



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

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

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

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

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<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
15	Monday, January 3, 1983	January 19, 1983
16	Friday, January 14, 1983	February 2, 1983
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Iowa Administrative Code

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
AGRICULTURE DEPARTMENT[30] Meat and poultry inspection, ch 43 IAB 1/5/83 ARC 3469	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 26, 1983 11:00 a.m.
ARTS COUNCIL[100] Policies and procedures, 2.3; Forms, ch 3 amendments IAB 1/5/83 ARC 3466	Conference Room Arts Council Office 1223 E. Court Ave. Des Moines, Iowa	January 25, 1983 10:00 a.m.
AUDITOR OF STATE[130] Leasing of personal property, ch 13 IAB 1/5/83 ARC 3491	Auditor of State Second Floor Lucas State Office Bldg. Des Moines, Iowa	January 26, 1983 1:30 p.m.
COMMERCE COMMISSION[250] Telephone utilities, amendments to chs 22 and 16 IAB 12/8/82 ARC 3434	Hearing Room First Floor Lucas State Office Bldg. Des Moines, Iowa	January 7, 1983 10:00 a.m.
Inspection of electric plant, 25.3, 20.5(5) IAB 12/8/82 ARC 3418	Hearing Room First Floor Lucas State Office Bldg. Des Moines, Iowa	January 18, 1983 10:00 a.m.
Services by gas, electric, water and telephone utilities, amendments to chs 19, 20, 21 and 22 IAB 12/22/82 ARC 3457	Hearing Room First Floor Lucas State Office Bldg. Des Moines, Iowa	January 26, 1983 10:00 a.m.
CONSERVATION COMMISSION[290] Land management agricultural lease program, ch 74 IAB 12/22/82 ARC 3446	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 19, 1983 10:00 a.m.
ENVIRONMENTAL QUALITY DEPARTMENT[400] Water quality standards, 16.3(5)"e" IAB 1/5/83 ARC 3492	City Hall 502 South 1st Guttenberg, Iowa	January 26, 1983 7:00 p.m.
HOUSING FINANCE AUTHORITY[495] General revenue bond procedures, 4.5 IAB 12/22/82 ARC 3460	Housing Finance Authority Suite 550 Liberty Bldg. Des Moines, Iowa	January 12, 1983 1:30 p.m.
REAL ESTATE COMMISSION[700] Fees, 1.13 IAB 1/5/83 ARC 3487	Commission Office 1223 East Court Ave. Suite 205 Des Moines, Iowa	February 18, 1983 9:00 a.m.
Earnest money, 1.27(2); broker as principal, 1.27(6) IAB 1/5/83 ARC 3488	Commission Office 1223 E. Court Ave. Suite 205 Des Moines, Iowa	February 18, 1983 9:00 a.m.
Licensees of other jurisdictions, 2.3 IAB 1/5/83 ARC 3489	Commission Office 1223 E. Court Ave. Suite 205 Des Moines, Iowa	February 18, 1983 9:00 a.m.
SOCIAL SERVICES DEPARTMENT[770] Unemployed parent workfare program, ch 59 IAB 12/22/82 ARC 3437 (See IAB 10/13/82 ARC 3287)	Machinist's Union Hall 2000 Walker Des Moines, Iowa	January 12, 1983 1:00 p.m.

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Abandoned vehicle, [07,D] 2.2(5) IAB 12/8/82 ARC 3424	Department of Transportation Complex Ames, Iowa	January 18, 1983
Motor vehicle dealers, manufacturers and distributors, [07,D] ch 10 IAB 12/8/82 ARC 3431	Department of Transportation Complex Ames, Iowa	January 18, 1983
Vehicle registration and certificate of title, [07,D] ch 11 IAB 12/8/82 ARC 3425	Department of Transportation Complex Ames, Iowa	January 18, 1983
Motor vehicle lighting and safety equipment, [07,E] 1.6 IAB 12/22/82 ARC 3452	Department of Transportation Complex Ames, Iowa	February 1, 1983
Interstate registration and operation of vehicles, amendments to [07,F] ch 1 IAB 12/22/82 ARC 3453	Department of Transportation Complex Ames, Iowa	February 1, 1983
Truck operators and contract carriers, [07,F] 3.3(1)"c" IAB 12/22/82 ARC 3454	Department of Transportation Complex Ames, Iowa	February 1, 1983
Interstate fuel permits and transport carrier registration, amendments to [07,F] ch 7 IAB 12/22/82 ARC 3455	Department of Transportation Complex Ames, Iowa	February 1, 1983

ARC 3469
AGRICULTURE DEPARTMENT[30]
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 159.5(11), 189.2(2) and 189A.13, the Iowa Department of Agriculture hereby gives Notice of Intended Action to amend Chapter 43, "Meat and Poultry", Iowa Administrative Code.

