HOLDS: The trustee here plainly had discretion under the will and Iowa Code section 633.123(1) (1981) to diversify the assets of the trust; we find no abuse of discretion.

No. 66397. STATE v. GROFF.

Appeal from Iowa District Court, Harold J. Swailes, Judge.
 Affirmed. Considered en banc. Opinion by Uhlenhopp, J.
 Special concurrence by LeGrand, J. (23 pages \$9.20)

Defendant Floyd Groff appeals from conviction of possession of controlled substance with intent to deliver not for profit and defendant Cindy Groff appeals from conviction of possession of controlled substance. OPINION HOLDS: I. We hold that claims under the Iowa Constitution that a search warrant was issued on the basis of false statements in the application are to be determined by the standard used in similar federal cases, and accordingly modify our holdings in State v. Boyd, 224 N.W.2d 609 (Iowa 1974), and its successors; defendants have failed to sustain their burden of proving that an intentional or reckless misstatement was contained in the warrant application. II. The magistrate could reasonably infer from the facts recited in the affidavit that defendants' residence was likely to be the location of marijuana for personal use, marijuana in various stages of processing before distribution, and records and equipment used in production; defendants' contention that there was not probable cause for issuance of the warrant is therefore without merit. III. The Fourth Amendment is satisfied when the issuing magistrate is neutral and detached and capable of determining probable cause; defendants do not challenge the impartiality or detachment of the magistrate who issued the warrant, and in the absence of a specific showing that the magistrate was incompetent to issue the warrant in question, we presume from the record that she was capable of determining whether probable cause existed to search the defendants' residence. IV. Magistrates have the authority to issue search warrants for property located outside the county of their appointment. SPECIAL CONCURRENCE ASSERTS: If the material facts upon which the warrant issued are false, even if innocently so, the warrant was improvidently granted and should be quashed; I think we should adhere to our own rule to that effect, based on the Iowa Constitution, as announced in State v. Boyd, 224 N.W.2d 609 (Iowa 1974).

No. 66608. STATE v. CHRISTENSEN.

Appeal from Scott District Court, J. Hobart Darbyshire, Judge.
 Affirmed. Considered en banc. Opinion by Schultz, J.
 (13 pages \$5.20)

Defendant appeals from his convictions of willful injury in violation of Iowa Code section 708.3, and of assault while participating in a felony (sexual abuse) in violation of Iowa Code section 708.4. OPINION HOLDS: I(A). Defendant failed to preserve error on his claim that in an Iowa R. Crim. P. 10(10)(a)(2) (1979) determination of good cause to admit alibi evidence subject to preclusion under the rule for failure to give timely notice of an alibi defense the court should have taken evidence and made a finding as to what prejudice would have been caused by a delay in the trial. I(B). The determination of whether to allow alibi evidence based on good cause where the alibi notice is untimely is a discretionary decision of the trial court; good cause was not shown since the lack of notice of the alibi defense prejudiced the State and since defendant's reason for failure to give notice was inadequate. I(C). Alternate remedies to the preclusion sanction under rule 10(10)(a)(2) should not be granted where good cause to admit the evidence has not been shown. II. There was no showing that discretion "was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable."

NO. 67514. HUBBARD V. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT.

Certified questions of law from United States District Court, W. C. Stuart, Judge. Certified questions answered. Considered by Reynoldson, C.J., and Harris, McCormick, Larson and Schultz, JJ. Opinion by McCormick, J.

(8 pages \$3.20)

Questions concerning notice in garnishment proceedings have been certified pursuant to Iowa Code chapter 684A. OPINION HOLDS: Iowa Code section 642.14 imposes a duty on the garnishment plaintiff to give notice of the garnishment proceeding to the principal defendant; neither the statute nor the common law places such a duty on the garnishee; because the garnishee does not have the duty to give notice, no wage claim action relying on the alleged breach of that duty lies against the garnishee under section 91A.5(1).

NO. 66888. STATE V. DURHAM.

Appeal from Black Hawk District Court, Robert E. Mahan, District Associate Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, McCormick, Larson, and Schultz, JJ. Opinion by McCormick, J.

(5 pages \$2.00)

Defendant appeals from conviction and sentence after trial to the court for carrying a weapon in violation of Iowa Code section 724.4. OPINION HOLDS: Under the statutory definition of "dangerous weapon" found in Iowa Code section 702.7, a straight razor is a dangerous weapon per se, regardless of the intent of the person carrying it.

