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PREFACE

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

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

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

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

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

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

WAYNE A. FAUPEL, Code Editor
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Iowa Administrative Code

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AUDITOR OF STATE[130]

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 sections 534.19(18) and 17A.4(1), the Supervisor of Savings and Loan Associations, under the direction of the Auditor of State, hereby gives Notice of Intended Action to amend 130—chapter 8. The chapter, entitled "NOW Accounts" provides authority for the issuance of negotiable order of withdrawal (NOW) accounts.

The 1982 Iowa Acts, chapter 1253, section 19, authorizes the association to issue "commercial" NOW accounts. An association is prohibited from paying interest on these commercial accounts and may only offer them to an entity which has a commercial loan from the association. The proposed amendments are in part to update chapter 8 to provide for these commercial accounts.

The other reason for the proposed amendments is to allow savings and loan associations to avail themselves of language used by federal associations for this type of commercial accounts. Pursuant to Public Law No. 97-320, Section 312, effective October 15, 1982, federal associations may issue "demand" accounts to persons or organizations having a business, corporate, commercial or agricultural loan relationship with the association. The tie-in to language authorized for federal associations to use, coupled with statutory permissibility to accept only those commercial NOW (demand) accounts or make only those commercial loans that federal associations are allowed to make, will allow state associations to avoid certain branching restrictions contained in 1982 Iowa Acts, chapter 1253, section 19(4).

Any interested parties may make written suggestions or comments on the proposed rules. Such materials should be delivered to the Supervisor of Savings and Loan Associations, 2nd Floor, Lucas State Office Building, Des Moines, Iowa, 50319, before January 4, 1983.

Persons who wish to convey their views orally may do so by contacting the Supervisor at 515-281-5491. There will be a public hearing in the above office at 1:30 p.m. on January 4, 1983. Persons may present their views at the public hearing orally or in writing. Persons who wish to make oral presentation at the public hearing should contact the supervisor at least one day prior to the date of the hearing.

The proposed rules are intended to implement Iowa Code sections 534.19(18) and 17A.4(1), and the 1982 Iowa Acts, chapter 1253, section 19.

ITEM 1. Subrule 8.1(1) is amended as follows:

8.1(1) A (NOW) negotiable order of withdrawal account is a share (savings) account on which dividends (interest) are paid, from which the owner may make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties. ~~The~~ *A "regular" NOW* account must consist solely of funds in which the entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes and which is not operated for profit. *Subject to restrictions contained in the Code of Iowa, a NOW account may also consist of deposits of public funds by an officer, employee or agent of the United States, and any county, municipality or political subdivision of the state of Iowa.*

ITEM 2. Two new subrules are added as follows:

8.1(5) A commercial NOW account is the same as defined under 1982 Iowa Acts, chapter 1253, section 19(6).

8.1(6) A demand account is a noninterest-bearing savings account from which the owner may make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties.

ITEM 3. Subrule 8.2(1) is amended as follows:

8.2(1) ~~Pursuant to the authority under Acts of the Sixty-eighth General Assembly, 1980 Session, Chapter 1166, an~~ *An* association may offer NOW accounts under which the account owners may order or authorize the withdrawal of a specified amount of the account by means of cash or a negotiable or nonnegotiable check or similar instrument payable to the account owner or to the third parties or their order for the benefit of the account owner.

ITEM 4. Subrule 8.2(3) is rescinded and the following inserted in lieu thereof:

8.2(3) An association may offer commercial NOW accounts pursuant to the 1982 Iowa Acts, chapter 1253, section 19(1).

ITEM 5. A new subrule is added as follows:

8.2(4) An association may offer demand accounts to (a) those persons or organizations that have a business, corporate, commercial or agricultural loan relationship with the association, and (b) commercial, corporate, business or agricultural entities for the sole purpose of effectuating payments thereto by a nonbusiness customer. To satisfy the intent of the 1982 Iowa Acts, chapter 1253, section 19, the issuance of demand accounts by an association shall be subject to the conditions and limitations imposed upon federal associations for similar activity. Pursuant to Public Law No. 97-320 94 Stat. 1469, Section 312, and Federal Home Loan Bank Board Resolution Number 82-730, dated November 4, 1982, federal associations were authorized to offer demand accounts effective October 15, 1982.

ITEM 6. Rule 8.3(534) is amended as follows:

130—8.3(534) General provisions.

8.3(1) An association may extend secured or unsecured credit in the form of overdraft privileges specifically related to NOW accounts. This rule also applies to officers, directors and employees of an association, when such loans are secured by savings accounts maintained by these affiliated persons at the association and the initial extension of overdraft credit plus future increases or decreases is approved by the association. *In addition, an association may extend similar overdraft privileges specifically related to commercial NOW accounts and demand deposits, but these overdraft loans must be aggregated with other commercial loans for purposes of the maximum investment limitation in commercial loans. Overdraft loans must be made pursuant to proper underwriting and with due regard for safety and soundness.*

8.3(2) Associations are not required to issue account books or certificates evidencing ownership of NOW accounts, *commercial NOW accounts or demand accounts.*

AUDITOR OF STATE[130] *(cont'd)*

8.3(3) As association may distribute dividends on *regular* NOW accounts as provided by its articles of incorporation or by resolution of its board of directors, all subject to Iowa Code section 534.42. A "mutual deposit" association shall pay interest in lieu of dividends pursuant to chapter 4, Iowa administrative code.

8.3(4) An association, by resolution of its board of directors, and not in conflict with its articles of incorporation or Iowa Code section 534.10, may determine not to distribute dividends (interest) on any *regular* NOW account with less than a specified minimum amount.

8.3(5) An association may charge a service fee for making any payment or transfer or for maintaining a NOW account, *commercial NOW account or demand account* under these rules.

8.3(6) A NOW account, *commercial NOW account or demand account issued by an association* shall be afforded all the rights and privileges for share accounts pursuant to Iowa Code chapter 534, *including the same priority as other savings accounts upon liquidation and voting and membership rights.*

ARC 3406

COLLEGE AID COMMISSION[245]

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 261.37, the College Aid Commission proposes to amend Chapter 10, Iowa Guaranteed Student Loan Program, Iowa Administrative Code.

The amendment to paragraph "c" will increase the commission's control over loans disbursed after the school term has ended. Loans will be approved after the enrollment period only if the student owes his or her school or commercial lender educational expenses incurred during the school term. The amendment to paragraph "e" will require participating lenders to send loan proceeds directly to the student's educational institution unless individual approval to make a loan disbursement directly to the borrower has been approved by the commission.

Interested persons may comment or submit requests for an oral presentation by writing the Executive Director, Iowa College Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309 on or before December 31, 1982.

These rules are intended to implement Iowa Code chapter 261.

The following amendments are proposed:

ITEM 1. Rule 245—10(261) is amended to read as follows:

245—10(261) The Iowa Guaranteed Student Loan Program, Chapter IV, Section B, Subsection 7, paragraph "c". No loan disbursement may be made after the expiration of the academic period for which the loan was intended without prior written approval of ICAC. *Late disbursement requests must be submitted on an approved ICAC form and the request may not exceed the amount guaranteed, the amount owed the school or the amount owed a commercial lender who may have provided interim financing to cover educational expenses. All late disbursement requests must be completed by the school (signed and dated) within sixty days following the end of the academic period.*

ITEM 2. Rule 245—10(261) is amended to read as follows:

245—10(261) The Iowa Guaranteed Student Loan Program, Chapter IV, Section B, Subsection 7, paragraph "e". Any deviation from the ~~disbursement schedule~~ *policies* outlined above requires ICAC approval~~, which may be granted under special circumstances~~ *on a per student basis.* Each request must be in writing and sent to the ICAC office clearly stating the circumstances surrounding the request.

This rule is intended to implement Iowa Code chapter 261.

ARC 3434

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 §17A 4(1)"b", Iowa Code

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

The ISCC hereby gives notice that on November 19, 1982, the commission issued an order in Docket No. RMU-82-1, In Re: Deregulation of the terminal equipment market for intrastate telephone utilities, "Order Adopting Proposed Rules and Establishing Dates for Filing of Written Comments and Submission of Oral Presentations." This order provides further background concerning the proposed rules hereinafter set forth and should be read in full. Pursuant to the authority of Iowa Code sections 476.1, 476.2, 476.8 and 476.9, the commission notices proposed rules to amend 250—Chapters 16, "Accounting," and 22, "Rates Charged And Service Supplied By Telephone Utilities," of the Iowa Administrative Code concerning treatment of existing and new customer premise equipment by intrastate telephone public utilities.

This proceeding was commenced by commission order on June 25, 1982, and Notice of Intended Action was published in the July 21, 1982 Iowa Administrative Bulletin as ARC 3057. This notice set forth specific inquiries concerning deregulation of the terminal equipment, i.e., customer premise equipment, market for intrastate telephone utilities for written comment and oral presentation. Written comments were filed by interested parties, including public utilities providing communications serv-

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

ices in the state of Iowa, on or before August 20, 1982. Oral presentations were received by the commission from these interested parties on August 30, 1982.

The commission has carefully reviewed the entire administrative record, including all written comments filed and oral presentations submitted, and finds that the proposed rules set forth in the appended Notice of Intended Action should be published in the biweekly supplement of the Iowa Administrative Bulletin. Interested persons, including public utilities providing communications services in the state of Iowa, will be afforded the opportunity to submit to the commission written comments and oral presentations concerning the proposed rules as hereinafter provided. The proposed rules serve to treat the provision, installation, repair and maintenance of existing and new customer premise equipment by public utilities providing communications services as nonutility functions on and after a date certain. The date certain will be the date selected by each public utility providing communications services in the state of Iowa for implementation of its tariff providing that existing and new customer premise equipment will no longer be offered on a regulated utility basis. Such tariffs must be filed with the commission within one hundred twenty days after the effective date of these rules. On and after the date certain, the provision, installation, repair, maintenance, and other terms and conditions involved with the offering of existing and new customer premise equipment shall be nonutility functions. Public utilities providing communications services in the state of Iowa shall maintain their accounting records in such a manner as to separately account for costs, investments and revenues related to utility functions and those related to nonutility functions. The proposed rules allow customers the opportunity to secure the provision, installation, repair, or maintenance of existing and new customer premise equipment from any supplier. The proposed rules further provide that public utilities providing communications services in the state of Iowa shall notify customers of the following matters: (1) A definition of customer premise equipment; (2) for residential and one- and two-line business customers, a listing of existing customer premise equipment provided to the customer under tariff and a current tariff rate for that equipment (unless existing customer premise equipment is provided under contract; in such situations, the terms and conditions of the contract will be referenced); (3) a notice that on and after the transition date for customer premise equipment, the customer will be allowed to secure existing and new customer premise equipment from any supplier and the telephone utility will no longer be providing such customer premise equipment as a mandatory and regulated service; (4) whether the telephone utility will, in whole or in part, continue to provide, install, repair or maintain customer premise equipment after the transition date for customer premise equipment; and (5) that the charges for existing and new customer premise equipment on and after the transition date for customer premise equipment will no longer be set by the Iowa State Commerce Commission. For business customers with three or more lines, the notice shall also contain a statement that a listing of existing customer premise equipment will be provided upon request.

The proposed rules further provide that each customer will have, at a minimum, a ninety-day period after the notification referred to above is transmitted to elect which alternative that customer desires for prospective provision, installation, repair and maintenance of existing and new customer premise equipment. The proposed rules also set forth minimum technical standards applicable to all suppliers in the provision, installation, repair and maintenance of existing and new customer premise equipment. Finally, the proposed rules provide for certain changes to current commission rules in order that such rules will be consistent with the proposed rules hereinafter set forth.

The commission desires each public utility providing communications services in the state of Iowa and all interested members of the public to file written comments and submit oral presentations concerning: (1) Whether the proposed rules should, in whole or in part, be promulgated as adopted rules by the commission; and (2) what changes should be made to the proposed rules in the event the commission finds that some form and type of adopted rules should ultimately be promulgated in this proceeding. Additionally, the commission finds that each public utility providing communications services in the state of Iowa and all interested members of the public should specifically address whether Alternative A or Alternative B under Item 57, proposed new subrule 16.5(46), should be adopted by the commission. Alternative A and Alternative B treat the deferred taxes and the investment tax credits related to existing customer premise equipment as below-the-line (i.e., retained by telephone utilities) or above-the-line (i.e., deducted from rate base, returned to customers, or both) accounts, respectively.

The commission shall afford the opportunity for public participation in this proceeding in accordance with Iowa Code section 17A.4 and 250—Chapter 3, Rulemaking, Iowa Administrative Code.

Written comments on the proposed rules hereinafter set forth may be filed no later than December 31, 1982, and should be addressed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Fifth Floor, Des Moines, Iowa 50319. Oral presentation on the proposed rules is hereby scheduled to commence at 10:00 a.m. on January 7, 1983, in the Commission's Hearing Room, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

ITEM 1. Subrule 22.1(3) is amended as follows: Add new definitions to be inserted alphabetically and reletter paragraphs accordingly.

"Customer premise equipment" means terminal equipment located on the customer's premise owned by the customer or owned by the telephone utility or some other supplier and leased to the customer.

"Existing customer premise equipment" means terminal equipment placed into service on the customer's premise prior to January 1, 1983.

"New customer premise equipment" means terminal equipment placed into service on the customer's premise on or after January 1, 1983.

"Official company station equipment" means telephone sets, teletypewriters, radio equipment, facsimile equipment, key systems, PBX's and other terminal equipment installed by the telephone utility and used exclusively by the telephone utility for the transacting of company business.

"Coin-operated, public or pay telephone equipment" means equipment used in the provision of coin-operated, credit card or pay telephone service to the public including telephone sets, housings, booths, public telephone signs and other associated equipment.

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"Mobile telephone equipment" means equipment used to provide telephone service from mobile stations into the commercial telephone system.

"Multiparty telephone" means a telephone used in the provision of multiparty service.

"Multiplexing equipment" means equipment used to combine a number of individual message circuits for transmission over a common transmission path. Two methods are used: (1) Frequency division, and (2) time division.

"Network channel terminating equipment" means equipment used to multiplex or demultiplex voice frequency signals to or from a transmission facility. This is commonly referred to as a station lines on one or two cable pairs.

"CPE transition date" means the date selected by the utility as the effective date for implementation of its tariff, subject to commission acceptance, which states that the utility no longer provides CPE on a regulated utility basis.

Further amend subrule **22.1(3)** as follows:

Paragraph "y", rescind the words "customers' telephone stations" and insert in lieu thereof "customers".

Paragraph "ai", rescind the words "customer stations" and insert in lieu thereof "customers or users".

Rescind the definition for "other supplier" and insert in lieu thereof the following: "Other supplier" means the customer or any entity other than the telephone utility providing, repairing, or maintaining new inside station wiring or existing or new terminal equipment or repairing or maintaining existing inside station wiring.

ITEM 2. Subrule **22.1(4)** is amended as follows:

Add new abbreviation to be inserted alphabetically. "CPE"—Customer Premise Equipment.

ITEM 3. Add the following new rule:

250—22.9(476) Customer premise equipment.

22.9(1) Treatment of existing and new customer premise equipment.

a. On or after the CPE transition date all telephone utilities shall, if existing or new customer premise equipment is offered, provide, sell, lease, maintain or repair such customer premise equipment as nonutility functions. The costs, investments and revenues associated therewith shall not be included in a telephone utility's revenue requirement for ratemaking purposes. No utility shall be required to sell, install, maintain or repair existing or new customer premise equipment.

b. Each telephone utility shall within one hundred twenty days after the effective date of these rules file a revised tariff which states that the utility no longer provides customer premise equipment on a regulated utility basis.

c. Each telephone utility shall maintain its accounting records to separately account for those costs, investments and revenues associated with utility functions and those costs, investments and revenues associated with nonutility functions. Identifiable costs and associated overheads will be directly assigned; common and joint costs will be allocated on a consistent basis between utility and nonutility functions. Each telephone utility shall have the burden of proof to establish that directly assigned and allocated costs are recorded in the appropriate accounts.

22.9(2) Suppliers. Customers may secure the provision, repair or maintenance of existing or new customer premise equipment from their telephone utility, if the telephone utility offers customer premise equipment, or from any other supplier.

22.9(3) Customer notification. Each telephone utility shall within sixty days after the effective date of these rules, notify its customers of the provisions of these rules. Such notice shall contain:

a. A definition of customer premise equipment;

b. For residential and one- and two-line business customers, a listing of existing customer premise equipment provided to the customer under tariff and the current tariff rate for that equipment (unless existing customer premise equipment is provided under contract; in such situations, the terms and conditions of the contract will be referenced);

c. A notice that on and after the CPE transition date, the customer will be allowed to secure existing and new customer premise equipment from any supplier, and the telephone utility will no longer provide CPE as a regulated service;

d. Whether the telephone utility will provide, repair or maintain customer premise equipment on or after the CPE transition date; and

e. That the charges associated with existing and new customer premise equipment on or after the CPE transition date will no longer be set by the ISCC. For business customers with three or more lines, the notice shall also contain a statement that a listing of existing customer premise equipment will be provided upon request.

22.9(4) Customer choice indication. The telephone utilities shall provide customers with the following opportunities in relation to securing CPE.

a. For at least ninety days following the notification required in 22.9(3), the telephone utility shall continue to offer existing customer premise equipment pursuant to tariffs on file with the ISCC prior to the effective date of these rules.

b. The telephone utilities shall provide customers using existing customer premise equipment with a customer choice card at least sixty days prior to the CPE transition date. The customer choice card shall provide the following information:

(1) A list of customer alternatives for securing CPE with space for indication of the customer's chosen alternative.

(2) A statement that if the card is not returned in the prescribed sixty-day time period, the telephone utility will assume that the customer wishes to continue using telephone utility equipment and that the utility will bill the customer for the use of that equipment at charges to be determined by the utility.

(3) A statement that an indication of choice now does not preclude the customer from securing CPE from another supplier or under other arrangements in the future.

(4) The CPE transition date.

c. The telephone utilities are not prohibited from making other satisfactory arrangements with customers regarding treatment of existing CPE provided that such arrangements are voluntary.

22.9(5) Standards for existing and new customer premise equipment. A telephone utility shall allow customers to secure the provision, repair, and maintenance of existing or new customer premise equipment provided however that:

a. Such equipment shall be in compliance with applicable registration standards promulgated by the federal communications commission.

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

b. Telephone utilities shall generally endeavor to answer any question concerning the installation, repair, and maintenance of existing or new customer premise equipment.

c. This rule does not give the customer the right to repair or maintain customer premise equipment owned by the telephone utility without the utility's consent.

ITEM 4. Subrule **22.2(5)** is amended as follows:

Paragraph "u", rescind the words "utility-provided terminal equipment".

Paragraph "u", rescind subparagraphs (1) and (2).

ITEM 5. Subrule **22.2(6)** is amended as follows:

Paragraph "d", on line 1, rescind the word "station", and in lines 4 to 7 rescind the sentence "Also, a separate report shall be counted for each telephone or PBX switchboard position reported in trouble when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to common cause."

Paragraph "j", on line 2, rescind the words "terminal equipment or".

ITEM 6. Subrule **22.3(2)** is amended as follows:

Paragraph "d", rescind in lines 6 and 7, "and rates for the lowest priced basic terminal equipment and most frequently provided terminal equipment" and replace the comma in line 5 with "and".

Paragraph "g", subparagraph (3) on line 2, after the word "wiring", insert "or terminal equipment", and insert after the word "wiring" on line 3, "or terminal equipment".

ITEM 7. Subrule **22.3(4)** is amended as follows:

On line 3 rescind the words "main station" and on line 4 rescind the word "phone" and insert in lieu thereof "service".

ITEM 8. Subrule **22.3(13)** is amended as follows:

On line 1 rescind the words "and terminal equipment" and on line 2 rescind the words "and terminal equipment" and rescind the third sentence.

ITEM 9. Subrule **22.4(3)** is amended as follows:

Paragraph "b", on line 1, rescind the word "telephone" and insert in lieu thereof "transmission service".

Paragraph "c", subparagraph (3) in line 2, rescind the words "terminal equipment".

ITEM 10. Subrule **22.5(8)** is amended as follows:

Paragraph "a", in line 2, rescind the word "sets" and insert in lieu thereof "stations".

ITEM 11. Subrule **22.5(12)** is amended as follows:

Paragraph "g", in line 1, insert after the word "all" the word "utility" and rescind the second sentence in lines 3 and 4.

Rescind paragraph "h".

Paragraph "i", on line 2, after the word "or" insert the word "utility".

ITEM 12. Subrule **22.6(1)** is amended as follows:

Paragraph "g", on line 1, rescind the word "telephone" and insert in lieu thereof "service" and on line 2, rescind the words "to service".

Paragraph "h", on lines 2 and 3, rescind the words "fourteen per one hundred telephones" and insert in lieu thereof "ten per one hundred central office access lines".

ITEM 13. Rule **250—22.10(476)** is amended as follows:

On line 2, after the word "permissible", insert the words "or required".

Paragraph "a", subparagraph (1) on line 3, rescind the figures "22.3(12)" and insert in lieu thereof "22.3(13)" and after the figure "(2)" insert the figures "22.9(476)".

ITEM 14. Subrule **22.13(2)** is amended as follows:

Paragraph "b", subparagraph (1) is rescinded and the following is adopted in lieu thereof, "Terminal equipment—customer premise equipment; official company equipment; coin-operated, public or pay telephone equipment; mobile telephone equipment; multiparty telephones; other miscellaneous station equipment and network channel terminating equipment."

ITEM 15. Subrule **16.5(5)** is amended as follows: Add new definitions to be inserted alphabetically and reletter paragraphs accordingly.

"Customer premise equipment" means terminal equipment located on the customer's premise owned by the customer or owned by the telephone utility or some other supplier and leased to the customer.

"Existing customer premise equipment" means terminal equipment placed into service on the customer's premise prior to January 1, 1983.

"New customer premise equipment" means terminal equipment placed into service on the customer's premise on or after January 1, 1983.

"Official company station equipment" means telephone sets, teletypewriters, radio equipment, facsimile equipment, key systems, PBX's and other terminal equipment installed by the telephone utility and used exclusively by the telephone utility for the transacting of company business.

"Coin-operated, public or pay telephone equipment" means equipment used in the provision of coin-operated, credit card or pay telephone service to the public including telephone sets, housings, booths, public telephone signs and other associated equipment.

"Mobile telephone equipment" means equipment used to provide telephone service from mobile stations into the commercial telephone system.

"Multiplexing equipment" means equipment used to combine a number of individual message circuits for transmission over a common transmission path. Two methods are used: (1) Frequency division, and (2) time division.

