



# IOWA

# ADMINISTRATIVE

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## CONTENTS IN THIS ISSUE

Pages 637 to 669 include ARC 3342 to ARC 3368

<b>ATTORNEY GENERAL</b>	
Opinions summarized .....	670
<b>CITY FINANCE COMMITTEE[230]</b>	
Notice Terminated, Budget amendments and fund transfers, ch 2 ARC 3342 .....	637
<b>COMMERCE COMMISSION[250]</b>	
Notice, Bonded warehouses, grain dealers, amendments to chs 12 and 13 ARC 3355 .....	637
Filed, Utilities, interest on customer deposits, 19.4(3), 20.4(4), 21.4(2)"b", 22.4(2)"b" ARC 3344 .....	655
<b>ENGINEERING EXAMINERS, BOARD OF[390]</b>	
Notice, Building structures and systems, ch 5 ARC 3366 .....	645
<b>ENVIRONMENTAL QUALITY DEPARTMENT[400]</b>	
Notice, Waste water construction and operation permits, 15.1(22), 19.6(6) ARC 3352 .....	646
<b>HEALTH DEPARTMENT[470]</b>	
Notice, Psychologists, disciplinary action, 140.212(5) ARC 3360 .....	647
Notice, Optometry, examinations, 143.5(4) ARC 3361 .....	647
Notice, Optometrist, notice of address, 143.8, 144.112(2) ARC 3362 .....	648
Notice, Premortuary college educational requirements, 147.1(3)"b" ARC 3363 .....	648
Filed, Funeral directors, mandatory disclosure, 147.7, 147.200(3) ARC 3364 .....	655
Filed, Speech pathologists and audiologists, licensure, amendments to chs 155 and 156 ARC 3365 .....	656
<b>HOUSING FINANCE AUTHORITY[495]</b>	
Notice, Contested case proceedings, ch 7 ARC 3367 .....	648
<b>IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523]</b>	
Filed, Soil conservation loan program, ch 4 ARC 3345 .....	657
<b>MERIT EMPLOYMENT DEPARTMENT[570]</b>	
Notice Amended, Professional/managerial pay plan, amendments to chs 1 to 12, 14 and 17 ARC 3346 .....	649
<b>PLANNING AND PROGRAMMING[630]</b>	
Notice, Community services block grant program, amendments to ch 22 ARC 3343 .....	650
<b>PUBLIC EMPLOYMENT RELATIONS BOARD[660]</b>	
Filed, Practice and hearing procedures, 2.13, 2.15(1)"d" ARC 3356 .....	658
Filed, Elections, certification of results, 5.4(1) ARC 3357 .....	659
Filed, Acceptance of proposed agreement, 6.4 ARC 3358 .....	659
Filed, Impasse procedures, fees of neutrals, 7.2 ARC 3359 .....	660
<b>PUBLIC HEARINGS</b>	
Summarized list .....	635
<b>REVENUE DEPARTMENT[730]</b>	
Notice, Interest, 10.2(2) ARC 3347 .....	651
Filed, Filing returns and payment of tax, 39.2(2), 39.5(3) ARC 3348 .....	660
Filed, Individual and corporation income tax, franchise tax, amendments to chs 39, 40, 41, 43, 52, 53, 58 and 59 ARC 3349 .....	661
Filed Emergency, Allocation and apportionment, 54.3(1) ARC 3368 .....	654
Filed, Cigarettes, manufacturer's samples, 82.10 ARC 3350 .....	666
Filed and Notice Terminated, Games of skill, chance, bingo and raffles, 91.4, 91.5(2), 91.6(1), 92.8, 94.8 ARC 3351 .....	668
<b>SOCIAL SERVICES DEPARTMENT[770]</b>	
Notice, Adult correctional institutions, visitors, 16.3(9) ARC 3353 .....	652
Notice, Medical assistance, physicians — auxiliary personnel, 78.1(13) ARC 3354 .....	653
<b>SUPREME COURT</b>	
Decisions summarized .....	675

## 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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### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
11	Friday, November 5, 1982	November 24, 1982
12	Friday, November 19, 1982	December 8, 1982
13	Friday, December 3, 1982	December 22, 1982

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## SUBSCRIPTION INFORMATION

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

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>AGRICULTURE DEPARTMENT[30]</b> Referendum procedures, ch 2 IAB 10/27/82 ARC 3324	Second Floor Conference Room Henry A. Wallace Bldg. Des Moines, Iowa	November 18, 1982 11:00 a.m.
Livestock diseases, amendments to ch. 16 IAB 10/27/82 ARC 3325	Second Floor Conference Room Henry A. Wallace Bldg. Des Moines, Iowa	November 17, 1982 11:00 a.m.
<b>BEER AND LIQUOR CONTROL DEPARTMENT[150]</b> Leasing of state liquor stores, 9.11, 9.16 IAB 10/27/82 ARC 3321	Department Office 1918 S.E. Hulsizer Ave. Ankeny, Iowa	November 30, 1982 1:00 p.m.
<b>COMMERCE COMMISSION[250]</b> Bonded warehouse and grain dealers, amendments to chs 12 and 13 IAB 11/10/82 ARC 3355	Hearing Room First Floor Lucas State Office Bldg. Des Moines, Iowa	December 8, 1982 10:00 a.m.
<b>ENGINEERING EXAMINERS, BOARD OF[390]</b> Building structures and systems, ch 5 IAB 11/10/82 ARC 3366	West Conference Room 1209 E. Court Ave. Executive Hills West Des Moines, Iowa	December 16, 1982 1:00 p.m.
<b>ENVIRONMENTAL QUALITY DEPARTMENT[400]</b> Waste water, construction and operation permits, amendments to chs 15 and 19 IAB 11/10/82 ARC 3352	Auditorium Henry A. Wallace Bldg. Des Moines, Iowa	December 13, 1982 9:00 a.m.
<b>HOUSING FINANCE AUTHORITY[495]</b> Group home facilities loan program, ch 6 IAB 10/27/82 ARC 3331	Housing Authority Office 550 Liberty Bldg. Des Moines, Iowa	November 17, 1982 1:30 p.m.
Contested case procedures ch 7 IAB 11/10/82 ARC 3367	Housing Authority Office 550 Liberty Bldg. Des Moines, Iowa	December 1, 1982 1:30 p.m.
<b>INSURANCE DEPARTMENT[510]</b> Registration of commodity pool programs, 50.80 IAB 10/27/82 ARC 3312	Securities Division Conference Room Ground Floor Lucas State Office Bldg. Des Moines, Iowa	November 18, 1982 10:00 a.m.
Continuing education for Insurance Agents, 11.1(3) IAB 10/27/82 ARC 3332	Insurance Department Ground Floor Lucas State Office Bldg. Des Moines, Iowa	November 23, 1982 2:00 p.m.
<b>MERIT EMPLOYMENT DEPARTMENT[570]</b> Professional/managerial pay plan, amendments to chs 1 to 12, 14 and 17 IAB 11/10/82 ARC 3346 (See IAB 10/13/82 ARC 3304)	Merit Department Conference Room Grimes State Office Bldg. Des Moines, Iowa	December 3, 1982 9:00 a.m.
<b>PLANNING AND PROGRAMMING[630]</b> Community Services Block Grant program, amendments to ch 22 IAB 11/10/82 ARC 3343	Conference Room 523 E. 12th St. Des Moines, Iowa	December 1, 1982 10:00 a.m.
<b>REVENUE DEPARTMENT[730]</b> Inheritance tax, 86.8 IAB 10/27/82 ARC 3335	Conference Room #2 Fourth Floor Hoover State Office Bldg. Des Moines, Iowa	November 19, 1982 1:30 p.m.

**TRANSPORTATION, DEPARTMENT OF[820]**

OMVUI and implied consent, [07,C] driver licensing, IAB 6/23/82 <b>ARC 2973</b>	Department of Transportation Complex Ames, Iowa	November 30, 1982
Driver licenses [07,C] 13.5 IAB 10/13/82 <b>ARC 3261</b>	Department of Transportation Complex Ames, Iowa	November 30, 1982
Driver licenses, [07,C] 13.13, 13.19 IAB 10/13/82 <b>ARC 3262</b>	Department of Transportation Complex Ames, Iowa	November 30, 1982
Financial responsibility, [07,C] 14.1 IAB 10/13/82 <b>ARC 3263</b>	Department of Transportation Complex Ames, Iowa	November 30, 1982
Special permits, amendments to, [07,F] ch 2 IAB 10/27/82 <b>ARC 3330</b>	Department of Transportation Complex Ames, Iowa	December 14, 1982

**ARC 3342**  
**CITY FINANCE COMMITTEE[230]**  
**NOTICE TERMINATION**

Pursuant to Iowa Code sections 384.13 to 384.22 the City Finance Committee published a Notice of Intended Action on August 18, 1982, as ARC 3122. [Chapter 2, Budget Amendments and Fund Transfers]

The rule required procedures and processes necessary to assure adequate notice to citizens of proposed and adopted changes in the local budget.

The Committee is terminating this proposed rule for further study based upon the public hearing that was held on September 15, 1982, and consideration of written comments received.

**ARC 3355**  
**COMMERCE COMMISSION[250]**  
**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.4(1), 542.2, and 543.2, the Iowa State Commerce Commission hereby gives notice that it intends to amend Iowa Administrative Code 250—chapters 12 and 13. To this end, the Commission issued on October 22, 1982, an order commencing such rulemaking, which has been identified as Docket No. RMW—82—2.

Pursuant to Iowa Code section 17A.4(1)"b", any interested person may file with the Commission, not later than December 1, 1982, an original and six copies of a written statement of position substantially complying with the form prescribed in Iowa Administrative Code subrule 2.2(2) containing data, views, comments or arguments concerning the proposed amendment. The Commission has waived its own subrule 3.4(2) for this proceeding only.

All communications shall clearly indicate the author's name and address and shall contain a specific reference to this docket and the rule upon which comment is submitted. All communications shall be directed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319. This rulemaking proceeding shall be conducted pursuant to Iowa Administrative Code 250—chapter 3.

A rulemaking oral presentation for the purpose of receiving comments on the proposed rules shall be held on December 8, 1982, in the Commerce Commission Hearing Room, First Floor, Lucas State Office Building, Des Moines, Iowa 50319 at 10:00 a.m. Persons who wish to participate in this oral presentation must file a written appearance five days prior to the oral presentation, on or before December 1, 1982, pursuant to subrule 3.7(1).

The purposes of this rulemaking are to enable a clearer understanding of the commission's bonded warehouse and grain dealer rules and procedures and to ensure consistent application and interpretation of these rules and procedures.

ITEM 1. Amend 250—12.3(543) to read as follows.

**250—12.3(543) Application for license.** Application for a license to operate a licensed warehouse under the Iowa bonded warehouse law (Iowa Code chapter 543) shall be made to the ~~commission~~ warehouse division on forms prescribed for that purpose, ~~by the warehouse division.~~ Forms are available from the warehouse division which will be furnished to prospective applicants upon request. ~~All such applications shall be typewritten or completed in ink and~~ All information required by section 543.7 must be furnished ~~as required by section 543.7-~~ the warehouse division may require the applicant to file updated information if the information on the application is no longer current. The warehouse division director may require an inspection of the proposed facilities prior to the issuance of a warehouse license.

This rule is intended to implement Iowa Code section 543.7.

ITEM 2. Add at the end of subrule 12.4(1) the following: The license holder shall give the warehouse division director notice of a proposed name change and, if applicable, a copy of the articles of incorporation changing the name.

ITEM 3. Amend subrule 12.4(2) by deleting from the first sentence the word "commission" and inserting in lieu thereof the phrase "warehouse division director."

ITEM 4. Rescind 250—12.6(543) and insert in lieu thereof the following:

**250—12.6(543) Renewal, termination, and reinstatement of license.** The warehouse division will send to each licensed warehouseman written notice that application and license fee for annual renewal of bonded warehouse license must be received by the warehouse division no later than June 30 of the renewal year. Failure to receive the application and fee at the commission by June 30 shall cause the license to terminate June 30. A license that has been so terminated may be reinstated within thirty days of the date of termination, conditioned on the applicant meeting all statutory requirements and receipt by the warehouse division of the following within the thirty-day time period:

1. Completed application.
2. Renewal fee.
3. Twenty-five dollar penalty fee.

This rule is intended to implement Iowa Code section 543.37.

ITEM 5. Rescind 250—12.7(543) and insert in lieu thereof the following:

**250—12.7(543) Financial statements.** To obtain a bonded warehouse license, an applicant must submit a current financial statement.

This statement must have been prepared within ninety days from the date of filing and in conformity with the applicable requirements as to annual financial statements.

A new business entity, which is in the process of transferring funds into the business name, filing for a license may file a pro forma balance sheet in lieu of a

## COMMERCE COMMISSION[250] (cont'd)

current financial statement when filing an application for license. Within thirty days after the issuance of a license by the warehouse division, the warehouse division must receive a financial statement which complies with either 12.7(3), paragraph "a" or "b".

**12.7(1) Filing date of statements.** Every licensee shall prepare a financial statement at the close of their designated fiscal or tax year, and must file the statement with the warehouse division not later than ninety days thereafter. This statement must be prepared in conformity with generally accepted accounting principles. The warehouse division shall send a written statement to every licensee at the beginning of the month at the close of the licensee's fiscal or tax year and to every licensee who has not filed a financial statement by the seventy-fifth day from the close of the licensee's designated fiscal or tax year notifying the licensee that their financial statement is due on the ninetieth day from the close of their fiscal or tax year.

**12.7(2) Assets allowed in determining net worth.** Only that part of the value of an asset which is subject to execution will be allowed by the warehouse division in determining net worth. When a liability associated with an exempt asset (whether the asset is included or not) exceeds the original cost (or fair market value after an appraisal approved by the warehouse division) such excess shall be shown as a liability with appropriate footnotes to the financial statement. Applicants or licensees must complete the warehouse division's form in this regard and file it with their financial statement.

**12.7(3) Financial statement requirements.** Financial statements filed pursuant to this rule must comply with either of the following:

a. Be accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. The warehouse division may accept a qualification in an opinion that is unavoidable by any audit procedure. Opinions that are qualified because of limited audit procedure or because the scope of an audit is limited will not be accepted by the warehouse division.

b. Be accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant.

**12.7(4) Monthly financial statements.** Any licensee who has a net worth deficiency and who has filed additional bond, must file a monthly balance sheet with the warehouse division by the end of the next month until their net worth meets the requirements of Iowa Code section 543.6.

**12.7(5)** The warehouse division director may require a licensee to file a monthly balance sheet by the end of the next month if one of the following conditions exist:

1. Quantity shortage.
2. Quality shortage.
3. Two or more insufficient fund checks within the last six months.
4. Evidence of licensee requesting delayed payment from producers when payment is due.

5. Other documented evidence which indicates the licensee's financial condition has deteriorated since the filing of the licensee's last financial statement.

A monthly balance sheet must be filed with the warehouse division until the problem has been resolved.

**12.7(6) Additional information.** The warehouse division director may require an applicant or licensee to

provide the warehouse division with any other information reasonably related to business as a warehouseman and work papers supporting the financial statement.

**12.7(7) Filing extension.** An extension of thirty days will be granted for the filing of financial statements by the warehouse division director upon receipt of the following:

a. A letter from licensee's certified public accountant stating the reason for the filing extension and that work has been done on preparing a financial statement.

b. An affidavit from the licensee stating the licensee meets financial responsibility requirements of Iowa Code section 543.6, or that the licensee shall file additional bond in an amount to cover any net worth deficiency as provided in section 543.6, based upon the licensed certified public accountant's best estimate of the licensee's financial position.

Subrule 12.7(7) does not apply to the filing of monthly financial statements.

**12.7(8) Penalty for failure to supply timely financial statements or balance sheets.** The commission may suspend the license of any licensee or applicant who fails to provide the required financial statements or balance sheets within the time limits prescribed by these rules. Any financial statement, balance sheet or application for extension to be filed with the warehouse division under this rule shall be deemed timely filed if postmarked on or before the due date.

This rule is intended to implement Iowa Code sections 543.6 and 543.7.

**ITEM 6. Amend 250—12.8(543) as follows:**

Delete the word "commission" in the first sentence and insert in lieu thereof the phrase "warehouse division" in two instances.

Amend 12.8(1) by deleting from the second sentence the word "commission" and inserting in lieu thereof the phrase "warehouse division."

Amend 12.8(3) by deleting from the first sentence the word "commission" and inserting in lieu thereof the phrase "warehouse division".

Amend 12.8(4) to read as follows:

**12.8(4) Additional bond as commission may require.** *The warehouse division director may require additional bond to be filed in an amount determined by the commission in addition to the minimum amount as required by Iowa Code section 543.13 for any of the following reasons:*

1. *Quality deficiency in stored grain.*
2. *Quantity deficiency in stored grain.*
3. *Use of temporary storage facilities by licensee If the commission deems it necessary in order.*

4. *Documented evidence of the excessive use of lost warehouse receipt release forms by the licensee.*

5. *To ensure the faithful performance of the obligations of the warehouseman under the terms of Iowa Code chapter 543 and rules of the commission; the commission may require bond be filed in an amount determined by the commission in addition to the minimum amount as required by section 543.13.*

Further amend 250—12.8(543) by adding new subrules as follows:

**12.8(5) Investigation of bond cancellation.** Upon receipt of notification from the licensee required under 12.10(1), paragraph "d", of licensee's bond cancellation, the warehouse division director may contact both the licensee and surety or surety company to establish the cause of the bond cancellation.

## COMMERCE COMMISSION[250] (cont'd)

**12.8(6) Replacement bond.** The warehouse division director shall send written notice to the licensee notifying the licensee that the licensee's bond will be canceled on the date specified by the surety or surety company in their notice to the warehouse division. The warehouse division director shall include information and forms for filing the required replacement bond with the written notice. If replacement bond is not on file with the warehouse division within thirty days of receipt of the notice of cancellation, the commission shall automatically suspend the warehouse license. The warehouse division shall inspect the licensed warehouse at the end of such thirty-day period. The commission shall revoke the warehouse license if a replacement bond is not received within thirty days of the suspension of the license. The warehouse division shall inspect the licensed warehouse at the end of such sixty-day period. When failure to file a replacement bond causes revocation of the warehouse license, the warehouse division director shall give notice of such revocation to each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage. Before the license is required to be suspended, the warehouse division director shall attempt to contact any licensee who does not have on file with the warehouse division a satisfactory replacement bond at least five days prior to the suspension or revocation deadlines.

This rule is intended to implement Iowa Code sections 543.6, 543.11, 543.12, and 543.13.

ITEM 7. Rescind 250—12.10(543) and insert in lieu thereof the following:

**250—12.10(543) Notice to the warehouse division.**

**12.10(1)** The warehouse division shall be notified by the licensee prior to:

- a. Change of ownership of a bonded warehouse.
- b. Change in name or business address of a bonded warehouse.
- c. The use of additional storage facilities, whether temporary or permanent, recently acquired by the licensee.
- d. The use of any facility under warehouse license for the storage of a product other than that for which it is licensed.
- e. The changing of the licensee's reporting period for tax purposes.

**12.10(2)** The warehouse division shall be notified by the licensee within twenty-four hours in case of:

- a. Loss of damage to stored products or to licensed storage facilities.
- b. Licensee's net worth falling below \$25,000 of a Class 2 license, or \$50,000 of a Class 1 license, and the amount of the deficiency is not covered by a net worth deficiency bond as required by Iowa Code section 543.6.
- c. Any quality or quantity deficiency of grain.