The rules governing meat and poultry processing and inspections were last amended in 1976. These proposed rules revise chapter 43 to reflect current citations to and provisions of the federal Meat Inspection Act and the federal Poultry Products Inspection Act. The rules provide for meat and poultry products inspection programs that impose and enforce requirements with respect to intrastate operations and commerce that are at least equal to those presently imposed and enforced with respect to operations and transactions in interstate commerce.

Any interested person may make written comments concerning the proposed rules on or before January 26, 1983, directed to Secretary Robert H. Lounsberry, Department of Agriculture, Wallace State Office Building, Des Moines, Iowa 50319. A public hearing will be conducted on January 26, 1983, at 11:00 a.m., in the second floor conference room of the Wallace State Office Building, East 9th & Grand, Des Moines, Iowa. Interested persons are invited to present their views orally or in writing.

These rules are intended to implement Iowa Code sections 189A.3 to 189A.10 and 189A.20.

The following amendments are proposed.

Amend Chapter 43, "Meat and Poultry", by striking the chapter in its entirety and inserting in lieu thereof the following:

CHAPTER 43
MEAT AND POULTRY INSPECTION

30—43.1(189A) Federal Wholesome Meat Act regulations adopted. Part 301 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 1983, is hereby adopted in its entirety by reference; and in addition thereto, the following subsection shall be expanded to include:

1. Sec. 301.2(a) therein defining the term "Act" shall include the Iowa meat and poultry inspection Act, Iowa Code chapter 189A.

2. Sec. 301.2(b) therein defining the term "department" shall include the Iowa department of agriculture.

3. Sec. 301.2(c) therein defining the term "secretary" shall include the secretary of agriculture of the state of Iowa.

4. Sec. 301.2(e) therein defining the term "administrator" shall include the supervisor of the Iowa meat and poultry inspection service or any officer or employee of the Iowa department of agriculture.

5. Section 301.2(t) therein defining the term "commerce" shall include intrastate commerce in the state of Iowa.

6. Sec. 301.2(u) therein defining the term "United States" shall include the state of Iowa.

30—43.2(189A) Federal Wholesome Meat Act regulations adopted. Part 303, Part 306, Parts 308 through 320 and Part 329 of Title 9, Chapter III of the Code of Federal Regulations, revised as of January 1, 1983, are hereby adopted in their entirety by reference. Part 305, except section 305.2, Part 307 except sections 307.5 and 307.6, Part 325 except sections 325.3 and 325.12 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 1983, are hereby adopted in their entirety by reference.

30—43.3(189A) Federal Poultry Products Inspection Act regulations adopted.

Part 381, Title 9, Chapter III of the Code of Federal Regulations, revised as of January 1, 1983, is hereby adopted in its entirety with the following exceptions: 381.96, 381.97, 381.99, 381.101, 381.102, 381.104, 381.105, 381.106, 381.107, 381.128, Subpart R, Subpart T, Subpart V, Subpart W; and in addition thereto, the following subsections shall be expanded to include:

1. Sec. 381.1(b)(2) therein defining the term "Act" shall include the Iowa meat and poultry inspection Act, Iowa Code chapter 189A.

2. Sec. 381.1(b)(3) therein defining the term "administrator" shall include the supervisor of the Iowa meat and poultry inspection service, or any officer or employee of the Iowa department of agriculture.

3. Sec. 381.1(b)(10) therein defining the term "commerce" shall include intrastate commerce in the state of Iowa.

4. Sec. 381.1(b)(13) therein defining the term "department" shall include the Iowa department of agriculture.

5. Sec. 381.1(b)(47) therein defining the term "secretary" shall include the secretary of agriculture of the state of Iowa.

6. Sec. 381.1(b)(53) therein defining the term "United States" shall include the state of Iowa.

These rules are intended to implement Iowa Code sections 189A.3 and 189A.7(8).

30—43.4(189A) Inspection required. Every establishment except as provided in section 303.1(a), (b), (c) and (d) of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations, revised as of January 1, 1983, in which the slaughter of livestock or poultry, or the preparation of livestock products or poultry products is maintained for transportation or sale in commerce, shall be subject to the inspection and other requirements of those parts of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations revised as of January 1, 1983, enumerated in rules 30—43.1(189A), 30—43.2(189A) and 30—43.3(189A).

This rule is intended to implement Iowa Code sections 189A.4 and 189A.5.

30—43.5(189A) Handbook 570 adopted. U.S.D.A. Handbook 570, a guide to construction and layout for U.S. inspected meat and poultry plants, February 1981, is hereby adopted in its entirety by reference, and the specifications therein are those required for the construction, equipment and layout for those plants identified in rule 30—43.4(189A).

This rule is intended to implement Iowa Code section 189A.5(6).

30—43.6(189A) Forms and marks. Whenever an official form is designated by federal regulation, the appropriate Iowa form will be substituted and whenever an official mark is designated, the following official Iowa marks will be substituted:

AGRICULTURE DEPARTMENT[30] (cont'd)

1. IOWA INSP'D AND
CONDEMNED

2.



This rule is intended to implement Iowa Code section 189A.5(2).