NO. 67339. DOUGHERTY V. STATE.

Appeal from Linn District Court, Paul Kilberg, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, McCormick, Schultz and Larson, JJ. Opinion by McCormick, J.

(4 pages \$1.60)

A state inmate appeals from the dismissal of a postconviction relief action challenging the revocation of his work release. OPINION HOLDS: The judicial review provision of the Iowa Administrative Procedure Act, Iowa Code section 17A.19, provides the exclusive means for challenging a chapter 247A work release revocation; Dougherty did not show he had complied with the procedural requirements of section 17A.19, and therefore the court did not err in refusing to consider the action as a petition for judicial review.

NO. 67689. STATE V. MORRISON.

Appeal from Washington District Court, James R. Havercamp, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, McCormick, Larson and Schultz, JJ. Opinion by McCormick, J.

(7 pages \$2.80)

Defendant appeals from sentence on guilty plea conviction of extortion. OPINION HOLDS: The trial court did not abuse its discretion by sentencing the defendant, who had pleaded guilty to extortion committed while he was a district judge, to a term of imprisonment rather than to probation.

NO. 66981. FARM & CITY INSURANCE CO. V. UNITED STATES FIDELITY
AND GUARANTY CO.

Appeal from Story District Court, M. D. Seiser, Judge.
Reversed and remanded. Considered by Harris, P.J.; and
McCormick and Schultz, JJ. Opinion by McCormick, J.

(6 pages \$2.40)

Plaintiff appeals from adverse declaratory judgment in dispute over insurance coverage. OPINION HOLDS: I. The failure of defendant's insured, a used car dealer, to have the vehicle inspected and his alternative noncompliance with Iowa's restricted transfer of title statute prevented him from passing ownership to plaintiff's insured for purposes of section 321.493 (liability of vehicle owner); because plaintiff's insured did not own the van, plaintiff's policy covered him as operator of a nonowned vehicle; the excess coverage endorsement in plaintiff's policy is applicable, making defendant's coverage primary and plaintiff's coverage secondary. II. An excess carrier has a right to indemnity for costs of defense from a primary carrier who has refused to defend; if indemnity is not ordered, the primary carrier is permitted to profit from its wrongful failure to defend; we do not foreclose the possibility of a pro rata award of litigation costs in a case in which the primary carrier establishes by satisfactory proof that the excess carrier, by reason of its exposure or practice in other cases, would have participated in the defense in any event; plaintiff is entitled to full indemnity under the present record.

NO. 67309. AREA RESIDENTIAL CARE, INC. V. IOWA DEPARTMENT OF
JOB SERVICE.

Appeal from Dubuque District Court, R. J. Curnan, Judge.
Affirmed in part and reversed in part. Considered by Harris,
P.J., and McCormick and Schultz, JJ. Opinion by McCormick, J.

(5 pages \$2.00)

Respondent Department of Job Service held that claimant was eligible for unemployment benefits because she left her employment for good cause attributable to her employer and appealed when, upon judicial review, the district court reversed. Claimant, a dormitory staff member in a facility providing residential care for mentally retarded adults, became pregnant and respondent found, on substantial evidence, that clients kicked at her abdomen in two separate incidents subsequent to that time. She quit her employment when her employer refused her request, based upon a doctor's advice, for an unpaid leave of absence or transfer to work where her abdomen would not be subject to trauma. OPINION HOLDS: Although claimant is not eligible for benefits during the period of her absence due to pregnancy, she will not be disqualified by her quitting from receiving benefits after termination of the pregnancy if she meets the additional requisites of Iowa Code section 96.5(1)(d).

No. 66501. YAGER v. FARMERS' MUTUAL TELEPHONE CO.

Appeal from Mitchell District Court, Ray E. Clough, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, McCormick, Larson, and Schultz, JJ. Opinion by Reynoldson, C.J.
(7 pages \$2.80)

Defendant telephone companies (Rockford and Riceville) appeal from a declaratory judgment decree awarding plaintiff employee \$20,172.42 in retirement benefits as third-party beneficiary of a purchase contract under which the Rockford company purchased all the stock of the Riceville company. OPINION HOLDS: The pension plan provision of the purchase contract is not unambiguous; extrinsic evidence and the contract itself indicate the contracting parties intended to extend to the Riceville employees all pension benefits accorded Rockford employees; although the details of the Rockford pension plan were not discussed during the sale negotiations; the circumstances dictate that the risk of this omission must fall on Rockford, not plaintiff employee; because the contracting parties reasonably could have anticipated that a Riceville employee might request pension benefits prior to retirement or death, impossibility is not a defense.