**12.10(3)** The warehouse division shall be notified by the licensee within ten days in case of:

- a. Any structural change of a bin or facility.
- b. Termination of a lease on storage facilities, or the leasing of a facility under license to any other person.
- c. The death of an individual or any member of a partnership operating a bonded warehouse.

This rule is intended to implement Iowa Code sections 543.2, 543.6, 543.8, and 543.9.

ITEM 8. Amend 250—12.11(543) to read as follows:

**250—12.11(543) Issuance of warehouse receipts.** Upon demand by the depositor or the depositor's agent, a

warehouse receipt shall be issued. The licensed warehouseman must offer a warehouse receipt for all agricultural products that are stored in a warehouse licensed by this commission: to the depositor or the depositor's agent within thirty days from the day the deposit is made. The warehouse receipt must be issued upon demand by the depositor or depositor's agent, or in absence of such demand, the warehouse receipt shall be issued within six months from the date of deposit in the warehouse, unless the warehouse is in possession of a signed statement from the depositor that he or she does not want a warehouse receipt to be issued. Such waiver shall only apply to grain deposited in the warehouse prior to the date of such waiver. If a depositor signs a statement that no warehouse receipt need be issued, such grain would then be deemed as open storage and would remain a warehouse obligation.

The original warehouse receipt and one copy shall be issued to the depositor of the product placed in storage, one copy of such receipt shall be maintained as part of the warehouseman's records, and one copy immediately filed with the ~~commission~~ warehouse division within seven days of issuance of the receipt.

ITEM 9. Amend subrule 12.11(2) to read as follows:

**12.11(2) Information on warehouse receipts.** Not more than one product, or grade, or value of product, shall be shown on a warehouse receipt. All grade factors pertinent to determining grade shall be shown on warehouse receipts issued for bulk grain and any other information pertinent to the product, stored under warehouse receipt should clearly be stated under the heading "Remarks." *The warehouseman in the inspection of the grain upon delivery must perform a sufficient amount of sampling of the grain to ensure a representative application of the grade factors to the grain, but shall take at least one sample for each depositor, each day. The licensed warehouseman's sampling techniques for applying grain standards must be in accordance with standard sampling procedures specified by official licensed samplers.* All warehouse receipts issued shall designate the person the receipt is issued to and whether it is issued negotiable or non-negotiable.

This rule is intended to implement Iowa Code sections 543.17 and 543.18.

ITEM 10. Amend 250—12.12(543) as follows:

**250—12.12(543) Cancellation of warehouse receipts.** Upon delivery of the product represented by a warehouse receipt, the original receipt must be marked canceled, signed, and dated upon the face thereof by the warehouseman or an authorized agent. The warehouseman may then retain possession of the warehouse receipt and present the receipt to be canceled with the commission's stamp at the time of any inspection or examination of the warehouse records. The warehouseman shall upon request of the ~~commission~~ warehouse division forward any such warehouse receipts to the ~~commission's~~ warehouse division's office to be canceled with the commission's stamp.

Any negotiable receipts which have been used as collateral by the licensee must have a release date stamped on the reverse side by the lender indicating when the receipt was released before the warehouse division's office will stamp the receipt canceled with the commission's stamp.

Amend 12.12(2) by deleting the word "commission" from the end and inserting in lieu thereof "warehouse division".

Amend 12.12(3) to read as follows:

**12.12(3) Surrender of warehouse receipts on cancellation, termination, or revocation of license.** When a

## COMMERCE COMMISSION[250] (cont'd)

warehouse license is canceled, terminated, or revoked, all unused warehouse receipts under such license shall be surrendered to the ~~commission~~ *warehouse division* for cancellation. ~~Upon the cancellation, termination or revocation of a warehouse license all warehouse receipts which have been issued that are still outstanding must be immediately recalled.~~

*The warehouse division director shall notify the warehouseman that all outstanding warehouse receipts must be returned to the warehouse division's office within thirty days from the date of cancellation, termination, or revocation of the license. If all outstanding receipts are not returned, the warehouse division director may require bond to be filed by the warehouseman or the producer in an amount to be determined by the commission for unreturned outstanding warehouse receipts.*

Amend subrule 12.12(4) by striking from line 9 the word "commission's" and inserting in lieu thereof "warehouse division's".

ITEM 11. Amend 250—12.13(543) to read as follows:

**250—12.13(543) Lost or destroyed receipt.** If a warehouse receipt is lost or destroyed, a duplicate warehouse receipt may be issued in accordance with the provisions of the (Iowa) Uniform Commercial Code, *section 554.7601(3)*. Before a duplicate warehouse receipt can be issued a bond must be provided in the amount equal to twice the value of the product, and a copy of such bond must be filed with the ~~commission~~ *warehouse division*. The indemnity bond required before the issuance of a duplicate receipt must be in form that will fully protect any person injured by issuance of a duplicate receipt. A duplicate warehouse receipt must clearly state under the heading "Remarks" that it is a duplicate receipt, the number of the receipt the duplicate is replacing, and the license number under which the original receipt was issued. If the products represented by the lost or destroyed receipt are to be removed from storage, a release may be procured from the person to whom the receipt was issued on a form provided by the ~~commission~~ *warehouse division*. The release, in duplicate, must then be forwarded to the office of the ~~commission~~ *warehouse division*.

This rule is intended to implement Iowa Code section 543.19.

ITEM 12. Rescind 250—12.15(543) and insert in lieu thereof the following:

**250—12.15(543) Asset valuation.** The licensee in writing may submit a request for asset valuation to the warehouse division. The written request, which may be accompanied by the appraisal, should include the name of an appraiser and a list of the appraiser's credentials. The warehouse division director shall notify the petitioner within one week if the appraiser is unacceptable.

The approved appraiser shall submit the asset valuation to the warehouse division for its approval. Any approved valuation may be used in any financial statements prepared by or for the licensee.

This rule is intended to implement Iowa Code section 543.6.

ITEM 13. Amend 250—12.16(543) to read as follows:

**250—12.16(543) Warehouseman's obligation and storage.** A warehouseman must at all times maintain sufficient quality and quantity of stored products in the warehouse to cover the obligation as investigation of the records shall indicate. If at the time of an examination a shortage is determined, a warehouseman must im-

mediately purchase and make actual payment for a sufficient quantity and quality of the commodity to fully cover the shortage: *by the end of the next business day, excluding weekends or holidays, unless the warehouse division director receives within the same time period a confirmation from a surety company for 100% bonding of the deficiency. Any shortage secured by a 100% bonding within the allotted time period must be covered in full within thirty days from the discovery of the shortage.*

*The commission may suspend the license of any licensee with a shortage who is unable to satisfy any of the above requirements.*

This rule is intended to implement Iowa Code section 543.1.

ITEM 14. Amend 250—12.17(543) to read as follows:

**250—12.17(543) Storing of products.** Bulk grain in storage shall be ~~levelled~~ *stored* in such a manner that the amount of grain in the storage facility can be readily determined. *The warehouseman shall be required to level the grain before completion of the examination if the amount of grain in a storage facility cannot be readily measured by the examiner.* A product other than bulk grain shall be stored in such a manner that it can be readily inspected and the amount and kind thereof determined. Such maintenance, conditioning, care, or surveillance shall be given to stored products as is required to maintain the quality, grade, and safe storage of the products. Nothing shall be placed or stored in a licensed facility that will in any way contaminate the stored products or cause any degrading of grade or value. Storage facilities shall not be overfilled. There shall be sufficient overhead air space to *allow the examiner to readily determine the quality and quantity of the grain and to provide adequate ventilation.* The warehouse division director or examiner ~~commission~~ may require the installation of overhead ventilation fans in facilities when in the ~~commission's~~ *warehouse division's* judgment such fans are needed to preserve the quality of stored products. The ~~commission~~ *warehouse division director or examiner* may require the installation of aeration equipment in storage facilities when it is deemed necessary to preserve the quality of stored products.

ITEM 15. Amend subrule 12.19(6) to read as follows:

**12.19(6) Grade factors on scale tickets.** All grade factors for determining the quality and grade of grain in accordance with the "Official Grain Standards" on grain for which warehouse receipts are not issued must be documented on scale ticket or supplemental records at time of deposit. *The licensed warehouseman must perform a sufficient amount of sampling of the grain to ensure a representative application of the grade factors to the grain, but shall take at least one sample for each depositor, each day.*

This rule is intended to implement Iowa Code sections 543.2, 543.17, and 543.35.

ITEM 16. Amend 250—12.21(543) by deleting from the fourth sentence the word "commission" and inserting in lieu thereof the phrase "warehouse division."

ITEM 17. Amend 250—12.22(543) by deleting the word "commission" from both the first and second sentences, and inserting in lieu thereof "warehouse division."

ITEM 18. Amend 250—12.23(543) to read as follows:  
**250—12.23(543) Tariffs.** Each warehouseman, at the time of making application for a warehouse license, shall



## COMMERCE COMMISSION[250] (cont'd)

file two copies of a tariff with the *warehouse division commission* and publish the same in accordance with the provisions of section 543.28. Such tariff shall be on a form prescribed by the *commission warehouse division*, which forms will be furnished to the applicant upon request. The tariff shall contain rates to be charged for storage, receiving, loadout and conditioning of stored products. After being properly numbered and dated by the *commission warehouse division*, one copy of the tariff will be returned to the applicant for publication. Publication of the tariff shall be made by posting the same in a conspicuous location at the place of business of the applicant.

**12.23(1)** Application of tariff. The tariff rates applicable to stored products shall be those as contained in the tariff on file with the *commission warehouse division* at the time the product was received for storage. The tariff rates shall be applicable on an annual basis from date of deposit. If a tariff is amended, the new rate shall be applicable from the anniversary of the deposit date. Tariff charges will cease upon cancellation, termination, or revocation of a warehouse license. Tariff charges shall continue in accordance with the rates as filed by the successor warehouseman. *In determining the applicable rates to be applied under the successor warehouseman's tariff, the date of deposit under the new tariff shall be the actual date of deposit.*

**12.23(2)** Amending tariff. Tariffs may be amended by the licensed warehouseman by filing a new tariff with the *commission warehouse division* and publishing the same in the same manner as required for an original tariff. Such amended tariff shall contain rates to be charged for the storage, receiving, loadout and conditioning of all products stored by the warehouseman. The previous tariff shall continue to apply on all products received prior to the effective date of the amended tariff until the anniversary date of deposit. The amended tariff will apply to any products received after the effective date of the amendment and on any products stored under the previous tariff commencing on the anniversary date of the storage period.

**12.23(3)** Posting of tariffs. Tariffs shall be posted in a conspicuous location at the warehouseman's place of business and in such a manner as to be protected from damage or effacement. If tariffs are amended, the amended tariff shall be posted and the previous tariff shall also be posted as long as there is any product in store subject to those rates.

**12.23(4)** *Tariff approval. The warehouse division director shall consider the following in the decision of whether to accept or reject a tariff filing:*

- a. *Prevailing tariff rates in Iowa and in other jurisdictions with conditions similar to those in Iowa,*
- b. *Cost of service based on original cost,*
- c. *Absence of discrimination among depositors.*

*If the tariff is unacceptable as filed, the warehouse division director may send written notice to the licensee stating the reason(s) for rejecting the tariff and explaining the means by which the licensee may obtain commission review of the tariff's rejection.*

*If a decision to reject a tariff is to be reviewed by the commission pursuant to rule 12.30(543), the licensee shall supply at the time the complaint is filed, information on the cost of service of the warehouse which shall be based on original cost. In deciding whether or not the tariff in question is just and reasonable, the commission may apply established principles of public utility regulation.*

ITEM 19. Amend 250—12.25(543) to read as follows:

**250—12.25(543)** Identification of licensed storage units. Each storage unit or building licensed under the Iowa bonded warehouse law shall have painted thereon an identifying letter or numeral or both, assigned by the *commission warehouse division*. ~~These identifying letters or numerals shall be painted in a conspicuous location on the storage unit or building.~~ Identifying letters or numerals on a storage unit or building must remain legible as long as the unit or building continues as a licensed storage facility.

This rule is intended to implement Iowa Code sections 543.2 and 543.8.

ITEM 20. Amend 12.26(1) to read as follows:

**12.26(1)** *Inspection safety specifications for* ~~ladders and lifts on storage units. Storage units having entrance over twenty feet above ground or floor level and not in excess of fifty-five sixty feet above such ground or floor level shall be equipped with a fixed ladder, or a safe and adequate lift, or an approved safety cable with belt hookup. If equipped with fixed ladder, such ladder shall have side rails and rungs; these rungs to be spaced not to exceed one foot centers and there shall be sufficient space between ladder rung and face of the structure to permit a safe foothold. Permanent fixed ladders more than twenty-four feet in height shall have a safety cage or an approved safety cable with belt hookup attached which shall commence not less than seven feet or more than eight feet from ground level. Storage units having entrance over fifty-five sixty feet to a maximum of one hundred feet above ground or floor level shall be equipped with safe and adequate lift, an attached circular or spiral stairway or an alternating tower-type stairway. Any storage units having entrance in excess of one hundred feet from ground or floor level shall be equipped with an adequate electric lift. Catwalks or walkways may be provided in lieu of ladders or lifts between facilities. The rise of such catwalks or walkways shall not exceed fifteen degrees.~~

*Rungs on fixed ladders shall be spaced not to exceed one foot centers and there shall be sufficient space between ladder rung and face of the structure to permit a safe foothold. Permanent fixed ladders more than twenty-four feet in height shall have a safety cage or an approved safety cable with belt hookup attached which shall commence not less than seven feet or more than eight feet from ground level.*

ITEM 21. Add new subrules 12.27(8) and 12.27(9) as follows:

**12.27(8)** All temporary storage facilities for which the commission has waived subrule 12.27(1) must continue to meet all of the other requirements of rule 12.27(543). The warehouse division director may require the filing of additional bond in an amount to be determined by the commission for the temporary facility before the waiver of subrule 12.27(1) is granted.

**12.27(9)** The warehouse division director or examiner shall issue written notice to the licensed warehouseman for any temporary storage facility which no longer meets these requirements. Failure of the warehouseman to place such facility in a suitable condition within a reasonable length of time will result in said facility being eliminated from coverage from the warehouse license. Any facility found which has deteriorated to a point that it is unsuitable for storage shall be immediately removed from the warehouse license until such time that it meets the requirements and has been reinspected. A ware-

## COMMERCE COMMISSION[250] (cont'd)

houseman may petition the commission for hearing in order to review the removal of a temporary storage facility from coverage of a warehouse license. The commission shall take such action as it deems just and reasonable.

ITEM 22. Amend 250—12.28(69GA, ch 180) to read as follows:

**250—12.28(69GA, ch 180) Shrinkage adjustments—disclosure—penalties.** A person who, in connection with the receipt of grain for storage, processing, or sale, adjusts the scale weight of the grain to compensate for losses to be incurred during the handling, processing, or storage of the grain shall do so in accordance with the provisions of 1982 Iowa Acts, chapter 180, section 17.

ITEM 23. Add new rules 250—12.29(543) and 12.30(543) as follows:

**250—12.29(543) Commission enforcement procedures.** The warehouse division shall follow a step-by-step enforcement policy to ensure consistent compliance with and application of these rules. The commission recognizes that violations of certain rules may have more serious ramifications, and thus, the enforcement of those rules requires stricter policies. The enforcement policies apply to any violation of these rules unless enforcement provisions are specifically addressed in a particular rule or subrule.

**12.29(1)** If it is necessary to establish proof of a Code or rule violation, a special investigation of the licensee will be conducted by the warehouse division of the commission. The warehouse division may contact the licensed warehouseman, the warehouseman's employees, or any other interested party to gain information for its investigation. The warehouse division, in its investigation of a licensee may cause a special examination to occur, at the licensee's expense, if evidence of at least one of the following conditions is present:

- a. Insufficient funds check,
- b. Stalled payment for grain,
- c. Quantity deficiency,
- d. Quality deficiency,
- e. Improper application of grading factors.

**12.29(2)** Upon establishment by an examiner or the warehouse division of potential rule violation, the warehouse division shall notify the licensee in writing that the licensee must be in compliance with the commission rules within a period of time to be established by the warehouse division. The warehouse division shall consider the following elements in determining the proper period of time within which to require a licensee to comply with the rules:

- a. Gravity of the offense,
- b. Likelihood of depositor loss,
- c. Length of time within which a reasonable licensee in a similar circumstance should be able to comply with the rule.

**12.29(3)** The warehouse division director may file an information against the licensee for any violation of these rules. The warehouse division director will consider the following factors in exercising their statutory discretion to file an information:

- a. Likelihood of depositor loss,
- b. Gravity of the offense,
- c. Licensee's intent to violate the rule,
- d. Licensee's record of Code or rule violations,
- e. Number of violations in the particular report.

**12.29(4)** The warehouse division director may file charges against the licensee for any violation of these

rules. The warehouse division director will consider the following factors in exercising their statutory discretion to file charges:

- a. Likelihood of depositor loss,
- b. Gravity of the offense,
- c. Licensee's intent to violate the rule,
- d. Licensee's record of rule violations.

This rule is intended to implement Iowa Code sections 543.2, 543.10 and 543.36.

**250—12.30(543) Review proceedings.** A warehouse licensee or applicant may file a formal written complaint with the commission if the licensee contests any finding or decision of the warehouse division director.

Any such complaints shall be resolved in contested case proceedings conducted pursuant to the applicable provisions of Iowa Administrative Code 250—chapters 6 and 7.

ITEM 24. Rescind 250—13.2(542) and insert the following:

**250—13.2(542) Application for license.** Application for a bonded grain dealer license (Iowa Code chapter 542) shall be made on forms prescribed for that purpose by the warehouse division. Forms are available from the warehouse division upon request. All information required by Iowa Code chapter 542 must be furnished. The warehouse division may require the applicant to file updated information if the information on the application is no longer current.

This rule is intended to implement Iowa Code sections 542.2 and 542.3.

ITEM 25. Amend 250—13.3(542) by adding the following to the end thereof:

"The license holder shall give the warehouse division notice of a proposed name change and, if applicable, a copy of the articles of incorporation changing the name."

ITEM 26. Amend 250—13.6(542) to read as follows:

**250—13.6(542) Surrender of license and registration.** The grain dealer's license and all current vehicle registration plates shall be forwarded to the ~~commission~~ warehouse division immediately upon cancellation, termination, or revocation of such license.

This rule is intended to implement Iowa Code sections 542.2, 542.3 and 542.7.

ITEM 27. Amend 250—13.7(542) to read as follows:

**250—13.7(542) Renewal, termination, and reinstatement of license.** *The warehouse division will send to each licensed grain dealer written notice that A* application and license fee for annual renewal of grain dealer license ~~shall~~ must be received by the ~~commission~~ warehouse division no later than June 30. Failure to receive the application and fee *at the warehouse division by June 30 of the renewal year* shall cause the license to terminate June 30. A license that has been terminated may be reinstated ~~only~~ within thirty days of termination, conditioned on the applicant meeting all requirements and receipt by the ~~commission~~ warehouse division of the following within the thirty-day time period:

- a. Completed application,
- b. Renewal fee,
- c. ~~a~~ Fifty dollar penalty fee. ~~and the renewal fee~~ within the thirty day time period:

This rule is intended to implement Iowa Code section 542.5

ITEM 28. Rescind 250—13.8(542) and insert in lieu thereof the following:

## COMMERCE COMMISSION[250] (cont'd)

**250—13.8(542) Financial statements.** To obtain a bonded grain dealer license, an applicant must submit a current financial statement.