30—43.7(189A,167) Registration. Every person engaged in business in or for intrastate commerce as a broker, renderer, animal food manufacturer, or wholesaler or public warehouseman of livestock or poultry products, or engaged in the business of buying, selling or transporting in intrastate commerce any dead, dying, disabled or diseased livestock or poultry or parts of the carcasses of any such animals, including poultry, that died otherwise than by slaughter, shall register with the Meat and Poultry Section, department of agriculture, indicating the name and address of each place of business and all trade names under which he conducts such business.

This rule is intended to implement Iowa Code section 189A.7(7).

30—43.8(189A,167) Dead, dying, disabled or diseased animals. A person shall not engage in the business of buying, selling, transporting in intrastate commerce, dead, dying, disabled or diseased animals, or any parts of the carcasses of any animal, unless they have been licensed for the purpose of disposing of the bodies of dead animals pursuant to Iowa Code section 167.2. All persons so engaged are subject to the provisions of Iowa Code chapter 167 and regulations of chapter 12. "Dead Animal Disposal". Iowa Administrative Code.

43.8(1) All rendering plants engaged in processing fallen or dead animals into pet food and pet food processing plants, shall be inspected by the Meat and Poultry Section in accordance with Iowa Code chapter 167 before registration is approved.

43.8(2) The plant shall engage the services of a licensed veterinarian, approved by the department, to inspect carcasses for the presence of communicable disease or harmful contamination or adulteration and evidence of decomposition. Any of these conditions shall be cause for the carcass to be condemned as unfit for processing into pet animal food.

All compensation for the veterinarian employed by the rendering plant and pet animal food processing plants processing inedible meat and carcass parts for pet food, shall be paid by the plant.

43.8(3) Fallen or dead animals which are recovered and transported to the processing plant shall be immediately skinned and eviscerated, except the lungs, heart, kidneys and liver, which shall be left attached to the carcass, and the carcasses shall be stored in a chill room with attached viscera until inspected and approved by a veterinary inspector. The stomach or stomachs, together with the entire intestinal tract, shall be tagged immediately with serially numbered tags and stamped with

the word "inedible." The word "inedible" shall be not less than one-half inch high. Condemned carcasses shall be deeply slashed on the round, rump, loin and shoulder, denatured with a ten percent solution of cresylic acid or other decharacterizing agent approved by the department of agriculture and removed to a rendering plant prior to the close of the working day.

43.8(4) The department shall inspect each place registered under chapter 189A or licensed under chapter 167 at least once a year, and as often as it deems necessary and shall see that the registrant conducts the business in conformity to both chapters and these rules.

43.8(5) Rendering plants and pet animal food processing plants may process fallen or dead animals into pet food where the animals are recovered and transported to a processing plant within a reasonable time following the death of an animal and before decomposition occurs.

43.8(6) Processing facilities, when located in or are operated in conjunction with a rendering plant, shall be in a separate area equipped and used only for skinning, eviscerating, deboning, grinding, decharacterizing, packaging and labeling of inedible meat and carcass parts to be used in pet animal food. Rendering facilities approved by the department shall be available to process materials not suitable for pet animal food.

43.8(7) These rules shall also govern the collection, transportation and processing of other inedible material such as lungs, livers, hearts, spleens, poultry and poultry parts obtained from slaughterhouses, packing plants or other sources, to be used in the processing and manufacture of pet animal food.

This rule is intended to implement Iowa Code sections 189A.8, 167.5 and 167.14.

30—43.9(189A) Denaturing and identification of livestock or poultry products not intended for use as human food. No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any livestock products or poultry products which are not intended for use as human food unless they are denatured or otherwise identified.

43.9(1) All inedible meat and carcass parts shall be adequately decharacterized with charcoal or with other suitable agent acceptable to the Iowa department of agriculture. Inedible material shall be cut into pieces or chunks no more than four inches in any dimension. Following decharacterization, inedible meat and carcass parts shall be packed in suitable containers approved by the department.

43.9(2) Decharacterizing shall be done to an extent acceptable to the department. Decharacterization shall be done in such a manner that each piece of material shall be so decharacterized so as to preclude its being used for, or mistaken for, product for human consumption.

43.9(3) All containers for decharacterized inedible meat or carcass parts shall be plainly marked with the word "inedible" in letters no less than two inches high.

43.9(4) Decharacterized inedible meat and carcass parts shall be frozen or held at a temperature of 40°F. or less in the processing plant or during transportation to the final processor.

This rule is intended to implement Iowa Code section 189A.8.

30—43.10(189A,167) Transportation of decharacterized inedible meat or carcass parts. No person engaged in the business of buying, selling or transporting in intrastate commerce, dead, dying, disabled or diseased

AGRICULTURE DEPARTMENT[30] (cont'd)

animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, or any other inedible product not intended for use as human food, shall buy, sell, transport, offer for sale or transportation or receive for transportation in such commerce, any dead, dying, disabled or diseased livestock or poultry or the products of any such animals that died otherwise than by slaughter, or any other inedible product not intended for use as human food, shall buy, sell, transport, offer for sale or transportation, unless such transaction or transportation is made in accordance with Iowa Code chapters 167 and 189A and Iowa Administrative Code, chapters 12 and 43.