"Network channel terminating equipment" means equipment used to multiplex or demultiplex voice frequency signals to or from a transmission facility. This is commonly referred to as a station lines on one or two cable pairs.

"CPE transition date" means the date selected by the utility as the effective date for implementation of its tariff, subject to commission acceptance, which states that the utility no longer provides CPE on a regulated utility basis.

ITEM 16. Subrule **16.5(9)** is amended as follows:

In lines 1 and 2 rescind the letter "(r)" and insert in lieu thereof, "(s)".

In line 1 insert the words "other than station apparatus" before "and station connections".

In line 3 rescind the words "other than station apparatus".

ITEM 17. Subrule **16.5(11)** is amended as follows:

In lines 2 and 8 rescind the account number "601" and insert in lieu thereof, "320".

ITEM 18. Rescind subrule 16.5(12) and insert in lieu thereof:

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

16.5(12) In section 31.02-82, delete the items "Station apparatus (account 231)," "Station connections (account 232)," and "Large private branch exchanges (account 234)" in the list of classes of depreciable telephone plant, and add "Services (account 232)" and "Public telephone equipment (account 235)" to the list following "Central office equipment (account 221)".

ITEM 19. Subrule **16.5(13)** is amended as follows:
In line 3 rescind the account number "231" and insert in lieu thereof, "station apparatus as recorded in accounts 221, 235, and 261".
In line 4 rescind the words "and account 231".

ITEM 20. Subrule **16.5(14)** is amended as follows:
In line 6 rescind the words "and account 231".

ITEM 21. Subrule**16.5(15)** is amended as follows:
In line 1 rescind the words "Add new section 31.106 as follows:" and insert in lieu thereof, "Add to section 31.103 as follows:".
In line 2 rescind the section number and description "31.106 Leased telephone equipment".
In line 3 rescind the letter "(a)".
In line 9 rescind the letter "(b)".

ITEM 22. Rescind subrule 16.5(16) and insert in lieu thereof:
16.5(16) Revise Note E of section 31.122 to read as follows:
Note E: This account shall not include items in stock which are includable in account 124.
Add new letter (e) to section 31.122 as follows:
(e) This account will also include material or equipment purchased for inventory in connection with public telephone equipment except for the housing and pedestal which will be recorded in account 235, Public Telephone Equipment.

ITEM 23. Subrule **16.5(17)** is amended as follows:
In line 5 rescind the parenthetical phrase "(Note account 231)" and insert in lieu thereof, "(Note account 103)".

ITEM 24. Subrule **16.5(18)** is amended as follows:
In line 4 rescind the words "of station apparatus" and insert in lieu thereof, "in account 235, Public telephone equipment".
In line 5 rescind the parenthetical phrase "(Note also account 605)."
In line 9 rescind the words "of apparatus" and insert in lieu thereof "in account 235, Public telephone equipment".

ITEM 25. Subrule **16.5(19)** is amended as follows:
In line 3 of paragraph (b) rescind the word "station".
In line 4 of paragraph (b) rescind the words "apparatus and" and the "s" on accounts and "231 and".
Add a new paragraph to subrule **16.5(19)** to read as follows:
Add new note (e) to section 31.171 to read as follows:
(e) After CPE transition date accumulated depreciation for customer premise equipment will no longer be recorded in this account, but shall be amortized in account 177.

ITEM 26. Subrule **16.5(20)** is amended as follows:
In line 1 rescind "section 31.175", and insert "sections" and rescind all of section 31.175 (lines 2 to 13).
Further amend subrule 16.5(20) by adding new section 31.177:3 as follows:
Add new section 31.177:3 as follows:
31.177:3 Depreciation reserve customer premise equipment. The account will include the accumulated depreciation on CPE transferred to this account from account 31.171 depreciation reserve station apparatus, and depreciation reserve large PBX. Furthermore, this account will include the additional accumulations of depreciation with the corresponding charge to account 31.320 cost and expenses of selling telephone equipment.

ITEM 27. Subrule **16.5(21)** is amended as follows:
In lines 2 and 9 rescind the account number "320".
In lines 3 and 10 rescind the words "station apparatus" and insert in lieu thereof, "public telephone equipment".
Add a new paragraph to subrule **16.5(21)** to read as follows:
Add note to read as follows:
NOTE: The above references to equipment do not refer to customer premise equipment.

ITEM 28. Rescind subrule 16.5(23) and insert in lieu thereof:
16.5(23) In paragraph (b)(2) of section 31.2-25, delete the words ", other than station apparatus and station connections,". The first sentence of paragraph (b)(2), as amended, will read:
(2) Minor items: This group includes any part or element of plant which is not designated as a retirement unit.

ITEM 29. Rescind subrule 16.5(24) and insert in lieu thereof:
16.5(24) Delete paragraph (b)(3) of section 31.2-25.

ITEM 30. Subrule **16.5(26)** is amended as follows:
Paragraph "e", line 11, rescind the word "telephones" and insert in lieu thereof, "public telephone equipment".
Paragraph "e", line 12, rescind the words "small private branch exchanges".
Add a new paragraph to subrule **16.5(26)** to read as follows:
Add new instruction for telephone plant accounts.
31.2-28 to read as follows:
31.2-28 As of CPE transition date the installation and maintenance of customer premise equipment by a telephone utility shall be a nonutility function, and the investments, costs, and revenues associated therewith shall not be included in a telephone utility's revenue requirement for ratemaking purposes.

ITEM 31. Rescind subrule 16.5(27) and insert in lieu thereof:
16.5(27) Delete section 31.231. (See subrule 16.5(45).
Add new section 31.221 as follows:
31.221 Central office equipment.
This account shall include the original cost of electrical instruments, apparatus, and equipment, other than station equipment used for official business or installed on customer's premises, in central offices (including terminal and test rooms), repeater stations and test stations used in transmitting traffic and operating signals, and similar equipment in operator's schools and other centralized locations.

ITEM 32. Subrule **16.5(29)** is amended as follows:
In line 4 of Note A rescind the words "equipment includable in account 234,".
In line 5 of Note A rescind the "," following "large private branch exchanges".

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

ITEM 33. Subrule **16.5(30)** is amended as follows:

Delete section 31.234. (See subrule 16.5(45).

Add new section 31.235 as follows:

31.235 Public telephone equipment.

Housing — a complete installation with or without booth, director hangers and shelves, shield and public telephone sign.

Pedestal — a complete installation with or without a base plate. Shelf in proximity to public telephones — a complete installation with or without directory hangers.

Telephone set — a complete item.

ITEM 34. Subrule **16.5(31)** is amended as follows:

In line 5 of Note A rescind the words "account 234" and insert in lieu thereof, "reclassified accounts (see 16.5(45)".

ITEM 35. Subrule **16.5(33)** is amended as follows:

In line 4 of Note D rescind the words "account 234" and insert in lieu thereof, "reclassified accounts (see 16.5(45)".

Further amend by adding the following to subrule **16.5(33)**:

Add new section 31.261 as follows:

31.261 Furniture and office equipment.

Each complete item of furniture or equipment, the original cost of which was charged to the telephone plant account, such as a desk, chair, table, piano, davenport, typewriter, computing machine, telephone set, teletypewriter set, facsimile set, radio equipment, key systems, large or small private branch exchanges; a section of bookcase, filing cabinet, shelving, bins, or counter; a rug, a carpet, or other floor covering for one room.

Revise the first paragraph in section 31.261 by deleting the parenthetical reference to account "234" and inserting in its place "reclassified accounts — see 16.5(45)". This paragraph as revised will read:

This account shall include the original cost not provided for in other accounts, of furniture and equipment in offices, storerooms, shops, and other quarters. (Note also §31.2-20(d) and accounts 221 and reclassified accounts—see 16.5(45).

ITEM 36. Subrule **16.5(34)** is amended as follows:

In line 2 rescind title "31.319 Revenues from telephone equipment sales" and insert in lieu thereof, "31.319 Revenues from customer premise equipment leases and sales."

In line 3 rescind title "31.320 Costs and expenses of selling telephone equipment" and insert in lieu thereof, "31.320 Costs and expenses of leasing and selling customer premise equipment."

Paragraph "a", line 1, insert the words "lease or" after "revenues derived from the".

Paragraph "a", line 2, rescind "customer-owned telephone equipment" and insert in lieu thereof, "customer premise equipment".

Paragraph "b", line 2, insert the words "leases or" after "such as equipment".

In Item 1 of Account 319 insert the words "lease or" after "revenues from".

In Item 2 of Account 319 rescind "customer-owned telephone equipment" and insert in lieu thereof, "customer premise equipment".

In Item 1 of Account 320 insert the words "leasing or" after "the purpose of".

In Item 3 of Account 320 rescind the words "customer-owned equipment" and insert in lieu thereof, "customer premise equipment".

In Item 4 of Account 320 insert the words "customer premise" after "materials for".

In Item 5 of Account 320 rescind the words "customer-owned telephone equipment" and insert in lieu thereof, "customer premise equipment".

In Item 5 of Account 320 insert the words "lease or" after "orders for the".

In Item 7 of Account 320 rescind the word "telephone" and insert in lieu thereof, "customer premise".

In Item 9 of Account 320 insert the words "customer premise" after "returned".

In Item 10 of Account 320 rescind the word "equipment" and insert in lieu thereof, "customer premise equipment lease or".

In Item 11 of Account 320 rescind the words "telephone equipment" and insert in lieu thereof, "customer premise equipment leasing or".

In Item 12 of Account 320 rescind the words "customer-owned" and insert in lieu thereof, "customer premise".

In Item 15 of Account 320 rescind the words "telephone equipment stocks held for sale" and insert in lieu thereof, "customer premise equipment stocks held for lease or sale".

In Item 18 of Account 320 rescind the words "buy telephone equipment" and insert in lieu thereof, "buy or lease customer premise equipment".

In Item 20 of Account 320 rescind the words "customer-owned telephone equipment" and insert in lieu thereof, "customer premise equipment".

In Item 22 of Account 320 rescind the words "customer-owned" and insert in lieu thereof, "customer premise".

In Item 24 of Account 320 rescind the words "sale of telephone equipment" and insert in lieu thereof, "lease or sale of customer premise equipment".

ITEM 37. Rescind subrule 16.5(36) and insert in lieu thereof the following:

16.5(36) Revise paragraph (2) of section 31.5-50 to read as follows:

(2) Amounts of initial nonrecurring charges for plant or equipment, furnished in rendering service to a customer, includable in accounts 232, 233 and 235. (Note §31.2-20(b).)

Insert in paragraph (b)(3) of 31.5-50 the word "regulated" after "service charges for". The paragraph, as amended, will read:

(3) Amounts of service charges for regulated supplemental or auxiliary equipment furnished in rendering service to a customer — for example, extension stations, auxiliary receivers, auxiliary signals, code calling and conference equipment, etc.

Add new paragraph (d) to section 31.5-50 to read as follows:

(d) Revenues applicable to customer premise equipment shall be recorded in account 319, "Revenues from customer premise equipment leases and sales." None of these revenues will be recorded in operating revenue accounts 500 to 530.

Add Note to section 31.6-60 to read as follows:

Note: Expenses applicable to customer premise equipment shall be recorded in account 320, "Cost and expenses of leasing and selling customer premise equipment." None of these expenses will be recorded in operating expense accounts 602:1 to 677.

ITEM 38. Rescind subrule 16.5(37) and insert in lieu thereof the following:

16.5(37) Add new note (c) to section 31.6-61 to read as follows:

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

(c) The cost of repairs may include certain costs of station installations, and the costs of reinstalling, connecting, disconnecting, and removing station apparatus, but if these expenses or any other repair expenses are associated with customer premise equipment, they will be recorded in account 320. If these expenses are not associated with customer premise equipment, see accounts 601, 605, and 607.

ITEM 39. Subrule **16.5(38)** is amended as follows:

In line 4 rescind the words "station apparatus" and insert in lieu thereof, "regulated station equipment".

ITEM 40. Subrule **16.5(39)** is amended as follows:

Rescind NOTE and insert in lieu thereof the following:

NOTE: Amounts charged customers for moves and changes of customer premise equipment shall be credited to account 319. If the moves and changes involve mobile or public telephone equipment, the amount will be credited to account 500 or to other revenue accounts appropriate for the class of service involved.

Further amend subrule **16.5(39)** by adding the following:

In line 15 of paragraph (a) in section 31.603 insert the word "regulated" after "rearrangements of". Paragraph (a), as amended, will read:

(a) This account shall include the costs incurred by forces located in central offices and engaged in the work of receiving and recording reports of trouble from subscribers and others; testing from test desks to determine the nature and location of trouble; dispatching repairmen from test desks; testing from test desks with repairmen during the course of their work or upon its completion and making other tests from test desks to determine the condition of the plant; and testing from test desks in the course of inside moves and rearrangements of regulated station apparatus, including service regrades.

ITEM 41. Subrule **16.5(41)** is amended as follows:

In line 3 rescind the title "31.605 Repairs of station equipment" and insert in lieu thereof, "31.605 Repairs of utility station equipment."

Add NOTE to read as follows:

NOTE: Customer premise equipment is not included in this account. All station apparatus and station equipment referred to is utility equipment (regulated items). Customer premise equipment is accounted for in account 320.

Further amend subrule **16.5(41)** by adding the following:

In section 31.8 delete the titles and explanations "231 Station apparatus none, but each company shall maintain its own list of station apparatus disposition units for account 231 in accordance with the provisions of that account." and "234 Large private branch exchanges units specified under subsection 221 Central office equipment of this section."

ITEM 42. Add new subrule 16.5(45) to read as follows:

16.5(45) Divide accounts 31.231 and 31.234 into five separate categories of: (1) Official company station equipment, (2) coin-operated, public or pay telephone equipment, (3) mobile telephone equipment, (4) customer premise equipment, and (5) additional equipment. The allocation of the depreciation reserve between each of the separate asset categories will be on a consistent basis in accordance with the FCC rules. Telephone utility owned customer premise equipment will be reclassified to the below-the-line account 31.103, "miscellaneous physical property." The remaining asset categories of accounts 31.231 and 31.234 will be reclassified pursuant to accounts established by the FCC.

ITEM 43. Add new subrule 16.5(46) to read as follows:

16.5(46) Each of the categories in 16.5(45) will be reclassified to eliminate account 31.231, station apparatus, and account 31.234 large private branch exchange, from the telephone utility's regulated rate base. Equipment should be accounted for on a functional rather than type of equipment basis. Under this approach the company used equipment that handles the switching of traffic would be recorded in account 31.221 "central office equipment," and the company used equipment that handles the company's own internal business operations would be recorded in account 31.261 "furniture and office equipment." All company telephone sets, teletypewriters, radio equipment, facsimile equipment, key systems and all PBX's or other terminal equipment shall be recorded in account 31.221 or account 31.261 based on function. The stock items included in account 31.231, station apparatus, applicable to CPE will be transferred below-the-line to account 31.124, telephone equipment held for lease or sale. Other stock items included in account 31.231 not applicable to CPE will be transferred to account 31.122, materials and supplies.

Alternative A: The deferred taxes and the investment tax credits related to the customer premise equipment will transfer with the customer premise equipment to a below-the-line account pursuant to accounts established by the FCC.

Alternative B: The deferred taxes and the investment tax credits related to the customer premise equipment will be returned to customers through above-the-line accounts as may be ordered by the commission.

ITEM 44. Add new subrule 16.5(47) to read as follows:

16.5(47) Accordingly, the cradle-to-grave method of accounting will not be used for the new account 31.235, but instead the more traditional retirement unit basis of depreciation accounting including the establishment of a continuing property record (CPR) on an accounting area basis will be used. Furthermore, other material or equipment purchased for inventory in connection with public telephone equipment will be recorded in account 31.122, "material and supplies" instead of account 31.231. The telephone company, at its option, should be permitted to begin using this account to record inventory purchased for public telephones effective January 1, 1983 and thereafter.

ITEM 45. Add new subrule 16.5(48) to read as follows:

16.5(48) When the customer premise equipment is transferred from the regulated rate base, the telephone company will record the original cost of the equipment in account 31.103, "Miscellaneous Physical Property." Furthermore, the current rules associated with account 31.103 that pertain to recording all revenues and expenses below-the-line, namely account 31.319, "revenues from customer premise equipment leases and sales," and account 31.320, "cost and expenses of leasing and selling customer premise equipment" will continue. Moreover, the appropriate depreciation reserve associated with customer premise equipment will be recorded below-the-line in account 31.177.3, "depreciation reserve customer premise equipment." All applicable taxes will be recorded in account 31.327, "other nonoperating taxes," and account 31.176.2, "accumulated deferred income taxes—other."

ARC 3418

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

The Iowa State Commerce Commission hereby gives notice that on November 18, 1982, it issued an "Order Commencing Rulemaking" in Docket No. RMU-82-18, "In Re: Amendment To 250—Chapter 25, Iowa Electrical Safety Code To Require All Electric Utilities To File An Inspection Plan And To Adhere To Inspection Plan Requirements. Pursuant to the authority of Iowa Code sections 476.2, 476.8 and 478.18, the commission intends to consider the adoption of proposals presented in a petition for rulemaking filed by commission staff to require each electric utility to adopt and file with the commission a written program for patrolling and inspecting its electric lines and substations in order to determine the necessity for replacement and repair. The utility would be required to report annually to the commission on compliance with its plan.

Any person interested in this matter may file a written statement of position no later than January 7, 1983, by filing an original and six copies of such statement, substantially complying with the form prescribed in 2.2(2), IAC.

Oral presentation on the proposed rules will be held January 18, 1983, commencing at 10:00 a.m. in the Commission hearing room, first floor, Lucas State Office Building, Des Moines, Iowa.

All communications to the commission shall clearly identify the author and author's address, reference Docket No. RMU-82-18 and shall be addressed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319. This rulemaking proceeding shall be conducted pursuant to 250—Chapter 3, Iowa Administrative Code.

ITEM 1. Add new rule 250—25.3(135) as follows:

250—25.3(135) Required periodic inspection of electric plant. Each electric utility shall adopt and file with the commission a written program for patrolling and inspecting its electric lines and substations in order to determine the necessity for replacement and repair. The period between inspections of various elements of the plant shall be based on accepted good practice in the industry and the experience of the utility. Rural Electrification Administration Bulletins 161-3, 161-4, and 165-1 are suggested guidelines to accepted good practice. Overhead line insulator inspection intervals shall be based upon historical vandalism rates for each line section, but shall provide for inspection at least annually. Regular patrols to inspect surge arresters, ground leads, guy wires, and guy protectors shall be scheduled at least annually. The inspection plan shall provide for inspection of all elements within the adopted inspection periods. The inspection plan shall be received for filing subject to review and complaint, and may be rejected in writing by the commission's principal electrical engineer stating the reason(s) for the rejection. Each utility shall include as part of its annual report to the commission, as required by 250—Chapter 23, certification of compliance. Each utility shall keep sufficient written records to give evidence of compliance with its inspection program.

ITEM 2. Amend subrule 20.5(5), Iowa Administrative Code, as follows:

20.5(5) Inspection of electric plant. Each utility shall adopt a *written* program ~~of~~ *for* inspection of its electric plant in order to determine the necessity for replacement and repair *in compliance with commission rule 250—25.3 (135).* ~~The period between inspections of various elements of the plant shall be based on the utility's experience and accepted good practice in the industry. Each utility shall keep sufficient records to give evidence of compliance with its inspection program.~~

ARC 3427

HEALTH DEPARTMENT[470]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 135.11(15), the Iowa State Department of Health, hereby gives Notice of Intended Action to amend Chapter 80 "Homemaker-Home Health Aide Service", Iowa Administrative Code.

These amendments are to clarify chapter 80 which was emergency adopted and implemented with a subsequent public hearing. As a result of the public comments and interested parties'comments and concerns, changes in the emergency adopted-implemented rule were suggested. The proposed changes clarify implementation, curriculum standards for home-health aide provider training, supervision and record-keeping requirements.

A public hearing will be held on December 28, 1982 at 1:00 p.m. in the third floor conference room, Lucas State Office Building, Des Moines, Iowa 50319.

Written comments may be submitted prior to December 28, 1982 addressed to Chief, Division of Community Health, 3rd floor, Lucas State Office Building, Des Moines, Iowa 50319.

These amendments implement Iowa Code section 135.11(15), and 1982 Iowa Acts, chapter 1260.

ITEM 1. Amend **chapter 80** by adding the following preamble:

The requirements and criteria for homemaker-home health aide service in this chapter also apply to chore service as defined in 1982 Iowa Acts, chapter 1260 except where separate requirements are specified.

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

ITEM 2. Amend subrule 80.3(2) paragraph "d" by striking and adding in lieu thereof the following:

d. The agency shall assure that each homemaker-home health aide has received adequate training for each case to which he or she is assigned. In general the training required shall fit one of three patterns.

(1) Those workers providing general homemaker-home health aide service shall complete a training program equivalent in content and depth to "A Model Curriculum and Teaching Guide for the Instruction of the Homemaker-Home Health Aide" - DHHS Publication No. (HSA) 80-5508.

(2) Those workers providing only routine household maintainance services for self-directing clients shall complete at a minimum a sixteen-hour orientation course.

(3) Those workers providing only child protective homemaker-home health aide service may have a specialized training program subject to the approval of the Iowa state department of health.

ITEM 3. Amend subrule **80.3(2)** by adding the following new paragraph "f".

f. The personnel management system for chore service need not include "a" to "e" above but the responsible agency shall assure that each chore person has received adequate training for each case to which he or she is assigned. The training may be preassignment or on the job. The agency shall also provide sufficient supervision to assure the tasks are completed correctly and efficiently.

ITEM 4. Amend subrule 80.4(1) by striking and adding in lieu thereof the following:

80.4(1) Case records.

a. Case records for each family, patient or client receiving homemaker-home health aide service: The contents of the record shall include face sheet data; physician's diagnosis and treatment plan (if appropriate); assessments (initial and ongoing); initial plan of care, with updates as frequent as necessary in relation to the recipient's condition and in any case a minimum of once every three months; the assignment sheet for services to be rendered by the homemaker-home health aide; progress notes on the condition of the recipient and the services provided, made by the homemaker-home health aide; supervisory notes; the plan for termination; and referrals for other services. All notes shall be dated and signed. All case record information which is excluded from public access and inspection pursuant to Iowa Code section 68A.7, or designated as confidential by another statute shall be respected by the department of health.

b. The case record for a chore case shall include at a minimum the face data sheet, initial and ongoing assessments, assignment sheet for services to be provided by the chore person, and documentation of service and supervision provided.