This statement must have been prepared within ninety days from the date of filing and in conformity with the applicable requirements as to annual financial statements.

A new business entity, which is in the process of transferring funds into the business name, filing for a license may file a pro forma balance sheet in lieu of a current financial statement when filing an application for license. Within thirty days after the issuance of a license by the warehouse division, the warehouse division must receive a financial statement which complies with 13.8(3), paragraphs "a" or "b".

**13.8(1) Filing date of statements.** Every licensee shall prepare a financial statement at the close of their designated fiscal or tax year, and must file the statement with the warehouse division not later than ninety days thereafter. This statement must be prepared in conformity with generally accepted accounting principles. The warehouse division shall send a written statement to every licensee at the beginning of the month at the close of the licensee's fiscal or tax year and to every licensee who has not filed a financial statement by the seventy-fifth day from the close of the licensee's designated fiscal or tax year notifying the licensee that their financial statement is due on the ninetieth day from the close of their fiscal or tax year.

**13.8(2) Assets allowed in determining net worth.** Only that part of the value of an asset which is subject to execution will be allowed by the warehouse division in determining net worth. When a liability associated with an exempt asset (whether the asset is included or not) exceeds the original cost (or fair market value after an appraisal approved by the warehouse division) such excess shall be shown as a liability with appropriate footnotes to the financial statement. Applicants or licensees must complete the warehouse division's form in this regard and file it with their financial statement.

**13.8(3) Financial statement requirements.** Financial statements filed pursuant to this rule must comply with either of the following:

a. Be accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. The warehouse division may accept a qualification in an opinion that is unavoidable by any audit procedure. Opinions that are qualified because of limited audit procedure or because the scope of an audit is limited will not be accepted by the warehouse division.

b. Be accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant.

**13.8(4) Monthly financial statements.** Any licensee who has a net worth or current ratio deficiency and who has filed additional bond, must file a monthly balance sheet with the warehouse division by the end of the next month until their net worth meets the requirements of Iowa Code section 542.3.

**13.8(5) The warehouse division director may require a licensee to file a monthly balance sheet by the end of the next month if one of the following conditions exist:**

a. Two or more insufficient fund checks within the last six months.

b. Evidence of licensee requesting delayed payment for grain without the use of a credit sale contract for grain.

c. Other documented evidence which indicates the licensee's financial condition has deteriorated since the filing of the licensee's last financial statement.

A monthly balance sheet must be filed with the warehouse division until the problem has been resolved.

**13.8(6) Additional information.** The warehouse division director may require an applicant or licensee to provide the warehouse division with any other information reasonably related to business as a grain dealer and work papers supporting the financial statement.

**13.8(7) Filing extension.** An extension of thirty days will be granted for the filing of financial statements by the warehouse division director upon receipt of the following:

1. A letter from licensee's certified public accountant stating the reason for filing extension and that work has been done on preparing a financial statement.

2. An affidavit from the licensee stating the licensee meets financial responsibility requirements of Iowa Code section 542.3, or that the licensee shall file additional bond in an amount to cover any net worth deficiency as provided in Iowa Code section 542.3, based upon the licensed certified public accountant's best estimate of the licensee's financial position.

Subrule 13.8(7) does not apply to the filing of monthly financial statements.

**13.8(8) Penalty for failure to supply timely financial statements or balance sheets.** The commission may suspend the license of any licensee or applicant who fails to provide the required financial statements or balance sheets within the time limits prescribed by these rules. Any financial statement, balance sheet or application for extension to be filed with the warehouse division under this rule shall be deemed timely filed if postmarked on or before the due date.

This rule is intended to implement Iowa Code sections 542.2, 542.3, 542.6, 542.7 and 542.9.

ITEM 29. Amend 250—13.9(542) as follows:

Delete the word "commission" wherever it appears and insert in lieu thereof "warehouse division".

Add new subrules as follows:

**13.9(1) Investigation of bond cancellation.** Upon receipt of notification from the licensee required under subrule 13.13(1), paragraph "d," of licensee's bond cancellation, the warehouse division shall contact both the licensee and surety or surety company to establish the cause for the bond cancellation.

**13.9(2) Replacement bond.** The warehouse division shall send written notice to the licensee notifying them that their bond will be canceled on the date specified by the surety or surety company in their notice to the warehouse division. The warehouse division shall include information and forms for filing the required replacement bond with the written notice. Replacement bond must be on file with the warehouse division prior to the time of cancellation of the bond. The commission will, in accordance with the requirements of Iowa Code section 542.4, temporarily suspend any grain dealer license from the time the bond is canceled until the replacement bond is on file with the commission. Before the license is required to be temporarily suspended, the warehouse division shall attempt to contact any licensee who does not have on file with the warehouse division a satisfactory replacement bond at least five days prior to the bond cancellation. The commission shall revoke the grain dealer license if a replacement bond is not received within thirty days of suspension of the license.

## COMMERCE COMMISSION[250] (cont'd)

ITEM 30. Amend 250—13.10(542) to read as follows:

**250—13.10(542) Payment.** Payment for grain shall be made as provided by Iowa Code section 542.8. When a dealer has failed to make payment on demand of the seller and such failure has come to the attention of the ~~commission~~ *warehouse division*, the ~~commission~~ *warehouse division director* shall request the dealer to make payment within twenty-four hours. Such request may be made verbally and confirmed by mail. The ~~commission~~ *warehouse division director* may require the dealer to make payment with a certified or cashier's check *if there is any evidence of financial instability*. Absent a dispute between buyer and seller, the license may be suspended if the dealer fails to make timely payment as requested by the ~~commission~~ *warehouse division director*. An insufficient funds check shall not constitute payment under this chapter.

This rule is intended to implement Iowa Code sections 542.2 and 542.8.

ITEM 31. Amend 250—13.11(542) by deleting the word "commission" where it appears four times and inserting in lieu thereof "warehouse division" in each instance.

ITEM 32. Amend 250—13.12(542) by deleting the word "commission" where it appears six times and inserting in lieu thereof "warehouse division" in each instance.

ITEM 33. Rescind 250—13.13(542) and insert in lieu thereof the following:

**250—13.13(542) Notice to the warehouse division.**

**13.13(1)** The warehouse division shall be notified in writing prior to:

- a. Any change of vehicles or any additional vehicle used in the transportation of grain purchased.
- b. Change of ownership of the grain dealer.
- c. Change of name or business address of the grain dealer.
- d. The changing of the licensee's reporting period for tax purposes.

**13.13(2)** The warehouse division shall be notified by the licensee within twenty-four hours in case of:

- a. Licensee's net worth falling below \$25,000 if a Class II license, or \$50,000 if a Class I license, and the amount of the deficiency which is not covered by a net worth deficiency bond.
- b. Licensee's current assets falling below ninety percent of current liabilities which deficiency is not covered by a current ratio deficiency bond.
- c. Class 2 licensee's grain purchases exceeding \$250,000 in a fiscal year.

**13.13(3)** The warehouse division shall be notified in writing by the licensee within ten days in case of:

- a. Loss or destruction of truck identification.
- b. The death of an individual or any member of a partnership licensed as a grain dealer.

This rule is intended to implement Iowa Code sections 542.2 and 542.3.

ITEM 34. Add new rules 250—13.14(542), 13.15(542), 13.16(542), and 13.17(542), and renumber the present 250—13.14(542) to 250—13.19(542), as 250—13.18(542) to 250—13.23(542).

The new rules shall read as follows:

**250—13.14(542) Asset valuation.** The licensee in writing may submit a request for asset valuation to the warehouse division. The written request, which may be

accompanied by the appraisal, should include the name of an appraiser and a list of the appraiser's credentials. The warehouse division director shall notify the petitioner within one week if the appraisal is unacceptable.

The approved appraiser shall submit the asset valuation to the warehouse division for its approval. Any approved valuation may be used in any financial statements prepared by or for the licensee.

This rule is intended to implement Iowa Code section 542.3.

**250—13.15(542) Requirements for Class 2 licensees.**

A Class 2 licensee, whose grain purchases during the fiscal year exceed \$250,000, and who is, thereby, required by section 542.3 to apply for a Class 1 license, must file the necessary additional bond required by Iowa Code section 542.3 within twenty normal working days after applying for Class 1. If the bond is not filed with the warehouse division within twenty normal working days, the licensee must suspend business operations until the necessary bond is filed.

This rule is intended to implement Iowa Code section 542.3.

**250—13.16(542) Commission enforcement procedures.** The warehouse division shall follow a step-by-step enforcement policy to ensure consistent compliance with and application of these rules. The commission recognizes that violations of certain rules may have more serious ramifications, and thus, the enforcement of those rules require stricter policies. The enforcement policies apply to any violation of these rules unless enforcement provisions are specifically addressed in a particular rule or subrule.

**13.16(1)** If it is necessary to establish proof of a rule violation, a special investigation of the licensee will be conducted by the warehouse division. The warehouse division may contact the licensed grain dealer, the grain dealers' employees, or any other interested party to gain information for the investigation.

**13.16(2)** Upon establishment by an examiner or the warehouse division of potential rule violation, the warehouse division shall notify the licensee in writing that the licensee must be in compliance with the commission rules within a period of time to be established by the warehouse division. The warehouse division or examiner shall consider the following elements in determining the proper period of time within which to require a licensee to comply with the rules:

- a. Likelihood of producer loss,
- b. Gravity of the offense,
- c. Length of time within which a reasonable licensee in a similar circumstance should be able to comply with the rule.

**13.16(3)** The warehouse division director may file an information against the licensee for any violation of these rules. The warehouse division director will consider the following factors in exercising his statutory discretion to file an information:

- a. Likelihood of producer loss,
- b. Gravity of the offense,
- c. Licensee's intent to violate the rule,
- d. Licensee's record of Code or rule violations.

**13.16(4)** The warehouse division director may file charges against the licensee for any violation of these rules. The warehouse division director will consider the following factors in exercising his statutory discretion to file charges:

## COMMERCE COMMISSION[250] (cont'd)

- a. Likelihood of producer loss,
- b. Gravity of the offense,
- c. Licensee's intent to violate the rule,
- d. Licensee's record of Code or rule violations.

This rule is intended to implement Iowa Code sections 542.2, 542.9, 542.10, 542.11.

**250—13.17(542) Review proceedings.** A grain dealer licensee or applicant may file a formal written complaint with the commission if the licensee contests the finding or decision of the warehouse division director. Any such complaint shall be resolved in contested case proceedings conducted pursuant to the applicable provisions of Iowa Administrative Code 250—chapters 6 and 7.

## ARC 3366

## ENGINEERING EXAMINERS, BOARD OF[390]

### 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 Iowa Code chapter 17A and section 114.6, the Iowa State Board of Engineering Examiners intends to adopt the following rules concerning its interpretation of the applicability of Iowa Code chapter 114 to certain standardized building structures and systems requiring the application of engineering principles and further requiring the services of a professional engineer for their design and completion. These rules will be added as chapter 5 of the administrative rules of the Board of Engineering Examiners.

Notice is hereby given that on December 16, 1982, at 1:00 p.m. at the West Conference Room, 1209 E. Court Avenue, Executive Hills West, State Capitol Complex, Des Moines, Iowa, the Iowa State Board of Engineering Examiners will hold a regular board meeting at which time persons interested in commenting on these proposed rules may present their views. Persons desirous of making an oral presentation at the aforementioned board meeting shall request opportunity from Bonita Fagerstrom, Secretary, Iowa State Board of Engineering Examiners, Executive Hills West, 1209 E. Court Avenue, Des Moines, Iowa 50319, telephone number 515/281-5602, no later than December 15, 1982. Persons desiring to submit their views in writing should mail or deliver their submissions to Bonita Fagerstrom, Secretary, Iowa State Board of Engineering Examiners, Executive Hills West, 1209 E. Court Avenue, Des Moines, Iowa 50319, with delivery no later than December 15, 1982.

This rule is intended to implement Iowa Code sections 114.2, 114.24 and 114.26.

The following new chapter is proposed.

## CHAPTER 5

### BUILDINGS, STRUCTURES, MECHANICAL SYSTEMS AND ELECTRICAL SYSTEMS REQUIRING PROFESSIONAL SERVICES.

**390—5.1(114) General statement.** The Iowa State Board of Engineering Examiners is charged with the enforcement of Iowa Code chapter 114. Iowa Code section 114.24 requires the board to prevent the practice of professional engineering in this state by persons not registered as professional engineers. The statutory definition of professional engineering contained in Iowa Code section 114.2 is very broad and to a certain extent vague. Thus the board has determined that it is in the public interest to develop certain criteria which it will use to determine whether the practice of professional engineering is involved in the design and construction of buildings, structures and systems. These criteria are described below and are based on the board's conclusion that the nature of the technical services required for their design and completion necessarily involve the practice of professional engineering. Persons selling services for design and construction of buildings, structures and systems meeting or exceeding the criteria set forth below may presume that professional engineering or architectural services are involved in those processes. However, these rules should be considered only as guidelines. Unique circumstances may require professional engineering or professional architectural services in buildings, structures and systems which do not meet the criteria set forth. Further, it should be understood that the board will not, as a general rule, apply these rules to a single family residential construction, farm buildings, or to standardized, pre-engineered buildings to which public access is not generally allowed. Buildings, structures and systems not described herein may also be subject to the requirements of Iowa Code chapter 114, if the public welfare or the safeguarding of life, health or property is involved, or if professional engineering services are prescribed by statute, administrative rule or ordinance.

#### **390—5.2(114) Buildings and structures requiring professional services.**

**5.2(1)** New buildings and structures (hereafter referred to as structures) that contain more than 50,000 cubic feet in total volume, alterations to structures that contain more than 50,000 cubic feet in total volume, and additions that result in a combined structure containing more than 50,000 cubic feet in total volume.

**5.2(2)** Structures that are more than 30 feet in height above any adjacent grade, structures that have a floor more than 6 feet 4 inches below any adjacent grade, and structures that have a total height greater than 35 feet measured from the lowest floor level to the highest point on the roof.

**5.2(3)** Structures that are used primarily for the manufacture or storage of hazardous chemicals, wastes or explosives, and additions or alterations to these structures.

**5.2(4)** Structures to be used for the assembly of 50 or more people.

**5.2(5)** Structures, alterations or additions not described above that are unusual or unique in nature or whose construction does not utilize simple framing techniques. Simple framing techniques are those in which the adequacy of the design can be easily verified through the use of recognized and commonly accepted technical

## ENGINEERING EXAMINERS, BOARD OF [390] (cont'd)

manuals. Examples of simple framing techniques include the use of conventional wood framing and simple span steel members.

**390—5.3(114) Mechanical and electrical systems requiring professional services.**

5.3(1) Electrical systems with service exceeding 600 amperes or 600 volts.

5.3(2) Mechanical systems with gage pressures exceeding 125 pounds per square inch or temperature (other than flue gas) of 300°F, steam heating systems with gage pressures exceeding 15 pounds per square inch or temperatures exceeding 250°F, natural gas systems with gage pressures exceeding 5 pounds per square inch, and hot water heating systems with gage pressures exceeding 30 pounds per square inch or temperatures exceeding 250°F.

**390—5.4(114) Standard designs.** Structures and their electrical and mechanical systems that are of standard design shall be exempt from the requirements of Iowa Code chapter 114, if they bear the certification of a professional engineer or architect registered in another state or U.S. jurisdiction and if the design criteria, the design loads, and the adaption of the standard design to the site are certified by a professional engineer or architect registered in Iowa.

**390—5.5(114) Statutory exemption.** Structures and their electrical and mechanical systems designed by full-time employees of corporations for the corporation's own use are exempt from the requirements of Iowa Code chapter 114, on the basis of section 114.26.

ARC 3352

## 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.32, the Environmental Quality Commission intends to take action to amend Chapter 15, "Definitions" and Chapter 19, "Waste Water Construction and Operation Permits", Iowa Administrative Code. The proposed amendments establish a specific policy for requiring the owners of municipal waste water treatment facilities to achieve and maintain compliance with applicable standards for the discharge of pollutants into waters of the state. While the department already has the authority to require such compliance, and to administer a permit program which could be used to achieve this end, the department is proposing a significant shift in current policy and practice

and feels that specific rules, and the public input that is a part of rulemaking, are necessary and appropriate to signal and implement this shift.

For the last ten years, the department's policy regarding municipal compliance has been closely linked to the construction grant program, with physical construction to achieve compliance with final effluent limitations being required only when grant money was available to the municipality. While many new facilities have been constructed under this program, over 600 municipalities still need additional treatment facilities. The grant process has already proven too slow, and dwindling federal financial commitments make it clear that continued reliance on that program is inappropriate. In some cases, municipalities have allowed their existing facilities to deteriorate, using the possibility of future grant funding as reason not to improve or maintain the system. In general, the department has observed that most municipalities do not manage their waste water facilities and plan for future needs with the same degree of commitment as they do for other services, such as drinking water.

The policy being proposed will require all publicly owned waste water facilities to have a plan of action to achieve and/or maintain compliance with final effluent limitations, irrespective of their status in the grant program. The plan of action will be developed by the municipality in co-operation with the department, and will be geared to the specific needs and financial situation of that municipality. Measures to achieve interim levels of compliance will be allowed where major reconstruction to meet final limitations is necessary, and the city is unable to finance such reconstruction in a single stage. A major goal of the plan of action requirement is to get municipalities to manage waste water facilities more like they would other utilities.

The department has already made major efforts to solicit input from the affected public in developing this proposed policy. A public hearing on the proposed amendments will be held on Monday, December 13, 1982, at 9:00 a.m. in the auditorium of the Henry A. Wallace Building, 900 E. Grand Avenue, Des Moines, Iowa. Any interested persons may make an oral presentation on the proposed rule changes at the public hearing. Interested persons may also submit written comments on the proposed rule changes on or before December 23, 1982, to the Executive Director, Department of Environmental Quality, Henry A. Wallace Building, 900 E. Grand Avenue, Des Moines, Iowa 50319.

These proposed rules are intended to implement Iowa Code chapter 455B, part 1, division III (455B.30 to 455B.49).

ITEM 1. Amend 400—15.1(455B) by adding the following new definition at 15.1(22) and renumbering existing subrules 15.1(22) to 15.1(29) as 15.1(23) to 15.1(30) respectively:

15.1(22) "POTW" or "publicly-owned treatment works" means any device or system used in the treatment of municipal sewage or industrial wastes of a liquid nature which is owned by a municipal corporation or other public body created by or under Iowa law and having jurisdiction over disposal of sewage, industrial wastes or other wastes, or a designated and approved management agency under section 208 of the Act.

ITEM 2. Amend 400—19.6(455B) by adding the following new subrule:

19.6(6) POTW compliance-plan of action required. The owner of each publicly owned treatment works

## ENVIRONMENTAL QUALITY DEPARTMENT[400] (cont'd)

(POTW) must prepare and implement a plan of action to achieve and maintain compliance with final effluent limitations in its NPDES permit, as specified below:

a. The executive director shall notify the owner of each POTW of the plan of action requirement, and of an opportunity to meet with department staff to discuss the plan of action requirements. The POTW owner shall submit a plan of action within six months of such notice, unless a longer time is needed and is authorized in writing by the executive director.

b. The plan of action will vary in length and complexity depending on the compliance history and physical status of the particular POTW. It must identify the deficiencies and needs of the system, describe the causes of such deficiencies or needs, propose specific measures (including an implementation schedule) that will be taken to correct the deficiencies or meet the needs, and discuss the method of financing the improvements proposed in the plan of action.