43.10(1) All carcasses and other inedible material received for processing, and all decharacterized inedible material shipped from the plant, shall be transported and delivered in closed conveyances. The conveyance shall be constructed in such a manner as to prevent the spillage of liquids and material and in accordance with rules 30—12.15(163) and 12.16(163), Iowa Administrative Code.

43.10(2) Rendering plants and pet animal food processing plants outside the state of Iowa, from which decharacterized inedible meat or carcass parts are shipped into the state of Iowa, shall be certified by the proper public officials of the state of origin that the processing plants meet at least the minimum standards as set forth in these rules.

This rule is intended to implement Iowa Code sections 189A.8 and 167.15.

30—43.11(189A) Records. Records which fully and correctly disclose all transactions involved in their business shall be kept and retained for a period of no less than two years by the following classes of persons:

Any person that engages in intrastate commerce in the business of slaughtering any livestock or poultry, or preparing, freezing, packaging or labeling, buying or selling, transporting or storing any livestock or poultry products for human or animal food;

Any person that engages in intrastate commerce in business as a renderer or in the business of buying, selling or transporting any dead, dying, disabled or diseased carcasses of such animals or parts of carcasses of any such animals, including poultry, that died otherwise than by slaughter.

43.11(1) All such persons shall afford the secretary and his representatives, including representatives of other governmental agencies designated by him, access to such business and opportunity at all reasonable times to examine the facilities, inventory and records thereof, to copy the records and to take reasonable samples of the inventory, upon payment of the reasonable value therefor.

43.11(2) Records shall include the following:

a. The name and address of the owner, the approximate time of death of the animal and the date the animal was received for processing, shall be recorded for all animals to be inspected for processing into pet animal food.

b. The number of cartons or containers and the approximate weight of other material received from slaughterhouses, packing plants and other sources to be used in the processing of pet animal food.

c. The number of cartons, packages or containers of processed inedible meat and carcass parts and the weight of each carton stored.

d. Date of shipment, number of containers or boxes, weight of each shipment and name and address of the

consignee of all inedible and decharacterized material shipped from the plant.

This rule is intended to implement Iowa Code section 189A.4(7).

ARC 3466**ARTS COUNCIL[100]****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)“6”.

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 304A.4 and 304A.6, the Iowa Arts Council amends Chapter 2, “Policies and Procedures” and Chapter 3, “Forms”, Iowa Administrative Code.

The intended action allows the Iowa Arts Council to clarify further projects which will not be funded within the general grants-in-aid program, introduces a new grants category (creative artists grants), introduces a revised program for special constituencies, introduces new rules for a student photography exhibition (faces of Iowa), and introduces new forms to implement the rules as stated.

Any interested person may make written suggestions or comments on the proposed rule through January 25, 1983. Such written materials should be directed to the director, Iowa Arts Council, State Capitol Complex, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the director, Iowa Arts Council, at (515)281-4013, or in the Council offices at 1223 East Court Avenue, Des Moines, Iowa. Also, there will be a public hearing on Tuesday, January 25, 1983, at 10:00 a.m. in the conference room at the Iowa Arts Council office. Persons who wish to make oral presentations at the public hearing should contact the director of the Council at least one day prior to the date of the public hearing.

This rule is intended to implement Iowa Code sections 304A.4 and 304A.6.

ITEM 1. Subrule 2.3(2), paragraph “b”, subparagraph (1), is amended as follows:

(1) The Iowa arts council will not consider applications for capital improvements or construction, purchase of equipment, funding a previous year's deficit, out-of-state travel, tuition assistance for academic study, ticket subsidy programs, reception expenses, or projects excluding the general public, *projects which occur prior to the grant review process, or projects which may be characterized and needlessly free of admission or participation fees. Organizations having negotiated indirect costs with the federal government may neither list indirect costs as a project expense, nor use them as cash match on an application. Applications from colleges and universities requesting assistance for events which take place on campus*

ARTS COUNCIL[100] (cont'd)

will be considered only if the proposal involves people from the community in planning and implementation of the project.

ITEM 2. Subrule 2.3(2), paragraph "b", subparagraph (2), is amended as follows:

(2) The Iowa arts council will generally not fund conservation of art work or projects which take place outside of Iowa.