ITEM 5. Amend rule 80.5 (69GA,ch 1260) by striking and adding in lieu thereof the following:

470—80.5 (69GA,ch 1260) Evaluation. The homemaker-home health aide program shall have a written plan for an overall evaluation of the total program no less than annually. The evaluation shall assess the extent to which the agency's program is appropriate, adequate, effective and efficient. The evaluation may be done by agency staff, professional people outside the agency in conjunction with consumers or a combination thereof. Results of the evaluation shall be reported to and acted upon by those responsible for the operation of the agency.

ARC 3408

HEALTH DEPARTMENT[470]

BOARD OF COSMETOLOGY 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 Cosmetology Examiners gives Notice of Intended Action to amend chapter 149 of the Iowa Administrative Code.

The proposed rule would permit an area school presently operating to operate a cosmetology school with one instructor for each increment of fifteen students or fraction thereof.

Any interested person may make written comments concerning the proposed rule not later than 4:30 p.m., December 31, 1982, addressed to Grace M. West, Executive Secretary, Iowa Board of Cosmetology Examiners, State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rule is intended to implement Iowa Code section 157.14.

Subrule 149.2(5) is amended to read as follows:

149.2(5) The number of instructors for each school shall be based upon total student enrollment, with a minimum of two instructors for every thirty students enrolled. Each school shall have a minimum of two full-time cosmetology instructors., *unless the school is already part of an on-campus vocational-technical program at an area school in this state in which event a minimum of one full-time instructor for each increment of fifteen students or fraction thereof shall be required.*

ARC 3409

HEALTH DEPARTMENT[470]

BOARD OF BARBER EXAMINERS

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code sections 147.76 and 258A.2, the Board of Barber Examiners gives Notice of Intended Action to amend Chapter 152 of the Iowa Administrative Code.

The proposed rules provide that a license will lapse if a licensee fails to renew within sixty days after the expiration date and provide the procedure for reinstating a lapsed license.

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

Consideration will be given to written comments concerning the proposed rules received by Keith Rankin, Executive Secretary, Board of Barber Examiners, State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319 not later than 4:30 p.m., December 29, 1982.

The proposed rules are intended to implement Iowa Code section 258A.2.

Chapter 152 is amended by adding the following new rule:

470—152.110(258A) Reinstatement of lapsed license. A licensee who fails to renew a license within sixty days after the expiration date of said license and who fails to obtain an exemption under rule 470—152.108(258A) shall be considered to have allowed the license to lapse.

152.110(1) A person who has allowed his license to lapse may apply to the board for reinstatement of the license.

152.110(2) Said reinstatement may be granted by the board if the applicant:

a. Submits written application for reinstatement to the board on forms provided by the board;

b. Pays all of the renewal fees then due;

c. Pays the penalty fee that is assessed by the board for failure to renew; and

d. Provides evidence of completion of continuing education during the period the license had lapsed.

(1) If the license had lapsed for three years or less, the applicant for reinstatement must complete a total number of hours of accredited continuing education computed by multiplying by six the number of years the license had lapsed;

(2) If the license had lapsed for four years, the applicant must complete at least twenty-five hours of accredited continuing education.

(3) If the license had lapsed for five years, the applicant must complete at least thirty hours of accredited continuing education.

(4) If the license had lapsed for more than five years, the applicant must complete a minimum of forty-five hours of accredited continuing education plus six hours for each additional year that the license had lapsed.

152.110(3) In lieu of the foregoing provisions of subrule 152.110(2), the applicant may furnish evidence of successful completion of the Iowa state license examination conducted within one year immediately prior to the submission of the application for reinstatement.

ARC 3414

INSURANCE DEPARTMENT[510]

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 514D.4, the Iowa Insurance Department hereby gives Notice of Intended Action to amend Chapter 36, Accident and Health Minimum Standards, Iowa Administrative Code.

Reductions in level of coverage by Medicare, Parts A and B, have resulted in a potential need by consumers to secure additional Medicare Supplement coverage. This change will allow such additional coverage to be purchased. The language is that contained in the Model Regulation of the National Association of Insurance Commissioners.

Any interested party may file a written statement of position on the proposed rule no later than December 29, 1982. Such written statement should be directed to the Commissioner of Insurance, Lucas State Office Building, Des Moines, Iowa 50319. Also, there will be a public hearing on December 29, 1982, at 1:30 p.m. in the office of the Insurance Department of Iowa, ground floor of the Lucas Building. Persons may present their views at the public hearing either orally or in writing. Persons wishing to make oral presentations at the public hearing should contact the Insurance Department (515) 281-5705, at least one day prior to the date of the public hearing. Oral presentations will be limited to ten minutes per person.

These rules are intended to implement Iowa Code section 514D.4.

The following amendment is proposed:

Amend 36.6(10) as follows:

36.6(10) "Limited benefit health insurance coverage" is any policy or contract which provides benefits that are less than the minimum standards for benefits required under 36.6(2) to 36.6(8). *A policy covering a specified disease or combination of diseases shall meet the requirements of 36.6(8) and shall not be offered for sale as a "limited coverage."* These policies or contracts may be delivered or issued for delivery in this state only if the outline of coverage required by 36.7(12) is completed and delivered as required by 36.7(2). ~~No policy may be issued as a limited benefit health insurance coverage which provides benefits that are less than the minimum standards for benefits required under 36.6(9).~~

This rule is intended to implement Iowa Code section 514D.4.

ARC 3424

TRANSPORTATION, DEPARTMENT OF[820]

07 MOTOR VEHICLE DIVISION

NOTICE OF INTENDED ACTION

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

On January 18, 1983, at their regular meeting at the Department of Transportation Complex, 800 Lincoln Way, Ames, Iowa, the transportation commission shall consider for adoption the administrative rules as described herein. Such action shall be in accord with the Iowa administrative procedures Act, Iowa Code chapter 17A, and department of transportation rules 820—[01,B] chapter 1, "Administrative Rules".

TRANSPORTATION, DEPARTMENT OF[820] *(cont'd)*

Written comments concerning these proposed rules or written requests to make an oral presentation at the above specified commission meeting shall be addressed to the Department of Transportation, Office of Financial/Operational Analysis, 800 Lincoln Way, Ames, Iowa 50010. Written comments or written requests to make an oral presentation may be accepted if received by the Department of Transportation on or before January 4, 1983.

Any person or agency, as defined in Iowa Code section 17A.2, subsections 1 and 6, may submit written comments or written requests to make an oral presentation. Such comments or requests shall clearly state:

1. The name, address and phone number of the person or agency authoring the comment or request.
2. The title and number of the proposed rule as given in this notice which is the subject of the comment or request. (Comments pertaining to a specific section of a proposed rule shall reference that section by subrule, paragraph, and subparagraph as appropriate.)
3. With regard to requests to make an oral presentation, the general content shall be indicated.

Pursuant to the authority of Iowa Code section 307.10, the Department of Transportation hereby gives Notice of Intended Action to amend 820—[07,D] chapter 2 entitled "Abandoned Vehicles".

This rule increases the reimbursable amounts for towing and storage of abandoned vehicles to reflect current charges incurred by police authorities.

This rule amendment is intended to implement Iowa Code chapter 321.

Proposed rulemaking actions:

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of Iowa Code section 307.10, rules 820—[07,D] chapter 2 entitled "Abandoned Vehicles" are hereby amended.

ITEM 1. Paragraph **2.2(5)**"a" is amended to read as follows:

a. Towing costs. Not to exceed ~~$25.00~~ *$35.00* per vehicle.

ITEM 2. Paragraph **2.2(5)**"b" is amended to read as follows:

b. Storage costs. Not to exceed ~~$2.00~~ *$3.00* per day per vehicle nor forty-five days per vehicle. When the department provides storage facilities for use by a police authority, the department shall not charge for such storage, nor shall the department allow any reimbursement for any storage costs otherwise incurred.

ARC 3431

TRANSPORTATION, DEPARTMENT OF[820]

07 MOTOR VEHICLE DIVISION

NOTICE OF INTENDED ACTION

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

On January 18, 1983 at their regular meeting at the Department of Transportation Complex, 800 Lincoln Way, Ames, Iowa the transportation commission shall consider for adoption the administrative rules as described herein. Such action shall be in accord with the Iowa administrative procedure Act, Iowa Code chapter 17A, and Department of Transportation rules 820—[01,B] Chapter 1, "Administrative Rules".

Written comments concerning these proposed rules or written requests to make an oral presentation at the above specified commission meeting shall be addressed to the Department of Transportation, Office of Financial/Operational Analysis, 800 Lincoln Way, Ames, Iowa 50010. Written comments or written requests to make an oral presentation may be accepted if received by the Department of Transportation on or before January 4, 1983.

Any person or agency, as defined in Iowa Code section 17A.2, subsections 1 and 6, may submit written comments or written requests to make an oral presentation. Such comments or requests shall clearly state:

1. The name, address and phone number of the person or agency authoring the comment or request.
2. The title and number of the proposed rule as given in this notice which is the subject of the comment or request. (Comments pertaining to a specific section of a proposed rule shall reference that section by subrule, paragraph, and subparagraph as appropriate.)
3. With regard to requests to make an oral presentation, the general content shall be indicated.

Pursuant to the authority of Iowa Code sections 307.10 and 322.13, the Department of Transportation hereby gives Notice of Intended Action to amend 820—[07,D] Chapter 10 entitled "Motor Vehicle Dealers, Manufacturers and Distributors".

Item 1 defines regular business hours.

Items 3 and 4 revise the format and condense the rules for obtaining a motor vehicle dealer's license. A zoning compliance requirement has been added, the six-month provision has been deleted from the lease requirement, and the filing time for supplemental statements has been specified.

Item 5 clarifies the form and usage of demonstration permits.

Item 6 specifies when a dealer's license is required for retail auction sales of motor vehicles.

Item 15 combines into one rule the provisions relating to denials, suspensions and revocations.

The remaining items delete irrelevant or obsolete material, correct form titles, renumber rules to re-establish the proper sequence of topics, and make needed editorial corrections.

These rule amendments are intended to implement Iowa Code chapter 322.

Proposed rulemaking actions:

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of Iowa Code sections 307.10 and 322.13, rules 820—[07,D] chapter 10 entitled "Motor Vehicle Dealers, Manufacturers and Distributors" are hereby amended.

ITEM 1. Subrule 10.1(6) is amended to read as follows:

10.1(6) "Designated location" means a building actually occupied where the public and the department may contact the owner or operator during regular business hours *which shall be a minimum of four consecutive hours between 9:00 a.m. and 4:00 p.m. for four days of each week.*

ITEM 2. Rescind subrules **10.1(11)** and **10.1(12)** and reserve the numbers for future use.

TRANSPORTATION, DEPARTMENT OF[820] *(cont'd)*

ITEM 3. Rescind all of rule 820—[07,D]10.2(322) and insert in lieu thereof the following:

820—[07,D]10.2(322) Criteria for obtaining a motor vehicle dealer's license.

10.2(1) Licensing information. Information about licensing requirements is available from the Department of Transportation, Office of Vehicle Registration, Dealer License Section, Lucas State Office Building, Des Moines, Iowa 50319; telephone 515/281-5921.

10.2(2) Application. The applicant shall accurately and completely fill out form number 417008, "Application for Dealer's License", and form number 417009, "Fee Section", and shall submit them to the department at the address shown in subrule 10.2(1) of this chapter.

10.2(3) Dealer's bond. The applicant shall obtain a surety bond in the amount of $25,000.00, and shall file the original bond with the department. The bond shall provide for notice to the department thirty days before cancellation. The department shall notify the bonding company of any convictions for violations of dealer laws. The department shall notify the dealer by certified mail that the dealer's license shall be revoked on the same date that the bond is canceled unless the bond is reinstated or a new bond is filed.

10.2(4) Place of business. At a designated location, the applicant shall maintain a place of business which shall include:

a. Telephone service and an adequate office area, separate from other facilities, in which are kept the business records, manufacturers' statements of origin, certificates of title or other evidence of ownership of each vehicle offered for sale.

b. A facility for reconditioning and repairing vehicles.

c. A facility for displaying vehicles. Dealers selling new trucks exclusively need only comply with the display facility requirements that apply to used motor vehicle dealers.

d. For a licensed motor vehicle dealer also doing business as a recycler, separate parking for vehicles being offered for sale at retail from vehicles that are salvage.

10.2(5) Other conditions.

a. For each make of new vehicle to be sold; the applicant shall submit a copy of a signed franchise agreement or contract with the manufacturer, importer or distributor. Form number 417005, "Agreement Relating to the Retail Sale of Motor Vehicles", shall be used when an established franchise agreement is not available. A written statement from the manufacturer, importer or distributor indicating intent to issue a franchise shall be acceptable until a franchise agreement, contract or form number 417005 is completed.

b. If the applicant is a corporation, it shall submit proof that the articles of incorporation have been registered with the state.

c. If the principal place of business or any extension is not owned by the applicant, a copy of a valid lease agreement shall be submitted to the department.

d. An investigator shall inspect and verify compliance with all statutory and regulatory requirements.

e. A license shall not be issued to any other person at the place of business of a person currently licensed under Iowa Code chapter 322.

f. The applicant shall provide the department with evidence, issued by the office responsible for the enforcement of zoning ordinances in the city, town or county, that the applicant's place of business is in compliance with all applicable zoning provisions or is a legal nonconforming use.

This rule is intended to implement Iowa Code section 322.4.

ITEM 4. Rescind all of rule 820—[07,D]10.3(322) and insert in lieu thereof the following:

820—[07,D]10.3(322) Additional requirements.

10.3(1) A dealer shall not represent or advertise the business under any name or style other than the name which appears on the license.

10.3(2) Every dealer shall file a written statement with the department within ten days after any change of name, location, method or plan of doing business. No license shall be valid until the changes set forth in the statement have been approved by the department.

This rule is intended to implement Iowa Code sections 322.4 and 322.8.

ITEM 5. Rescind subrule 10.4(3) and insert in lieu thereof the following:

10.4(3) Demonstration permits for motor trucks and truck tractors.

a. The department shall issue demonstration permit forms in triplicate to dealers to permit the use of dealer plates for demonstrating load capabilities of motor trucks and truck tractors. The fee for a permit shall be ten dollars.

b. The original copy of the permit shall at all times be carried in the vehicle to which it refers and shall be shown to any peace officer upon request. The second copy shall be mailed or delivered by the dealer to the department within forty-eight hours of issuance. The third copy shall be retained by the dealer for a minimum of one year from date of issuance.

c. The dealer shall completely and accurately fill out the permit form which shall include, but not be limited to, the following information:

(1) Date of issuance, date of expiration, and the specific dates for which the permit is valid. The expiration date shall be five days or less from the date of issuance.

(2) Dealer's name, address and license number.

(3) Name(s) of the prospective buyer(s) and all prospective drivers.

(4) Route of the demonstration trip. The point of origin and the destination shall be the dealership. No route outside Iowa shall be allowed.

(5) The make, year and vehicle identification number of the vehicle being demonstrated.

d. Only one demonstration permit per vehicle shall be issued to a prospective buyer.

This rule is intended to implement Iowa Code sections 321.57 to 321.63.

ITEM 6. Rule 820—[07,D]10.5(322) is amended as follows:

820—[07,D]10.5(322) Fleet vehicle sales *and retail auction sales.* *Any* ~~P~~persons who has~~ve~~ acquired vehicles for consumer use in a business shall obtain a dealer's license when ~~such~~ *more than six* vehicles are ~~resold~~ *offered for sale* at retail~~, including sale at retail at a public auction~~ *in a twelve-month period. Any other person planning to conduct a public auction of more than six motor vehicles in a twelve-month period shall obtain a dealer's license. All certificates of title for the motor vehicles offered for sale at public auction shall be duly assigned to the dealer.* The state of Iowa, counties, munici-

TRANSPORTATION, DEPARTMENT OF[820] *(cont'd)*

palities and other subdivisions of government shall not be required to obtain a dealer's license to sell *their vehicles* at retail. ~~vehicles owned by such entities~~. *A dealer's license issued under this rule shall not require a place of business as defined in Iowa Code subsection 322.2(5).*

This rule is intended to implement *Iowa Code* sections *322.2 and* 322.3. ~~The Code~~.

ITEM 7. The first unnumbered paragraph of rule 820—[07,D]10.7(322) is amended to read as follows:

820—[07,D]10.7(322) Criteria for obtaining a manufacturer's, distributor's or representative's license. Information concerning requirements for licenses of manufacturers, distributors, factory branches or distributor branches may be obtained ~~by the procedures set forth~~ *from the address given in subrule* 10.2(1) *of this chapter*. The applicant shall be provided with ~~an "Application for Manufacturer, Factory Branch, Distributor Branch License~~ *Manufacturer, Distributor, Wholesaler Application for License*", form number 417029, and an appropriate quantity of "~~Applications for~~ Factory or Distributors Representative's License", form number 417032~~1~~.

ITEM 8. Rescind subrule **10.7(3)**.

ITEM 9. Renumber rule 820—[07,D]**10.8(322)** as 820—[07,D]**10.10(322)** and renumber rule 820—[07,D] **10.10(321)**as 820—[07,D]**10.8(321)**.

ITEM 10. Amend the catchwords of renumbered rule 820—[07,D]10.8(321) as follows:

820—[07,D]10.8(321) Motor home~~systems~~*manufacturer's certification.*

ITEM 11. Rescind rule 820—[07,D]**10.9(321)**.

ITEM 12. Amend renumbered subrule 10.10(4) as follows:

10.10(4) Permits shall be issued for the duration of the event ~~or for fourteen days, whichever period of time is the shortest~~. Only one permit shall be issued to a dealer for an event.

ITEM 13. Renumber rule 820—[07,D]**10.11(321)** as rule 820—[07,D]**10.9(321)**and correct the rule citation within the renumbered rule to read as follows: Rule 820—[07,D]10.~~10~~8(321).

ITEM 14. Renumber rule 820—[07,D]**10.15(322)** as rule 820—[07,D]**10.11(321)** and amend the renumbered rule to read as follows:

820—[07,D]10.11(321) Right of inspection. Peace officers ~~employed by the department~~ shall have the authority to inspect vehicles or component parts of vehicles and the records and documents referred to in ~~section~~ *paragraph* 10.2(4)~~"ba"(1)~~ of this chapter.

This rule is intended to implement *Iowa Code* sections ~~322.13, The Code~~ *321.62 and 321.95.*

ITEM 15. 820—[07,D] chapter 10 is amended by adding the following new rule:

820—[07,D]10.15(321,322) Denial, suspension or revocation.

10.15(1) If an applicant or licensee fails to comply with this chapter of rules or Iowa Code chapter 322, the department may deny, suspend or revoke the license.

10.15(2) If a dealer fails to comply with rule 820—[07,D]10.4(321) or Iowa Code sections 321.57 to 321.63, the department may deny or suspend the dealer's right to issue demonstration permits for a period not to exceed six months.

10.15(3) If a dealer fails to comply with rule 820—[07,D]10.10(322) or Iowa Code subsection 322.5(2), the department may deny the dealer's applications for fair, show or exhibition permits for a period not to exceed six months.

This rule is intended to implement Iowa Code sections 321.57 to 321.63, 322.6, 322.9 and 322.31.

ARC 3425

TRANSPORTATION, DEPARTMENT OF[820]

07 MOTOR VEHICLE DIVISION

NOTICE OF INTENDED ACTION

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

On January 18, 1983, at their regular meeting at the Department of Transportation Complex, 800 Lincoln Way, Ames, Iowa, the transportation commission shall consider for adoption the administrative rules as described herein. Such action shall be in accord with the Iowa administrative procedure Act, Iowa Code chapter 17A, and department of transportation rules 820—[01,B] chapter 1, "Administrative Rules".

Written comments concerning these proposed rules or written requests to make an oral presentation at the above specified commission meeting shall be addressed to the Department of Transportation, Office of Financial/Operational Analysis, 800 Lincoln Way, Ames, Iowa 50010. Written comments or written requests to make an oral presentation may be accepted if received by the department of transportation on or before January 4, 1983.

Any person or agency, as defined in Iowa Code section 17A.2, subsections 1 and 6, may submit written comments or written requests to make an oral presentation. Such comments or requests shall clearly state:

1. The name, address and phone number of the person or agency authoring the comment or request.
2. The title and number of the proposed rule as given in this notice which is the subject of the comment or request. (Comments pertaining to a specific section of a proposed rule shall reference that section by subrule, paragraph, and subparagraph as appropriate.)
3. With regard to requests to make an oral presentation, the general content shall be indicated.

Pursuant to the authority of Iowa Code section 307.10, the department of transportation hereby gives Notice of Intended Action to amend 820—[07,D] chapter 11 entitled "Vehicle Registration and Certificate of Title".

Items 3, 4, 11, 15 and 16 amend rules to comply with 1982 Iowa Acts, chapter 1251, which exempts mobile homes from annual registration.

Item 4 also allows county treasurers to require evidence of a truck's weight.

Items 6 and 9 amend the procedure for surrender of foreign certificates of title.

Items 7 and 8 update the certificate of title to specify use of special fuel in compliance with 1982 Iowa Acts, chapter 1218.

Items 10 and 17 clarify the procedures for cancellation of titles, registration or plates and add a form for use by peace officers.

TRANSPORTATION, DEPARTMENT OF[820] *(cont'd)*

Item 12 requires amateur radio operators to show their FCC license when applying for amateur radio plates.

Item 13 deletes the requirement that physicians estimate the duration of temporary handicaps.

The remaining items update terminology, add implementation clauses and clarify the language.

These rule amendments are intended to implement Iowa Code chapter 321.

Proposed rulemaking actions:

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of Iowa Code section 307.10, rules 820—[07,D] chapter 11 entitled "Vehicle Registration and Certificate of Title" are hereby amended.

ITEM 1. Subrule 11.1(7) is amended to read as follows:

11.1(7) Manufacturer's ~~statement~~ *certificate* of origin means a certification signed by the manufacturer, *distributor* or importer, that the vehicle described ~~therein~~ has been transferred to the person or dealer named ~~therein~~ and that the transfer is the first transfer of the vehicle in ordinary trade and commerce. ~~The description shall include the make, model, style vehicle identification number, and if a motorized bicycle the engine displacement and maximum speed, and any other information which may be required by statute or rule.~~ The terms "manufacturer's *statement* ~~certificate~~", "importer's *statement or* certificate", "MSO" and "MCO" shall be synonymous with the term "manufacturer's ~~statement~~ *certificate* of origin". *In addition to the requirements of Iowa Code subsection 321.45(2), the certificate shall contain a description of the vehicle which includes the make, model, style and vehicle identification number. The description of a motorized bicycle shall also specify the engine displacement and maximum speed.*

ITEM 2. Rule 820—**[07,D]11.1(321)** is amended by adding an implementation clause as follows:

This rule is intended to implement Iowa Code sections 321.1, 321.20, 321.23, 321.45, 321.46, 321.50, 321.123, 321.134 and 321.157.