No. 67075. SNYDER v. DAVENPORT.

Appeal from Marshall District Court, Russell J. Hill, Judge. Affirmed and remanded. Considered en banc. Opinion by Schultz, J.
(9 pages \$3.60)

Plaintiffs were granted permission for an interlocutory appeal from trial court's ruling sustaining dram shop operators' motions to dismiss. OPINION HOLDS: A suit against a liquor licensee for selling liquor to an intoxicated person may be brought only by following the statutory scheme of section 123.92, and no common-law cause of action against a licensee for selling liquor to an intoxicated person exists in Iowa; by so holding we do not modify the holding in Lewis v. State, 256 N.W.2d 161 (Iowa 1977).

No. 67269. STATE v. LUCAS.

Appeal from Black Hawk District Court, Roger F. Peterson, Judge. Affirmed. Considered en banc. Opinion by Schultz, J.
(12 pages \$4.80)

Defendant appeals from his conviction and sentence upon a guilty plea to the charge of sexual abuse in the second degree in violation of Iowa Code section 709.3. Defendant's claims of error all evolve from the failure of the trial court to hold a competency hearing under Iowa Code section 812.3. OPINION HOLDS: I. Defendant's failure to challenge his guilty plea by a motion in arrest of judgment precludes his procedural claims. II. Under this record the failure of trial court to hold a section 812.3 hearing does not deny defendant of due process. III. The issue of ineffective assistance of counsel is better reserved for a post-conviction proceeding.

No. 63125. STATE v. GRIFFIN.

On review from Iowa Court of Appeals. Appeal from Polk District Court, Joel D. Novak, Judge. Court of appeals decision vacated; trial court reversed and case remanded for new trial. Considered by LeGrand, P.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by LeGrand, J. (9 pages \$3.60)

On defendant's appeal from adverse judgment on two related criminal charges, court of appeals affirmed the trial court. We granted defendant's petition for further review. Without consulting the attorneys for either party, and outside the presence of defendant, the trial judge, in response to a request for definitions of legal terms, informed the jury it would have to make do with the existing instructions. OPINION HOLDS: I. Iowa R. Crim. P. 18(5)(g) makes several significant changes in the prior law, including making the presence of defendant and counsel at all procedures mandatory unless waived; that the trial court gave no additional instruction is no longer determinative; the jury was asking for information on a point of law; thus, these inquiries made rule 18(5)(g) applicable to the proceedings which followed; we cannot say the record discloses any facts to overcome the presumption of prejudice beyond a reasonable doubt, so defendant must be allowed a new trial. II. The minutes of testimony of defendant's prior crime recited the basic facts upon which his conviction rested and upon which the trial court could find that defendant's prior crime involved intent to commit theft; there was no error in permitting the State to use this prior conviction to impeach defendant.

NO. 66257. STATE v. FAGEN.

Appeal from Polk District Court, Dale Missildine, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, McCormick, Larson, and Schultz, JJ. Opinion by Larson, J. (3 pages \$1.20)

Defendant appeals from sentence imposed for his guilty plea conviction of sexual abuse in the third degree, Iowa Code §§ 709.1, 709.4 (1979). OPINION HOLDS: Iowa Code section 907.3, which imposes a mandatory term of imprisonment upon conviction of a "forcible felony," did not deny the defendant equal protection under the federal and state constitutions.

No. 67399. NORLAND v. WORTH COUNTY COMPENSATION BOARD.

Appeal from Worth District Court, Newt Draheim, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, McCormick, Larson, and Schultz, JJ. Opinion by Larson, J. (6 pages \$2.40)

In this certiorari action, plaintiff challenges the legality of proceedings by defendant Worth County Compensation Board and its five individual members in determining his salary as county attorney. OPINION HOLDS: I. The district court was correct in finding no illegality in the board's failure to follow literally the mandates of Iowa Code section 340A.6; substantial compliance was sufficient. II. The evidence was insufficient to sustain plaintiff's burden of proving that the board's action was unreasonable, arbitrary, and capricious. III. The board's decision was supported by substantial evidence. IV. Chapter 340A does not, explicitly or implicitly, require a compensation board to enact rules governing the procedure set forth in section 340A.6; attorney's fees, including those relating to this appeal, are not allowable in the absence of statute or an agreement by the party to be charged.