ITEM 3. Subrule 2.3(3) is amended by adding paragraph "e" (a new subcategory of general grants) which reads as follows:

e. Creative artists grants. Starting in January, 1983, the Iowa arts council will conduct a pilot project for professional creative writers (poets, playwrights, and fiction authors), musical composers or arrangers, dance choreographers, and film or video artists. Creative artists may apply for matching grants to prepare works-in-progress for circulation to potential publishers, agents, sponsors or performers. Eligible projects may include: Hiring musicians to produce a demonstration tape of a new composition, studio recording fees, hiring a music copyist to prepare a score or parts, hiring dancers to produce a video tape of a new choreography, typist fees to finalize the manuscript of a novel, hiring consultants to prepare publications or other preparatory expenses. Creative artists grants are not fellowships. After June 30, 1983, this program will be evaluated. Individuals interested in applying for creative artists grants after that date should contact the agency grants officer.

ITEM 4. Subrule 2.3(12) is rescinded in its entirety. A new program category is inserted in its place which reads as follows:

2.3(12) Arts for special constituencies. Programs for the physically, mentally, and emotionally handicapped, programs for the elderly, and programs for the institutionalized may be individually designed by sponsors to fulfill the needs of special groups. Special constituencies are defined as groups and individuals removed from society's mainstream by virtue of physical or mental handicaps, geographic or socioeconomic conditions, detention, or the process of aging.

a. Program guidelines. The mission of the Iowa arts council's special constituents program is to employ artists to initiate, guide, and document quality programs or projects in special settings. Quality is defined as seriousness of intention, validity of process, and potential for creative development of the individuals involved. Programs or projects are individually tailored to meet the needs and concerns of the applicant. Usually, the applicant will provide half of the program or project cost with cash or in-kind services. Groups and individuals interested in special constituents programs should contact the Iowa arts council for application forms.

b. Procedures for sponsors. The following procedures apply to sponsors involved with programs for special constituents.

(1) The applicant must submit for arts council approval the resumé of any artist or artists proposed for residencies.

(2) The applicant should fill out and return application P-22. The applicant will be notified in writing within thirty days of receipt of the application by the Iowa arts council of the status of the application.

(3) A successful application will receive contract P-16. The contract should be signed and returned within seven days of the day of receipt.

(4) Sponsors must complete and return programs final report form P-36 within thirty days of the completion of the final project as granted.

ITEM 5. Subrule 2.3(14) is rescinded in its entirety and reserved for future use.

ITEM 6. Amend rule 2.3(304A) by adding the following new subrule and renumbering subrules 2.3(15) and 2.3(16) accordingly:

2.3(15) Faces of Iowa. Faces of Iowa is an all-Iowa student photography exhibition.

a. Program guidelines and description. The exhibition is open to students in public and private schools, grades six through twelve. Students need not enter through their schools, but administrators and teachers are encouraged to assist in the project. The purpose of the exhibition is to capture Iowa's faces, places, landscapes, buildings and terrain, to stimulate and reward quality in student photography, and to emphasize the power of visual communication.

b. Official rules and guidelines. Students wishing to enter the exhibition must do the following:

(1) Entries must be black and white photos conforming to the following photographic dimensions: Four inches by five inches, five inches by seven inches, eight inches by ten inches, or eleven- by fourteen-inch. Each photo must be mounted on eleven inches by fourteen inches black mat board for durability.

(2) The maximum number of entries per student is five, each entry must be accompanied by an official entry form P-17. The entry form gives permission for photographs to be published in publications of the Iowa arts council or another publication so designated, and displayed as part of a touring exhibition should they be selected by the judges. The student must also retain negatives of all works submitted.

(3) Students or schools must bear the expense in postage to submit entries. Entries will be returned to students only if accompanied by stamped, self-addressed envelopes.

(4) Entries will be judged on the basis of impact, imagination and unity, composition, balance, and contrasts, camera techniques, and darkroom skills.

(5) Photographs, entry forms, and a photo of the entrant must be postmarked or hand-delivered by an annual deadline during the month of May, such date to be designated and published annually.

ITEM 7. Rule 3.1(304A) is amended by adding a new subrule which reads as follows:

3.1(12) Touring exhibitions evaluation form G-12. Visual artists receiving funds to tour exhibitions are required to complete this form which describes how the event was financed, information about the people served, and rates the artistic quality of the exhibition.

ITEM 8. Rule 3.2(304A) is amended by adding a new subrule which reads as follows:

3.2(7) Final financial report form P-36 requires detailed fiscal accounting of how AIS project funds were expended.

ITEM 9. Rule 3.5(304A) is rescinded due to the discontinuance of the arts and older americans program in its previous form. A new rule is inserted which reads as follows:

100-3.5(304A) Arts for special constituencies (ASC) forms. The following are forms used in carrying out ASC.

ARTS COUNCIL[100] (cont'd)

3.5(1) Arts for special constituencies application P-22 requires basic information from the applicant, program choices, and the signature of an authorized official.

3.5(2) Arts for special constituencies contract P-16 legally commits the sponsor and the Iowa arts council to fulfill their individual responsibilities as stated in the program guidelines.

3.5(3) Arts for special constituencies final report form P-36 requires detailed fiscal accounting of how project funds were expended.

ITEM 10. Chapter 3 is amended by adding the following new rule:

100—3.10(304A) Faces of Iowa forms. The following are forms used in carrying out faces of Iowa, an all-Iowa student photography exhibition.