ITEM 3. Amend subparagraph **11.3(6)**"b"(3) as follows:

(3) The applicant shall surrender the application forms to the county treasurer of the applicant's residence. The county treasurer shall issue a certificate of title ~~and~~ *or* registration ~~card~~ *receipt* upon payment of the appropriate fees.

ITEM 4. Rule 820—[07,D]11.3(321) is amended by adding the following new subrules and implementation clause:

11.3(9) Tax clearance form. If the vehicle described on the application is a mobile home, the applicant shall submit a tax clearance form to show that no taxes are owing. The form may be obtained by any owner of record of the mobile home from the county treasurer of the owner's residence.

11.3(10) Weigh ticket. If application is being made to lower the tonnage on any motor truck or truck tractor, the county treasurer may require a copy of a stamped weigh ticket issued by any public scale.

This rule is intended to implement Iowa Code section 321.122 and sections 321.24 and 321.46 as amended by 1982 Iowa Acts, chapter 1251.

ITEM 5. The first paragraph of subrule 11.4(1) is amended to read as follows:

11.4(1) New vehicle. If application is made for a new vehicle, a manufacturer's ~~or importer's statement~~ *certificate* of origin, properly assigned to the applicant, shall be submitted. A manufacturer's ~~or importer's statement~~ *certificate* of origin shall not be accepted if the assignment to the applicant is made by any person other than the manufacturer, importer, distributor or a licensed motor vehicle dealer.

ITEM 6. Subrule 11.4(8) is amended to read as follows:

11.4(8) Supporting document retained by county treasurer. The supporting document, *except in the case of a foreign certificate of title*, shall be retained by the county treasurer. *When a foreign certificate of title is surrendered, the county treasurer shall note the number of the Iowa title and the date of issuance on the face of the certificate and forward it to the department. The title number and the state or country that issued the foreign certificate of title shall be noted on the county treasurer's copy of the Iowa title issued.*

This rule is intended to implement Iowa Code sections 321.20 and 321.45.

ITEM 7. Subrule 11.6(1) is amended to read as follows:

11.6(1) Motor vehicle control number assigned to the owner *and the motor vehicle number code.*

ITEM 8. Subrule 11.6(2) is amended to read as follows:

11.6(2) ~~Motor vehicle control number code.~~ *Type of fuel.*

ITEM 9. Subrule 11.6(6) is amended to read as follows:

11.6(6) Previous title certificate number *or, if the previous title is a foreign title, the identity of the foreign state or country.*

ITEM 10. Strike rule 820—[07,D]11.15(321) and insert in lieu thereof the following:

820—[07,D]11.15(321) Cancellation of a certificate of title. The department shall cancel a certificate of title under the provisions of Iowa Code subsection 321.101(8), unless the ownership of the vehicle is being disputed, in which case the department shall require a court order for title cancellation.

11.15(1) Cancellation for fraud. A certificate of title which has been fraudulently obtained shall be cancelled by the department. Form 411012, "Request for Cancellation of Title or Revocation or Suspension of Registration and Plates", shall be signed by the supervisor of the requesting peace officer and submitted to the department. The request shall provide sufficient information for the department to determine the existence of a fraudulent situation, including but not limited to the following:

a. The certificate of title was issued for a vehicle other than the one possessed or being used.

b. The owner(s) committed a fraudulent practice as defined in Iowa Code section 321.100 or made fraudulent application as defined in Iowa Code section 321.97.

c. A certificate of title is being used as the ownership document on a stolen or embezzled vehicle.

11.15(2) Cancellation for error. A certificate of title which has been improperly or erroneously issued shall be cancelled by the department. A written request for cancellation signed by the county treasurer of the issuing county shall be submitted to the department. The request shall include sufficient information for the department to determine the cause of the improper or erroneous issuance, including but not limited to the following:

a. The certificate of title does not contain the information required in Iowa Code section 321.24 or rule 820—[07,D]11.6(321).

b. The information on the certificate of title is not correct because of an error made in the county treasurer's office.

TRANSPORTATION, DEPARTMENT OF[820] *(cont'd)*

c. The certificate of title was issued on a vehicle which is exempt from the titling provisions of Iowa Code chapter 321.

d. The face of the certificate of title fails to indicate a lien of record when a lien of record exists.

11.15(3) Additional information. If the department cannot determine from the information submitted that a valid reason for cancellation exists, the department shall deny the request for cancellation of title, may request additional information or may obtain a legal opinion. The additional information may include, but is not limited to, evidence of a court conviction or a court order.

This rule is intended to implement Iowa Code sections 321.24, 321.97, 321.100 and 321.101.

ITEM 11. Rescind rule 820—[07,D]11.40(321) and insert in lieu thereof the following:

820—[07,D]11.40(321) Mobile home converted to real property. When a mobile home is converted to real property under Iowa Code section 135D.26, the assessor shall collect its motor vehicle certificate of title. The assessor shall note the conversion on the face of the certificate of title above the assessor's signature, date the notation and deliver the certificate to the county treasurer. The county treasurer shall note the conversion on the vehicle record in the county treasurer's office, cancel the record and send the certificate of title to the department. The department shall cancel its record for that mobile home.

This rule is intended to implement Iowa Code sections 135D.26 and 321.1.

ITEM 12. Paragraph **11.41(2)**"a" is amended to add new subparagraph (3) as follows:

(3) The amateur radio license issued by the federal communications commission shall be shown to the county treasurer at the time of application.

ITEM 13. Subparagraph **11.41(2)**"b"(2) is amended to read as follows:

(2) The application shall include a signed physician's statement certifying that the applicant is confined to a wheelchair or has significant difficulty or insecurity in walking. The statement ~~must~~ *shall* indicate whether the handicap is permanent~~,~~ *or* temporary~~, or of unknown duration. If the handicap is not permanent, the physician shall estimate the number of months the handicap is expected to continue.~~

ITEM 14 Amend the implementation clause of rule 820—**[07,D]11.41(321)** as follows:

This rule is intended to implement *Iowa Code* section 321.34~~, The Code, and Acts of the Sixty-eighth General Assembly, 1980 Session, chapter 1094, section 6~~.

ITEM 15. Rule 820—[07,D]11.43(321) is amended to read as follows:

820—[07,D]11.43(321) Storage of vehicles. The owner of a vehicle upon which the registration fee is not delinquent~~, who, before February 1 of any year,~~ *may* surrender~~s~~ all registration plates for ~~said~~ *the* vehicle to the county treasurer ~~of the county in which said~~ *where the* vehicle is registered~~,~~ *and* shall have the right to register the vehicle ~~at any~~ later ~~period of time~~ upon payment of the ~~current~~ *annual* registration fee. The registration plates which have been surrendered shall be retained and reissued to the owner if the vehicle is registered *again* within thirty days from the date of surrender of the plates. If the vehicle is not registered within the thirty-day period, the plates shall be destroyed and ~~the~~ new plates assigned to the owner ~~at such time as~~ *when* the vehicle is registered, without payment of a replacement plate fee. ~~This rule shall not apply to the owner of a mobile home which is subject to registration under the provisions of section 321.123(3). The owner of such mobile home shall be required to pay the registration fee in the manner provided in such section.~~ The owner of a motor vehicle which is placed in storage ~~by such~~ *when the* owner ~~upon that person's entry into~~ *enters* the military service of the United States shall comply with ~~the provisions of~~ *Iowa Code sub*section 321.126(4*3*), and ~~the provisions of~~ this rule shall not *apply* ~~be applicable to such person~~.

This rule is intended to implement Iowa Code sections 321.126 and 321.134.

ITEM 16. Rule 820—[07,D]11.44(321) is amended to read as follows:

820—[07,D]11.44(321) Penalty on registration fees. Penalty on the payment of registration fees shall be determined in accordance with the following rules:

11.44(1) Fractional year fee. When a vehicle becomes subject to registration ~~in February or succeeding months to and including November~~, penalty on the registration fee shall accrue *from* the first day of the month following the month that the vehicle ~~became~~ *becomes* subject to registration.

11.44(2) When delinquency extends beyond the current year. When the penalty on a delinquent registration fee extends beyond the current year, the penalty shall continue to accrue until paid. Penalty shall only accrue on the fee applicable at the time ~~such~~ *the* delinquency accrued and shall not be applicable to subsequent registration fees which have not been paid. ~~except that penalty shall accrue on each semiannual fee applicable to a mobile home at such time as each fee becomes delinquent.~~

11.44(3) Specific penalty date. When a specific penalty date is provided by law, the penalty shall accrue ~~on~~ *from* that date, ~~regardless of whether~~ *even if* the ~~last~~ day ~~of the previous month was~~ *is* a Saturday, Sunday or holiday.

11.44(4) Statement of nonuse. If the owner of a vehicle, on which the registration fees have not been paid for ~~three or~~ more *than three complete registration* years, certifies to the county treasurer of the owner's residence that the vehicle has not been moved or operated upon the highway since the year it was last registered, the county treasurer may register the vehicle upon payment of the current year's registration fee. ~~The statement of nonuse shall not apply to a mobile home.~~

This rule is intended to implement Iowa Code section 321.134.

ITEM 17. Rule 820—[07,D]11.45(321) is amended to read as follows:

820—[07,D]11.45(321) Revocation *or suspension* of registration. *The department shall suspend or revoke registration and plates under Iowa Code section 321.101 when a written request is received from a peace officer or the county treasurer's office that issued the registration and plates. A request from a peace officer shall be submitted on Form 411012, "Request for Cancellation of Title or Revocation or Suspension of Registration and Plates", signed by the officer's supervisor. A request from a county treasurer's office shall be signed by the county treasurer.* When the registration of a vehicle has been revoked as provided in *Iowa Code* section 321.101, the registration fee and penalty shall accrue ~~in the same manner~~ as *if* ~~though~~ the plates ~~so revoked~~ had never been issued, unless waiver of registration fees and penalties is specifically provided for in *Iowa Code* chapter 321.

This rule is intended to implement Iowa Code section 321.101.

ARC 3407

COLLEGE AID COMMISSION[245]

Pursuant to the authority of Iowa Code section 261.37, subsection 5, and section 421.17 as amended by 1982 Iowa Acts, chapter 1057, the Iowa College Aid Commission emergency adopts amendments to Chapter 10 "Iowa Guaranteed Student Loan Program" to provide rules for the set off of a defaulter's income tax refund or rebate.

In compliance with Iowa Code section 17A.4(2), the commission finds that public notice and participation is unnecessary as Iowa Code section 421.17, as amended by 1982 Iowa Acts, chapter 1057 authorizes the Tax Setoff Program. These rules, which provide for the necessary notifications, outline the procedures for contesting a claim, and provide for dividing a refund between the defaulter and the defaulter's spouse are considered noncontroversial.

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 upon filing with the Administrative Rules Coordinator on November 19, 1982, as it confers a benefit upon the public to ensure speedy implementation of the tax offset program.

The commission adopted this rule at a regular meeting on October 26, 1982.

This rule implements Iowa Code section 421.17 as amended by 1982 Iowa Acts, chapter 1057.

ITEM 1. Rule 245—10(261) is amended by adding the following new rules:

245—10(261) Chapter XVI, Tax Setoff Program.

A. Setoff against income tax refund or rebate. A setoff against a borrower's income tax refund or rebate shall be authorized when the borrower is in default on a guaranteed student or parental loan under chapter 261. Iowa Code section 421.17, as amended by 1982 Iowa Acts, chapter 1057, sets forth the criteria to be used for the setoff. In addition, the following rules shall apply.

1. Notification of claim. Upon receiving from the department a notice of the defaulter's entitlement to a refund or rebate of at least fifty dollars, the commission shall give written notice to the defaulter in accordance with Iowa Code section 421.17, as amended.

2. Procedures for contesting a claim. When the defaulter desires to contest a claim, a written request shall be submitted to the commission within ten days after the notice is mailed. When the request is made within the ten-day time limit, the defaulter shall be afforded an opportunity for hearing. Such hearing shall be granted in accordance with Iowa Code chapter 17A, with the exception that written notice to the defaulter may be delivered by ordinary mail as well as by the means specified in section 17A.12(1). An appeal taken from the decision of a hearing officer and any subsequent appeals shall be taken in accordance with chapter 17A.

3. Provision for joint income tax returns. When the defaulter desires that a joint income tax refund or rebate be divided between the defaulter and the defaulter's spouse, a written request shall be submitted to the commission within ten days after the notice is mailed.

4. Notification of setoff. The commission shall notify the defaulter in writing upon completion of the setoff.

This rule implements Iowa Code section 421.17 (1981) as amended by 1982 Iowa Acts, chapter 1057.

[Filed emergency 11/15/82, effective 11/19/82]
[Published 12/8/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/8/82.

ARC 3412

HEALTH DEPARTMENT[470]

Pursuant to the authority of Iowa Code section 135.11(15), the Department of Health adopts and implements on an emergency basis the following rules creating Chapter 73 in Title XII.

This filing contains four rules all of which relate to the Special Supplemental Food Program for Women, Infants and Children (WIC). The first rule describes the program. The second rule adopts by reference federal regulations governing the WIC program found at 7 C.F.R. Part 246. The third rule explains where the rules may be obtained. The fourth rule provides notice of those situations where the department believes that certain rules respecting the WIC program should be exempt from the notice and public participation provisions of Iowa Code section 17A.4(2).

Pursuant to Iowa Code section 17A.4(2), the department believes that notice and public participation are impracticable in this case since the department is required to operate its WIC program, a federal program, according to the provisions of the federal law and regulations; the department has no authority to change the terms of the federal regulations based upon public comments that might be received in the Iowa rulemaking process.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the department finds that these rules should become effective immediately since adoption of the rules assures continued operation of the Iowa WIC program in accordance with federal law which program provides supplemental foods and nutrition education to thousands of needy Iowa mothers, infants and young children.

The board of health adopted these rules on November 10, 1982. The Commissioner of Public Health adopted these rules on November 15, 1982.

No Iowa law exits governing the operation of the WIC program. These rules implement federal law found at 42 U.S.C. §1786 and are in accordance with Iowa Code section 135.11(1).

These rules shall become effective upon publication in the Iowa Administrative Bulletin, December 8, 1982.

TITLE XII
PUBLIC HEALTH PROGRAM
CHAPTER 73
SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC)

470—73.1(135) Program explanation. The Special Supplemental Food Program for Women, Infants and Chil-

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

dren (WIC) is a federal program operated pursuant to agreement with the states. The purpose of the program is to provide supplemental foods and nutrition education to eligible pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate incomes. The WIC program is administered on the federal level by the U.S. Department of Agriculture, Food and Nutrition Service (FNS). The Iowa state department of health serves as the administering agency for the state of Iowa. The Iowa state department of health enters into contracts with selected local agencies on an annual basis for the provision of WIC services to eligible participants.

470—73.2(135) Adoption by reference. Federal regulations found at 7 C.F.R. Part 246 (effective as of January 1, 1982) shall be the rules governing the Iowa WIC program and are incorporated by reference herein.

470—73.3(135) Availability of rules. Copies of the federal rules adopted by reference by 73.2 are available from: Director, Iowa WIC Program, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319, (515) 281-6650. Federal rules are also available from local WIC agencies.

470—73.4(135) Certain rules exempted from public participation. The Iowa state department of health finds that certain rules should be exempted from notice and public participation as being in a very narrowly tailored category of rules for which notice and public participation are unnecessary as provided in Iowa Code section 17A.4(2). Such rules shall be those that are mandated by federal law and regulation governing the Iowa WIC program where the department has no option but to adopt such rules as specified and where federal funding for the WIC program is contingent upon the adoption of such rules.

[Filed emergency 11/17/82, effective 12/8/82]
[Published 12/8/82]

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ARC 3413

HEALTH DEPARTMENT[470]

Pursuant to the authority of Iowa Code section 135.72, the Department of Health adopts and implements the following amendments to IAC, 470—subrules 202.4(4) and 202.4(5) on an emergency basis.

IAC, 470—subrules 202.4(4) and 202.4(5) were adopted and implemented on an emergency basis as published in the Iowa Administrative Bulletin on September 29, 1982, ARC 3254. The effective date of these subrules was also September 29, 1982. [Notice of Intended Action — Hearing, ARC 3255, IAB, September 29, 1982]

At the Administrative Rules Review Committee meeting held on October 12, 1982, question was raised as to the legality of these subrules and their potential inconsistency with Iowa Code section 135.63(2), as amended by 1982 Iowa Acts, chapter 1194, section 3, effective July 1, 1982. After considerable discussion, the Committee requested that the Department place a sunset clause on both subrules, stating that the rules shall be effective only until June 30, 1983. This filing is for purposes of complying with that request.

The public had opportunity for comment after notice at the State Board of Health meeting of November 10, 1982, and the Iowa Health Facilities Council meeting of November 12, 1982. The Department finds, pursuant to Iowa Code section 17A.4(2), that further public notice and participation are unnecessary since the amendments contained therein are technical and in keeping with the provisions of 470—subrules 202.4(4) and 202.4(5) as originally filed which provided that the subrules would be effective only for so long a period of time as is required by federal law for the receipt of federal funds.

Pursuant to section 17A.5(2)"b", the Department also finds that these subrules should become effective immediately upon publication and the thirty-five-day waiting period should be waived since the amendments confer a benefit to the public by offering an assurance that these subrules, which have been questioned as inconsistent with Iowa law but which are necessary for adoption to maintain continued receipt of significant federal funds, will not be effective after a certain set date.

These amendments are to become effective on December 8, 1982.

The Health Facilities Council approved these amendments on November 12, 1982. The Board of Health adopted these amendments on November 10, 1982. The Commissioner of Public Health adopted these amendments on November 15, 1982.

Subrules 202.4(4) and 202.4(5), as amended, implement federal law and regulations, 42 U.S.C. section 300m-6(b) and 42 C.F.R. section 123.405(b).

Subrule **202.4(4)** is amended by repealing the last paragraph thereof which read as follows:

The provisions of this subrule shall be effective only for so long a period of time as is necessary for compliance with federal law and the receipt of federal funds.

The following is adopted in place of the above:

This subrule shall be effective until June 30, 1983.

Subrule **202.4(5)** is amended by repealing the last paragraph which read as follows:

The provisions of this subrule shall be effective only for so long a period of time as is necessary for compliance with federal law and the receipt of federal funds.

The following is adopted in place of the above:

This subrule shall be effective until June 30, 1983.

[Filed emergency after notice 11/17/82, effective 12/8/82]
[Published 12/8/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/8/82.

ARC 3419

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of 1982 Iowa Acts, chapter 1260, rules of the Department of Social Services appearing in the IAC relating to unemployed parent workfare

program (chapter 59) are hereby amended. This rule clarifies when a religious institution may be utilized as a work site.

The Department of Social Services finds that notice and public participation are impracticable. Counties are starting to operate programs and this rule is necessary to remain in compliance with federal requirements of separation of church and state. Also, since the program is scheduled to end March 31, 1983 it is unlikely this rule would get through the rulemaking process in time. Therefore, this rule is filed pursuant to Iowa Code section 17A.4(2).

The Department of Social Services finds that this rule confers a benefit on the public. It allows counties the flexibility to include religious institutions as work sites while maintaining compliance with legal requirements. Therefore, this rule is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Social Services adopted this rule November 15, 1982. This rule is intended to implement 1982 Iowa Acts, chapter 1260, section 86. This rule shall become effective immediately upon filing.

Rule 770—59.1(69GA,ch 1260) is amended to read as follows:

770—59.1(69GA,ch 1260) Contracts. The department of social services (department) shall establish a community work experience program for ADC unemployed parents by contracting with counties (county) or local public or nonprofit organizations (hereto referred to as agency) designated by both the county board of supervisors and the department of social services to provide work sites and assign persons referred by the department to appropriate work sites. The Community Work Experience Contract, PA-6104-5, shall be used. Designation of Local Agency Agreement, PA-3166-5, shall also be used when a local agency is designated by the department and a county.

59.1(1) A contracting county or agency may obtain work sites for participants from other public and nonprofit organizations within the county. These organizations shall supervise participants and report immediately to the county or agency matters that the county or agency is required to report to the department. The county or agency shall have no further responsibility for participants assigned to these organizations other than provided in these rules.

59.1(2) *Participants may be placed at work sites with religious institutions only when work performed is nonsectarian and not in support of sectarian activities. Participants may not be used to replace regular employees in the performance of nonsectarian work for the purpose of enabling regular employees to engage in sectarian activities.*

[Filed emergency 11/19/82, effective 11/19/82]
[Published 12/8/82]

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ARC 3420

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of Iowa Code section 237.3, the Department of Social Services is rescinding rules published in the IAC relating to licensing requirements for institutional care (chapter 107). This chapter is being rescinded because it has been replaced by 770—chapters 114, 115, and 116.

The Department of Social Services finds that notice and public participation are unnecessary. This is a technical amendment since the chapter has been replaced and has no force or effect. The department originally proposed rescinding the chapter in ARC 1703, January 7, 1981. However, all related chapters were not ready at the same time and the department missed rescinding this chapter when the remainder of the licensing rules were finalized. Therefore, this rule is filed pursuant to Iowa Code section 17A.4(2).

The Department of Social Services finds that this rule confers a benefit on the public. Rescinding this chapter will avoid confusion that may result if people are misdirected to this chapter to find licensing standards. Therefore, this rule is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Social Services adopted this rule November 15, 1982. This rule is intended to implement Iowa Code chapter 237. This rule shall become effective immediately upon filing.

770—**chapter 107** is rescinded.

[Filed emergency 11/19/82, effective 11/19/82]
[Published 12/8/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/8/82.

ARC 3432

COMMERCE COMMISSION[250]

The Iowa State Commerce Commission hereby gives notice, pursuant to Iowa Code section 17A.4 that on November 19, 1982, the Commission issued an order in Docket No. RMU-82-15, In Re: Iowa State Commerce Commission Rules Amending Chapter 250—7, Iowa Administrative Code, "Order Adopting Rules," amending Iowa Admin. Code 250—7. Notice of Intended Action was published in the September 1, 1982, Iowa Administrative Bulletin as ARC 3180.

The finally adopted rules include one change from the proposed rules in the Notice of Intended Action which were made in response to comments of utilities received by the commission. The change limits the filing requirement of advertising information to information related to advertising which will be charged to ratepayers. The change is more fully discussed in the Commission's "Order Adopting Rules," issued November 19, 1982, in Docket No. RMU-82-15.

These rules are intended to implement Iowa Code chapter 476. The adopted rules will become effective January 12, 1983.