The plan may provide for a phased construction approach to meet interim and final limitations, where financing is such that a long-term project is necessary to meet final limitations, and shorter-term projects may provide incremental benefits to water quality in the interim.

Information on the purpose and preparation of the plan can be found in the departmental document entitled "Guidance on Preparing a Plan of Action", available through the records center of the department.

c. Upon submission of a complete plan of action to the department, the plan should be reviewed and approved or disapproved within sixty days unless a longer time is required and the POTW owner is so notified.

d. The NPDES permit for the facility shall be amended to include the implementation schedule or other actions developed through the plan to achieve and maintain compliance.

The proposed rule provides as a cause for disciplinary action in Iowa disciplinary action taken by another state, territory, or country; or failure by the licensee to report in writing the disciplinary action.

Any interested person may make written comments concerning the proposed rule not later than 4:30 p.m. December 3, 1982 addressed to Peter J. Fox, Hearing Officer, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rule is intended to implement Iowa Code section 258A.4.

Subrule 140.212(5) is rescinded and the following adopted in lieu thereof:

**140.212(5)** Revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or failure by the licensee to report in writing to the Iowa board of psychology examiners revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country; or both.

**ARC 3361****HEALTH DEPARTMENT[470]****BOARD OF OPTOMETRY EXAMINERS****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Optometry Examiners gives Notice of Intended Action to amend the rules relating to examinations found in chapter 143 of the Iowa Administrative Code.

The proposed rule change removes the second examination without charge.

Any interested person may give written comments concerning the proposed rule change addressed to Peter J. Fox, Hearing Officer, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319 not later than 4:30 p.m. December 2, 1982.

The proposed rule change is intended to implement 1981 Iowa Acts chapter 5, section 10.

Subrule 143.5(4) is rescinded.

**ARC 3360****HEALTH DEPARTMENT[470]****BOARD OF PSYCHOLOGY EXAMINERS****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 258A.4, the Board of Psychology Examiners gives Notice of Intended Action to amend chapter 140 of the Iowa Administrative Code.

**ARC 3362****ARC 3363****HEALTH DEPARTMENT[470]****HEALTH DEPARTMENT[470]****BOARD OF OPTOMETRY EXAMINERS****BOARD OF MORTUARY SCIENCE EXAMINERS****NOTICE OF INTENDED ACTION****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".

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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.

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

Pursuant to the authority of Iowa Code sections 147.76 and 258A.3, the Board of Optometry Examiners gives Notice of Intended Action to amend the rules relating to licensure of optometrists found in chapters 143 and 144 of the Iowa Administrative Code.

Pursuant to the authority of Iowa Code sections 147.76 and 156.3, the Board of Mortuary Science Examiners gives Notice of Intended Action to amend the rules relating to premortuary college educational requirements found in chapter 147 of the Iowa Administrative Code.

The proposed rule requires the optometrist to provide the address of each office in which he or she practices.

The proposed rule removes the requirement that the credits include a course in inorganic chemistry and biology or zoology.

Any interested person may give written comments concerning the proposed rule change addressed to Peter J. Fox, Hearing Officer, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319 not later than 4:30 p.m. December 2, 1982.

Any interested person may give written comments concerning the proposed rule change addressed to Peter J. Fox, Hearing Officer, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319 not later than 4:30 p.m. December 2, 1982.

The proposed rule is intended to implement Iowa Code section 258A.3.

The proposed rule change is intended to implement Iowa Code section 156.3.

ITEM 1. Chapter 143 is amended by adding the following new rules:

Subrule 147.1(3) paragraph "b" is rescinded and the following adopted in lieu thereof:

**470—143.8(154) Notice of address.**

b. Natural sciences (sixteen semester or twenty-four quarter hours) which may consist of chemistry, biology, zoology, anatomy, histology, microbiology, or physiology.

**143.8(1)** Before engaging in the practice of optometry, each licensed optometrist shall notify the board in writing by United States mail of the address where he or she is to engage, or intends to engage, in the practice of optometry. If the optometrist intends to practice in more than one office, the notification shall include the address of each office.

**143.8(2)** Each licensed optometrist shall as a part of his or her renewal application notify the board in writing of the address where he or she is engaged in the practice of optometry. In the event that the licensee is not engaged in the practice of optometry this shall be noted and the home address provided by the licensee. If the optometrist practices in more than one office, the notification shall include the address of each office.

**143.8(3)** Each licensed optometrist shall notify the board in writing by United States mail of a change of address of his or her residence and where he or she is engaged in the practice of optometry within thirty days after the change of address.

ITEM 2. Subrule 144.112(2) is rescinded and the following adopted in lieu thereof:

**144.112(2)** Failure to notify the board of address as required by rule 470—143.8(154).

**ARC 3367****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



## HOUSING FINANCE AUTHORITY[495] (cont'd)

hereby gives Notice of Intended Action to amend IAC 495 by adding new Chapter 7, Contested Case Procedures.

The Iowa Administrative Procedure Act, Iowa Code chapter 17A, contains references to contested case proceedings in sections 17A.10 to 17A.18. Under generally recognized principles of administrative law, the contested case proceeding is the mechanism used to obtain a final agency decision in nearly all cases, which is the final step involved prior to involvement of the judicial branch of government. The rules of the Housing Finance Authority have not dealt directly with contested cases in the past, and these rules are to further explain the way the agency will approach contested case proceedings consistent with the statute.

Any interested person may make written suggestions or comments on these proposed rules prior to December 2, 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 at (515) 281-4058 or in the offices of the Authority at 550 Liberty Building. Also, there will be a public hearing on Wednesday, December 1, 1982, at 1:30 p.m. in the Authority's offices at 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.

These rules are intended to implement Iowa Code chapters 17A and 220.

The following amendments are proposed.

The Housing Finance Authority adopts a new chapter 7 as follows:

**CHAPTER 7  
CONTESTED CASE PROCEEDINGS**

**495—7.1(17A,220) Presiding officer.** Contested cases shall be presented to the board of the authority.

**495—7.2(17A,220) Right to contested case proceedings.** Any party aggrieved by action of the staff of the authority may request review of such action by the board of the authority at the next regularly scheduled board meeting. An aggrieved party may request either an informal resolution of his or her complaint or may request contested case proceedings. The staff of the authority may also initiate contested case proceedings without a request by an aggrieved party when due process would require such action.

**495—7.3(17A,220) Time limit for request.** A request for contested case proceedings must be made by an aggrieved party within sixty days after official notification of an action.

**495—7.4(17A,220) Notice of contested case.** After receiving a timely request for contested case proceedings, or when contested case proceedings are initiated by staff without a request, notice complying with Iowa Code section 17A.12, subsection 2, shall be mailed by staff.

**495—7.5(17A,220) Form of request.** A request for contested case proceedings shall be in writing and be signed by the aggrieved party or by an attorney at law representing the aggrieved party.

**495—7.6(17A,220) Subpoena power.** The authority shall have all subpoena power conferred on it by statute. Authority subpoenas shall be issued to a party on request, shall be signed by the executive director of the authority, and be under the seal of the authority.

**495—7.7(17A,220) Conduct of contested case.** Contested case proceedings shall comply with Iowa Code sections 17A.12 to 17A.17. The position of the authority's staff shall first be presented, then the position of the aggrieved party shall be offered. Rebuttal by either side may be made where appropriate, and the chairman or other presiding officer of the authority board may limit or direct the hearing to avoid duplicitous, repetitive or unnecessary portions of a presentation.

**495—7.8(17A,220) Decisions.** Decisions of the board shall be in writing, and shall be mailed to the parties involved in the proceeding.

These rules are intended to implement Iowa Code sections 17A.10 to 17A.18.

**ARC 3346**

**MERIT EMPLOYMENT  
DEPARTMENT[570]**

**AMENDED NOTICE OF INTENDED ACTION**

Pursuant to the authority of Iowa Code section 19A.9, the Iowa Merit Employment Department hereby amends Notice of Intended Action to Chapter 1, "Definitions", Chapter 2, "State Service and its Divisions", Chapter 3, "Classification Plan", Chapter 4, "Pay Plan", Chapter 5, "Recruitment and Examination", Chapter 6, "Eligible Lists", Chapter 7, "Certification and Selection", Chapter 8, "Appointments", Chapter 9, "Probationary Period", Chapter 10, "Promotions, Reassignments, Transfers and Demotions", Chapter 11, "Separation and Disciplinary Action", Chapter 12, "Appeals", Chapter 14, "Vacation and Leave", and Chapter 17, "Records", Iowa Administrative Code.

The substance of this rule was previously submitted as Notice of Intended Action, ARC 3304, published in the Iowa Administrative Bulletin on October 13, 1982.

The purpose of this notice is to amend the preamble to allow for persons to present their views at a public hearing 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 no later than December 1, 1982, to the Division Manager, Technical Services Division, Iowa Merit Employment Department, Grimes State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Division Manager, Technical Services Division at (515) 281-6602 or at the above address. Also, there will be a public hearing on Friday, December 3, 1982, at 9:00 a.m. in the Merit Employment Department conference room on the first floor of the Grimes State Office Building. Persons may present their views at this public hearing either orally or in writing.

Persons who wish to make oral presentations at the public hearing should contact the Division Manager of the Technical Services Division prior to the date of the public hearing in order to be scheduled.

These rules are intended to implement Iowa Code section 19A.9.

**ARC 3343**

**PLANNING AND  
PROGRAMMING[630]  
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 chapter 7A, the Office for Planning and Programming hereby gives Notice of Intended Action to amend Chapter 22, "Community Services Block Grant Program," Iowa Administrative Code.

These amendments are intended to implement two bills which were recently passed by the Iowa General Assembly. The 1982 Iowa Acts, chapters 1241 and 1262, respectively, provide: For the continuation of human service programs delivered by community action agencies; and to appropriate federal funds made available from the community services block grant.

Any interested person may make written suggestions or comments on these proposed amendments prior to December 1, 1982. Such written materials should be directed to the Division of Local Government Affairs, Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319.

A public hearing on these rules will be held on December 1, 1982 at 10:00 a.m. in the Office for Planning and Programming conference room. Any person wishing to be placed on the agenda should notify the Office for Planning and Programming of their name, organization, if applicable, and the area of their intended comment at the above address or phone (515) 281-3951 by the close of business December 1, 1982.

This rule is intended to implement Iowa Code section 7A.3, and 1982 Iowa Acts chapters 1241 and 1262.

The following amendments are proposed:

**ITEM 1.** Subrule 22.2(1) is rescinded and the following inserted in lieu thereof:

**22.2(1)** The terms "eligible entity," "community action agency," or "community action program" mean any organization which was officially recognized as a community action agency or a community action program under the provisions of Public Law 97-35, Subtitle B, Section 673(1) and the 1982 Iowa Acts, chapter 1241, section 3.

**ITEM 2.** Subrules 22.3(1), 22.3(2), 22.3(3) and 22.3(4) are rescinded and the following inserted in lieu thereof:

**22.3(1)** Iowa apportionment. There are appropriated to the office for planning and programming from the fund created by the 1981 Iowa Acts, chapter 17, section 3, subsection 1, funds to implement the community services block grant as described under P.L. 97-35, Title VI, Subtitle B. The office for planning and programming shall expend the funds appropriated as provided in the federal law, making the funds available in conformance with these rules.

**22.3(2)** Distribution to eligible entities. An amount not less than ninety-five percent of the funds received according to 22.3(1) shall be distributed to eligible entities following the formula described in 22.5(7A). In accordance with 1982 Iowa Acts, chapter 1262, section 1,

recipient agencies shall receive from the community services block grant annually an amount based upon the size of the poverty-level population in the area represented by the community action agency compared to the size of the poverty-level population in the state.

**22.3(3)** Poverty-level population. The state shall use, for fiscal year 1983 and subsequent fiscal years the most recent decennial census statistics available to determine the poverty-level population in each community action area. The state may revise the allocation formula as new census figures become available.

**22.3(4)** State administrative fees. The office for planning and programming shall reserve for its administrative expenses of the program no more than five percent of the state's apportioned amount described in 22.3(1).

**ITEM 3.** Rule 630—22.4(7A), is amended by striking "for program year 1982". Subrules 22.4(3) paragraph "c" and 22.4(4) are rescinded and the following inserted in lieu thereof:

c. One-third shall be persons who are members or representatives of businesses, industry, labor, religious, welfare, and educational organizations, or other major interest groups. The term of such person shall be not more than three years. Such person shall not serve more than two consecutive terms and shall be elected by a majority of the board members serving pursuant to 22.4(3)"a" and "b".

**22.4(4)** Public agency advisory boards or delegate agencies. Notwithstanding 22.4(3), a public agency which is acting as a community action agency shall establish an advisory board or may contract with a delegate agency to assist the governing board. The advisory board or delegate agency board shall be composed of the same type of membership as a board of directors under 22.4(3). The advisory board or delegate agency board shall comply with the duties required for the board of directors for community action agencies as provided in 1982 Iowa Acts, chapter 1241, section 5. However, the public agency acting as the community action agency shall determine annual program budget requests.

**22.4(5)** Ineligible recipients. Individuals, political parties and for profit organizations, partnerships and corporations are ineligible for direct assistance from the state under this program.

**ITEM 4.** Rule 630—22.5(7A) is rescinded and the following inserted in lieu thereof:

**630—22.5(7A) Distribution to eligible applicants.** The funds described in 22.3(2) shall be distributed to eligible entities in a manner which shall place all recipients on the same program year. The director shall distribute funds from the state's annual allocation at a funding level based upon the size of the poverty-level population in the area represented by the community action agency compared to the size of the poverty-level population in the state.

**ITEM 5.** Rule 630—22.6(7A), subrules 22.6(1), and 22.6(2) are rescinded and the following inserted in lieu thereof:

**630—22.6(7A) Application submission.** All eligible entities shall utilize the community services block grant "Request for Funding Application" as provided by the office for planning and programming. The allocation of funds to eligible applicants is on a noncompetitive basis. Applicants shall be provided with forms at the time they apply.

## PLANNING AND PROGRAMMING[630] (cont'd)

**22.6(1) Timing.** Eligible entities shall be informed in writing of the due date for application and the amount of their allocation in accordance with rule 22.6(7A).

**22.6(2) Application.** Application instructions shall be provided along with the application package which shall be sent to all eligible entities. Project activity proposals will be reviewed and evaluated by the office for planning and programming to ensure that they meet the objectives of the community services block grant program. Further clarification of application requirements and format may be obtained by writing the Office of Planning and Programming, Division of Local Government Affairs, 523 E. 12th Street, Des Moines, Iowa 50319, or by calling 515/281-3951.

**ITEM 6.** Subrule 22.6(3) is rescinded and reserved for future use.

**ITEM 7.** Subrule 22.7(2) is rescinded and the following inserted in lieu thereof:

**22.7(2) Performance.** Approval of applications is dependent on the satisfactory performance of the applicant in the past funding year(s). The minimum standards include: Timely and adequate expenditure report submission, program report submission, prudent management of funds, conformance with state and federal law relative to the restrictions in the use of funds, and adequate recordkeeping. Additionally, available records, audits and determinations from the Office of Community Services — Department of Health and Human Services, Office of Management and Budget, Iowa Energy Policy Council, Iowa State Department of Health and other relevant state and federal agencies shall be utilized to the extent possible. Unresolved audit questions and past due audits shall be a basis for conditional approval or disapproval of an application.

**ITEM 8.** Amend 630—22.7(7A) by adding the following new subrule:

**22.7(3) Allocation of funds to entities.** The allocation of community services block grant funds to eligible entities is on a noncompetitive basis, as specified in 1982 Iowa Acts, chapter 1262, division I, section 1, community services appropriations.

**ITEM 9.** 630—22.10(7A) is rescinded and the following inserted in lieu thereof:

**630—22.10(7A) Project periods.** For all eligible entities, defined in subrule 22.2(1), the project period shall commence on October 1. Funding shall be made in accordance with the method of distribution set forth under 22.5(7A).

**ITEM 10.** Chapter 22 is amended by adding the following new rules:

**630—22.13(7A, 69GA, ch 1241) Change of designation.** In the event that a political subdivision desires to terminate affiliation with the agency (CAA) currently serving it, the following procedure shall be used:

**22.13(1)** The board of supervisors or the city council as the case may be will vote to consider:

- a. Withdrawal from the service area of the CAA.
- b. Revocation of their original designation (if applicable) of the CAA for that area.
- c. A proposal to affiliate with another CAA.

**22.13(2)** The political subdivision shall hold a public hearing for review and comment on the proposed change.

**22.13(3)** At the next regular meeting of the board or council after the public hearing, a final vote on the resolution shall be taken.

**22.13(4)** If the board or council votes in favor of terminating affiliation with the community action agency, the office for planning and programming shall be notified, in writing within ten days.

**22.13(5)** In accordance with P.L. 97—35, Title VI, Subtitle B, and 1982 Iowa Acts, chapter 1241, the director of the office for planning and programming shall accept, reject or modify the proposed termination and if necessary alter the amount of CSBG funding to be received by the affected CAA.

**630—22.14(7A, 69GA, ch 1241) Establishing new designation.** In order to redesignate a new community action agency for the political subdivision, the board or council shall vote to approve one of the following options in accordance with the provisions of 1982 Iowa Acts, chapter 1241, section 4:

1. Create a new community action agency which meets the criteria set forth in 1982 Iowa Acts, chapter 1241, section 4.

2. Consolidation with another CAA which currently serves an area contiguous to the political subdivision. If the political subdivision votes for consolidation a request for approval shall be submitted to the adjacent CAA board.

3. Become a community action agency of record in accordance with 1982 Iowa Acts, chapter 1241, section 4, subsection 2.

**22.14(1)** A public hearing shall be held by the board or council on the proposed redesignation of community action agency to serve the area.

**22.14(2)** At the next regular meeting after the public hearing, a final vote on the resolution for the redesignation of a community action agency shall be taken.

**22.14(3)** The director of the office for planning and programming shall accept, reject or modify the proposed redesignation and if necessary alter the amount of CSBG funding to be received by the affected CAA. Criteria used in reaching a decision will include: Determination of the most efficient service delivery mechanism, transition time, local views and issues, types of services to be provided, funds available, disruption of service to the eligible population, and other relevant data.

These rules are intended to implement Iowa Code section 7A.3; 1982 Iowa Acts, chapters 1241 and 1262; and Public Law 97—35.

**ARC 3347**

**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 section 421.14, the Iowa Department of Revenue hereby gives Notice of

## REVENUE DEPARTMENT[730] (cont'd)

Intended Action to amend Chapter 10, "Interest", Iowa Administrative Code.

This amendment is proposed in order to implement 1981 Iowa Acts, chapter 131. This legislation, which became effective on July 1, 1981, requires the director of revenue to determine the interest rate for each calendar year. The director has determined that the rate of interest on interest bearing taxes arising under Code Title XVI, shall be fourteen percent for calendar year 1983. The rate is two percent below the average prime rate charged by banks on short-term business loans as published in the Federal Reserve Bulletin for the twelve months ending September 30, 1982. For the past twelve months the average prime rate was sixteen percent.