3.10(1) Faces of Iowa official entry form P-17 gives permission for photographs to be published in publications of the arts council or other publications so designated, and permission to display the works in an exhibition should they be selected by the judges.

3.10(2) Reserved.

ARC 3491**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 §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.

Pursuant to the authority of 1982 Iowa Acts, chapter 1253, section 13, and Iowa Code section 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 adopt 130—Chapter 13, Leasing of Personal Property. This chapter of rules provides guidelines for savings and loan associations to follow in leasing personal property to customers.

The 1982 Session of the Sixty-ninth General Assembly passed legislation to permit savings and loan associations to acquire and lease personal property for use by a customer. A lease made under this section shall have prior approval of the supervisor or be made pursuant to personal property lease guidelines approved by the supervisor to be used by the lessor associations or pursuant to a personal property lease guideline rule of general applicability for use by all associations.

Any interested parties may make written suggestions or comments on the proposed rules. Such written material should be delivered to the Supervisor of Savings and Loan Associations, Auditor of State, 2nd Floor Lucas State Office Building, Des Moines, Iowa 50319 before January 26, 1983.

Persons who wish to convey their views orally, may do so by contacting the Supervisor of Savings and Loan Associations at 515/281-5491. A public hearing will be held in the supervisor's office at 1:30 p.m. on January 26, 1983.

Persons may present their views at the public hearing either 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 hearing. These proposed rules are intended to implement 1982 Iowa Acts, chapter 1253, section 13.

CHAPTER 13**LEASING OF PERSONAL PROPERTY**

130—13.1(534) Authority. A savings and loan association may within the limitations of this rule:

1. Become the legal or beneficial owner and lessor of specific personal property or otherwise acquire such property at the request of a lessee who wishes to lease it from the association;

2. Become the owner and lessor of personal property by purchasing the property from another lessor in connection with its purchase of the related leases;

3. Incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property, if the lease is a net full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of that lease. At the expiration of the lease all interest in the property shall be either liquidated or released on a net basis as soon as practicable.

4. A lease of personal property shall be treated as a commercial loan if a loan to the lessee to acquire the property would have been a commercial loan.

5. A lease to a natural person, which meets the definition of consumer lease contained in Iowa Code section 537.1301(13), is subject to that chapter of the Code.

130—13.2(534) Definitions.

13.2(1) The term “lease” means a contract in the form of a lease or bailment for the use of personal property for a period of time exceeding four months, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease.

13.2(2) The term “lessee” means the party who leases or is offered a lease.

13.2(3) The term “lessor” means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a lease.

13.2(4) The term “personal property” means any property which is not real property under the laws of Iowa at the time offered or otherwise made available for lease.

13.2(5) The term “net lease” means a lease under which the association will not be, directly or indirectly, obligated to provide for:

a. The servicing, repair or maintenance of the leased property during the lease term;

b. The purchase of parts or accessories for the leased property: Provided, however, that improvements and additions may be leased to the lessee upon its request in accordance with the full payout requirements of subrule 13.2(6);

c. The loan or replacement of substitute property while the leased property is being serviced;

d. The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance;

e. The renewal of any license or registration for the property unless such action by the association is necessary to protect its interest as owner or financier of the property.

AUDITOR OF STATE[130] (cont'd)

13.2(6) The term "full-payout lease" is one from which the lessor can reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease. Recovery of investment by the lessor may be derived from:

- a. Rentals;
- b. Extended tax benefits;
- c. The estimated residual value of the property at the expiration of the initial term of the lease. The estimated residual value shall not exceed twenty-five percent of the acquisition cost of the property to the lessor unless it is guaranteed by the manufacturer, the lessee, or a third party not an affiliate of the association, and the association makes the determination that the guarantor has the resources to meet the guarantee. In all cases, however, both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances. Realization of the lessor's full investment plus the cost of financing the property should primarily depend on the credit worthiness of lessee and any guarantor of the residual value, and not on the residual market value of the leased item.

130—13.3(534) Salvage powers.

13.3(1) If in good faith an association believes that there has been an anticipated change in conditions which threatens its financial position by significantly increasing its exposure to loss, the provisions of rules 13.1(534) and 13.2(534) shall not prevent the association:

a. As the owner and lessor under a net, full-payout lease, from taking reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

b. As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable or appropriate action to salvage or protect the value of the property or the association's interest under the lease.

13.3(2) Additional terms. The provisions of rules 13.1(534) and 13.2(534) do not prohibit an association from including any provisions in the lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in subrule 13.3(1).

ARC 3470**EDUCATIONAL RADIO AND TELEVISION FACILITY BOARD[340]****TERMINATION OF NOTICE OF INTENDED ACTION**

Pursuant to the authority of Iowa Code chapter 18, division V, the Educational Radio and Television Facility

Board hereby terminates their Notice of Intended Action to rescind 340—chapters 1 to 10 and 16 of the Iowa Administrative Code.