ITEM 1. Amend subrule **7.4(3)** by striking paragraph "b" and reserve for future use.

ITEM 2. Amend subrule **7.4(6)**, paragraph "e", by adding the following item 24:

24. Information relating to advertisements including:

(a) A portfolio of all advertisements charged to ratepayers either produced, recorded or a facsimile thereof;

(b) Cost data for all advertisements and the accounting treatment utilized; and

(c) An account of total advertising expense including a breakdown of the expense by category.

[Filed 11/19/82, effective 1/12/83]

[Published 12/8/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/8/82.

ARC 3433

COMMERCE COMMISSION[250]

The Iowa State Commerce Commission hereby gives notice, pursuant to Iowa Code section 17A.4, that on August 13, 1982, the Commission issued an order in Docket No. RMU-82-13, In Re: Iowa State Commerce Commission Rules Revising the Iowa Electrical Safety Code, Iowa Admin. Code 250—chapter 25. Notice of Intended Action was published in the September 1, 1982, Iowa Administrative Bulletin as ARC 3182.

The adopted rules contain two changes from the rule published in the Notice of Intended Action. Subrule 25.2(2) paragraph "b" includes a reference to Rule 234E as well as to Rule 232, and footnote 19 of table 232-1 has been modified to allow governmental requirements to control if they were equal to or greater than those required by the Commission rules. The rules are intended to implement Iowa Code sections 476.2 and 476.8. The rule will become effective January 12, 1983, pursuant to Iowa Code sections 17A.5 and 17A.6.

ITEM 1. Amend subrule 25.2(1) by striking it in its entirety (including paragraphs "a" to "e") and inserting in lieu thereof:

25.2(1) National electrical safety code. The American National Standards Institute (ANSI) C2-1981 "National Electrical Safety Code" as ultimately conformed to the ANSI approved draft by correction of publishing errors through issuance of printed corrections is adopted as part of the Iowa Electrical Safety Code.

ITEM 2. Amend subrule **25.2(2)** paragraph "a" to read as follows:

a. ~~The last sentence of~~ Rule ~~202B1~~ *013A2* is changed to read:

"Types of construction and ~~M~~ *methods of* ~~construction and~~ installation other than specified in the rules may be used experimentally to obtain information, if done where ~~proper~~ *qualified* supervision ~~would be~~ *is* provided and prior approval is obtained from the commission."

ITEM 3. Amend subrule **25.2(2)** paragraph "b" to read as follows:

b. Rule ~~202B2~~ *013B1* is changed by adding ~~a second~~ *new* paragraphs which reads:

"Adequate protection of the public requires ~~that~~ certain existing electric transmission lines ~~be reconstructed to~~ obtain not less than the minimum standards specified in this code. The specific overhead supply line clearance requirements (Rule 232 *and Rule 234E*) ~~and latest date for compliance shall be~~ *are* as follows:

(1) Clearance over or near swimming areas; ~~by 3-31-1981.~~

(2) Vertical clearance over public or posted private land and water areas for rigging or launching sailboats; ~~by 3-31-1981.~~

(3) Vertical clearance over water areas suitable for sailboating. ~~by 3-31-1981.~~

(4) ~~Vertical clearance over water areas not suitable for sailboating by 12-31-1982.~~

Where an existing electric transmission line has less than the minimum clearance requirement (Rule 232) for vertical clearance over water areas not suitable for sailboating, the lines shall be reconstructed by 12-31-1982 to obtain not less than the minimum vertical clearance".

ITEM 4. Amend subrule **25.2(2)** paragraphs **"c"** and **"d"** by deleting 25.2(2)"d", renumbering subrule 25.2(2)"c" as 25.2(2)"d", and inserting the following new subrule 25.2(2)"c":

c. Table 232-1, Footnote 19 is changed to read:

"Where the U.S. Army Corps of Engineers or the state, or a surrogate thereof, issues a crossing permit, the clearances of that permit shall govern if equal to or greater than those required herein. Where the permit clearances are less than those required herein and water surface use restrictions on vessel heights are enforced, the permit clearances may be used."

ITEM 5. Amend subrule **25.2(3)**, by striking the words "C2.2-1976" in the sentence and inserting in lieu thereof "C2-1981."

ITEM 6. Amend **24.11(2)"e"(2)(b)** by striking it in its entirety, and reserve for future use.

[Filed 11/19/82, effective 1/12/83]

[Published 12/8/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/8/82.

ARC 3428

HEALTH DEPARTMENT[470]

Pursuant to the authority of Iowa Code sections 135.11(15) and 136C.3(3), the State Department of Health hereby adopts amendments as Title V, "Radiation Emitting Equipment", Chapter 42, "Operating Procedures and Standards for use of Radiation Emitting Equipment", Iowa Administrative Code.

The Iowa State Board of Health at its regular meeting on November 10, 1982, adopted the following rule; this adoption was to be effective November 17, 1982, with the provision no changes were made to the rule between November 10 and November 17. This provision was met, no changes were made.

Notice of Intended Action was published in the Iowa Administrative Bulletin, Volume V, Number 3, October 13, 1982, as ARC 3299.

This rule is identical to that published as Notice of Intended Action with the exception of gender changes in subrule 42.1(4) and the deletion of the erroneously placed word "direct" at 42.1(6)"a", line 6.

This rule is to be effective on January 12, 1983.

This rule is intended to implement Iowa Code section 136C.3(3).

Rescind chapter 42 and insert in lieu thereof the following:

CHAPTER 42

OPERATING PROCEDURES AND STANDARDS FOR USE OF RADIATION EMITTING EQUIPMENT

470—42.1(136C) Minimum training standards for diagnostic radiographers.

42.1(1) Definitions.

a. "Approved course of study" means a curriculum and associated training and testing materials which the agency has determined is adequate to train students to meet the requirements of 42.1(136C).

b. "Clinical education" means the direct participation of the student in completion of diagnostic studies.

c. "Contrast media" means material intentionally administered to the human body to define a part(s) which is not normally visualized radiographically.

d. "Diagnostic radiography" means the science and art of applying X-radiation to human beings for diagnostic purposes other than in dental radiography. It shall include adjustment or manipulation of X-ray equipment and appurtenances including image receptors, positioning of patients and processing of films in such a manner as to materially affect the radiation exposure of patients.

e. "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, osteopathy, chiropractic, or podiatry.

f. "Student" means a person enrolled in and participating in an approved course of study.

g. "Supervision" means responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic or therapeutic purposes.

h. "X-radiation" means penetrating electromagnetic radiation with energy greater than 0.1 kV produced by bombarding a metallic target with fast electrons in a high vacuum.

42.1(2) Types of operators.

a. "General diagnostic radiographer" means a person, other than a licensed practitioner, who applies X-radiation to any part of the human body for diagnostic purposes while under the supervision of a licensed practitioner.

b. "Limited diagnostic radiographer" means a person, other than a licensed practitioner or dental radiographer, who applies X-radiation to one specific body part while under the supervision of a licensed practitioner. The exceptions to the one body part restriction are:

(1) The limited individual may perform both chest and extremity radiographic examinations if that individual has received appropriate clinical experience during the didactic training required under 42.1(4)"b" and 42.1(5)"b", and

(2) When an individual gains the status of a limited diagnostic radiographer as outlined in 42.1(4)"b"(2), (3) or (4) that individual may perform the permitted radiographic procedures.

c. "Conditional diagnostic radiographer (hardship)" means a diagnostic X-ray machine operator who has minimal clinical competency but does not fully meet the appropriate requirements of 42.1(3) and 42.1(4) or is not otherwise covered under 42.1(5), 42.1(6) or 42.1(8), but in which case there is substantial evidence that the people in the locality of the state in which this exemption is sought, would be denied adequate health care because of the unavailability of appropriately qualified persons under 42.1(136C). A conditional exemption shall be granted for limited periods of time to be prescribed by the agency at the agency's discretion and in accordance with the purposes of 42.1(136C). A conditional diagnostic radiographer shall be limited by the agency to those rights specified in the exemption notice and be under the direct supervision of a licensed practitioner.

42.1(3) Minimum eligibility requirements.

a. Graduation from high school or its equivalent.

b. Attainment of eighteen years of age.

c. Ability to adequately perform necessary duties without constituting a hazard to the health or safety of patients or operators.

42.1(4) Training requirements.

a. General diagnostic radiographer. Successful completion of a Committee on Allied Health Education and Accreditation approved course of study or equivalent to prepare the student to demonstrate competency in the following areas:

(1) Radiation protection of patients and workers, including monitoring, shielding, units of measurement and permissible levels, biological effects of radiation, and technical consideration in reducing radiation exposure and frequency of retakes;

(2) Technique and quality control to achieve diagnostic objectives with minimum patient exposure, including X-ray examinations, X-ray production, films, screens, holders and grids, technique conversions, film processing, artifacts, image quality, film systems and control of secondary radiation for the specified category;

(3) Patient care, including but not limited to, aseptic techniques, emergency procedures and first aid, and contrast media;

(4) Positioning, including normal and abnormal anatomy and projections;

(5) Radiographic equipment and operator maintenance to include X-ray tubes, grids, standardization of equipment, generators, preventive maintenance, basic electricity, film processors and maintenance, collimators, X-ray control consoles, tilt tables, ancillary equipment, fluoroscopes and electrical and mechanical safety;

(6) Special techniques, including stereo, body section radiography, pelvimetry, image intensification, photo timing and mobile units; and

(7) Clinical experience sufficient to demonstrate competency in the application of the above as specified in the revised 1978 edition of the "Essentials and Guidelines of an Accredited Education Program for the Radiographer" of the American Medical Association's Committee on Allied Health Education and Accreditation.

b. Limited diagnostic radiographer.

(1) Completion of an approved course of study to prepare the student to demonstrate competency in the following areas:

1. Radiation protection of patients and workers including monitoring, shielding, units of measurement and permissible levels, biological effects of radiation, and technical considerations in reducing radiation exposure and frequency of retakes;

2. Technique and quality control to achieve diagnostic objectives with minimum patient exposure to include X-ray examination, X-ray production, films, screens, holders and grids, technique conversions, film processing, artifacts, image quality, film systems and control of secondary radiation for the specified category;

3. Patient care, including but not limited to, aseptic techniques, emergency procedures and first aid;

4. Positioning, including normal and abnormal anatomy and projections for the specific category;

5. Radiographic equipment and operator maintenance to include X-ray tubes, grids, standardization of equipment. generators, preventive maintenance, basic electricity, film processors and maintenance, collimators, X-ray control consoles, tilt tables, ancillary equipment, fluoroscopes and electrical and mechanical safety;

6. Special techniques limited to those required by the specific category; and

7. Clinical experience sufficient to demonstrate competency in the application of the above as specified in the revised 1978 edition of the "Essentials and Guidelines of an Accredited Educational Program for the Radiographer" of the American Medical Association's Committee on Allied Health Education and Accreditation.

(2) An individual may apply X-radiation to more than one specific part of the human body for diagnostic purposes if the individual meets the requirements of 42.1(4)"b"(1), and 42.1(5)"b", and receives a course of clinical training approved by the department from a radiologist who then certifies the individual's competency to perform certain specific radiographic procedures. The individual may only perform those diagnostic radiographic procedures certified by the radiologist. The following information and statements will need to be provided to the department:

1. The diagnostic radiographic procedures which the individual may perform;

2. The name and qualifications of the certifying radiologist, and a list of the body part(s) and projection(s) the radiologist has certified the individual to perform;

3. If the individual has not successfully completed a training program which meets the requirements set forth in 42.1(4)"b" and 42.1(5)"b", a letter from the institution providing didactic training which indicates the employee's enrollment status and course dates; and

4. Permission for a representative of the Iowa state department of health to comprehensively evaluate whether the individual meets the training standard.

(3) An individual employed in a diagnostic radiography facility which has a work load of less than 5,000 examinations per year and which provides twenty-four-hour service in a hospital will be permitted to apply X-radiation to any part of the human body at that facility if the individual completes a training program recognized by the department, as outlined in 42.1(4)"b"(1) and 42.1(5)"b" and has received clinical training from a radiologist who then certifies in writing the specific procedures the individual is competent to perform. The training program must cover the areas outlined in 42.1(4)"b", the anatomy and physiology of the entire body, positioning and techniques relative to the procedures to be performed and appropriate clinical training which includes all parts of the human body. The certifying radiologist must be directly responsible for the individual's clinical training.

(4) An individual performing diagnostic radiography in a hospital for less than two years prior to the effective date of 42.1(136C) is considered as meeting the requirements of 42.1(136C) provided that this individual meets the requirements of 42.1(4)"b"(1) and 42.1(5)"b" and receives clinical training from a radiologist who then certifies the individual's competence to perform certain radiographic procedures. Each individual will be limited to those diagnostic radiography procedures certified by the radiologist. Persons seeking to qualify an individual under this rule must submit the following information to the department:

1. The diagnostic radiographic procedures which the individual may perform;

2. The name and qualifications of the certifying radiologist, and a list of the body part(s) and projection(s) the radiologist has certified the individual to perform;

3. A letter from the institution providing didactic training which indicates the employee's enrollment status and course dates; and

4. An outline of the clinical experience of the employee. This should include the number of radiographic examinations performed by type, who determined the quality of the radiograph and that person's qualifications to do so.

Subrule 42.1(4), paragraph "b", subparagraph (4), is rescinded two years subsequent to the effective date of rule 42.1(136C).

c. Certification by the American Registry of Radiologic Technologists or the American Registry of Clinical Radiography Technologists meets the minimum requirements of 42.1(136C).

d. Individuals engaged in the practice of diagnostic radiography for two or more years prior to the effective date of 42.1(136C) must meet the requirements of 42.1(4)"a" or "b" as appropriate or demonstrate the adequacy of their training and experience including all existing credentials, to the agency in order to be considered as meeting the requirements of 42.1(136C).

42.1(5) School accreditation.

a. Graduates of schools accredited by the Committee on Allied Health Education and Accreditation who have successfully completed an appropriate course of study in diagnostic radiography will be considered to meet the requirements of 42.1(2)"a".

b. Graduates of programs recognized by the Iowa state department of health in consultation with the professional societies and boards of examiners for approp-

riate course of study in diagnostic radiography will be considered to meet the requirements of 42.1(2)"b".

42.1(6) Exemptions.

a. Students enrolled in and participating in an approved program or approved course of study for diagnostic radiography or an approved school of medicine, osteopathy, podiatry, and chiropractic, who as a part of their course of study, apply ionizing radiation to a human being while under the supervision of a licensed practitioner. The projected completion date of such a program or course of study shall be within a time period equal to or less than twice that required for a full-time student.

b. Licensed practitioners as defined in 42.1(1)"e".

c. Conditional diagnostic radiographer as defined under 42.1(2)"c".

42.1(7) Enforcement.

a. Any individual, except a licensed practitioner defined in 42.1(1)"e" who operates X-ray equipment in the practice of diagnostic radiography, shall meet the requirements of 42.1(136C).

b. Any person including a licensed practitioner defined in 42.1(1)"e" who employs an individual in the practice of diagnostic radiography may do so only if that individual meets the requirements of 42.1(136C).

42.1(8) Reciprocity. Any person who is the holder of a current certificate in diagnostic radiography issued by another state, jurisdiction, agency or recognized professional registry may be considered by the agency to meet the requirements of 42.1(136C), provided that the agency finds that the standards and procedures for certification in the state, jurisdiction, agency or recognized professional registry which issued the certificate, afford protection to the public equivalent to that afforded by 42.1(136C).

This rule is intended to implement Iowa Code section 136C.3(3).

[Filed 11/19/82, effective 1/12/83]

[Published 12/8/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/8/82.

ARC 3429

HEALTH DEPARTMENT[470]

Pursuant to the authority of Iowa Code section 135.11(15), the Iowa State Department of Health hereby gives notice of adoption of rules to amend Chapter 45 "Nonpublic Water Wells", Iowa Administrative Code.

The Board of Health adopted the rule at its regular meeting on November 10, 1982.

Notice of Intended Action was published in the Iowa Administrative Bulletin, Volume V, Number 1, July 7, 1982, as ARC 3028. Public hearing was held on August 9, 1982.

As a result of the public hearing and suggestions by the Administrative Rules Review Committee the following clarifying changes from the noticed rule have been made:

Item 2, subparagraph (3) "All covers. . . . and fits snugly." is deleted.

Item 2, subparagraph (4) "a minimum of three inches" is changed to "a minimum of two inches".

Item 2, subparagraph (5), line 6, is clarified by changing the paragraph to read . . . "by extending the vibrator to a depth of at least two feet below the pit floor into. . .".

These rules are intended to implement Iowa Code section 135.11(1).

These rules are to be effective January 12, 1983.

The following amendments are adopted:

ITEM 1. Subrule 45.6(3) is amended to read as follows:

45.6(3) Wells located within frost pits.

a. In new construction, wells are not permitted to be located within frost pits since they present a sanitary hazard to the water supply by providing access of flood or surface waters to the well. *Exception — Wells are permitted to be located within frost pits of augered or bored wells which do not penetrate consolidated formations. See 45.7(2).*

ITEM 2. Subrule **45.7(2)** is amended by adding the following:

d. Augered or bored wells which do not penetrate consolidated formations are permitted to terminate in tile frost pits provided that the pit walls, floor, and cover are constructed and sealed so as to not permit entry of any contamination.

(1) Pit walls (concrete tile). The pit shall extend twelve inches above natural grade. Pipe nipples or adaptors for entrance of water line and electric conduit through wall shall be mechanically sealed or poured in place.

(2) Pit floor. The pit floor shall be constructed of neat cement or concrete, and the well casing shall extend at least six inches above the floor.

(3) Pit, manhole or well cover. The pit, manhole or well cover shall be constructed of concrete and shall have a diameter two inches larger than the outer diameter of the pit, manhole, or well opening. If manholes are provided, the joint between a manhole and the pit cover shall be raised at least two inches above the top of the pit cover.

(4) Pit excavation. The annular space between sides of the pit excavation and outer diameter of pit tiles shall be a minimum of two inches. The annular space outside the pit wall shall be continuous with annular space outside the well casing.

(5) Grouting. Grouting of the annular space of the pit and well shall be accomplished in one continuous operation and in accordance with 45.7(2) and 45.8(3) except that in cases where concrete grout is applied from the surface, a mechanical concrete vibrator shall be employed by extending the vibrator to a depth of at least two feet below the pit floor into the annular space outside the well casing during application of the grout.

ITEM 3. Subrule **45.7(2)** is amended as follows:

45.7(2)"c"(1) is renumbered as 45.7(3).

ITEM 4. Subrule **45.7(2)** is amended as follows:

45.7(2)"c"(2) is renumbered as 45.7(4).

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

ITEM 5. Subrule **45.7(2)** is amended as follows:

45.7(2)"c"(3) is renumbered as 45.7(5).

[Filed 11/19/82, effective 1/12/83]

[Published 12/8/82]

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ARC 3430

HEALTH DEPARTMENT[470]

Pursuant to the authority of Iowa Code sections 135.11(15) and 144.3, the Department of Health hereby adopts amendments to Chapter 96, "Vital Records", Iowa Administrative Code.

The State Board of Health at its regular meeting of November 10, 1982 adopted the following amendment. This adoption was to be effective November 17, 1982 with the provision no changes were made to the rule between November 10 and November 17. This provision was met, no changes were made.

Notice of Intended Action was published in the Iowa Administrative Bulletin, Volume V, Number 3, October 13, 1982 as ARC 3300.

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

This rule will become effective on January 12, 1983.

The rule is intended to implement 1981 Iowa Acts, chapter 64, section 12.

Amend rule **96.4**(144) by adding the following new paragraph at the end:

A fee of four dollars shall be charged by the state or local registrar for the preparation of an adoption certificate, for amending a certificate of birth to reflect legal change of name, for amending a certificate of birth to reflect paternity and the search or copying of records. If following a search no record is found the four-dollar fee shall be charged. No fees are required for paternity determined by court action.

[Filed 11/19/82, effective 1/12/83]

[Published 12/8/82]

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ARC 3410

HEALTH DEPARTMENT[470]

BOARD OF COSMETOLOGY EXAMINERS

Pursuant to the authority of Iowa Code sections 157.14 and 258A.2, the rules of Board of Cosmetology Examiners which appear in the IAC relating to the licensure of cosmetologists (chapters 149, 151, and 160) are hereby amended. The Board adopted the amendments November 4, 1982.

Notice of Intended Action regarding these rules was published in the IAB September 1, 1982, as ARC 3164.

The rules are the same as those published under notice except Item 1 was changed to make the effective date of Item 1 "1984" in lieu of "1983".

The rules are intended to implement Iowa Code sections 157.14 and 258A.2.

The rules shall become effective January 15, 1983.

ITEM 1. Rule 470—149.3(147) is amended by adding the following new subrule:

149.3(10) Effective January 1, 1984, an applicant for a cosmetology license shall be a high school graduate or have passed the general education development tests.

ITEM 2. Chapter 151 is amended by adding the following new rule:

470—151.12(258A) Reinstatement of lapsed licenses.

151.12(1) Those persons, who have failed to renew a license to practice cosmetology and have not previously received a certificate of exemption, shall pay past due renewal and penalty fees in addition to completion of all past due continuing education. In addition those persons whose licenses have lapsed for four years or more shall complete a refresher course approved by the board and pass the practical portion of the state licensure examination for cosmetologists.

151.12(2) A person applying for reinstatement of a license which has lapsed for four years or more shall be required to pay a maximum of four years' past due renewal fees and penalty fees then due.

ITEM 3. Rule 470—151.7(67GA, ch 95) is amended to read as follows:

470—151.7(~~67GA, ch 95~~ *258A)* Licensed instructors. Licensed cosmetologists who are also licensed cosmetology instructors ~~currently employed by a cosmetology school~~ may use hours of attendance at the annual instructors' institute, prescribed by the board of cosmetology examiners, to fulfill continuing education requirements.

ITEM 4. Amend rule 470—160.7(147) as follows:

470—160.7(147) Board of cosmetology examiners. *All fees are nonrefundable.*

[Filed 11/15/82, effective 1/15/83]

[Published 12/8/82]

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ARC 3411

HEALTH DEPARTMENT[470]

BOARD OF BARBER EXAMINERS

Pursuant to the authority of Iowa Code sections 147.10, 147.76, and 147.80, rules of the Board of Barber Examiners appearing in the Iowa Administrative Code relating to fees found in chapter 160 are hereby amended.

The rules increase the fee for a license to practice barbering from fifty to seventy-five dollars and provide a penalty fee for failure to renew a license.

Notice of Intended Action was published in the IAB September 15, 1982, as ARC 3203.

The rules are identical to those published under notice.