The fourteen percent annual rate is equivalent to an interest rate of 1.2 percent per month on outstanding taxes. The rate will be applied to all taxes owing or becoming payable on or after January 1, 1983. Under Iowa law, each fraction of a month is considered a whole month when interest is computed. When required to pay interest on taxpayers' refunds, the department will also pay interest at the fourteen percent rate on refunds owing or becoming payable on or after January 1, 1983.

Any interested person may make written suggestions or comment on this proposed amendment on or before December 10, 1982. Such written comments should be directed to the Deputy Director, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

Persons who want to orally convey their views should contact the deputy director at (515) 281-3346 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 December 3, 1982.

These rules are intended to implement 1981 Iowa Acts, chapter 131.

The following amendment is proposed:

Rule 730—10.2(421) is amended by adding the following new subrule 10.2(2).

**10.2(2)** Calendar year 1983. The rate of interest upon all unpaid taxes which are due as of January 1, 1983, will be fourteen percent per annum (1.2% per month). This interest rate will accrue on taxes which were due and unpaid as of, or after, January 1, 1983. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless whether the tax to be refunded is due before, on, or after January 1, 1983. This interest rate of fourteen percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1983.

ARC 3353

## 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 218.4, the Department of Social Services proposes amending rules appearing in the IAC relating to adult correctional institutions (chapter 16).

This change requires more information when a strip search is requested and allows a search in connection with an arrest. The first part is in response to a court order regarding searches and the second to allow for safer procedures in the event of an arrest.

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 December 3, 1982.

These rules are intended to implement Iowa Code section 218.4.

ITEM 1. Subrule 16.3(9) is amended to read as follows:

**16.3(9)** Visitors may be requested to submit to a personal search (pat down) or review by an electronic device for weapons or contraband. *When the electronic device alarm indicates an undetected item, the visitor will produce the item or a personal search may be made to find the item that set off the alarm.* Visitors may be requested to submit to a strip search when there is an articulable reason to believe the person is concealing a weapon or contraband. Each institution shall designate the level of authority required to request a search through institutional policy. This person shall authorize the search in writing. Entrance may be denied when the visitor is not willing to submit to a search. The request for a search shall be conducted in a ~~private location~~ *an inconspicuous manner*. The visitor may verbally request a review by the warden, superintendent, or designee at the time of request for a search. ~~The decision does not preclude a written request to the warden, superintendent, or designee for review within one week of the request for search.~~ *When the denial is affirmed, the individual may, in*

## SOCIAL SERVICES DEPARTMENT[770] (cont'd)

writing, request a review by the director, division of adult corrections, within two weeks of the warden's or superintendent's written decision.

ITEM 2. Subrule 16.3(9) is amended by adding new paragraph "d" and relettering current paragraphs "d" and "e" as "e" and "f".

d. When a visitor is arrested, the visitor may be searched for weapons which may inflict harm on the arresting officers.

**ARC 3354**

**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)<sup>b</sup>.

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Social Services proposes amending

rules appearing in the IAC relating to medical assistance (chapter 78). In order to clarify policy, this change expands the rule on auxiliary personnel employed by physicians.

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 December 3, 1982.

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

Subrule 78.1(13) is rescinded and the following inserted in lieu thereof:

78.1(13) Payment will be approved for services of auxiliary personnel such as nurses, physician assistants, nonphysician anesthetists, psychologists, social workers, technicians, therapists and other aides, employed by the physician and working under the physician's direct personal supervision. An actual employment relationship must exist between the physician and the aide. Direct personal supervision in the office setting does not mean that the physician must be present in the same room with the aide, however, the physician must be present in the office suite and immediately available to provide assistance and direction throughout the time the aide is performing services. This policy is identical to that in effect in Part B of Medicare. Payment for services rendered by auxiliary personnel is made to the physician.

**ARC 3368****REVENUE DEPARTMENT[730]**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue hereby emergency adopts a rule to amend Chapter 54, "Allocation and Apportionment", Iowa Administrative Code.

Subrule 54.3(1) is amended to correct a typographical error contained in the example set forth in unnumbered paragraph 9. Specifically, the number "\$30,000" should read "\$80,000".

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation in the change is impractical, since the correction is grammatical in nature.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of this rule, thirty-five days after publication, should be waived and the rule be made effective immediately upon filing with the Administrative Rules Coordinator due to the nature of the change and that it confers a benefit to the

public in having the correct figure in the formula, to eliminate question and confusion, due to an incorrect figure.

This rule is intended to implement Iowa Code section 422.33.

The following amendment is adopted.

Subrule 54.3(1) is amended at the example as follows:

Indirect expense deemed related to interest income:

$$\begin{array}{r} \$ 250,000 \\ \hline \$10,000,000 \end{array} \times \$80,000 = \$2,000$$

Indirect expense deemed related to dividend income:

$$\begin{array}{r} \$ 2,000,000 \\ \hline \$10,000,000 \end{array} \times \cancel{\$30,000} \$80,000 = \$16,000$$

[Filed emergency 10/26/82, effective 10/26/82]

[Published 11/10/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/10/82.

**ARC 3344****COMMERCE COMMISSION[250]**

The Iowa State Commerce Commission hereby gives notice, pursuant to Iowa Code section 17A.4 that on October 20, 1982, the Commission issued an order in Docket No. RMU-82-12 In Re: Interest on Customer Deposits, "Order Adopting Rules," amending IAC 250 Chapters 19, 20, 21, and 22.

Notice of Intended Action was published in the August 18, 1982, Iowa Administrative Bulletin as ARC 3126.

These rule amendments are identical to those published as Notice of Intended Action.

These rules are intended to implement Iowa Code sections 476.1 and 476.8.

These rule amendments will become effective December 15, 1982.

**ITEM 1.** Amend subrule 19.4(3) by striking the following language in the second line beginning with "Interest of at least seven percent per annum, compounded on an annual basis, shall be paid on deposits through March 31, 1982. Commencing April 1, 1982, the interest compounded annually, shall be the average quarterly interest rate at commercial banks of twelve-month loans for personal expenditures (as set forth in the Federal Reserve statistical release E.12(122). For time periods less than a year, a weighted average of the published quarterly rates is applicable." and inserting in lieu thereof:

"As of the effective date of this rule, and on a prospective basis only, utilities may cease computing interest on customer deposits at previously designated rates, and rate regulated utilities shall begin computing interest on customer deposits at twelve percent per annum, compounded annually. Interest for prior periods shall be computed at the rate specified by the rule in effect for the period in question."

**ITEM 2.** Amend subrule 20.4(4) by striking the following language in the second line beginning with "Interest of at least seven percent per annum, compounded on an annual basis, shall be paid on deposits through June 30, 1981. Commencing July 1, 1981, the interest compounded annually, shall be the average quarterly interest rate at commercial banks of twelve-month loans for personal expenditures (as set forth in the Federal Reserve statistical release E.12(122). For time periods less than a year, a weighted average of the published quarterly rates is applicable." and inserting in lieu thereof:

"As of the effective date of this rule, and on a prospective basis only, utilities may cease computing interest on customer deposits at previously designated rates, and rate regulated utilities shall begin computing interest on customer deposits at twelve percent per annum, compounded annually. Interest for prior periods shall be computed at the rate specified by the rule in effect for the period in question."

**ITEM 3.** Amend subrule 21.4(2), paragraph "b", by striking the following language in the first line beginning with "Interest of at least seven percent per annum, which is to be compounded on an annual basis, shall be paid by the investor-owned utility to each customer required to make a deposit. Interest of at least six percent per annum, which is to be compounded on an annual basis, shall be

paid by mutual and co-operative utilities to each customer required to make a deposit. Interest of at least five percent per annum, which is to be compounded on an annual basis, shall be paid by municipal utilities to each customer required to make a deposit." and inserting in lieu thereof:

"As of the effective date of this rule, and on a prospective basis only, utilities may cease computing interest on customer deposits at previously designated rates, and rate regulated utilities shall begin computing interest on customer deposits at twelve percent per annum, compounded annually. Interest for prior periods shall be computed at the rate specified by the rule in effect for the period in question."

**ITEM 4.** Amend subrule 22.4(2) paragraph "b" by striking the following language in the second line beginning with "Interest of at least seven percent per annum, compounded on an annual basis, shall be paid on deposits through July 14, 1982. Commencing on July 14, 1982, the interest compounded annually, shall be twelve percent per annum." and inserting in lieu thereof:

"As of the effective date of this rule, and on a prospective basis only, utilities may cease computing interest on customer deposits at previously designated rates, and rate regulated utilities shall begin computing interest on customer deposits at twelve percent per annum, compounded annually. Interest for prior periods shall be computed at the rate specified by the rule in effect for the period in question."

[Filed 10/21/82, effective 12/15/82]

[Published 11/10/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/10/82.

**ARC 3364****HEALTH DEPARTMENT[470]****BOARD OF MORTUARY SCIENCE EXAMINERS**

Pursuant to the authority of Iowa Code sections 147.76 and 258A.3, the rules of the Board of Mortuary Science Examiners which appear in the IAC relating to funeral directors chapter 147 are hereby amended. The board adopted the amendments October 19, 1982.

Notice of Intended Action regarding these rules was published in the IAB September 15, 1982 as ARC 3202.

The rules are the same as published under notice except that Item 1 of the Notice of Intended Action was changed to clarify that the written statement be signed at the time the arrangements are completed.

The rules are intended to implement Iowa Code section 258A.3.

The rules shall become effective December 17, 1982.

**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

## HEALTH DEPARTMENT[470] (cont'd)

the disposition of a dead human body, at the time ~~such~~ the arrangements are completed and prior to the time of rendering the service or providing the merchandise, a written statement signed by the funeral director at the time the arrangements are completed 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.

[Filed 10/22/82, effective 12/17/82]

[Published 11/10/82]

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## ARC 3365

## HEALTH DEPARTMENT[470]

BOARD OF SPEECH PATHOLOGY  
AND AUDIOLOGY EXAMINERS

Pursuant to the authority of Iowa Code sections 147.76, 147.80, and 258A.2, the rules of the Board of Speech Pathology and Audiology Examiners, which appear in the IAC relating to licensure of speech pathologists and audiologists (chapters 155, 156) are hereby amended. The board adopted the amendments September 19, 1982.

Notice of Intended Action regarding these rules was published in the IAB August 18, 1982 as ARC 3125.

The rules are the same as those published under notice except that Item 2 of the Notice of Intended Action was deleted which would have required the applicant to have passed the national teacher examination within five years of the application, and renumbered Item 7 was changed to refer to a "period's" continuing education activities instead of "year's".

The rules are intended to implement Iowa Code sections 147.55, 147.76, 147.80, and 258A.2

The rules shall become effective December 17, 1982.

ITEM 1. Subrule 155.3(1) is amended to read as follows:

**155.3(1)** *No person shall engage in the practice of speech pathology or audiology unless the person has obtained from the state department of health a license or a temporary clinical license. Licenses issued by the board shall be for licensure by examination, except as provided by rule 155.5(147).*

ITEM 2. Subrule 155.3(4) is amended to read as follows:

**155.3(4)** *A person who wishes to practice speech pathology or audiology in Iowa under the supervision of an Iowa licensed speech pathologist or audiologist for the purpose of obtaining clinical experience as a prerequisite for permanent licensure shall apply to the board for a temporary clinical license prior to obtaining clinical experience.*

To fulfill requirements for a temporary clinical license, the applicant must submit all materials and information

as provided in subrule 155.3(3) with the exception of the following substitution for paragraphs "c" and "e". A notarized statement of a plan of action to complete at least nine months of full-time clinical experience, or equivalent, under the supervision of a ~~an~~ Iowa licensed speech pathologist or audiologist, as appropriate, shall be submitted. Such verification shall be signed by the licensed supervisor and notarized.

ITEM 3. Rule 470—155.6(147) is amended to read as follows:

**470—155.6(147) Supervision of temporary clinical license-holders.** A temporary clinical license shall be issued only upon evidence that the applicant will be supervised by a person licensed in Iowa as a speech pathologist or audiologist as appropriate. The board shall revoke any temporary clinical license at any time it shall determine either that the work done by the temporary clinical licensee or the supervision being given the temporary clinical licensee does not conform to reasonable standards.

ITEM 4. Subrule 155.7(1) is amended to read as follows:

**155.7(1)** The application fee for all licenses *except a temporary clinical license* shall be fifty dollars. *The application fee for a temporary clinical license is twenty-five dollars.*

ITEM 5. Subrule 155.7(2) is amended to read as follows:

**155.7(2)** The fee for biennial renewal of all licenses *except temporary clinical license* shall be fifty dollars. *The annual renewal fee for a temporary clinical license is twenty-five dollars.*

ITEM 6. Subrule 156.2(4) is rescinded and the following adopted in lieu thereof:

**156.2(4)** Hours of continuing education shall not be carried over into the continuing education period beginning September 1, 1983 or subsequent thereto.

ITEM 7. Subrule **156.4(1)**, paragraph "b", is rescinded and the following adopted in lieu thereof:

b. At the close of each continuing education compliance period and not later than September 1 of each odd-numbered year, all accredited sponsors shall report to the board, on a form approved by the board, a summary of that period's continuing education activities.

ITEM 8. Rule 470—156.6(258A) is amended to read as follows:

**470—156.6(258A) Report of licensee.** Each licensee shall file a signed report, on a form provided by the board, no later than October 1 of the year following the continuing education compliance year in which the continuing education hours were completed each odd-numbered year. The report shall include the following information: Title of continuing education activity, date(s), provider of activity, type of activity, name(s) of instructor(s) and continuing education hours earned. The licensee's signature upon this form shall be regarded as verification that the licensee did in fact attend and participate in the activities listed. A licensee who elects to take the licensing examination in lieu of earning continuing education credits shall have the results of the examination sent to the board by the agency administering the examination.

ITEM 9. Subrule **156.9(2)**, paragraph "b", is amended to read as follows:



## HEALTH DEPARTMENT[470] (cont'd)

b. Completion of a total number of hours of accredited continuing education computed by multiplying ~~twenty~~ *fifteen* by the number of years a waiver of compliance shall have been in effect for such applicant; or

[Filed 10/22/82, effective 12/17/82]

[Published 11/10/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/10/82.

**ARC 3345****IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523]**

Pursuant to the authority of Iowa Code section 175.6(14), the Iowa Family Farm Development Authority adopted by a vote of approval on October 20, 1982, Chapter 4, "Soil Conservation Loan Program", Iowa Administrative Code.

This chapter was filed as an emergency adopted rule and under notice and published in IAB, Volume V, Number 4, on August 18, 1982 as ARC 3141 and 3142 respectively.

This chapter provides application procedures for soil conservation loans. Also provided in the chapter are qualification requirements for applicants and participating lenders, definitions, procedures for issuing bonds and delineations of the authority and control of the Iowa Family Farm Development Authority to oversee and implement the program.

This chapter is identical to that published under Notice of Intended Action and emergency adopted. These rules will become effective December 15, 1982, and at that time the emergency rules will be rescinded.

These rules implement 1982 Iowa Acts, chapter 1243.

**CHAPTER 4****SOIL CONSERVATION LOAN PROGRAM****Part I**

**523—4.1(69GA, ch1243) Soil conservation loan program description.** This program is intended to facilitate the implementation of permanent soil and water conservation practices and the acquisition of conservation farm equipment for agricultural land by making financing available to credit worthy owners and operators of agricultural land within the state. This will be accomplished by obtaining loan funds from the proceeds of a tax-exempt bond issued by the authority and purchased by the participating lender. The authority will issue a tax-exempt bond in the amount of the loan and the participating lender will purchase that bond, which is used to fund the loan assigned to the lender. The bond which is issued by the authority and purchased by the lender is a nonrecourse obligation. The only security for the lender is the underlying security on the assigned loan(s). Due to the anticipated small size of the individual loans, participating lenders may aggregate individual loans into one bond issue in order to make the program economically feasible.

**Part II****523—4.2(69GA, ch1243) Definitions.**

**4.2(1)** "Landowner or operator" means any person, firm, or corporation or any federal agency, the state of Iowa or any of its political subdivisions, who shall hold title to or operate agricultural land within the boundaries of the state.

**4.2(2)** "Landowner or operator application" means a completed instrument on a form approved by the authority. Each application must include the following: Applicant name, address, county in which agricultural land is located, description of anticipated use of loan proceeds, amount of loan, amount of state or federal cost share fund (if any) that will be received if application is for a permanent soil conservation practice, statement by the soil conservation district that the permanent soil and water conservation project is in accordance with a conservation plan developed in accordance with standards and specifications adopted by the district, or a statement by the district that the conservation farm equipment being contemplated for purchase meets the requirements of subrule 4.2(7).

**4.2(3)** "Participating lender application" means a completed instrument on a form approved by the authority. Each application must include the following: Applicant name, address, amount of bond requested, a list of loan requests submitted to substantiate bond request, proposed loan terms, including interest rate, type of interest on the loan, and length of loan.

**4.2(4)** "Agricultural land" means land suitable for use in farming and which is or will be operated as a farm.

**4.2(5)** "Farm" means a farming enterprise which is recognized in the community as a farm rather than a rural residence.

**4.2(6)** "Permanent soil and water conservation practice" means planting of perennial grasses, legumes, shrubs or trees, the establishment of grassed waterways, and the construction of terraces, or other permanent soil and water conservation practices approved by the state soil conservation committee.

**4.2(7)** "Conservation farm equipment" means the specialized planters used for reduced tillage or no-till planting of row crops. Such planters shall provide for a planting procedure in which seed bed preparation and planting are completed in one operation with tillage in the row limited to one-third of the total area. The area between the rows will be left untilled until planting has been completed.

**4.2(8)** "Act" means Iowa Code chapter 175, as amended by 1982 Iowa Acts, chapter 1243.

**Part III**

**523—4.3(69GA, ch1243) Application procedures.** Soil conservation loans can be made to an owner or operator of a farm located within the state for which a conservation plan has been developed by the USDA Soil Conservation Service and adopted by the soil conservation district and the project for which the loan is to be made has been approved by the district, and meets applicable requirements of the U.S. Internal Revenue Service (IRS) for tax-exempt financing. The landowner or operator may apply for an authority loan with any participating lender. The participating lender may aggregate loan requests into one loan application and submit it to the authority. Any loan approved will be assigned by the authority to that participating lender. Applicant loan eligibility will

## IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523] (cont'd)

be determined on the basis of the Act and rules of the authority. If the project for which a loan is sought meets loan eligibility requirements, the decision on whether to enter into a loan agreement is between the landowner or operator and the participating lender. They must agree on terms of the loan including interest rates, length of loan, loan amount, down payment, service fees, origination charges, and repayment schedule, which may not be any more onerous than that charged to similar customers for similar loans, but taking into account the tax-exempt nature of the loan. Following completion of the application by the landowner or operator, it is submitted to a participating lender who will submit an application for those loan requests approved by the lender to the authority for review and approval. The authority's review will include, but not be limited to whether (1) the loan proceeds will be used for a qualified purpose(s) under the Act and rules of the authority and the Internal Revenue Code and IRS regulations relating to industrial development revenue bonds as determined by bond counsel; and (2) the terms of the loan comply with these rules. In granting loan requests, the authority will give preference to those landowners or operators with the lower net worth. Following approval and issuance of the bond, the authority will enter into a loan agreement with the participating lender and then assign the loan without recourse to that lender. The loan shall not be remitted to the landowner or operator until evidence is provided that payment of the permanent soil and water conservation practice is arranged for and the soil conservation district certifies that the practice is completed and approved. The authority may charge reasonable and necessary fees needed to defray its costs for processing the loan and bond.