No. 65548. CASEY v. KOOS.

Appeal from Calhoun District Court, James C. Smith, Judge. Reversed on plaintiff's appeal; affirmed on defendant's cross-appeal; remanded for new trial. Considered en banc. Opinion by LeGrand, J. (11 pages \$4.40)

Plaintiff appeals from adverse judgment on her personal injury claim against defendant arising from the nighttime collision of two snowmobiles on a frozen lake. Defendant cross-appeals, raising several issues to be determined in the event of new trial. OPINION HOLDS: I. Negligence per se is limited to cases in which there is a violation of statute or ordinance creating a particular standard of care; the statute which fixes the statutory standard for the operation of snowmobiles contains no right-of-way provision; the court erred in judicially establishing an intersection, after first recognizing there was no intersection on the frozen lake where this accident occurred, and in making a violation of the rule thus fashioned negligence per se, just as though it were a violation of the applicable statute. II. We express no opinion concerning offensive issue preclusion except to say that on remand plaintiff may renew her request that it be applied. III. The general rule is that a tortfeasor is responsible for the negligence of an attending physician in treating the injured party, so such negligence usually would not be a superceding intervening cause; therefore, the trial court was right in rejecting defendant's evidence of the attending physician's malpractice in treating plaintiff's injuries; in the present case the circumstances do not warrant a finding of plaintiff's contributory negligence as a matter of law; we cannot say the trial court should have ruled as a matter of law that plaintiff's voluntary payment in another suit amounted to a complete settlement of all claims between plaintiff and defendant and that plaintiff is precluded from maintaining the present action.

No. 66462. STATE v. SPOONMORE.

Appeal from Muscatine District Court, R. K. Stohr, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by LeGrand, J. (4 pages \$1.60)

Defendant appeals from judgment and sentence as an habitual offender under section 902.8, The Code. OPINION HOLDS: Defendant failed to timely challenge the applicability of section 902.8, The Code, prior to trial of the underlying offense with which he was charged; the issue of applicability of section 902.8 is therefore deemed waived; it was error for the jury, rather than the court, to decide if defendant's prior offenses were felonies; however, there was no resulting harm because of defendant's failure to raise timely objection to the prior convictions.

No. 65650. HENKEL v. R AND S BOTTLING CO.

Appeal from Henry District Court, Ira F. Morrison, Judge.
Reversed and remanded. Considered en banc. Opinion by Schultz, J.
(19 pages \$7.60)

Plaintiffs appeal from an adverse jury verdict and the judgment in a products liability case arising from an eye injury suffered by the minor plaintiff when a soft drink bottle "exploded".

OPINION HOLDS: I. It has not been shown here that beverage bottles of the type at issue possess the degree of danger necessary to engender a jury question on the duty to warn, and trial court therefore correctly granted defendant's motion for a directed verdict on this ground; the evidence presented by plaintiffs was insufficient to generate a jury question on the issue of product design, and trial court therefore correctly granted defendant's motion to dismiss on this ground. II. Because the evidence was insufficient to generate a jury question on the issue of the duty to warn, any error in the instruction specifying circumstances under which a warning is required, was harmless; the portion of the jury instruction stating that a product is not defective if it fails solely because of misuse, was incorrect; a product may be defective even though it was misused, if the factfinder determines that such misuse was reasonably foreseeable or anticipated by the seller; the instruction that plaintiffs had the burden to establish the product reached them without substantial change in condition from the time defendant sold it, should be clarified to eliminate any danger that the jury would find a product nondefective because of misuse by the plaintiff that was reasonably foreseeable by defendant. III. A hazard report by the Bureau of Epidemiology of the United States Consumer Product Safety Commission, which plaintiffs sought to have admitted into evidence, is not sufficiently reliable to be admissible under the public records exception to the hearsay rule; trial court could also have held the report inadmissible on the ground of relevancy. IV. Because the trial court incorrectly instructed the jury, as discussed in division II, we reverse the judgment of the trial court and remand for a limited retrial on plaintiffs' strict liability claims.

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