The rules are intended to implement Iowa Code sections 147.10 and 147.76.

The rules shall become effective February 1, 1983.

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

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

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

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

[Filed 11/15/82, effective 2/1/83]

[Published 12/8/82]

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ARC 3416

REVENUE DEPARTMENT[730]

Pursuant to the authority of Iowa Code section 17A.22, the Iowa Department of Revenue hereby adopts amendments to Chapter 7, "Practice and Procedure Before the Department of Revenue," Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume V, Number 7, on September 29, 1982, as ARC 3248.

Iowa Code section 17A.16, subsection 2, specifically provides that parties participating in contested cases before agencies may file applications for rehearing. The adopted amendments clarify the rights and duties of parties making application for rehearing and resolve apparent discrepancies in the department's rules regarding rehearing.

These rules are identical to those published under Notice of Intended Action except for gender changes. The amendments will become effective January 12, 1983 after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code section 17A.16, subsection 2.

The following amendments are adopted.

ITEM 1. Subrule **7.17(5)**, fourth unnumbered paragraph, is amended to read as follows:

When the director initially presides at a hearing or considers decisions on appeal from, or review of the administrative hearing officer, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to, or review on motion of, a second agency within the time provided by statute or rule. When an administrative hearing officer presides at the hearing, the order becomes the final order of the department for purposes of judicial review or rehearing unless there is an appeal to, or review on motion of, the director within thirty days of the date of the order, or ten days, excluding Saturdays, Sundays, and legal holidays, for a revocation order pursuant to rule 730—17.24(17A). On an appeal from ~~or~~, review of *or applications for rehearing concerning* the administrative hearing officer's order, the director has all the power which ~~he or she~~ *the director* would initially have had in making the decision, however, ~~he or she~~ *the director* will only consider those issues or selected issues presented at the hearing before the administrative hearing officer or any issues of fact or law raised independently by the hearing officer, including the propriety of and the authority of raising issues. The parties will be notified of those issues which will be considered by the director.

ITEM 2. Rule 730—7.20(17A) is amended to read as follows:

730—7.20(17A) Rehearing. Any party may file an application with the ~~hearing officer~~ *director* for a rehearing in the contested case, stating the specific grounds therefor and the relief sought. The application must be filed within twenty days after the department has issued a final order. *See subrule 7.17(5) as to when a proposed order becomes a final order.* A copy of such application shall be timely mailed by the applicant to all parties *in conformity with rule 730—7.21(17A).* The ~~hearing officer~~ *director* shall have twenty days from the filing of the application to grant or deny the rehearing. If the application is granted, a notice will be served on the parties stating the time and place of such rehearing. An application for rehearing shall be deemed denied if not granted by the ~~hearing officer~~ *director* within twenty days after filing.

The application for rehearing which is filed shall contain:

1. A caption in the following form:

BEFORE THE IOWA STATE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF _____ (state the taxpayer's name, address and designate type of proceeding e.g. income tax refund claim)	* * * * *	APPLICATION FOR REHEARING DOCKET NO. _____

2. Substantially state in separate numbered paragraphs the following:

a. Clear and concise statements of the reasons for requesting a rehearing and each and every error which the party alleges to have been committed during the contested case proceedings;

b. Clear and concise statements of all relevant facts upon which the party relies;

c. Refer to any particular statute or statutes and any rule or rules involved;

d. The signature of the party or that of ~~his or her~~ *the party's* representative;

No applications for rehearing shall be entertained by the department's hearing officers.

[Filed 11/19/82, effective 1/12/83]

[Published 12/8/82]

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ARC 3417

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 12, "Filing Returns, Payment of Tax, Penalty and Interest - Excise"; Chapter 44 "Penalty and Interest"; Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest - Corporation"; Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenue - Franchise"; Chapter 63, "Motor Fuel - Administration"; Chapter 75, "Determination of Value and Tax for Freight-Line and Equipment Car Companies"; Chapter 81, "Cigarette and Tobacco Administration"; and Chapter 104, "Filing Return and Payment of Tax, Penalty and Interest," Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume V, Number 8, on October 13, 1982, as ARC 3271.

The Iowa Supreme Court in Armstrong's Inc. v. Iowa Department of Revenue, 320 N.W.2d 623, adopted the "innocent error" concept and stressed that ordinary business care and prudence is based on a factual situation. In this case, based on the particular facts, if a person turns over all necessary information to a competent tax professional and if the person does not have actual knowledge something is wrong, the penalty should be waived. The rule amendments merely reflect that each penalty waiver must be determined by the facts presented.

These rules are identical to those published under Notice of Intended Action except for gender change. The amendments will become effective January 12, 1983, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code sections 324.65, 422.25, 422.58, 422.66, and 423.18.

The following amendments are adopted.

ITEM 1. Rule **730—12.11(422, 423)**, paragraph "h," is amended to read as follows:

h. Where the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return or monthly deposit within the prescribed time, then the delay is due to reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that ~~he or she exercised~~ ordinary business care and prudence *were exercised* in providing for payment of ~~his or her~~ *the taxpayer's* liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if ~~he or she~~ *the taxpayer* paid on the due date. *What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, Armstrong's Inc. vs. Iowa Department of Revenue, 320 N.W.2d 623 (Iowa 1982).*

ITEM 2. Subrule 44.8(7) is amended to read as follows:

44.8(7) If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that ~~he exercised~~ ordinary business care and prudence *were exercised* in providing for payment of ~~his~~ *the* tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if ~~he~~ *the taxpayer* paid on the due date. *What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, Armstrong's Inc. vs. Iowa Department of Revenue, 320 N.W.2d 623 (Iowa 1982).*

ITEM 3. Subrule **52.6(12)**, paragraph "h," is amended to read as follows:

h. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that ~~he exercised~~ ordinary business care and prudence *were exercised* in providing for payment of ~~his~~ *the* tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if ~~he~~ *the taxpayer* paid on the due date. *What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, Armstrong's Inc. vs. Iowa Department of Revenue, 320 N.W.2d 623 (Iowa 1982).*

ITEM 4. Subrule **58.6(11)**, paragraph "h," is amended to read as follows:

h. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that ~~it exercised~~ ordinary business care and prudence *were exercised* in providing for payment of ~~its~~ *the* tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if ~~it~~ *the taxpayer* paid on the due date. *What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, Armstrong's Inc. vs. Iowa Department of Revenue, 320 N.W.2d 623 (Iowa 1982).*

ITEM 5. Rule **730—63.9(324)**, paragraph "h," is amended to read as follows:

h. A showing that the delinquency existed even though the taxpayer exercised ordinary business care and prudence to ensure that the filing of the return or remittance of the tax would occur timely. *What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, Armstrong's Inc. vs. Iowa Department of Revenue, 320 N.W.2d 623 (Iowa 1982).*

ITEM 6. Rule 730—75.2(435) is amended to read as follows:

730—75.2(435) Penalty and interest. Computations for tax periods where the due date occurs after December 31, 1981. The filing of the tax return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts. If either condition is not met, a penalty shall be assessed unless it is shown that such failure was due to reasonable cause. The rate of penalty shall be five percent per month or fraction thereof, not to exceed twenty-five percent in the aggregate for failure to file a return. In case there is both a failure to file and failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay if, after the return is filed, there is a continued failure

to pay during the five-month period after the tax was due (taking into consideration any extensions of time to file and pay). The combined penalties for failure to file or pay shall not exceed twenty-five percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return. Therefore, if an audit results in an additional tax which was required to be shown as due on the return, the additional tax is subject to the penalty for failure to pay, unless the failure was due to reasonable cause. See subrule 44.3(3) for examples of the penalty computation.

Where the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return of monthly deposit within the prescribed time, then the delay is due to reasonable cause. A failure to pay will be considered to be due to a reasonable cause to the extent that the taxpayer has made a satisfactory showing that the taxpayer exercised business care and prudence in providing for payment of the liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if the taxpayer paid on the due date. What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, Armstrong's Inc. vs. Iowa Department of Revenue, 320 N.W.2d 623 (Iowa 1982).

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due in the order specified.

In addition to the penalty, interest accrues on the tax or additional tax at the rate of three-fourths of one percent per month, counting each fraction of a month as an entire month, computed from the date the return or deposition was required to be filed until December 31, 1981. See rule 730—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

ITEM 7. Rule **730—81.15(98)**, numbered paragraph 9, is amended to read as follows:

9. Where the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time. Failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that ~~he or she exercised~~ ordinary business care and prudence *were exercised* in providing for payment of ~~his or her~~ *the* liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if ~~he or she~~ *the taxpayer* paid on the due date. *What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, Armstrong's Inc. vs. Iowa Department of Revenue, 320 N.W.2d 623 (Iowa 1982).*

ITEM 8. Rule **730—104.9(422A)**, numbered paragraph 7, is amended to read as follows:

7. Where the retailer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the retailer has made a satisfactory showing that ~~he or she exercised~~ ordinary business care and prudence *were exercised* in providing for payment of ~~his or her~~ *the* liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if ~~he or she~~ *the retailer* paid on the due date. *What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, Armstrong's Inc. vs. Iowa Department of Revenue, 320 N.W.2d 623 (Iowa 1982).*

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ARC 3421

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of Iowa Code section 249A.4, rules of the Department of Social Services appearing in the IAC relating to medical assistance (chapter 79) are hereby amended. The Council on Social Services adopted these rules November 15, 1982.

Notice of Intended Action regarding these rules was published in the IAB September 29, 1982 as ARC 3238. Because the reimbursement system for providers of medical services has increased in complexity, these rules are being changed to clarify the basis of payment for the different provider groups. The rules do not change the basis of payment for any provider group.

770—79.1(249A) was reworded to include words left out in typing. 79.1(1)"d" was reworded.

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

These rules shall become effective February 1, 1983.

Rule 770—79.1(249A), but not the subrules, is rescinded and the following inserted in lieu thereof and subrules 79.1(1) to 79.1(5) renumbered as 79.1(4) to 79.1(8).

770—79.1(249A) Principles governing reimbursement of providers of medical and health services. The basis of payment for services rendered by providers of service participating in the medical assistance program varies depending upon whether the provider is noninstitutional, such as physicians, dentists, and similar providers and on whether the provider is also eligible to participate in the Medicare program. Except as indicated, those providers of service eligible to participate in the Medicare program are reimbursed on the basis of Medicare methodology. Other types of providers are reimbursed by methodology established by the department. Providers of care must accept reimbursement based upon reasonable charges as determined by the department, making no additional charge to the recipient.

79.1(1) Types of providers.

a. Institutional-Medicare. Providers are reimbursed on the basis of retrospective reimbursement based on reasonable and proper costs of operation with suitable retroactive adjustments based on submission of fiscal and statistical reports by the provider. The retroactive adjustment represents the difference between the amount received by the provider during the year for covered services and the amount determined in accordance with an accepted method of cost apportionment to be the actual cost of services rendered to medical assistance recipients.

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

b. Institutional-departmental. Providers are reimbursed on the basis of prospective or retrospective cost-related reimbursement, depending on type of institution.

c. Noninstitutional-Medicare. Providers are reimbursed on the basis of usual, customary, and reasonable charges not to exceed the lesser of:

(1) The actual charge made by the provider of service,

(2) The customary charge made by the provider for the same or similar services, and

(3) The prevailing charges for the same or similar services in the locality served by the provider. The prevailing charges for the services in the locality are adjusted annually on the basis of an economic index but may not exceed the seventy-fifth percentile of the customary charges in the locality for each year.

d. Noninstitutional-departmental. Providers are reimbursed on the basis of a fixed fee for service. If product cost is involved in addition to service, reimbursement is based either on actual acquisition cost of the product to the provider or product cost is included as part of the fee for service. Increases in fixed fees are made periodically or on an annual basis provided for by statute.

79.1(2) Basis of reimbursement of specific provider categories.

Institutional	**Basis of reimbursement**
1. Home health agencies	Medicare
2. Rehabilitation agencies	Medicare
3. Rural health clinics	Medicare
4. Skilled nursing facilities	Medicare
5. Hospitals	Prospective reimbursement. (See 79.1(3))
6. Family planning clinics	Prospective rate per clinic visit determined on basis of financial and statistical data submitted annually by clinic.
7. Intermediate care facilities and intermediate care facilities for the mentally retarded	See 81.10(1), 770—81.6(249A), and 770—82.5(249A)

Noninstitutional	**Basis of reimbursement**
1. Ambulance	Medicare
2. Chiropractors	Medicare
3. Medical equipment & prosthetic devices	Medicare (See 79.1(6))
4. Podiatrists	Medicare (service) Fixed fee (orthotics)
5. Physical therapists	Medicare
6. Dentists	Medicare
7. Laboratories	Medicare
8. Psychologists	Fixed fee
9. Optometrists	Product acquisition cost plus fixed fee
10. Opticians	Product acquisition cost plus fixed fee
11. Orthopedic shoes	Fixed fee
12. Physicians (doctors of medicine or osteopathy)	Statewide prevailing fee for recognized specialities as determined by Medicare methodology subject to an annual increase not to exceed five percent.
13. Prescribed drugs	See 78.2(2), (3), and (4)
14. Hearing aids	Product acquisition cost plus fixed fee
15. Audiologists	Fixed fee
16. Community mental health centers	Physicians (see item 12 above) Psychologists, social workers, psychiatric nurses (fixed fee)
17. Screening centers	Fixed fee

79.1(3) Reimbursement for hospitals. Hospital reimbursement is prospective based on a per diem rate calculated for each hospital by establishing a base year per diem rate to which an annual index is applied.

a. The base rate shall be the medical assistance per diem rate as determined by the individual hospital cost report for the hospital's 1981 fiscal year as adjusted by Medicare except that no recognition will be given to the routine nursing salary cost differential allowed by Medicare. The annual index will be calculated by the department based on the average percentage change in a standard category of hospital expenses to which forecasted increases will be applied.

b. For hospitals where medical assistance recipients account for fifty-one percent or more of the hospital's total bed days the hospital and the department will negotiate an appropriate per diem rate.

c. Hospitals shall be reimbursed the lower of actual charges or the medical assistance cost per diem rate. The determination of the applicable rate shall be based on the hospital fiscal year aggregate of actual charges and medical assistance cost per diem rate. If an overpayment exists the hospital will refund or have the overpayment deducted from subsequent billings.

d. Hospital prospective reimbursement rates shall be established as of October 1, 1982, for the remainder of the applicable hospital fiscal year. Prior to the beginning of each succeeding hospital fiscal year, inpatient hospital prospective reimbursement rates shall be established and become effective for the period of one year.

e. A hospital may at times offer to the public new or expanded services including capitals which require certificate of need approval, or permanently terminate a service. Within sixty days after such an event, the hospital shall submit a budget which shall take into consideration new, expanded, or terminated services. These budgets will be subject to desk review and audit. Upon completion of the desk review, reimbursement rates may be adjusted, if indicated. Failure to submit budgets within sixty days shall require disallowances of all expenses, direct and indirect, associated with the service until the following cost reporting period. The new rate will be retroactive to the beginning of the new or expanded service or the termination of an existing service.

f. The current method for submitting billing and cost reports shall be maintained. All cost reports will be subject to desk review audit and if necessary a field audit.

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[Published 12/8/82]

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ARC 3422

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of Iowa Code section 217.6 and chapter 252B, rules of the Department of Social Services appearing in the IAC relating to child support recovery (chapter 95) are hereby amended. The Council on Social Services adopted these rules November 15, 1982.

Notice to Intended Action regarding these rules was published in the IAB September 29, 1982 as ARC 3236. These rules specify the amounts and circumstances for offsetting federal income tax refunds when past due support is owed.

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

These rules are intended to implement Iowa Code section 252B.3.

These rules shall become effective January 12, 1983.

ITEM 1. Rule 770—95.6(421) is amended to read as follows:

770—95.6(421) Setoff against *state* income tax refund or rebate. A setoff against an absent parent's income tax refund or rebate shall be authorized when an absent parent is delinquent in payment of child support which is assigned to the department or which the department is attempting to collect on behalf of any individual not eligible for aid to dependent children. *Iowa Code* section 421.27; ~~The Code~~ sets forth the criteria to be used for the setoff. In addition, the following rules shall apply.

ITEM 2. Subrule 95.6(2) is amended to read as follows:

95.6(2) In addition to the requirements of *Iowa Code* section 421.17, ~~The Code,~~ the department shall notify the absent parent of the amount that will be setoff against the refund or rebate *when the department of revenue notifies the department the refund check is being held.*

ITEM 3. 770—Chapter 95 is amended by adding a new rule.

770—95.7(252B) Setoff against federal income tax refund.

95.7(1) Definition. "Past due support" means the amount of the delinquency, determined under a court order, which will become the offset amount for support and maintenance of a child or of a child and the parent with whom the child is living.

95.7(2) Past due support qualifies for offset when:

a. The department has been assigned the support obligation and has taken at least one action to collect the delinquency (billing, location, or legal action) within the current calendar year;

b. The amount of the past due support is $500.00 or more or $150.00 or more when no payment has been received in the twelve months preceding the month of certification; and

c. The past due support has been delinquent for three months or longer.

95.7(3) The department shall, by October 1 of each year, submit a notification(s) of liability for past due support to the federal office of child support enforcement.

95.7(4) Each taxpayer will receive a pre-offset notice in writing, using address information available from the internal revenue service, stating the amount of the past due support certified for offset.

a. Individuals who wish to dispute the offset amount must notify the department within the time period specified in the pre-offset notice.

b. Upon receipt of a complaint disputing the offset amount, the department shall investigate its validity and respond to the taxpayer in writing within ten days.

95.7(5) When the records of the department differ with those of the individual for determining the amount of the past due support, the individual may provide and the department will accept the amount calculated and certified by the clerk of court as the official pay record for the time period involved.

95.7(6) The department shall notify the federal office of child support enforcement, within time frames established by it, of any decrease in, or elimination of, an amount referred for offset.

95.7(7) When an individual does not respond to the pre-offset notice within the specified time even though the department later agrees a certification error was made, the person must wait for corrective action as specified in subrule 95.7(8).

95.7(8) When the offset is found to exceed the amount of the past due support owed and the taxpayer did not notify the department as provided in 95.7(4)"b", the department will refund the excess amount to the individual within thirty days of receipt of verification of the offset amount.

a. "Verification" means a copy of the offset letter received by the taxpayer or a listing of refunds which have been offset containing the taxpayer's name from the federal office of child support enforcement. The date of whichever verification the department receives first will be the beginning day of the thirty-day period in which to make the refund.

b. Reserved.

This rule is intended to implement Iowa Code section 252B.3.

[Filed 11/19/82, effective 1/12/83]

[Published 12/8/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 12/8/82.

ARC 3423

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of Iowa Code section 217.6 and chapter 252B, rules of the Department of Social Services appearing in the IAC relating to child support recovery (chapter 95) are hereby amended. The Council on Social Services adopted these rules November 17, 1982.

Notice of Intended Action regarding these rules was published in the IAB September 29, 1982, as ARC 3239. These rules specify the amounts and circumstances for offsetting federal income tax refunds when past due support is owed.

These rules are identical to those published under notice except for 95.8(3)"a" which was reworded.

These rules are intended to implement Iowa Code section 252B.3.

These rules shall become effective January 12, 1983.

770—Chapter 95 is amended by adding a new rule.

770—95.8(96) Child support offset of unemployment benefits. When job service notifies the child support recovery unit that an individual who owes a child support obligation being enforced by the child support recovery unit has been determined to be eligible for job insurance benefits, the unit will enforce a child support obligation owed by an absent parent but which is not being met by offsetting job insurance benefits. "Owed but not being met" means either current child support not being met or arrearages that are owed.

95.8(1) The unit shall contact the absent parent by letter, using the address furnished to the unit by job service of Iowa. An absent parent shall have ten calendar days to respond to the letter and enter into a voluntary agreement for an amount to be withheld from job insurance benefits to be applied to the child support obligation.

95.8(2) The child support recovery unit may enter into a written voluntary arrangement with an absent parent for an amount of not less than twenty-five percent nor more than fifty percent to be deducted from job insurance benefits.

95.8(3) When the absent parent and the child support recovery unit fail to reach a written voluntary agreement the child support recovery unit shall initiate a garnishment action pursuant to Iowa Code chapter 642.

a. When the absent parent is supporting a spouse or dependent child living in the same home, fifty percent of the job insurance benefits shall be garnished for the delinquent support or fifty-five percent when the delinquency is more than twelve weeks old.

b. When an absent parent is not supporting a second family, sixty percent of the job insurance benefits shall be garnished if the delinquency is less than twelve weeks old and sixty-five percent if the delinquency is more than twelve weeks old.

95.8(4) A receipt of the payments intercepted through job insurance benefits will be provided once a year, upon the request of an absent parent to the child support recovery unit.

This rule is intended to implement Iowa Code section 96.3 and 15 U.S.C.1673(b).

[Filed 11/19/82, effective 1/12/83]

[Published 12/8/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement. 12/8/82.

ARC 3415

SUBSTANCE ABUSE, DEPARTMENT OF[805]

Pursuant to the authority of Iowa Code section 125.7, the Iowa Department of Substance Abuse hereby adopts an amendment to Chapter 3 of the Iowa Administrative Code entitled "Licensure Standards for Substance Abuse Treatment Programs" which was approved by the Iowa Commission on Substance Abuse on November 17, 1982.

These rules were published as a Notice of Intended Action on October 13, 1982, as ARC 3293.

Subrule 3.24(6) is amended to specify that health and sanitation inspections of substance abuse residential facilities shall be conducted by the Department of Agriculture or local health departments in accordance with 30—chapter 37, Iowa Administrative Code.

Subrule 3.24(14) establishes sanitation, safety and health rules for substance abuse residential facilities.

Subrule 3.23(5) establishes rules for the safety, maintenance and appropriateness of outpatient substance abuse facilities.

These rules are identical to that published as Notice of Intended Action and shall become effective January 12, 1983.

These rules are intended to implement Iowa Code chapter 125.

ITEM 1. Amend subrule 3.24(6) to read as follows:

3.24(6) ~~Facility~~ *Health and fire safety inspections.* Residential/intermediate service facilities shall comply with appropriate state department of health rules, state fire marshal's rules and fire ordinances, and appropriate local health, fire, occupancy code and safety regulations. The program shall maintain documentation of such compliance.

a. Residential substance abuse treatment facilities required to be licensed by the Iowa department of substance abuse shall comply with standards for food service sanitation in accordance with rules promulgated by the Iowa department of agriculture pursuant to 30—chapter 37 of the Iowa administrative code.

b. Food service operations in substance abuse residential treatment facilities shall be inspected on an annual basis by the Iowa department of agriculture or appropriate local boards of health having agreements with the department of agriculture to conduct such inspections.