**523—4.4(69GA, ch1243) Issuance of bond.** Following approval of the loan, the authority will issue a bond, to be purchased by the participating lender, in the amount and fitting the terms of the loan to the landowner(s) or operator(s). The principal and interest on the bond is a limited obligation payable solely out of the revenues derived from the loan to the landowner(s) or operator(s) and the underlying collateral or other security furnished by or on behalf of the landowner(s) or operator(s). The participating lender shall have no other recourse against the authority. The principal and interest on the bond do not constitute an indebtedness of the authority or a charge against its general credit or general fund.

**523—4.5(69GA, ch1243) Participating lenders.** Any bank, bank holding company, trust company, mortgage company, national banking association, savings and loan association, life insurance company, any state or federal governmental agency or instrumentality, or any other financial institution or entity authorized to make mortgage loans or secured loans in this state may become a participating lender. A financial institution may become a participating lender at any time by signing an agreement with the authority to become a participating lender.

**523—4.6(69GA, ch1243) Minimum loan.** There will be no minimum amount for a loan under this program.

**523—4.7(69GA, ch1243) Maximum loan.** The maximum amount of loans that an owner or operator may receive in one year pursuant to this program shall not exceed twenty-five thousand dollars.

**523—4.8(69GA, ch1243) Priority of applications.** Applications shall be processed by the authority on a

first-come-first-served basis, based upon the receipt of all completed documents by the authority.

**523—4.9(69GA, ch1243) Procedures following bond issuance.** No bond proceeds may be used for a nonqualified purpose. Following the disbursement of the bond proceeds, the participating lender shall certify to the authority that the proceeds were used by a qualified landowner(s) or operator(s).

**523—4.10(69GA, ch1243) Assignment of loans by participating lenders.** A participating lender may assign a loan in whole or in part to any person, as defined in Iowa Code section 4.1(13). Servicing of the loan may also be assigned, but must at all times be with a participating lender as defined in rule 523—4.5(69GA, ch1243). The authority must be notified in writing prior to assignment of servicing of the loan.

**523—4.11(69GA, ch1243) Right to audit.** The authority shall have at any time the right to audit the records of the participating lender and the landowner(s) or operator(s) relating to this loan and bond to ensure that bond proceeds were used for a qualified purpose by a qualified user.

These rules are intended to implement 1982 Iowa Acts, chapter 1243.

[Filed 10/22/82, effective 12/15/82]

[Published 11/10/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/10/82.

## ARC 3356

### PUBLIC EMPLOYMENT RELATIONS BOARD[660]

Pursuant to authority granted by Iowa Code section 20.6(5), the Public Employment Relations Board adopts on October 21, 1982, amendments to 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.

Notice of Intended Action was published in the September 15, 1982 Iowa Administrative Bulletin as ARC 3220.

These rules are identical to those published as Notice of Intended Action.

These rules will become effective December 15, 1982.

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

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

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.

[Filed 10/22/82, effective 12/15/82]  
[Published 11/10/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/10/82.

**ARC 3357****PUBLIC EMPLOYMENT  
RELATIONS BOARD[660]**

Pursuant to authority granted by Iowa Code section 20.6(5), the Public Employment Relations Board adopts, on October 21, 1982, amendments to 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.

Notice of Intended Action was published in the September 15, 1982 Iowa Administrative Bulletin as ARC 3221.

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

This rule will become effective December 15, 1982.

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.

[Filed 10/22/82, effective 12/15/82]

[Published 11/10/82]

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**ARC 3358****PUBLIC EMPLOYMENT  
RELATIONS BOARD[660]**

Pursuant to the authority granted by Iowa Code section 20.6(5), the Public Employment Relations Board adopts on October 21, 1982, an amendment to 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.

Notice of Intended Action was published in the September 15, 1982, Iowa Administrative Bulletin as ARC 3222.

The change from such notice is that the language originally added at the end of the third unnumbered paragraph of rule 660—6.4(20) is now inserted as a new third unnumbered paragraph with the former third unnumbered paragraph becoming the fourth unnumbered paragraph.

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

This rule will become effective December 15, 1982.

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.

*The above time limits may be modified by a written mutual agreement between the public employer and the employee organization.*

The above time limits shall not apply to proposed agreements between the state and any bargaining unit of state employees.

[Filed 10/22/82, effective 12/15/82]  
[Published 11/10/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/10/82.

**ARC 3359****PUBLIC EMPLOYMENT  
RELATIONS BOARD[660]**

Pursuant to authority granted by Iowa Code section 20.6(5), the Public Employment Relations Board adopts, on October 21, 1982, an amendment to 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.

Notice of Intended Action was published in the September 15, 1982, Iowa Administrative Bulletin as ARC 3223.

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

This rule will become effective December 15, 1982.

This 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.

[Filed 10/22/82, effective 12/15/82]  
[Published 11/10/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/10/82.

**ARC 3348****REVENUE DEPARTMENT[730]**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to Chapter 39 "Filing Returns and Payment of Tax," Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume V, Number 6, on September 15, 1982, as ARC 3214.

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 adopted 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 provides 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 makes Iowa's extension procedures consistent with the federal extension requests which also require payments.

These rules are identical to those published under Notice of Intended Action.

The amendments will become effective December 15, 1982, after filing with the administrative rules coordinator and publication in the Iowa Administrative Code.

These rules are intended to implement Iowa Code chapter 422.

The following amendments are adopted.

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

## REVENUE DEPARTMENT[730] (cont'd)

the taxpayer files the appropriate form as prescribed by the director.

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 renumbering 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.

[Filed 10/22/82, effective 12/15/82]

[Published 11/10/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 11/10/82.

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.

Notice of Intended Action was published in IAB, Volume V, Number 6, on September 15, 1982, as ARC 3215.

1982 Iowa Acts, Chapters 1015, 1023, 1057, 1064, 1196, 1203 and 1206 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.

After Notice of Intended Action was published on September 15, 1982, it was discovered that rules 52.5(422) and 58.5(422) were incomplete, in that no provision had been adopted to prorate the consolidated federal minimum tax to the individual members of the affiliated group which had tax preference items. Therefore, rules 52.5(422) and 58.5(422) were amended by adding a new paragraph.

A concern was also received which addressed the minimum tax imposed on individuals and corporations and whether or not estimate payments for minimum tax would be required. An amendment was made at rules 39.6(422), 52.5(422) and 58.5(422), which stated that estimate payments are not required for minimum tax.

Comment was also received that the "s" be removed from "windfall profits" in rule 53.8(422). This change was also made.

With the exception of the above mentioned changes, these rules are identical to those published under Notice of Intended Action. The amendments will become effective December 15, 1982, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code chapter 422, as amended by 1982 Iowa Acts, chapters 1015, 1023, 1057, 1064, 1196, 1203 and 1206.

The following amendments are adopted.

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 com-

## ARC 3349

## REVENUE DEPARTMENT[730]

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Iowa Department of Revenue hereby adopts amendments to Chapter 39 "Filing Return and

## REVENUE DEPARTMENT[730] (cont'd)

puted 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.

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, chapter 1023, section 2, and chapter 1064.

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. No estimate payments are required for minimum tax.

**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, chapter 1023.

**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.

## REVENUE DEPARTMENT[730] (cont'd)

**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, chapter 1064.

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

**730—40.6(422) Interest and dividend income.** *The following rule applies to 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, chapter 1023, 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, chapter 1023, 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, chapter 1023, 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, chapter 1023.

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, chapter 1023.

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

## REVENUE DEPARTMENT[730] (cont'd)

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 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, chapter 1023, 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



## REVENUE DEPARTMENT[730] (cont'd)

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:

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, chapter 1057.

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, chapters 1015 and 1196.

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 rule 54.5(422) through 54.7(422) unless an alternative method more accurately reflects that portion of minimum tax attributable to Iowa.

When a corporation joins with at least one other corporation in the filing of a consolidated federal income tax return, but files a separate Iowa corporation income tax return, the consolidated federal minimum tax shall be allocated to the separate corporations. The allocation of the consolidated federal minimum tax shall be determined as follows: The consolidated federal minimum tax is multiplied by a fraction, the numerator of which is the sum of the taxpayer's federal tax preference items and the denominator of which is the total of the federal tax preference items of each corporation included in the consolidated federal income tax return.

In computing penalty and interest on unpaid minimum tax, refer to subrules 52.6(1) and 52.6(2). No estimate payments are required for minimum tax.

This rule is intended to implement 1982 Iowa Acts, chapter 1023, 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, chapter 1023.

## REVENUE DEPARTMENT[730] (cont'd)

ITEM 17. Amend chapter 53 by inserting the following new rules 53.7(422) and 53.8(422) and renumbering 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.

This rule is intended to implement Iowa Code section 422.35, as amended by 1982 Iowa Acts, chapter 1023, section 15.

**730—53.8(422) Windfall profit tax.** For tax years beginning on or after January 1, 1981, add the amount of windfall profit 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, chapter 1206.

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.

When a corporation joins with at least one other corporation in the filing of a consolidated federal income tax return, but files a separate Iowa corporation income tax return, the consolidated federal minimum tax shall be allocated to the separate corporations. The allocation of the consolidated federal minimum tax shall be determined as follows: The consolidated federal minimum tax is multiplied by a fraction, the numerator of which is the sum of the taxpayer's federal tax preference items and the denominator of which is the total of the federal tax preference items of each corporation included in the consolidated federal income tax return.

In computing penalty and interest or unpaid minimum tax, refer to subrules 58.6(1) and 58.6(2). No estimate payments are required for minimum tax.

This rule is intended to implement 1982 Iowa Acts, chapter 1023, 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, chapter 1023.

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, chapter 1023, section 15.

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## ARC 3350

## REVENUE DEPARTMENT[730]

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue hereby adopts amendments to Chapter 82, "Cigarette Tax", Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume V, Number 6, on September 15, 1982, as ARC 3216.

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 non-cigarette promotion items and coupons may be used.

## REVENUE DEPARTMENT[730] (cont'd)

There has been one change made to the rules from those printed under Notice of Intended Action. The last paragraph of new subrule 82.10(3) which states that replacement packages must be clearly marked with "IOWA STATE TAX PAID - Manufacturer's name", is changed to read, "COMPLIMENTARY. NOT FOR SALE. ALL APPLICABLE STATE TAXES PAID." This change was made at the request of the manufacturers for clarification purposes and for the purpose of eliminating the need to make a special stamp for the state of Iowa regarding replacement packages. The amendments will become effective December 15, 1982, after filing with the rules coordinator and publication in the Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code section 98.39.

The following amendments are adopted:

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 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

## REVENUE DEPARTMENT[730] (cont'd)

another package of twenty cigarettes. The replacement package must be clearly marked with the following information:

COMPLIMENTARY. NOT FOR SALE.  
ALL APPLICABLE STATE TAXES PAID.

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.

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## ARC 3351

## REVENUE DEPARTMENT[730]

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue hereby adopts amendments to 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.

The adopted amendments were published under Amended Notice of Intended Action in IAB, Volume V, Number 6, on September 15, 1982, as ARC 3217.

Notice of Intended Action published in IAB, Volume V, Number 4, on August 18, 1982, as ARC 3156 is hereby terminated.

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 adopted 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 adopted amendment to subrule 91.5(2) gives the department discretionary authority for revocation if the report is late. The rule is further adopted as 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 adopted 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 adopted as amended to reflect 1982 Iowa Acts, chapter 1189, which amended Iowa Code section 99B.5 to allow the retail value of prizes to be fifty dollars instead of twenty-five dollars. The adopted 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 adopted as amended to reflect 1982 Iowa Acts, chapter 1189, 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.

These rules are identical to those published under Amended Notice of Intended Action. The amendments will become effective December 15, 1982, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code section 99B.7, as amended by 1982 Iowa Acts, chapter 1189.

The following amendments are adopted:

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.
- e.d. Failure to remit the sales tax timely.
- d.e. Payment of tax with unhonored check.
- e.f. Licensee has incomplete or inadequate records.

## REVENUE DEPARTMENT[730] (cont'd)

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

(4) A business that is doing business in this state or

(5) A qualified organization. See also subrule 94.2(2).

± 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.

∓ Doing business in this state is used in a comprehensive sense and includes all activities or any 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 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 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 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 dollars but not greater than ~~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 thousand dollars.

This rule is intended to implement Iowa Code section 99B.5 as amended by 1982 Iowa Acts, chapter 1189.

ITEM 4. 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 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 dollars but no greater than ~~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, chapter 1189.

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## SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

September, 1982COUNTIES AND COUNTY ATTORNEYS

County Attorney; Replacement When Absent, Sick or Under Disability. Iowa Code §§ 331.754(1), 331.756 and 331.759 (1981). The statutory duties of the county attorney devolve solely on that office, subject to the exceptions found in Iowa Code §§ 331.754(1) and 331.759. These statutory exceptions are not applicable in cases such as the present one, where the disputed matter did not involve litigation pending before the district court; instead, home rule authority authorizes the county attorney to request the board of supervisors to appoint a replacement. Correspondingly, neither the board of supervisors nor any other county official is independently authorized to appoint a replacement for the county attorney. Finally, because such an appointment is illegal, the board of supervisors is not authorized to pay a claim by the county sheriff for legal fees incurred by a private attorney hired by the sheriff to represent him in a matter in which the county was already represented by the county attorney or a duly-appointed replacement. (Weeg to Soldat, Kossuth County Attorney, 9/1/82) #82-9-5(L)

Drainage Districts. Iowa Code Chapter 455 (1981); Iowa Code §§ 24.22, 455.109 and 455.132. A county may re-establish an inactive drainage district by following the procedures set forth in § 455.132. The costs of maintaining and repairing the district incurred by the county prior to the re-establishment of the district may be assessed against members of the district pursuant to this same section. Finally, the county is not authorized to temporarily transfer money from county funds to a drainage district. (Weeg to Bruner, Carroll County Attorney, 9/1/82) #82-9-1(L)

Community Action Programs. 28 E Agreements. 1982 Iowa Acts, H.F. 2436; Iowa Code Ch. 28E (1981); Omnibus Budget Reconciliation Act of 1981, §§ 671, 673, 675. A 28E agreement entered into by several governmental bodies for the purpose of establishing a community action agency to serve the entire area would not affect that agency's qualification for federal community services block grant money assuming that agency is otherwise qualified to receive that money under applicable state and federal law. (Weeg to Carr, State Senator, 9/27/82) #82-9-20(L)

Clerk of Court. Iowa Code § 331.704 (1981). The requirement of Iowa Code § 331.704 (1981) that the clerk keep a record book of docket entries may be satisfied by keeping a set of loose cards in a bin or other container. These cards should at a later date be bound together in a more permanent fashion, but this latter requirement may be satisfied by either post-type, looseleaf, or formal stitched binding. (Weeg to O'Brien, Court Administrator, 9/27/82) #82-9-19(L)

Exchange of Property. Iowa Code § 331.361(2) (1981). A county may exchange real property owned by the county with any party, including a private individual or a governmental body, pursuant to Iowa Code § 331.361(2) (1981). A county may also exchange personal property with any party pursuant to its grant of home rule authority. (Weeg to Heitland, Hardin County Attorney, 9/15/82) #82-9-14(L)

Taxation of Real Property; Certificates of Purchase. Iowa Code Chs. 446, 447 and 448 (1981); Iowa Code §§ 446.18, 446.19, 446.29, 446.31, 446.37, 447.9, 448.1, 569.8 (1981). There is no statutory requirement that a county which holds a certificate of purchase for property obtained at a scavenger tax sale must act within a designated period of time to obtain a tax deed. However, in some circumstances a county's unreasonable delay in obtaining a tax deed in order to avoid liability for property which is not properly maintained may subject the county to tort liability. (Weeg to Maher, Fremont County Attorney, 9/15/82) #82-9-13(L)

CONSTITUTIONAL LAW

Governor; Item Veto. Art. III, § 16, Constitution of Iowa, Senate Files 2304 and 566, 69th G.A. The Governor's attempted item veto of a condition in Senate File 2304 relating to an appropriation made in Senate File 566 is invalid. If the Governor desires to veto a legislatively imposed qualification upon an appropriation, he must veto the accompanying appropriation as well, even where the appropriation and the qualification appear in different bills. (Hunacek to Avenson and Weldon, State Representative, 9/22)

CONSUMER CREDIT CODE

Notice of Right to Cure, §§ 537.5110, 537.5111 and 537.7103(5) (e). It is not a prohibited debt collection practice under § 537.7103(5) (e) of the ICC, Iowa Code 1981, for a creditor to send a mandatory notice of right to cure default under §§ 537.5110 and 537.5111 to the debtor in default even if the creditor knows the debtor is represented on the debt by an attorney whose name and address is known to the creditor. The creditor may change certain language in the form of the notice of right to cure contained in § 537.5111(2) when the debtor is represented by an attorney. (Lowe to Ellins, J. C. Penney Co., Inc., 9/7/82) #82-9-9(L)

Inclusion of Commencement Date and Last Date in Computation of Loan Term. §§ 537.2401 and 537.2510(4) (b), Iowa Code (1981). Revised Regulation Z (12 C.F.R., Section 226, Appendix J). Under the Iowa Consumer Credit Code, a lender may not count both the first day and the last day of the loan for purposes of computing one loan term for accrual of the financial charge on a closed-end-consumer credit loan. (Lowe to Pringle, 9/28/82) #82-9-25(L)

CRIMINAL LAW

Uniform Citation and Complaint. Iowa Code Chapter 805. Unsecured appearance bond provisions apply where the offense is a scheduled violation because court appearance is required; available means by which a defendant can avoid a court appearance do not effect the applicability of the provision. (Baustian to Long, Wright County Magistrate, 9/27/82) #82-9-21(L)

Uniform Citation and Complaint; Criminal Penalty Surcharge. Iowa Code § 805.6 (1981); 1982 Iowa Acts, H.F. 2493, §§ 1-3. A criminal penalty surcharge shall be imposed on certain law violators who are subject to the uniform citation and complaint procedure. Thus the ten percent additional penalty should be added where applicable to the total amount of fines or forfeitures imposed and so designated on the Uniform Citation and Complaint. (Foritano to Meyer, Judicial Magistrate, 9/15/82) #82-9-15(L)

Bail on Appeal From Magistrate's Judgment. Iowa Rule of Criminal Procedure 54. A defendant is not required to post an appeal bond in order to perfect an appeal from a judgment of guilt rendered by a magistrate. (Blink to Sklenar, Judicial Magistrate, 9/28/82) #82-9-23

ENVIRONMENTAL PROTECTION

Water Rights. Iowa Code §§ 455A.1, 455A.2, 455A.19-455A.30 (1981); 1981 Iowa Acts, House File 2463. Except for the "rights preserved" by Iowa Code § 455A.27 (1981), the provision in § 455A.1 concerning "absolute ownership" of "impounded or stored waters," does not exempt the storage of waters from the regulatory provisions of the statute. (Osenbaugh to Gallagher, State Senator, 9/1/82) #82-9-2(L)

GARNISHMENT

Garnishment Limitations as Applied to Payments Owed to Independent Contractors. Iowa Code § 642.21 (1981); Consumer Credit Protection Act, Title III, 15 U.S. C. § 1671. Amounts due to an independent contractor are not subject to the garnishment limitations of § 642.21 unless payment due is for personal services and payment is due pursuant to an employer/employee relationship. The actual substance of the relationship between the parties controls in determining whether an individual is an employee or an independent contractor, not the labels attached or words used to describe the relationship. (McFarland to Lura, State Senator, 9/14/82) #82-9-12(L)