During the proposed rulemaking phase of the administrative rule procedure certain portions of the proposed rule needed clarification. This clarification could not be approved by the Facility Board within the one hundred eighty-day period. The publication date for the proposed rule was August 4, 1982, ARC 3088.

Agency intent is to initiate the proceedings again in calendar year 1983.

ARC 3492**ENVIRONMENTAL QUALITY DEPARTMENT [400]****ENVIRONMENTAL QUALITY COMMISSION****NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in §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.

Pursuant to the authority of Iowa Code section 455B.32(2), the Environmental Quality Commission intends to take action to amend Chapter 16, "Water Quality Standards", Iowa Administrative Code. The proposed amendment is to reclassify the lower reach of Miners Creek in Clayton County from "B"(c) [cold water fishery] to "B"(w) [warm water fishery].

The proposed change would affect approximately 1,500 feet of Miners Creek, from its mouth at the Mississippi River to the U.S. Highway 52 bridge crossing. While the upper reaches of Miners Creek support cold water species, the portion considered for change lies within the alluvial floodplain of the Mississippi River and the influence of backwater flooding from the Mississippi River, and lack of cold water habitat, make reclassification appropriate. Reclassification is necessary because a new wastewater treatment facility for the city of Guttenberg will be discharging to this reach and might inappropriately be subjected to more stringent discharge standards for cold water streams.

A public hearing on the proposed amendment of chapter 16 will be held on January 26, 1983, at 7:00 p.m. in the City Hall, 502 South 1st, Guttenberg, Iowa. Any interested persons may make an oral presentation on the proposed rule changes at the public hearing. Interested persons may also submit written comments on the proposed rule change on or before February 7, 1983, to the Executive Director, Department of Environmental Quality, Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa 50319.

This proposed change is intended to implement Iowa Code chapter 455B, part I, division III (455B.30-455B.49).

ENVIRONMENTAL QUALITY DEPARTMENT[400] (cont'd)

Amend the current reference to Miners Creek in 16.3(5)"e", on page 49, as follows:

Water Use Designations

	Water Uses	
	A B(W)	B(C) C
NORTHEASTERN IOWA RIVER BASINS		
YELLOW RIVER SUBBASIN (Mississippi R. Tributaries)		
Miners Cr. Mouth (S21, T92N, R2W. Clayton Co.) to Hwy. 52 (SE quarter of S20, T92N, R2W. Clayton Co.	x	
Hwy. 52 (SE quarter of S20, T92N, R2W. Clayton Co.) to W line of Section 1, T92N, R3W. Clayton Co.		x

These amendments are proposed pursuant to Iowa Code section 135C.14, as amended by 1982 Iowa Acts, chapter 60.

The following amendments are proposed.

ITEM 1. Amend subrule 58.43(7), paragraph "d" to read as follows:

d. A resident placed in a Type II or III restraint shall be checked at least every thirty minutes by appropriately trained staff. ~~This shall be documented on a check sheet.~~ No form of restraint shall be used or applied in such a manner as to cause injury or the potential for injury and provide a minimum of discomfort to resident restrained. (I, II)

ITEM 2. Amend subrule 59.48(7), paragraph "d" to read as follows:

d. A resident placed in a Type II or III restraint shall be checked at least every thirty minutes by appropriately trained staff. ~~This shall be documented on a check sheet.~~ No form of restraint shall be used or applied in such a manner as to cause injury or the potential for injury and provide a minimum of discomfort to resident restrained. (I, II)

ITEM 3. Amend subrule 64.49(7), paragraph "d" to read as follows:

d. A resident placed in a Type II or III restraint shall be checked at least every thirty minutes by appropriately trained staff. ~~This shall be documented on a check sheet.~~ No form of restraint shall be used or applied in such a manner as to cause injury or the potential for injury and provide a minimum of discomfort to resident restrained. (I, II)

ITEM 4. Amend subrule 58.43(7), paragraph "i" to read as follows:

i. Nursing assessment of the resident's need for continued application of a Type III restraint shall be made every twelve hours and documented on the nurse's progress record. Documentation shall include the type of restraint, reason for the restraint and the circumstances. Nursing assessment of the resident's need for continued application of either a Type I or Type II restraint and nursing evaluation of the resident's physical and mental condition shall be made every ~~seven~~ *thirty* days and documented on the nurse's progress record. (II)

ITEM 5. Amend subrule 59.48(7), paragraph "i" to read as follows:

i. Nursing assessment of the resident's need for continued application of a Type III restraint shall be made every twelve hours and documented on the nurse's progress record. Documentation shall include the type of restraint, reason for the restraint and the circumstances. Nursing assessment of the resident's need for continued application of either a Type I or Type II restraint and nursing evaluation of the resident's physical and mental condition shall be made every ~~seven~~ *thirty* days and documented on the nurse's progress record. (II)

ITEM 6. Amend subrule 64.49(7), paragraph "i" to read as follows:

i. Nursing assessment of the resident's need for continued application of a Type III restraint shall be made every twelve hours and documented on the nurse's progress record. Documentation shall include the type of restraint, reason for the restraint and the circumstances. Nursing assessment of the resident's need for continued

ARC 3468

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 135C.14, as amended by 1982 Iowa Acts, chapter 60, the State Department of Health proposes amending rules appearing in the IAC relating to the use of restraints in intermediate care and skilled nursing facilities.