ITEM 2. Add subrule 3.24(14) to read as follows:

3.24(14) Residental/intermediate care facility. A residential/intermediate care facility shall be safe, clean, well-ventilated, properly heated, in good repair, and free from vermin and rodents to ensure the well-being of residents.

a. Client bedrooms shall include:

1. A sturdily constructed bed;
2. A clean mattress protected with a clean mattress pad;
3. A designated space for personal possessions and for hanging clothing in proximity to the sleeping area; and,
4. Windows in bedrooms shall be openable with curtains or window blinds.

b. Clean linen, towels and wash cloths shall be available minimally on a weekly basis and more often if needed.

c. Bathrooms shall provide residents with facilities necessary for personal hygiene and personal privacy, including:

1. A safe supply of hot and cold running water which is potable;
2. Clean towels, electric hand driers or paper towel dispensers, and an available supply of toilet paper and soap;
3. Natural or mechanical ventilation capable of removing odors;
4. Separate toilet facilities in co-educational residential facilities;

5. Tubs or showers shall have slip-proof surfaces;

6. Partitions with doors which provide privacy if a bathroom has multiple toilet stools;

7. At least one covered waste receptacle in bathrooms used by females;

8. The toilet facility shall be separated from the food preparation areas and be enclosed by a door;

9. Toilets, wash basins, and other plumbing or sanitary facilities shall,at all times, be maintained in good operating condition; and

10. The ratio of bathroom facilities to residents shall be one tub or shower head per twelve residents, one wash basin per twelve residents and one toilet per eight residents.

d. There shall be a written plan outlining procedures to be followed in the event of fire or tornado. These plans shall be conspicuously displayed at the facility and explained to all residential clients as a part of their orientation to the program. Fire drills shall be rehearsed at least monthly and tornado drills seasonally.

e. Written reports of annual inspections by state or local fire safety officials shall be maintained with records of corrective action taken by the program on recommendations articulated in such reports.

f. Smoking shall not be permitted in bedrooms. Smoking will be allowed only where proper facilities are provided.

g. Every facility shall have an adequate water supply from an approved source. A municipal water system shall be considered as meeting this requirement. Private water sources shall be tested annually.

h. Garbage shall be stored in containers for refuse which are watertight, rodent proof and have tight-fitting covers.

i. The washing and sanitization of dishes and utensils shall meet approved sanitation procedures and practices in order to protect the health and welfare of the residents and employees.

j. Furniture shall be clean and in good repair.

ITEM 3. Add subrule 3.23(5) to read as follows:

3.23(5) Outpatient facility. The outpatient facility shall be safe, clean, well-ventilated, properly heated and in good repair.

a. The facility shall be appropriate for providing services available from the program and for protecting client confidentiality.

b. Furniture shall be clean and in good repair.

c. Written reports of annual inspections by state or local fire safety officials shall be maintained with records of corrective action taken by the program on recommendations articulated in such reports.

d. There shall be a written plan outlining procedures to be followed in the event of fire, tornado, or explosion. This plan shall be conspicuously displayed at the facility and included as a part of the new staff orientation.

These rules are intended to implement Iowa Code chapter 125.

[Filed 11/18/82, effective 1/12/83]

[Published 12/8/82]

EDITOR'S NOTE. For replacement pages for IAC, see IAC Supplement, 12/8/82.

SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

October, 1982

COUNTIES AND COUNTY OFFICERS

Expenses of County Jail Prisoners. Iowa Code Chapter 356 (1981); Iowa Code §§ 331.303(7); 356.15; 356.30 (1981). It is irrelevant whether a prisoner held at the county jail is arrested without a warrant. The county is responsible for the charges and expenses of maintaining and safekeeping all prisoners housed at the county jail except those prisoners expressly excluded by the terms of § 356.15. The board of supervisors is responsible for setting these charges, and may exercise its discretion in determining the criteria to be used in setting those charges. (Weeg to Stream, Mahaska County Attorney, 10/25/82) #82-10-11(L)

Official Misconduct; Public Motor Vehicles; Campaigns. Chapter 721; §§ 721.4, 621.6. A county sheriff may not use his official vehicle at county expense for transportation around the county when his prime purpose is to campaign for re-election. (Pottorff to Norland, State Representative, 10/21/82) #82-10-6(L)

CRIMINAL LAW

Dangerous Weapon, Nunchaku. Iowa Code § 702.7 (1981). Whether a Nunchaku is a dangerous weapon constitutes a question of fact for the jury to decide. (Cleland to Heitland, Hardin County Attorney, 10/25/82) #82-10-10(L)

OWI, Guilty Pleas, Record. Iowa Code § 602.60 (1981) as amended, 1982 Iowa Acts, Chapter 1167, § 26; IowaR.Crim.P. 8 does not allow for electronic recording of guilty pleas. No exception is made for guilty pleas to first offense violations of Iowa Code § 321.281 (1981) taken before judicial magistrates, and the parties may not vitiate the requirements of rule 8 by agreement. (Cleland to Poppen, Wright County Attorney, and Heitland, Hardin County Attorney, 10/25/82) #82-10-9(L)

INSURANCE

Licensing: Exempting Nonresident Insurance Agents from Continuing Education Requirements; Cancelling Existing Insurance Agents' Licenses Prior to the Expiration of the Term of Those Licenses. 1982 Iowa Acts, H.F. 846, §§ 9, 10, 13; Iowa Code §§ 4.1(1), 4.5, 4.7, 4.8, 4.13, 258A.1(1)(z), 257A.2(1), 258A.2(2)(a), 258A.2(3), 505.14, 508.13, 515.42, 522.1, 522.2, 522.4 (1981). Exempting all nonresidents from the Commissioner of Insurance's rules on continuing education for insurance agents is statutorily overbroad to the extent that it exempts a nonresident agent even when the nonresident's state has no continuing education requirement for agents. Insurance agents' licenses in effect prior to July 1, 1982, may not be cancelled by the commissioner for nonpayment of the fee required for licenses issued after that date, until the prior licenses by their terms expire. (Haskins to Harbor, State Representative, 10/1/82) #82-10-2(L)

JUVENILE LAW

Application of Iowa's New Drunk Driving Statutes to Juveniles. 1982 Iowa Acts, House File 2369; 1982 Iowa Acts, Senate File 2197; Iowa Code Chapter 321, 321B (1981); Op.AttyGen. #80-9-10; Op.AttyGen. #82-1-6. A peace officer who has taken into custody a juvenile driver for operating while intoxicated and has obtained a breath specimen test of ten one hundredths or more, or has been refused permission to take said test, may seize the permanent license and issue a temporary driver's license to a juvenile in like manner as he or she would to an adult. (Hege to Anstey, Appanoose County Attorney, 10/25/82) #82-10-8(L)

PUBLIC RECORDS

Police Investigative Reports. Iowa Code ch. 68A (1981); Iowa Code §§ 68A.7, 68A.7(5), 68A.7(9). (1) Requests for public records pursuant to § 68A.7(5) should be directed to the lawful custodian of the records or to his or her authorized deputy. (2) Such requests must reasonably describe the records requested. A request is "reasonable" if it enables the lawful custodian who is familiar with the subject matter of the request to locate the records with a reasonable amount of effort. As such, a request for § 68A.7(5) time, date, and location information is inherently specific. (3) A citizen may request § 68A.7(5) information for a particular day or time, or for any number of days or times. The request is not required to specify the particular criminal incident for which the information is required. (4) Disclosure or nondisclosure pursuant to § 68A.7(5) does not depend on the nature of the document which contains that information. (5) The lawful custodian may not keep all § 68A.7(5) information, including time, date and location information, confidential on the ground that part of it may be kept confidential, but the custodian may delete the confidential information before disclosure. (Weeg to Holt, State Representative, 10/7/82) #82-10-3

SCHOOLS

Establishment Clause: Creationism. First Amendment, U.S. Const.; Iowa Code chs. 273 and 301, §§ 278.1(1), 279.28 (1981). Section 278.1(1) is not facially unconstitutional. Petitions requesting a school board to adopt a specific list of books as supplemental textbooks for school library and teacher resource use are not authorized by § 278.1(1) because: 1) the electors hold power to direct the board to change textbooks but it is the board that selects, adopts and purchases textbooks; 2) the electors do not hold power under § 278.1(1) to direct the adoption of supplemental textbooks for school library and teacher resource use and 3) the power of a district board and/or the area education agency to select and purchase books and other materials for school library and teacher resource use is not affected by the power exercised by the electorate under § 278.1(1). It would not violate the Establishment Clause if the books listed on the petition were placed in school libraries. The Establishment Clause would be violated by a requirement that the creationist-science books be used in science classes, pursuant to Lemon v. Kurtzman and McLean v. Arkansas Board of Education. (Fleming to Anderson, State Senator, 10/1/82) #82-10-1

STATE DEPARTMENTS AND OFFICERS

Conservation Commission; Liquor, Beer & Cigarettes; Administrative Rules: Consumption of Beer in State Parks. United States Constitution, Fourteenth Amendment; Iowa Const. art. I, § 6; Iowa Code Chapters 17A, 111, 123 (1981); Iowa Code §§ 17A.19(8), 17A.19(8)(a), 17A.19(8)(b), 17A.19(8)(g), 111.3, 111.4, 111.11(1), 111.35, 111.47, 123.3(9), 123.46 (1981). If the Conservation Commission has a rational basis to conclude that regulating or banning keg beer is needed for proper public use of parks, it may adopt rules which are rationally related to this purpose. (Kniep to Wilson, Director, State Conservation Commission, 10/25/82) #82-10-7(L)

Conservation Commission: Navigation Regulation Jurisdiction. Iowa Code Chapter 106 (1981); Iowa Code §§ 106.1, 106.2(4) as amended by 1982 Iowa Acts, Senate File 299, § 2, 106.2(5), 106.2(9), 106.2(13), 106.15(1), 106.17(1), (2), (3) (1981), as amended by 1982 Iowa Acts, Senate File 399, § 26, 111.18 (1981), Iowa Code Chapter 504A (1981). The navigation regulations of Iowa Code Chapter 106 apply on a lake located in and owned by a city. The city may regulate any boating it permits on the lake only within the limits established by Iowa Code § 106.17 (1981) as amended by 1982 Iowa Acts, Senate File 399, §§ 20-21. (Kniep to Kenyon, Union County Attorney, 10/11/82) #82-10-4(L)

TAXATION

Partial Payments of Delinquent Property Taxes. Iowa Code §§ 445.36 and 445.37 (1981). The county treasurer, in the exercise of sound discretion, can accept or reject partial payments of delinquent property taxes for partial satisfaction of delinquent amounts. (Griger to Spear, State Representative, 10/11/82) #82-10-5(L)

STATUTES CONSTRUED

Code, 1981	Opinion
4.1(1)	82-10-2(L)
4.5	82-10-2(L)
4.7	82-10-2(L)
4.8	82-10-2(L)
4.13	82-10-2(L)
17A.19(8)	82-10-7(L)
68A.7	82-10-3
106.1	82-10-4(L)
106.2	82-10-4(L)
106.15	82-10-4(L)
106.17	82-10-4(L)
106.31	82-10-4(L)
111.3	82-10-7(L)
111.4	82-10-7(L)
111.11	82-10-7(L)
111.35	82-10-7(L)
111.47	82-10-7(L)
123.46	82-10-7(L)
258A.1	82-10-2(L)
258A.2	82-10-2(L)
273	82-10-1
279.28	82-10-1
301	82-10-1
321	82-10-8(L)
321B	82-10-8(L)
331.303(7)	82-10-11(L)
356.15	82-10-11(L)
445.36	82-10-5(L)
505.14	82-10-2(L)
508.13	82-10-2(L)
515.42	82-10-2(L)
522.1	82-10-2(L)
522.2	82-10-2(L)
522.4	82-10-2(L)
702.7	82-10-10(L)
721.4	82-10-6(L)
721.6	82-10-6(L)

Const. of Iowa	Opinion
Art. I, § 6	82-10-7(L)

U.S. Const.	Opinion
Amend. XIV	82-10-7(L)

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA
FILED - November 24, 1982

NOTE: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA 50319, for a fee of 40 cents per page.

No. 67351. JANDA v. IOWA INDUSTRIAL HYDRAULICS, INC.
Appeal from Pocahontas District Court, R. K. Richardson, Judge. Affirmed in part, reversed in part, and remanded with directions. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Reynoldson, C.J. (15 pages $6.00)

Defendants-employers appeal from adverse trial court judgment in action for breach of oral employment contract. OPINION HOLDS: I. The evidence showed that the employers promised the employee that he would be reimbursed for transportation expenses; there was no clear-cut modification of the employment agreement regarding transportation expenses, and therefore we cannot apply the general rule that an employee accepts a change in the employment contract by continuing to work. II. The trial court awarded the employee duplicative transportation expenses, resulting in a judgment larger than the evidence will support; the judgment must be reduced accordingly. III. The trial court imposed primary liability on one corporate employer, Iowa Industrial, and secondary liability on a wholly owned subsidiary of Iowa Industrial; assuming the subsidiary was a viable corporation, we find that Iowa Industrial was the employer; we affirm that part of the judgment holding Iowa Industrial liable and reverse that part holding the subsidiary liable. IV. Iowa Code section 535.3, as amended effective January 1, 1981, changed the rate of interest on judgments and provided for the first time that such interest would be computed from the date the petition was filed rather than from the date of the judgment; in the present case the petition was filed before the effective date of the amendment but the judgment was entered after the effective date; in this situation the amendment applies; the trial court correctly computed interest under the amended statute rather than under the previous statute.

No. 66741. SHEER CONSTRUCTION, INC. v. W. HODGMAN AND SONS, INC.
Appeal from Ida District Court, Richard W. Cooper, Judge. Affirmed in part, reversed in part, and remanded with direction. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Reynoldson, C.J. (12 pages $4.80)

Plaintiff subcontractor appeals from trial court decree in action for breach of subcontract. At trial plaintiff rejected defendant Hodgman's offer to confess judgment for $3500. OPINION HOLDS: I. We affirm trial court in granting plaintiff a net judgment against Hodgman for $3500. II. An offer to confess judgment under Iowa Code sections 677.4-.6 need not be in writing; as plaintiff was present when the oral offer was made in court the three days' notice requirement of section 677.5 was inoperative; Hodgman's failure to include in its offer the "statutory" attorney fees and interest did not make the offer defective; because plaintiff did not recover more than the offer on the trial, the district court properly taxed to plaintiff the costs incurred after the offer was made.

III. Trial court's ruling denying plaintiff attorney fees was not clearly unreasonable nor did trial court abuse its discretion; in the circumstances of this case, the language of Iowa Code section 535.3 (1981) (interest to accrue from date of commencement of action) stripped the court of any discretion to withhold interest on the judgment; upon remand the trial court's decree should be modified to this extent.

No. 66997. DOLEZAL v. CITY OF CEDAR RAPIDS.
Appeal from Linn District Court, Robert E. Ford and Thomas M. Horan, Judges. Reversed and remanded with directions. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Reynoldson, C.J. (15 pages $6.00)

Plaintiff appeals from the entry of dismissal, summary judgment, and directed verdict in his unjust enrichment action. After defendants, a city and its airport commission, had commenced condemnation proceedings against farmland plaintiff was leasing, plaintiff planted a crop on the land. Defendants harvested the crop and retained the profits, and plaintiff brought this action against defendants to recover the alleged value of his services and expenses in planting and tending the crop. The trial court dismissed plaintiff's claim on the ground that suit had not been brought within two years of notice as required by Iowa Code section 613A.5 (statute of limitations for municipal tort claims). The trial court also dismissed defendants' counterclaim in trespass on the ground that the dismissal of plaintiff's claim obviated its use as an offset. OPINION HOLDS: I. Plaintiff's unjust enrichment claim is not a tort within the scope of Iowa Code section 613A.2, so the notice and timely filing requirements of chapter 613A are inapplicable; plaintiff's claim is, however, subject to the five-year statute of limitations on unwritten contracts. II. Because the trial court predicated dismissal of defendants' counterclaim on dismissal of plaintiff's claim, defendants' failure to cross-appeal does not preclude the trial court on remand from considering their counterclaim as a set-off.

No. 67407. STATE v. NEWMAN.
Appeal from Polk District Court, Dale S. Missildine, Judge. Affirmed in part, reversed in part. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McCormick, and McGiverin, JJ. Opinion by Uhlenhopp, J. (16 pages $6.40)

Defendant appeals from his conviction of first-degree kidnapping and third-degree sexual abuse. OPINION HOLDS: I. Defendant's rights were not violated by the lineup procedure employed here. II. The trial court did not err in holding that the probative value of testimony concerning a previous instance of sexual abuse was sufficient for admissibility on the issue of identity in connection with the present instance; the probative value outweighed the prejudicial effect of the evidence. III. The trial court erred in overruling defendant's request to have the closing arguments reported but defendant did not sustain prejudice from the court's ruling. IV. Substantial evidentiary support exists for the jury's finding of kidnapping; the confinement and removal of the victim exceeded that merely incident to the offense of sexual abuse. V. Defendant cannot be punished for both first degree kidnapping and third degree sexual abuse because third degree sexual abuse is a lesser included offense of first degree kidnapping as charged and tried in this case.

No. 67636. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT v. D. HOWARD MALLONEE.
Appeal from Grievance Commission of the Supreme Court of Iowa. License revoked. Considered en banc. Opinion by Uhlenhopp, J. (8 pages $3.20)

Mallonee appeals from a recommendation of the commission that his license to practice law be revoked. OPINION HOLDS: I. In connection with his representation of the Carleys in the settlement of claims arising out of a personal injury automobile accident, Mallonee manipulated his clients and the papers in such a way as to appropriate to his own use $3481.50; we approve the commission's finding that Mallonee violated DR1-102(A)(3), (4), and (5), EC 1-5, EC 9-5, and DR9-102(A) and (B) of the Iowa Code of Professional Responsibility for Lawyers. II. In connection with his representation of the administrator of the Schmidt estate and the sale of the estate's principle asset, a farm, Mallonee, either as the result of incompetence or duplicity, was engaged in "triple dealing"; we agree with the commission's finding that Mallonee's conduct of affairs in this estate violated DR1-102(A)(1), (3), (4), and (5), EC 1-5, EC 5-3, and sections 610.15 and 610.24(3) and (4) of the Iowa Code of 1977 and 1979. III. We approve the commission's finding that Mallonee violated EC 5-5 by naming himself as a beneficiary in a will he drafted for a client. IV. We approve the commission's finding that Mallonee violated DR 9-102(A) and (B) by failing to keep a separate trust account for clients' funds.

NO. 66928. KESTER V. BRUNS.
Appeal from Linn District Court, William R. Eads, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McCormick, and McGiverin, JJ. Opinion by McCormick, J.
(13 pages $5.20)

Plaintiffs appeal from the judgment on jury verdict for defendant in this negligence suit arising from a car-pedestrian accident. A car driven by plaintiffs Thomas and Marilyn Kester stalled on an icy four-lane street. A passing motorist stopped to help, and he and Thomas unsuccessfully tried to push the car onto the shoulder. The car was hit by another car and both cars were left in the street. When Thomas returned to his car to retrieve a pool cue, he was hit by a third car and severely injured. OPINION HOLDS: I. Although defense counsel should not have made remarks in his opening statement about the investigating officers' opinions of fault, the trial court did not abuse its discretion in holding plaintiffs were not prejudiced by the remarks. II. The trial court did not err in refusing to instruct the jury that Thomas did not have a duty to maintain a constant lookout for traffic; although a pedestrian does not, as a matter of law, have a duty of constant lookout for approaching vehicles, the situation in the present case was sufficiently perilous that a jury might have found that reasonable care did require a constant lookout. III. We find no merit in plaintiffs contention that the trial court should not have instructed on their duty under Iowa Code section 321.395 to display lights on a vehicle stopped in the roadway without also instructing on the exception in section 321.396 which excuses the duty when an accident extinguishes the lights; while the evidence showed the Kester car had no lights on, no evidence was adduced to show how or when they were extinguished. IV. The trial court did not err in instructing the jury that Marilyn had to comply with section 321.395; the jury could find from the evidence that even though Marilyn did not own the car, she had at least joint control of the vehicle during the relevant events. V. The trial court did not err in refusing to instruct the jury on the rescue doctrine (it is not contributory negligence to expose oneself to risk of harm in a reasonable effort to save valuable property); we agree with the trial court that it was unreasonable as a matter of law for Thomas to risk his life to rescue a $90 pool cue. VI. Plaintiffs also contend that the trial court erred in refusing to instruct the jury on the doctrine of comparative negligence rather than contributory negligence; although they allege that Iowa Code section 619.17 (mitigating facts in actions for damages) would deny equal protection of the laws unless construed as a comparative negligence provision like Iowa R. Civ. P. 97 (for suits by employees against employers

KESTER V. BRUNS (cont.)
and by passengers against common carriers) and Iowa Code section 327D.188 (for suits by or on behalf of railroad employees against railroads), the classification plaintiffs attack is accomplished by rule 97 and section 327D.188, not by section 619.17; the trial court did not err in overruling plaintiffs' constitutional objection to the court's refusal of their requested instruction on comparative negligence; plaintiffs did not preserve any other ground of objection to the court's refusal to give the instruction. VII. The trial court did not err in refusing to give plaintiffs' instruction submitting a specification of negligence against defendant alleging his failure to stop his vehicle within the assured clear distance ahead as required by section 321.285; the assured clear distance issue was omitted not only from the petition but also from the response to discovery and pretrial order, where it should have been listed if it was to be an issue in the case; notice pleading enables a party to postpone the necessity of specificity from the pleading stage to the pretrial stage but does not dispense with it altogether.

NO. 67835. BEVERS V. KILBURG.
Certiorari to Linn District Court, Paul J. Kilburg, Judge. Writ annulled. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McCormick and McGiverin, JJ. Opinion by McGiverin, J.
(9 pages $3.60)

Wife in dissolution case, and her attorney, were found in contempt of court for trying to avoid transferring a child's physical custody to the husband after the dissolution degree gave him legal custody. We granted certiorari to determine whether there is sufficient basis and evidence to find plaintiffs in contempt. OPINION HOLDS: I. The dissolution decree's provisions regarding the timing of the transfer of the child's physical custody were sufficiently clear and definite to inform the wife and her lawyer of their duties and to permit a finding of contempt for the avoidance of those duties. II. The plaintiffs' conduct was in willful disobedience of the dissolution decree.