JUVENILE LAW

Confidentiality of Complaints Alleging Delinquency. Iowa Code Chs. 232.2(7), 232.2(33), 232.28, 232.147, 1981; 1982 Session, 69th G.A. H.F. 2460. The legislature intended to expand public access to filed complaints alleging juvenile delinquency. However, irrespective of age of the child or gravity of the delinquent act alleged, all complaints -- alleging delinquency -- remain public records under Iowa Code § 232.147, (1982).. (Allen to Short, Lee County Attorney, 9/27/82) #82-9-18(L)

MUNICIPALITIES

Civil Service. Examinations. Iowa Code §§ 400.8, 400.8(1), 400.9, 400.11 and 400.13 (1981). Chiefs of police and fire must be appointed from their respective civil service eligible lists. To be placed on the lists, applicants must take an original entrance examination. A civil service commission is vested with the authority to prescribe, in advance, rules relating to the necessity of an applicant to resubmit to an original entrance examination. Four considerations in prescribing such rules are offered. (Walding to Fisher, Webster County Attorney, 9/1/82) #82-9-4(L)

Eminent Domain. Iowa Code Chapters 471, 472, 403A (1981). A city can legally enter into an agreement under which the city agrees to acquire, using its power of eminent domain if necessary, real property for the development of a public parking facility, and subsequently to convey to a private party, at that party's option, the air rights above the property for the development of a housing project for the elderly and the handicapped. (Stoffregen to Chiodo, State Representative, 9/1/82) #82-9-6(L)

Urban Revitalization Areas. Notice of Public Hearing. Sections 362.3, 404.2(4), and 404.2(6), The Code 1981. The notice requirement in § 404.2(4), The Code 1981, is twofold. A city is required to provide published notice in accordance with § 362.3, The Code 1981. In addition to notice by publication, notification shall be given by ordinary mail to all owners of record of real property and occupants of city addresses located within a proposed revitalization area at least thirty days prior to a public hearing. Published notice alone will suffice for a second public hearing, provided for in § 404.2(6), The Code 1981. (Walding to Pogue, City Development Board Chairperson, 9/1/82) #82-9-7(L)

Police and Fire Pensions. Section 411.6(12)(a), The Code 1981; Acts, 1980 Session, 68th G.A., Ch. 1014, § 33, Acts, 1979 Session, 68th G.A., Ch. 34, § 16. Section 411.6(12)(a), The Code 1981, provides for a single computation of the annual readjustment of pensions, without regard to the date of a member's retirement. (Walding to Running, State Representative, 9/2/82) #82-9-8(L)



Zoning; Nonconforming Uses. Iowa Code Ch. 135D (1981); Iowa Code §§ 414.1 and 414.2 (1981). A municipality has the power expressly granted by statute to enact ordinances regulating and restricting the location of mobile homes within its boundaries. Replacement of a mobile home, as a nonconforming structure which has become unusable from natural deterioration, is not permissible. But in the absence of any prohibitory provision, a mobile home may be restored after being damaged or destroyed by fire, storm or other calamity. (Walding to Nystrom, State Senator, 9/7/82) #82-8-10(L)

#### PUBLIC RECORDS

Medical Records; Fire Rescue Reports. Chapter 68A, §§ 68A.1, 68A.2, 68A.7, 68A.7(2). A fire rescue report is a medical record under section 68A.7(2). The determination of whether any record is a medical record must be made on the basis of the record as a whole. The lawful custodian cannot be compelled to redact nonmedical information for examination and copying. The lawful custodian may exercise his or her discretion to release all or part of the record provided, however, that the information is not highly offensive to a reasonable person and is of legitimate concern to the public. (Pottorff to Nystrom, State Senator, 9/1/82) #82-9-3

#### STATE OFFICERS AND DEPARTMENTS

Review of Corporate Public Affairs Leave of Absence Policy. Sections 56.29, 722.1, 722.2, 68B.2(9), 68B.5, Iowa Code (1981). Leave of absence or time-off policy under which employees are given leaves of absence or time off with benefits under certain circumstances to hold public office may be lawful, dependent upon a factual determination. (Swanson to Stromer, Speaker, House of Representatives, 9/13/82) #82-9-11(L)

Board of Pharmacy Examiners: Co-payment on prescription drugs. Iowa Code § 217.38(9), Acts of the 69th General Assembly, Senate File 2304, Section 96. The Board of Pharmacy Examiners should adopt a rule to insure that pharmacists who reduce their charges to private benefit plans also reduce their charges by the same amount to the medical assistance (Medicaid) program and that co-payment requirements are applied equally to third-party payors and the Medicaid program. The Board would not be bound by the rule now found in 770 IAC § 79.1(4)(i). In our judgment, that Rule has been repealed by the new legislation. (Robinson to Johnson, 9/28/82) #82-9-26(L)

Secretary of State, Filing Fees. Iowa Code Sections 499.45(2) and 4.6 (1981). The language of § 499.45(2) is ambiguous and should be construed in a manner which gives full effect to the meaning of all of the words used in the statute and accomplishes the purposes of the statute as evidenced by legislative intent. Those goals are both met by construing the phrase "such excess" in § 499.45(2) to refer to the part of the increase of authorized capital stock which, when the increase is added to existing authorized capital stock, exceeds \$25,000. (McFarland to Odell, Secretary of State, 9/28/82) #82-9-22

#### TAXATION

Correction of Property Tax Assessment Errors. Iowa Code §§ 421.17(10) 443.6 and 445.60 (1981). If assessment errors are made by the assessor because of use of erroneous data in determining assessments for individual residential realty, the county auditor has no authority under § 443.6 to correct such nonministerial errors. In addition, the board of supervisors has no authority, under § 445.60, to order a refund of taxes paid upon such erroneous assessments. The director of revenue has authority, within the scope of § 421.17(10), to consider such assessment errors. If the director corrects such errors, he/she can raise individual valuations but cannot reduce any valuation unless such reduction is recommended by the board of review. (Griger to Schwengels, State Senator, 9/28/82) #82-9-24(L)

Legal Assistance for the Assessor and Board of Review in Litigation Dealing with Assessments. Iowa Code § 441.41 (1981). Taxing bodies, such as a school district, interested in the taxes received from a city assessing jurisdiction's assessments cannot be required to aid or assist the city legal department in litigation dealing with such assessments. (Kuehn to Mike Connolly, State Representative, 9/20/82) #82-9-16(L)

## STATUTES CONSTRUED

<u>Code, 1981</u>	<u>Opinion</u>	<u>Code, 1981</u>	<u>Opinion</u>
4.6	82-9-22	455A.19	82-9-2(L)
24.22	82-9-1(L)	455A.30	82-9-2(L)
28E	82-9-20(L)	471	82-9-6(L)
56.29	82-9-11(L)	472	82-9-6(L)
68A.1	82-9-3	499.45(2)	82-9-22
68A.2	82-9-3	537.2401	82-9-25(L)
68A.7(9)	82-9-3	537.2510	82-9-25(L)
68B.2(9)	82-9-11(L)	537.5110	82-9-9(L)
68B.5	82-9-11(L)	537.511	82-9-9(L)
217.38(9)	82-9-26(L)	537.7103(5)	82-9-9(L)
232.2(7)	82-9-18(L)	569.8	82-9-13(L)
232.2(33)	82-9-18(L)	642.21	82-9-12(L)
232.28	82-9-18(L)	722.1	82-9-11(L)
232.147	82-9-18(L)	722.2	82-9-11(L)
331.704	82-9-19(L)	805	82-9-21(L)
331.756	82-9-5(L)		
331.759	82-9-5(L)	<u>68th G.A.</u>	<u>Opinion</u>
362.3	82-9-7(L)		
400.8	82-9-4(L)	Ch. 34, § 16	82-9-8(L)
400.11	82-9-4(L)		
400.13	82-9-4(L)	<u>69th G.A.</u>	<u>Opinion</u>
404.2(4)	82-9-7(L)		
404.2(6)	82-9-7(L)	S.F. 566	82-9-17(L)
411.6(12)	82-9-8(L)	S.F. 2304	82-9-17(L)
414.1	82-9-10(L)	S.F. 2304	82-9-26(L)
414.2	82-9-10(L)		
421.17(10)	82-9-24(L)	H.F. 2460	82-9-18(L)
441.41	82-9-16(L)	H.F. 2437	82-9-20(L)
443.6	82-9-24(L)	H.F. 2463	82-9-2(L)
445.60	82-9-24(L)		
446.18	82-9-13(L)	<u>Cons. Cr. Prot. Act</u>	<u>Opinion</u>
446.19	82-9-13(L)		
446.29	82-9-13(L)	Title III, 15 U.S.C.	
446.31	82-9-13(L)	§ 1671	82-9-12(L)
446.37	82-9-13(L)		
447.9	82-9-13(L)	Omnibus Budget	
448.1	82-9-13(L)	Reconciliation Act,	
455.109	82-9-1(L)	§§ 671, 673, 675	82-9-20(L)
455.132	82-9-1(L)		
455A.1	82-9-2(L)	<u>I.R.Cr.P.</u>	
455A.2	82-9-2(L)		

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA  
FILED - October 27, 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.

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No. 67533. STATE v. ZAEHRINGER.

Appeal from Scott District Court, James R. Havercamp, Judge. Reversed and remanded for new trial. Considered by Reynoldson, C.J., and Harris, McGiverin, Larson, and Carter, JJ. Opinion by Reynoldson, C.J. (17 pages \$6.80)

Defendant appeals from his conviction for rape in violation of Iowa Code section 698.1 (1977). OPINION HOLDS: I. Narcotic offenses do not involve dishonesty or false statement; trial court erred in allowing impeachment based on the felonious delivery of marijuana. II. Since an unavailable witness may be available to take the stand upon retrial we are not required to determine whether admission of her transcribed testimony from a previous trial was error as depriving defendant of his right to confront the witness, or if so, whether it was harmless beyond a reasonable doubt. III. Upon retrial, if defendant clearly concedes the issue of identity on the record, trial court upon proper objection should not permit testimony regarding his change in appearance if the court determines its sole purpose is to disclose to the jury defendant was heavier or had a ponytail at the time of the alleged crime. IV. The court upon reconviction erred in passing a sentence based on the revised criminal code's definition of a crime not covered under the older statute under which defendant was charged; this determination makes it unnecessary for us to consider defendant's claim that the second enhanced sentence was unconstitutional under the prophylactic rule designed to remove the motive of vindictiveness from resentencing proceedings.

No. 67468. STATE v. FARNI.

Appeal from Dubuque District Court, L. John Degnan, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by LeGrand, J. (9 pages \$3.60)

Defendant challenges his conviction and subsequent sentence for robbery in the first degree, a violation of Iowa Code section 711.2 (1981). The victim of the robbery did not testify at trial. OPINION HOLDS: I. Defendant claims he was denied a fair trial because he was not given an opportunity to cross-examine the victim; the objection "calls for hearsay" is too broad to raise the issue of constitutional right of confrontation; we do not review issues, even constitutional grounds; which are raised for the first time on appeal. II. Defendant's claim that the jury instruction on intoxication was improper is without merit because the other jury instructions made it clear that the State had the burden to prove defendant's intent, even though defendant relied on the intoxication defense. III. The trial court properly overruled defendant's motion to suppress the introduction of the handgun at trial; the search of defendant's van was made incident to a lawful arrest. IV. Defendant has failed to demonstrate any personal bias by the judge stemming from an extrajudicial source; the trial court's statements regarding defendant's guilt were made in a pretrial hearing from information gained during the course of the present proceeding against defendant; in any event, the remarks were without prejudice to defendant.

No. 66874. MUNGER v. JESUP COMMUNITY SCHOOL DISTRICT.  
 Appeal from Buchanan District Court, C. W. Antes, Judge.  
 Reversed. Considered by Reynoldson, C.J., and LeGrand,  
 Uhlenhopp, Harris and Larson, JJ. Opinion by LeGrand, J.  
 (10 pages \$4.00)

Teacher and wrestling coach Munger appeals from the decree affirming termination of his contract. OPINION HOLDS: Munger could not voluntarily resign from only a part of his duties under the contract; Munger's contract is indivisible, requiring him to render certain services, including coaching duties; the adjudicator's decision to the contrary was wrong; the findings of the school board that Munger's contract should be terminated due to alleged deficiencies in the wrestling program are not supported by a preponderance of the evidence; the judgment is reversed, and Munger is reinstated to his former position according to the terms of his contract..

No. 66947. STATE v. ZINZER.  
 Appeal from Tama District Court, L. Vern Robinson, Judge.  
 Affirmed. Considered by Reynoldson, C.J., and Harris, McGiverin  
 Larson, and Carter, JJ. Per Curiam. (8 pages \$3.20)

Defendant appeals from his conviction of first-degree murder in violation of Iowa Code section 707.2. OPINION HOLDS: I. We find no abuse of discretion in the trial court's admission of a life-sized transparency of the victim's wounds; defendant has failed to preserve error on his allegations of hearsay and inadequate foundation, and his challenge of the manner in which size of the transparency was determined. II. Defendant contends that certain rebuttal testimony offered by the State failed to controvert any matter in evidence; however, we find no abuse of discretion in admission of this testimony. III. Defendant contends that one of the prosecutor's comments during closing argument was unsupported, misrepresented evidence, and was advanced to rebut evidence not properly subject to rebuttal; we find no abuse of discretion in the trial court's refusal to grant a mistrial on the basis of this contention. IV. We find the evidence sufficient to support the jury's verdict.

Nos. 65470 & 66178. VAN METER v. IOWA DISTRICT COURT.  
 Certiorari to Webster District Court, B. C. Sullivan  
 and Charles H. Barlow, Judges. Writ sustained in part,  
 remanded with directions. Considered by Reynoldson, C.J.,  
 and McCormick, McGiverin, Larson, and Carter, JJ. Per Curiam.  
 (13 pages \$5.20)

Plaintiff Van Meter claims a contempt proceeding court acted illegally in denying him counsel in an action in which he was sentenced to be incarcerated and in enforcing an allegedly invalid decree. OPINION HOLDS: I. The decree issued in Lee County and enjoining Van Meter from bringing legal proceedings in other counties, except upon permission after certain showings, was not void but was valid and enforceable in the contempt proceeding brought in Webster County and there was no necessity that a bond be posted before permanent injunction could be entered. II. The court in the contempt proceeding was entitled to confront Van Meter with the choice of proceeding pro se or with appointed counsel but failed to allow him to make that choice before permitting previously appointed counsel to withdraw.

No. 66672. STATE v. FOLCK.

Appeal from Warren District Court, M. C. Herrick and Thomas S. Bown, Judges. Affirmed in part and reversed in part. Considered by Reynoldson, C.J., and LeGrand, Uhlenhopp, Harris and Larson, JJ. Opinion by LeGrand, J. (24 pages \$9.60)

Defendant appeals his conviction of the crime of kidnapping in the first degree (Iowa Code §§ 710.1(3) and 710.2, 1979) and sexual abuse in the third degree (Iowa Code §§ 709.1(1) and 709.4(1), 1979). He also appeals from denial of his application for postconviction relief under chapter 663A, The Code 1979. OPINION HOLDS: I. There was sufficient evidence of defendant's confinement and removal of the victim, not merely incidental to the act of sexual abuse, to support the kidnapping conviction. II. The testimony of Jeanne Rocque was proper rebuttal testimony, but it was not alibi rebuttal testimony; the names of rebuttal witnesses need not be listed on the information, and such witnesses are not subject to Iowa R. Crim. P. 5(3) or 10(10)(a); therefore, defendant's constitutional rights were not violated by admission of this testimony. III. Much of the complained of jury misconduct regarding information from jurors' own knowledge inheres in the verdict, and we do not believe the objectionable matter could have influenced the verdict; jurors' complaints that they were "brow beaten" by the other jurors and denied a fair chance to express their opinions inhere in the verdict. IV. We find the evidence of past sexual conduct of either complainant was irrelevant; therefore, it is unnecessary to reach defendant's constitutional issue because he has no constitutional right to elicit irrelevant testimony under the guise of cross-examination. V. Even though it refused the jury's request that certain testimony be read from the record, trial court should not have communicated with the jury without notifying counsel and the defendant; however, in view of the proceedings which followed and the fact that the testimony originally requested was ultimately furnished to the jury with defendant and counsel present, there was no prejudice. VI. Trial court properly denied defendant's motion for new trial because the newly discovered evidence of the complainant's alleged perjury, upon which the motion was based, was trivial and immaterial. VII. Under the circumstances of this case, where the kidnapping and sexual abuse charges were tried as one continuing event and submitted to the jury in that manner, sexual abuse is an included offense of kidnapping; therefore, as dictated by State v. Whitfield, 315 N.W.2d 753 (Iowa 1982), the kidnapping conviction may stand, but the conviction of sexual abuse must be set aside. VIII. We find no abuse of discretion in the denial of defendant's petition for postconviction relief based on the alleged perjured testimony of Jeanne Rocque. IX. We affirm defendant's conviction of kidnapping in the first degree and the subsequent denial of postconviction relief; for the reasons stated in Division VII, we reverse the conviction and sentence on the charge of sexual abuse.

No. 64769. STATE v. WALES.

Appeal from Scott District Court, R. K. Stohr, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and LeGrand, Uhlenhopp, Harris, and Larson, JJ. Opinion by LeGrand, J. (8 pages \$3.20)

Defendant appeals from judgment following his conviction of the crime of burglary in the second degree in violation of Iowa Code sections 713.1 and 713.3 (1979). The State charged burglary under alternative theories alleging the defendant had either broken the premises or entered the premises, and there was evidence to support each alternative. OPINION HOLDS: Criminal trespass can be a lesser included offense of burglary by entering but not of burglary by merely breaking; since the State's charge included an alternative (supported by the evidence) under which criminal trespass could be a lesser included offense, the defendant was entitled to an instruction submitting criminal trespass as a lesser included offense; we now disapprove the analysis used in State v. Law, 306 N.W.2d 756 (Iowa 1981).

No. 66193. STATE v. HARLOW.

Appeal from Story District Court, Russell J. Hill, Judge. On review from Iowa Court of Appeals. Affirmed. Considered by Reynoldson, C.J., and LeGrand, Uhlenhopp, Harris, and Larson, JJ. Opinion by LeGrand, J. (6 pages \$2.40)

Defendant appealed from judgment following his conviction of burglary in violation of Iowa Code sections 713.1, .3 (1979). The court of appeals affirmed the judgment and we granted defendant's application for further review. OPINION HOLDS: I. The present case meets the legal test for holding criminal trespass (Iowa Code section 617.7) is an included offense of burglary (Iowa Code section 701.1) as here alleged; however, under the factual test for submission of a lesser included offense, there must be evidence which would justify a jury in finding a defendant had committed a lesser offense before that issue should be submitted along with the major crime; the rule permitting a fact-finder to believe all, some, or none of the evidence does not apply in included offense settings; therefore, the trial court was right in refusing to instruct on criminal trespass. II. A defendant need not renew his objections at trial if the prior ruling on a motion in limine amounts to an unequivocal holding concerning the issue raised; this case is within this exception to the general rule, and the court of appeals erred in holding otherwise; the error, however, was without prejudice because the trial court correctly ruled that evidence of defendant's prior conviction of theft was admissible.

NO. 65975. SEMLER V. KNOWLING.

On review from Iowa Court of Appeals. Appeal from Johnson District Court, Ansel Chapman, Judge. Decision of court of appeals vacated; district court judgment affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, McGiverin, and Larson, JJ. Opinion by McGiverin, J. (10 pages \$4.00)

Plaintiff was granted further review of an adverse court of appeals ruling which reversed district court judgment in which defendant contractor was found to have breached an implied warranty of fitness for a particular purpose in the installation of a sewer. OPINION HOLDS: I. The installation of the sewer cannot be characterized as part of the construction of plaintiff's building, and thus covered by the construction contract implied warranty; nonetheless, an implied warranty of fitness for a particular purpose existed in the contract to install the sewer; the policy reasons for extending the application of implied warranties to contracts such as this are compelling. II. The extension of the implied warranty doctrine does not catapult contracts for the installation of sewers into the ambit of Article 2 of the Uniform Commercial Code (UCC). III. Substantial evidence, supporting the trial court's judgment, shows that since the contractor's work failed to accomplish the particular purpose for which it was contracted, there was no substantial performance and he must bear the liability; it is not necessary for plaintiff to prove the specific defect which caused the sewer to malfunction; the "defect" was the failure of the installation to perform the particular purpose. IV. Since defendant first raises his objections relative to the measure and computation of damages on appeal we are precluded from considering them. V. Because the trial court's judgment is supported by the implied warranty theory, we need not consider the parties' contentions concerning the applicability of res ipsa loquitur.

NO. 66110. NIELSEN V. STRATBUCKER.

Appeal from Harrison District Court, E. F. Hanson, Judge. On review from Iowa Court of Appeals. Decision of court of appeals vacated; district court decree reversed and remanded with directions. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, McGiverin, and Larson, JJ. Opinion by McGiverin, J. (9 pages \$3.60)

We granted further review to the defendant, State of Iowa, from the court of appeals decision affirming the district court's decree which quieted title of accreted land on Missouri River in the riparian owners, the plaintiffs. OPINION HOLDS: In order to sustain his burden of proof the riparian owner must show that the accretions first formed along land to which he or his predecessor had title; this plaintiffs failed to do; on the other hand, the State has shown that it owned the disputed land from its inception as a sandbar in the river until the time of trial; we vacate the decision of the court of appeals and reverse the decree of the district court; we remand the case to the district court with directions that plaintiffs' petition be dismissed and that title be quieted in the State based upon its counterclaim.

No. 66493. STATE EX REL. HAMILTON V. SNODGRASS.

Appeal from Clinton District Court, C. H. Pelton, Judge. Affirmed. Considered en banc. Opinion by Harris, J. Dissent by Uhlenhopp, J. (28 pages \$11.20)

Putative father appeals from order denying appointment of counsel in action to establish paternity and support. OPINION HOLDS: The due process clauses of the state and federal constitutions do not require the appointment of counsel at public expense for an indigent defendant in a proceeding initiated by the State to determine paternity and establish a child support obligation. DISSENT ASSERTS: I believe due process under the federal and state constitutions does require the appointment of counsel at public expense for an indigent defendant in a paternity action initiated by the State.

No. 67163. SALLIS V. RHOADS.

Appeal from Pottawattamie District Court, Glen McGee, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, McGiverin, Larson, and Carter, JJ. Opinion by Harris, J. (8 pages \$3.20)

Petitioner appeals from the trial court's denial of postconviction relief. OPINION HOLDS: I. The petitioner received effective assistance of counsel during her trial for first-degree murder; counsel's failure to request instructions on lesser included offenses represented a deliberate tactical decision that such instructions would compromise the defendant's arguments for acquittal; that tactical decision was within the normal range of competency. II. The trial court did not abuse its discretion by refusing to order the petitioner's personal presence at the postconviction hearing; according to Iowa Code § 663A.7, a petitioner's personal presence at a postconviction hearing is entirely discretionary with the trial court; in view of the cost and security problems involved, the trial court was justified in requiring a preliminary showing of need before allowing the incarcerated petitioner to personally attend the hearing.

No. 66645. STATE V. NELSON.

Appeal from Des Moines District Court, David B. Hendrickson, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, McGiverin, Larson, and Carter, JJ. Opinion by Harris, J. (6 pages \$2.40)

In his appeal from a first-degree murder conviction, Iowa Code § 707.2 (1979), defendant assigns error in the trial court's refusal to suppress statements defendant made to a fellow jail inmate. OPINION HOLDS: The defendant's statements which were the subject of a fellow jail inmate's testimony were not gathered by him at the time he was working for the State; because the inmate was not thus working for the State it cannot be said the statements were deliberately elicited within the proscription of United States v. Henry, 447 U.S. 264, 100 S.Ct. 293, 65 L.Ed.2d 115 (1980); the trial court did not err in admitting them.

No. 67050. HALL v. STATE.

Appeal from Polk District Court, C. Edwin Moore, Senior Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, McGiverin, Larson, and Carter, JJ. Opinion by Carter, J. (5 pages \$2.00)

Postconviction applicant under Iowa Code ch. 663A appeals from an order denying postconviction relief from his 1978 conviction for first degree murder. OPINION HOLDS: We find no suggestion from the evidence in the present case that the judge who was trier of fact at his criminal trial failed to exclude all considerations except those arising from the evidence before him; in reaching this result, we review the record de novo and give no consideration to the original trial judge's testimony regarding the effect of the challenged statement upon his decision.

No. 67262. STATE v. BUSS.

Appeal from Black Hawk District Court, L. D. Lybbert, Judge. Reversed and remanded. Considered by LeGrand, P.J., and Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by Larson, J. (4 pages \$1.60)

This is an appeal by the State from a district court order dismissing a charge of second-degree burglary in violation of Iowa Code sections 713.1 and 713.3. OPINION HOLDS: I. The district court's dismissal of the second-degree burglary charge and retention for trial of the included offense of criminal trespass constitutes "[a]n order dismissing an indictment, information, or any count thereof," from which the State may appeal as a matter of right pursuant to Iowa Code section 814.5(1)(a). II. The cab portion of the pickup truck in this case is an "occupied structure" within the meaning of our burglary statute; therefore, defendant's alleged breaking of the cab with the intent to commit theft could constitute burglary. III. When the district court entered its pretrial dismissal order, jeopardy had not attached; therefore, under the circumstances, the State is not barred from further prosecution of the burglary charge.

No. 67661. STATE v. HOLMES.

Appeal from Polk District Court, Luther T. Glanton, Jr., Judge. Affirmed. Considered by LeGrand, P.J., Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by Larson, J. (5 pages \$2.00)

Defendant appeals from his conviction of second degree robbery in violation of Iowa Code sections 711.1 and 711.3 (1979). OPINION HOLDS: I. Defendant contends the trial court erred in allowing a police officer to testify, over his hearsay objection, about the words the victim used in an out-of-court identification of defendant; the State, arguing that because the testimony is a statement of an out-of-court identification corroborating the declarant's testimony at trial it is not hearsay at all, asks us to adopt Federal Rule of Evidence 801(d)(1)(C); we decline to do so at this time; while we have serious doubts whether the defendant's objection was adequate to preserve error, we nevertheless conclude the identification testimony was merely cumulative and any error in admitting it was harmless. II. Defendant contends the trial court erred in allowing the State to cross-examine him concerning his contact with a person named "Randy" on the day of his arrest; on direct examination, defendant had testified about the people he had passed while walking on the day of his arrest; the State's questions were, therefore, fairly within the matter of the persons he had seen on the day of his arrest, and thus fall properly within the scope of direct examination.

No. 66970. STATE v. LULOFF.

Appeal from Bremer District Court, B.C. Sullivan, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by Schultz, J. (8 pages \$3.20)

The State was granted discretionary review of a trial court ruling suppressing evidence seized in the search of defendant's home incident to the execution of an arrest warrant for a third party. OPINION HOLDS: An arrest warrant alone is not sufficient authority for entry into the home of a third party to arrest the subject of the warrant; absent consent or exigent circumstances a search warrant must be obtained; there were not sufficient exigent circumstances to justify the police officers' entry into defendant's home to execute an arrest warrant for defendant's brother when they failed to obtain consent or a search warrant before entry; the State has failed to shoulder its burden of justifying the initial entry, which led to the discovery of evidence that formed the basis for the search warrant; the exclusionary rule bars the use of the evidence seized from defendant's farmhouse.



No. 67687. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT v. MORRIS  
C. HURD.

Review of report of the Grievance Commission. License suspended. Considered en banc. Opinion by Schultz, J.

(12 pages \$4.80)

This attorney disciplinary proceeding arises from the alteration by the respondent of a motion after it had been approved by opposing counsel and granted by order of a magistrate. The Grievance Commission concluded that the respondent was guilty of ethical misconduct and recommended that his license be suspended for thirty days. OPINION HOLDS: I. The complaint against the respondent was sufficiently specific to give him notice as required by procedural due process of the charge of practicing deception on the county attorney. II. By making the notation that he had filed the unaltered motion, sent to the county attorney, the respondent was admittedly dishonest and made a misrepresentation to the county attorney; this action is deceit and it violates Iowa Code section 610.15 and DR 1-102(A)(4) and DR 7-102(A)(5) of the Iowa Code of Professional Responsibility for Lawyers. III. By excising a portion of the motion and order (a court document) the respondent violated DR 1-102(A)(5) by engaging in conduct that is prejudicial to the administration of justice and DR 7-102(A)(3) by concealing or knowingly failing to disclose that which a lawyer is required by law to reveal. IV. The respondent's license to practice law in this state is suspended indefinitely, effective November 15, 1982, with no possibility of reinstatement for sixty days after said date.

No. 67365. STATE v. DARRIN.

Appeal from Washington District Court, Phillip R. Collett, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by Schultz, J. (10 pages \$4.00)

This is a discretionary review of trial court's order revoking defendant's probation. OPINION HOLDS: Under the set of circumstance presented in this appeal, the power to revoke probation is not limited to conduct that occurs during the probation period; Iowa Code chapters 907 and 908 do not so limit the court's power; if the court finds that fraud practiced by the defendant prior to sentencing endangers the community or fails to promote rehabilitation of the defendant, it must have the discretion to revoke the probation; the evidence supports the finding that the defendant fraudulently concealed his identity and criminal record to induce a probationary sentence and that this fraud influenced the sentencing judge in granting probation; it was well within the discretion of the district court to find that under these facts the defendant's deception practiced prior to sentencing outweighed the value of defendant's postsentencing conduct or finality in sentencing.

No. 67151. STATE v. CLARK.

Appeal from Polk District Court, Anthony Critelli, Judge. Affirmed. Considered by LeGrand, P.J., Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by Uhlenhopp, J. (7 pages \$2.80)

The defendant appeals his conviction of first degree murder in violation of Iowa Code sections 707.1, .2. OPINION HOLDS: I. The trial court in this case was in error in stating that cross-examination on specific misconduct of the witness (stealing to get money for marijuana) is "an improper way to test the credibility of that witness;" assuming without deciding that the exclusion of the evidence in question was wrong because the reason given for it was erroneous, the exclusion was not prejudicial error. II. The trial court did not abuse its discretion in admitting pictures of the deceased depicting his wounds, especially on the issue of whether the death occurred intentionally, as the State claimed, or accidentally, as defendant contended. III. The evidence amply supports the verdict; we find no reversible error.

No. 66618. STATE v. EICHORN.

Appeal from Scott District Court, L.D. Carstensen, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by Uhlenhopp, J. (6 pages \$2.40)

The defendant appeals from his conviction for burglary in the first degree. The defendant was charged with first-degree robbery and was held in jail, but he was never arraigned or tried on that charge. Without ever being released from jail, he was later charged with first-degree burglary based on the same incident. The burglary charge was not filed within 45 days of the defendant's initial arrest, and he therefore argues the burglary charge should have been dismissed on the ground he had been denied his right to speedy indictment under Iowa R. Crim. P. 27(2)(a). OPINION HOLDS: I. Under these facts we deem the time of arrest for burglary to have been the time the burglary charge was filed; there was no denial of the defendant's rights to speedy indictment or speedy trial. II. The record is inadequate for determination of the allegation of ineffective assistance of counsel; the defendant may raise this issue in a postconviction proceeding.

NO. 66828. STATE V. AGUILAR.

Appeal from Polk District Court, Dale S. Missildine, Judge. Affirmed. Considered by LeGrand, P.J., Uhlenhopp, McCormick, Larson and Schultz, JJ. Opinion by McCormick, J. (7 pages \$2.80)

Defendant appeals from his conviction for first degree murder in violation of Iowa Code sections 707.1 and 707.2. OPINION HOLDS: I. We find no abuse of trial court discretion in denying defendant's original and renewed motion for additional psychiatric evaluation when no showing was made that the additional examination was reasonably necessary or, in any event, that it could have made any difference under the facts of this case. II. When the evidence shows the mental condition at issue was caused by voluntary intoxication it is sufficient to instruct on that issue and not give an additional instruction on diminished responsibility generally.

NO. 66644. HAWK V. RICE.

Appeal from Grundy District Court, Peter Van Metre, Judge. On review from Iowa Court of Appeals. Decision of court of appeals vacated; district court decree affirmed. Considered by LeGrand, P.J., and Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by McCormick, J. (7 pages \$2.80)

We granted further review to the plaintiff from the court of appeals decision vacating the district court decree quieting title in plaintiff to abandoned railroad right of way. The trial court held that the original grant was of a mere easement which reverted to plaintiff when the trackage was abandoned, and the court therefore quieted title in him. Upon defendant's appeal the court of appeals reversed, holding that the deed conveyed a determinable fee that did not revert because the possibility of reverter was not preserved in accordance with the stale uses and reversions statute, Iowa Code section 614.24 (1975). OPINION HOLDS: Since the granting clause in the deed expressly described the conveyance in this case as a right of way for construction and operation of a railroad and the habendum clause added that the railroad was to have, hold and enjoy it "for any and all uses and purposes in any way connected with the construction, preservation, occupation and enjoyment" of the railroad, only an easement was conveyed; because the deed conveyed only an "affirmative" easement, the stale uses and reversions statute, section 614.24, is inapplicable.

NO. 68565. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT V.  
ROGER R. HALLECK.

On review of Report of the Grievance Commission. License suspended. Considered en banc. Opinion by McCormick, J.  
(3 pages \$1.20)

This attorney discipline case is based on an incident that resulted in respondent's conviction and sentence for tampering with a witness in violation of section 720.4 of the Iowa Code (1981). The evidence in the criminal case showed that respondent improperly sought to influence the testimony of a witness against respondent's client on a theft charge through an offer of restitution. OPINION HOLDS: Respondent's conduct violated section 610.24(3) and (4) of the Iowa Code (1981), and DR 1-102(a) (1), (3), (4), (5) and (6) and DR 7-109(c) of the Iowa Code of Professional Responsibility for Lawyers; respondent engaged in unprofessional conduct and must be disciplined; we order that respondent's license to practice law remain suspended indefinitely but that since the fourteen-month period of temporary suspension constituted a sufficient minimum period of suspension for respondent's misconduct he is authorized to apply for reinstatement at any time after the date of filing of this opinion, subject to the requirements of Court Rule 118.13.

NO. 66525. SMITH V. HARRISON.

Appeal from Ida District Court, Lawrence W. McCormick, Judge. On review from Iowa Court of Appeals. Decision of court of appeals affirmed. Considered by LeGrand, P.J., and Uhlenhopp, McCormick, Larson and Schultz, JJ. Opinion by McCormick, J.  
(7 pages \$2.80)

This is a further review of a court of appeals decision affirming a district court judgment dismissing a petition brought by a conservator seeking to cancel a farm lease entered by his elderly ward. The principal conservatorship asset is the 320-acre Ida County farm which was leased in 1975 for ten years at a fixed annual cash rental of \$23 per acre. OPINION HOLDS: I. We find a failure of proof of either actual or constructive fraud in this case. II. The conservator failed to prove undue influence by failing to prove that the lessee utilized unfair persuasion sufficient to overcome the ward's free agency in obtaining the lease. III. Unjust enrichment is a doctrine of restitution, and a ground for invalidating the lease must be established before a basis for restitution exists. IV. The evidence is not sufficient to prove the lease is unconscionable.

NO. 66755. FRYER V. STATE.

Appeal from Lyon District Court, Murray S. Underwood, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, McGiverin, Larson and Carter, JJ. Opinion by McGiverin, J.  
(31 pages \$12.40)

Fryer appeals from denial of his application seeking postconviction relief from his 1974 conviction of four counts of first degree murder. OPINION HOLDS: I. Iowa Code section 663A.8 does not bar Fryer from postconviction relief because even though his direct appeal was dismissed as frivolous, he did not deliberately bypass an opportunity to press his claim for relief. II. By failing to object at trial, Fryer failed to preserve error on his claim regard allegedly insufficient evidence to support the giving of an instruction of premeditated murder of Michael Hadrath and Stewart and Dana Baade; we find

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NO. 66755. FRYER V. STATE (continued).  
that a rational trier of fact could find beyond a reasonable doubt that applicant shot and killed Roger Essem; there is sufficient evidence for the jury to have found that Fryer either knowingly assented to the murders of Michael Hadrath and Dana and Stewart Baade or lent countenance or approval by active participation in it or by some manner encouraging it prior to its commission, and thereby aided and abetted those murders; there was sufficient evidence of an attempted robbery to support the State's theory of felony-murder. III. Assuming, without deciding, that the prosecution suppressed investigative reports of witness Sandra Cheskey's allegedly exculpatory statements, they were not material because during cross-examination defense counsel was able to seriously damage Sandra's credibility as to who shot which victim; failure to obtain the reports did not deprive Fryer of a fair trial. IV. The circumstances surrounding Fryer's November 30 confession demonstrate that it was voluntary: he was sufficiently appraised of his rights and knowingly and voluntarily waived them; much of the nineteen hour delay in taking Fryer before a magistrate can be attributed to allowing him to sleep, and such a delay in presentment does not render his statement involuntary; the purpose of the interrogation was not to obtain a confession, and Fryer's will was not overborne by lack of food or sleep; Fryer did not request, and affirmatively waived his right to, an attorney prior to the confession. V. Even though it was conducted in the presence of the jury, the hearing on the voluntariness of Fryer's confession complied with the requirements of Jackson v. Denno, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 905 (1964); State v. Walton, 247 N.W.2d 736, 740 (1976), requiring an evidentiary hearing outside the presence of the jury, does not apply retroactively. VI. Fryer understood his rights to counsel and affirmatively relinquished them prior to giving statements on December 1; therefore, there was no prejudice in the admission of these statements. VII. By failing to object at trial, Fryer failed to preserve error on this claim that the jury instructions did not properly inform the jury of the elements of the crimes charges. VIII. A reference by a State's witness to Fryer's failure to testify was an indirect reference about which his trial counsel made a tactical decision not to object; any objections as to improprieties in the testimony have been waived. IX. We have examined the entire record and find that based on the totality of the circumstances, the performance of Fryer's trial counsel was within the range of normal competency. X. Because a postconviction proceeding is a civil suit, Iowa Code section 625.1 ("Costs shall be recovered by the successful against the losing party") is applicable; section 663A.5 does not supercede section 625.1; section 663A.5 merely advances the costs of a postconviction proceeding to the indigent so that he or she will not be prevented from seeking redress of alleged defects in the conviction; it is not unreasonable for the State to recover, whenever possible, the costs it has advanced; however, the practical effect of taxing court costs in postconviction proceedings will be the same as that provided for statutorily in habeas corpus proceedings: if the losing party is confined to a state institution and is indigent, the State will have to absorb the costs.