NO. 67611. IN RE MARRIAGE OF BEVERS.
Appeal from Linn District Court, Paul J. Kilburg, Judge. Reversed in part; and affirmed in part. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McCormick and McGiverin, JJ. Opinion by McGiverin, J.
(15 pages $6.00)

Wife appeals the custody and economic provisions of a dissolution decree. OPINION HOLDS: I. We reverse the trial court's custody determination and award custody of the parties' one child to the wife, with an appropriate visitation schedule. II. We affirm the trial court's division of marital property in all respects except one; we modify the payment schedule on the wife's lien on the house. III. The wife is entitled to rehabilitative alimony of $200 per month for a period of two years and to child support of $100 per week. IV. We affirm the trial court's award of attorney's fees. V. This court previously found the husband to be in contempt of court for trying to alienate the parties' child from her mother in violation of an order of this court; we now impose a fine of $300, payable to this court's clerk, as a sanction for this contempt.

NO. 68278. IN THE INTEREST OF J.L.H.
Appeal from Cerro Gordo District Court, Leslie Boomhower, District Associate Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McCormick and McGiverin, JJ. Opinion by McCormick, J. (4 pages $1.60)

The natural parents appeal from a decree terminating their parental rights pursuant to Iowa Code section 232.116(5). That statute permits termination if a child has been adjudicated a child in need of assistance and has been placed outside his or her parents' home for at least twelve months, and if there is clear and convincing evidence that the child cannot be returned to the custody of his or her parents. OPINION HOLDS: I. The twelve-month period referred to in section 232.116(5) must expire before the hearing, but not necessarily before the petition for termination is filed; the passage of twelve months is not a jurisdictional prerequisite. II. There was clear and convincing evidence that the child could not be returned to his parents.

NO. 67575. STATE V. WEST
Appeal from Jasper District Court, Dale S. Missildine and J. P. Denato, Judges. Case remanded. Considered en banc. Opinion by McCormick, J. Dissents by Harris and Carter, JJ. (8 pages $3.20)

Defendant appeals from his guilty plea conviction of second degree robbery in violation of Iowa Code section 711.3. Before accepting defendant's plea, the judge made a statement which made it appear he had discretion concerning what the sentence would be when in fact the sentence was mandatory. After pronouncing sentence, a different judge misinformed defendant concerning reconsideration of the sentence. OPINION HOLDS: I. We remand the case to afford defendant an opportunity to show that his plea was induced by his erroneous belief the court had discretion in sentencing; if upon remand defendant makes such a showing, he is entitled to have his plea set aside and to plead anew. II. It is true defendant's sentence was not subject to reconsideration because a person sentenced for a forcible felony is ineligible for shock sentencing; the court's alleged misadvice, however, did not occur until after sentence had been pronounced; it certainly could not have affected the voluntary and intelligent nature of a plea entered a month earlier, and it surely could not have influenced defendant to not move to withdraw his plea before judgment as authorized by Iowa R. Crim. P. 8(2)(a). DISSENT BY HARRIS, J., ASSERTS: I cannot believe the trial court can be charged with giving defendant any hope, glimmering or otherwise, that he might escape serving the maximum sentence; the trial court took great pains to keep defendant from harboring any hopes about the sentence. DISSENT BY CARTER, J., ASSERTS: Absent a showing on the record in the present case that defendant was in fact misled, our disposition should be to affirm the judgment without prejudice to defendant's right to raise the issue by means of an application for postconviction relief.

No. 67433. CITY OF JANESVILLE V. McCARTNEY.
Certiorari to Bremer District Court, Ralph F. McCartney, Judge. Writ sustained. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McCormick, and McGiverin, JJ. Opinion by Harris, J. (8 page $3.20)

We granted certiorari to review a district court ruling that nullified plaintiff city's speeding ordinance and reversed two magistrate's convictions under the ordinance. OPINION HOLDS: I. The supreme court has jurisdiction to hear this case on certiorari; at the time the city's petition

for writ of certiorari was filed, the city had no other way to seek review of the challenged order, although a subsequently enacted rule of criminal procedure would permit discretionary review in the circumstances of this case. II. The district court should not have invalidated the plaintiff city's speeding ordinance; although the speed limit on the relevant stretch of "suburban" highway was lower than the limit which municipalities are ordinarily authorized by statute to impose on "suburban" highways, nonetheless the speed limit might have been proper under Iowa Code section 321.290, which permits speed limits to be lower than otherwise prescribed if the department of transportation has determined a lower speed to be the reasonable and safe limit for a specific stretch of road; the convicted motorists had the burden to raise and prove any contention that the speed limit for the relevant stretch of road was not properly imposed under section 321.290, and they did not meet that burden. III. The district court's ruling has the effect of an acquittal; the motorists cannot be retried.

No. 67658. STATE V. HODGES.
Appeal from Scott District Court, Margaret Briles, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Harris, J. (9 pages $3.60)

Defendant appeals from his conviction of first degree murder in violation of Iowa Code section 707.1 and 707.2. OPINION HOLDS: Defendant's confession was precipitated by a police officer's suggestion that defendant would receive better treatment and less severe punishment by confessing that by denying guilt and standing trial; the confession was thus involuntary and should not have been admitted.

No. 67872. SULLIVAN V. CHICAGO & NORTHWESTERN TRANSPORTATION CO.
Appeal from Harrison District Court, Glen M. McGee, Judge. Affirmed in part, reversed in part, and remanded. Considered by Reynoldson, C.J., and Harris, McGiverin, Larson, and Carter, JJ. Opinion by Harris, J. (20 pages $8.00)

Defendant railroad brings an interlocutory appeal to challenge several pretrial rulings in this wrongful death action arising from a car-train collision at a railroad crossing. OPINION HOLDS: I. The railroad contends that an amendment to Iowa Code section 307.26(5)(b) prohibits the plaintiff from presenting evidence that the railroad crossing was "particularly hazardous" so as to require special precautions, because the state department of transportation has never determined the crossing to be particularly hazardous; we do not decide whether a state DOT determination is a prerequisite to an allegation that a crossing is "particularly hazardous" on a permanent basis; in this case the only allegation is that the crossing was temporarily hazardous (and required the temporary services of a flagman) because motorists' vision was obscured by a parked train; the statutory amendment does not prohibit such an allegation of temporary special hazard, regardless of its effect on allegations of permanent special hazard. II. We decline to give an advisory opinion on an evidentiary issue not yet presented to the trial court. III. The trial court did not abuse its discretion in imposing sanctions on the defendant railroad for failure to comply with rules of civil procedure concerning discovery. IV. A motion to reconsider or set aside a previous order is not appealable; in any event the railroad did not preserve error on the motion in question. V. The trial court did not abuse its discretion by refusing to permit the defendant railroad to depose an expert whom the

plaintiff had consulted but did not plan to call as a witness; the railroad did not show exceptional circumstances justifying such a deposition under Iowa R. Civ. P. 122(d)(2). VI. With regard to the defendant railroad's motion to compel documents prepared by two of plaintiff's experts who are expected to testify, the trial court mistakenly employed a standard applicable to compelling documents prepared by an expert who will not testify; on remand the trial court should reconsider the motion and exercise its discretion whether or not to compel production of documents.

No. 68177. DEERING V. NIX.
Appeal from Lee District Court, D. B. Hendrickson, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Harris, J. (6 pages $2.40)

This is an appeal from a postconviction proceeding to challenge the penal placement of petitioner inmate in the general prison population rather than returning him to his former placement in a less restrictive correctional center after he was exonerated in a disciplinary proceeding. OPINION HOLDS: In light of Iowa Code section 902.5, which gives the state unfettered discretion regarding inmate placement, a prison policy and procedure guideline providing that an inmate "shall be reinstated to his original status" if found innocent of any alleged disciplinary rule violation does not create any constitutionally protected due process "liberty interest" which would require placing an inmate back in the same location he was in prior to the filing of the disciplinary charge.

No. 66827. STATE V. THOMPSON.
Appeal from Polk District Court, Harry Perkins, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Harris, J. (10 pages $4.00)

Defendant appeals his conviction of voluntary manslaughter in violation of Iowa Code section 707.4. OPINION HOLDS: I. Trial court did not abuse its discretion in allowing the jury, over defendant's objection, to take to the jury room the gun with which the victim had been shot; even assuming, without holding, that the gun here should not have been sent with the jury, defendant is in no position to complain because any experiments with the gun by the jury were only cumulative of what was already in the record without objection. II. Trial court did not abuse its discretion in refusing to admit into evidence audio tape recordings of defendant's pretrial hypnotic sessions with a psychologist. III. By failing to either specifically address his sufficiency of the evidence challenge to the lesser included offense or to object to the instruction and verdict form on voluntary manslaughter, defendant failed to preserve error on his claim that there was insufficient evidence to support a jury verdict of guilty of the lesser included offense of voluntary manslaughter.

NO. 66857. BANKERS TRUST CO. V. WOLTZ.
Appeal from Polk District Court, Ray Hanrahan, Judge. Affirmed and remanded. Considered by Reynoldson, C.J., and LeGrand, Uhlenhopp, Harris and McGiverin, JJ. Opinion by McGiverin, J. (11 pages $4.40)

Defendant appeals with permission from a partial judgment entered on an adverse jury verdict and the awarding of attorney fees pursuant to Iowa Code § 625.22 (1981). A jury verdict found defendant Woltz liable as guarantor of

a $170,000 consolidated loan made by plaintiff bank to a corporation of which Woltz owned one-half of the stock. OPINION HOLDS: I. The proffered testimony was an attempt to alter or vary language to the written agreement, and as such was inadmissible extrinsic evidence. II. The surety agreement does not lack the necessary language to create a continuing guaranty of an unlimited amount of money for an unlimited period of time; the surety agreement was not ambiguous as to a continuing guaranty obligation. III. The right to attorney fees and costs depends upon the statute in force at the termination of the proceedings, not at the time the contract was signed; the award of trial attorney fees to plaintiff was proper under Iowa Code section 625.22 (1981); attorney fees in this appeal are allowed because the written agreement provided for attorney fees and in no way limited them to costs in the trial court; we remand the case to the district court for the limited purpose of an evidentiary hearing on and the fixing of appellate attorney fees.

No. 66949. BRUBAKER v. BARLOW.
Appeal from Linn District Court, Clinton E. Shaeffer, Judge. On review from Iowa Court of Appeals. Court of appeals opinion vacated; judgment of the trial court reversed; case remanded for trial. Considered by LeGrand, P.J., Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by LeGrand, J. (6 pages $2.40)

The trial court entered summary judgment for the executor and dismissed the plaintiffs' motion for summary judgment in their action seeking funds from decedent's bank accounts assigned to them as allegedly irrevocable gifts. On appeal, the court of appeals reversed and ordered the trial court to enter summary judgment for the plaintiffs, determining that the assignments were irrevocable gifts. We granted further review. OPINION HOLDS: Unless the evidence is so clear that reasonable minds can reach only one conclusion, the question concerning whether the decedent intended to make irrevocable gifts by the assignments, an issue involving the interpretation of the language in the assignments, is a fact question which cannot be disposed of on a motion for summary judgment; the record before us does not meet this standard of certainty, particularly as to the meaning of the decedent's reservation of a right of "withdrawal and redemption" in the assignments; this is an issue to be resolved by trial. We hold both motions for summary judgment should have been overruled; the case is remanded for trial.

No. 67715. STATE v. SUCHANEK.
Appeal from Dubuque District court, T.H. Nelson, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Schultz, J. (10 pages $4.00)

Defendant appeals from a judgment and resentence imposed following the vacation of a previous sentence wherein probation was granted. Defendant asserts that he was denied his statutory right to a probation revocation hearing under Iowa Code section 908.11 and his constitutional rights to due process when, upon resentencing, trial court rejected a portion of a stipulation under which defendant had previously received a suspended sentence, apparently relied upon another portion of that stipulation wherein defendant admitted a probation violation, and then imposed a sentence of incarceration without affording defendant a probation revocation hearing. OPINION HOLDS: Trial court should not have set aside the original judgment entry containing the suspended sentence without holding an evidentiary hearing to determine whether the original written judgment entry should be set aside under Iowa R. Crim. P. 23(5)(a) as imposing an illegal

determinate sentence or whether the original judgment contained a clerical error which should be corrected via a nunc pro tunc order under Iowa R. Crim. P. 22(3)(g); if the latter action is the proper one, defendant's suspended sentence could be set aside only after a probation revocation hearing was held; we remand the matter for such an evidentiary hearing; we find no merit in the State's claim that defendant waived this error by his failure to object at the time of sentencing.

No. 67502. KIMBALL v. NIX.
Appeal from Lee District Court, John C. Miller, Judge. Reversed and remanded. Considered en banc. Per curiam. (5 pages $2.00)

Penitentiary inmates appeal from the dismissal of their petition for writ of habeas corpus, challenging conditions of confinement on grounds of cruel and unusual punishment. OPINION HOLDS: The district court undoubtedly had personal jurisdiction of the warden and subject matter jurisdiction of habeas corpus proceedings, so the warden's special appearance should have been overruled; even assuming it was proper to treat the special appearance as a motion to dismiss, trial court should not have sustained the motion to dismiss because it raised affirmative matters.

No. 67103. MERGED AREA (EDUCATION) VII v. BOARD OF REVIEW.
Appeal from Black Hawk District Court, William G. Klotzbach, Judge. Affirmed. Considered by Reynoldson, C.J., and LeGrand, Uhlenhopp, McGiverin, and Carter, JJ. Opinion by LeGrand, J. (10 pages $4.00)

Merged Area (Education) VII a/k/a Hawkeye Institute of Technology appeals from a decree denying a property tax exemption on leased property used in the operation of a technical and vocational school. OPINION HOLDS: The trial court correctly ruled that Iowa Code section 427.1(2) (1979) affords a school corporation its only exemption and is limited to covering property owned by it and that Iowa Code section 427.1(9) (1979) was not intended to include a school corporation within the designation of "charitable institutions" for which exemptions for property used are available; we therefore affirm the trial court.

No. 66485. COMMUNITY LUTHERAN SCHOOL v. IOWA DEPARTMENT OF JOB SERVICE.
Appeal from Polk District Court, James P. Denato, Judge. Reversed. Considered en banc. Opinion by Uhlenhopp, J. Dissent by McGiverin, J. (19 pages $7.60)

Petitioners, parochial schools, appeal from the district court's affirmance of respondent agency's denial of a statutory exemption from the Iowa Employment Security Law. In this appeal we are asked to recognize a statutory exemption from coverage of the Iowa Employment Security Law, chapter 96 of the Iowa Code of 1981 (IESL) for three parochial schools which are separately incorporated from the churches in Iowa that formed them. OPINION HOLDS: I. The schools are exempt from IESL under section 96.19(6)(a)(6)(a) of the Iowa Code because they are "operated primarily for religious purposes" as that phrase is used in the statute and meet the second prong of the statutory test for exemption by being "operated, controlled, supervised or principally supported by a church or convention or association of churches." II. Because we hold the schools are exempt from IESL under section 96.19(6)(a)(6)(a) of the Iowa Code, we do not reach the constitutional claims advanced in the appeal; we also find it unnecessary to resolve the issue of an agency's ability to determine the meaning of a religious function. DISSENT ASSERTS: I would affirm the district court and hold that petitioner schools are not exempt from coverage under the Iowa Employment Security Law under Iowa Code section 96.19(6)(a)(6)(a) (1981) and the Federal Unemployment Security Act, chapter 23 of the Internal Revenue Code; I also agree with the district court and the agency that

coverage of petitioners under IESL does not violate petititoners' rights under U.S. Const., Amend. 1, due to the compelling state interest to minimize the crushing burden of involuntary unemployment.

No. 65992. STATE v. NEWMAN.
Appeal from Polk District Court, Joel D. Novak, Judge and C. Edwin Moore, Senior Judge. Affirmed in part and reversed in part. Considered by LeGrand, P.J., and Uhlenhopp, McCormick, Larson and Schultz, JJ. Opinion by LeGrand, J. (17 pages $6.80)

In these consolidated appeals, defendant challenges his conviction for first degree kidnapping and second degree sexual abuse (Iowa Code §§ 710.2 and 709.3) as well as the subsequent denial of his application seeking postconviction relief. OPINION HOLDS: I. There was sufficient evidence for the jury to find, beyond a reasonable doubt, that the victim had been kidnapped and not merely confined and transported incidentally to sexual assaults. II. Iowa Code section 710.1, the statutory definition of kidnapping, is not unconstitutional on its face. III. The trial court's action in striking certain allegedly prejudicial testimony and instructing the jury to disregard it cured any error. IV. Defendant cannot be punished for both first degree kidnapping and second degree sexual abuse because second degree sexual abuse is a lesser included offense of first degree kidnapping as charged and tried in this case. V. The issue regarding the validity of a lineup identification was first raised in defendant's motion for a new trial and was therefore waived. VI. The services rendered by trial counsel were not below the range of normal competency and did not constitute ineffective assistance of counsel.

No. 67036. LAMBERTO v. BOWN.
Certiorari to Polk District Court, Thomas Bown, Judge. Writ sustained. Considered en banc. Opinion by Larson, J. (10 pages $4.00)

Roman Lamberto, a newspaper reporter, brought a certiorari action challenging district court's action finding him in contempt of court for failure to obey discovery orders including a ruling for an in-camera inspection of the testimony and documents sought to be discovered in a suit filed by Donald Gartin against Dan McAllister. Lamberto wrote a story about the suit; McAllister sought to compel Lamberto to relate details of conversations with Gartin and to produce documents demanded by him, and Lamberto refused claiming a first amendment privilege. OPINION HOLDS: I. A showing that a claim or defense is not patently frivolous is duplicative and unnecessary in view of the other elements for subordinating a first amendment privilege, in Winegard v. Oxberger, 258 N.W.2d 847 (Iowa 1977), and we now eliminate it as a requirement. II. The procedure utilized where use is made of an in-camera inspection of the disputed evidence in order to determine whether a reporter's privilege should be subordinated to a compelling state interest includes a preliminary determination whether the resisting party falls within the class of persons qualifying for the privilege; if that preliminary showing is made, the material is to be treated as presumptively privileged, and the burden falls on the requesting party to satisfy the court by a preponderance of the evidence, including all reasonable inferences, that (1) there is a probability or likelihood that the evidence is necessary and (2) it cannot be secured from any less obtrusive source; if the court is so satisfied, an in-camera examination of the evidence should be ordered. III. McAllister failed to demonstrate the compelling need for the evidence because publication caused by Gartin disseminating of the damaging information was of doubtful relevancy where he only presently claims damages for intrusion upon his solitude or seclusion, and the need of the evidence for impeachment purposes is not critical to the case, particularly where such evidence is cumulative in nature; the threshold showing necessary to trigger an in-camera examination of the evidence was not met, and the court erred in ordering discovery of Lamberto.

No. 67083. NEYENS v. ROTH.
Appeal from Dubuque District Court, T. H. Nelson, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and LeGrand, Uhlenhopp, Harris, and Larson, JJ. Opinion by Larson, J. (11 pages $4.40)

Plaintiffs, who desired to start a private ambulance service, appeal from ruling that the City of Dubuque's ambulance service was not subject to the Iowa Competition Law, Iowa Code chapter 553 (1979). OPINION HOLDS: I. The city's ambulance service is subject to the Iowa Competition Law, Iowa Code chapter 553, which prohibits "a monopoly of trade or commerce in a relevant market for the purpose of excluding competition or controlling, fixing, or maintaining prices"; the ambulance service is "trade or commerce" within the meaning of the statute. II. The city's ambulance service does not fall within an exemption to chapter 553 permitting monopolies in "activities or arrangements expressly approved or regulated by any regulatory body or officer acting under authority of this state . . ." (section 553.6(4)); the city's authority under the Home Rule Amendment to the Iowa Constitution does not amount to "express approval or regulation" of a monopolistic ambulance service.

No. 67150. MAMMEL v. M & P MISSOURI RIVER LEVEE DISTRICT.
Appeal from Pottawattamie District Court, Paul H. Sulhoff, Judge. Affirmed. Considered by Reynoldson, C.J., and LeGrand, Uhlenhopp, Harris, and Larson, JJ. Opinion by Larson, J. (10 pages $4.00)

Plaintiff appeals from adverse summary judgment in action challenging notice of proposed levee district. OPINION HOLDS: I. The contents of the notice of hearing on the proposed levee district met the test of sufficient notice as set out in our cases; the notice followed the language of the statute in regard to the claims procedure and, while it would have been preferable to include more details, the notice complies with due process requirements. II. Publishing the notice in a newspaper and sending a copy of it by ordinary mail to landowners was reasonably certain to inform interested parties of the project; the method of giving notice therefore did not violate due process standards.

No. 67621. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT v. ROBERT C. GROSS.
On Review of Report of the Grievance Commission. License suspended. Considered en banc. Opinion by Larson, J. (3 pages $1.20)

This is a review of the recommendation of the Grievance Commission concerning the extent of discipline to be imposed on the respondent. The Commission found that the respondent (1) ignored district court orders directing distributions to beneficiaries of funds received in a partition action and requiring an accounting for all funds received, and (2) comingled personal funds with trust funds received on behalf of his clients. OPINION HOLDS: Respondent's license to practice law is suspended indefinitely without reinstatement for a period of at least sixty days and until this court has approved the respondent's written application for reinstatement.

No. 67718. STATE v. CAMPBELL.
Appeal from Polk District Court, Luther T. Glanton, Judge. Affirmed in part; reversed in part. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Carter, J. (10 pages $4.00)

The State was granted discretionary review of two pretrial rulings suppressing evidence. The court held that bloody clothing found in defendant's bedroom was unconstitutionally seized, and that issues concerning admissibility of footprint identification testimony could not adequately be resolved in advance of trial. OPINION HOLDS: I. Consent to the search by defendant's girlfriend was freely given by defendant's sister, who had authority to permit a search of defendant's room by the police or by defendant's girlfriend in aid of the police. II. The trial court did not err in withholding final ruling on admissibility of footprint identification testimony until the time said evidence is offered at trial.

No. 67003. STATE v. SULLIVAN.
Certiorari to Butler District Court, B. C. Sullivan, Judge. Writ sustained. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Carter, J. (7 pages $2.80)

The State brings this original certiorari proceeding to challenge the legality of the defendant judge's order reconsidering a sentence of imprisonment pursuant to Iowa Code section 902.4 (1981). OPINION HOLDS: I. This court has jurisdiction to review on certiorari the action of the defendant judge; section 902.4 precludes appellate review of a trial court's exercise of discretion whether to reconsider a sentence, but this provision does not apply where the court's authority to reconsider a sentence is challenged on certiorari. II. Under the terms of section 902.4, a district court has no power to order a convicted felon returned to court for a reconsideration of sentence when an interval of more than ninety days has elapsed since the convicted person began to serve a sentence of confinement; the order modifying the sentence is void.

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