These amendments are proposed in order to eliminate the time-consuming requirement of documenting, every thirty minutes, the fact that a resident restrained in a Type II or III restraint has been checked. This rule has proven to be unworkable and overly burdensome. The other proposed change would lengthen the time period required before a nursing assessment of a resident's continued need for a Type I or II restraint must be done from seven to thirty days. These amendments would not change the requirement that residents restrained in Type II or III restraints must be checked every thirty minutes nor would they change the requirement that a nursing assessment of the continued need for a Type III restraint must be done and documented every twelve hours.

Any interested person may make written suggestions or comments on these proposed rules prior to January 26, 1983. The written materials should be directed to Chief, Health Facilities Division, State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

HEALTH DEPARTMENT[470] (cont'd)

application of either a Type I or Type II restraint and nursing evaluation of the resident's physical and mental condition shall be made every ~~seven~~ *thirty* days and documented on the nurse's progress record. (II)

ARC 3471**NURSING, BOARD OF[590]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Iowa Board of Nursing hereby gives Notice of Intended Action to adopt amendments to Chapter 3 "Licensure to Practice — Registered Nurse" appearing in the Iowa Administrative Code.

These rules relate to a change in the examination procedure and an increase in fees of the agency.

Any interested person may make written suggestions or comments prior to January 25, 1983. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, State Capitol Complex, 1223 East Court Avenue, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Executive Director at 515/281-3256 or in the office at 1223 East Court Avenue.

These rules are intended to implement Iowa Code sections 147.10, 147.29, 147.80, 152.7 and 152.8.

The following amendments are proposed.

ITEM 1. Amend Chapter 3, "Licensure to Practice — Registered Nurse" by striking all references to "State Office Building, 300-4th Street" and inserting in lieu thereof the words "1223 East Court Avenue".

ITEM 2. Strike all of subrule 3.1(2) and insert in lieu thereof the following:

3.1(2) Application — Iowa graduates. Application for the licensing examination to practice as a registered nurse in Iowa shall be made to NCLEX (National Council Licensure Examination), P.O. Box 280, Seaside, California 93955-0280 and to the Iowa Board of Nursing, 1223 East Court Avenue, Des Moines, Iowa 50319.

a. Applications for the licensure examination by graduates of nursing programs in Iowa preparing registered nurse candidates shall be processed as follows:

(1) Three months prior to each scheduled examination, the form entitled Students Completing Program shall be sent by the board directly to the head of the nursing program.

(2) The head of the nursing program is responsible for completing and returning the form entitled Students

Completing Program at least two months prior to the scheduled examination.

(3) Application forms and instructions for filing shall be sent by the board directly to the head of the nursing program for each nursing student whose name appears on the form entitled Students Completing Program.

(4) The head of the nursing program is responsible for distributing the applications and instructions for filing to each nursing student being scheduled for the examination.

b. The nursing student is responsible for:

(1) Completing the Iowa board of nursing application for examination.

(2) Completing the NCLEX application.

(3) Mailing by certified mail, the NCLEX application with an application fee (money order or certified check) seven weeks prior to the examination. A nursing student who does not meet the NCLEX deadline is to contact the Iowa board of nursing for further instructions.

c. The head of the nursing program is responsible for:

(1) Assisting the nursing student in completing the forms correctly.

(2) Signing the Iowa board of nursing application for each nursing student verifying eligibility for the licensing examination.

(3) Collecting a licensing examination fee of \$40.00 from each nursing student being scheduled for the registered nurse licensing examination. The examination fee of \$40.00 to be paid to the Iowa board of nursing is in addition to the NCLEX application fee as outlined in paragraph "b", subparagraph (3) of this subrule. The licensing examination fee is to cover the cost of administration of the examination and is not refundable.

(4) Filing the Iowa board of nursing applications for each nursing student with one licensing examination remittance made payable to the Iowa Board of Nursing totaling the exact number of nursing students scheduled for the licensing examination. An application from a nursing student will not be accepted unless filed at least fifteen days prior to the licensing examination as required by the Iowa Code.

(5) Filing a legible copy of birth certificate (hospital birth certificate will not be accepted) for each nursing student prior to the license being issued.

(6) Filing an official nursing transcript denoting the date of entry and the date of graduation for each nursing student writing the licensing examination prior to the license being issued.

d. Upon receipt of the Iowa board of nursing application for each nursing student, the remittance totaling the exact number of nursing students scheduled for the licensing examination and notification by NCLEX of the completion of their application process, an admission card and instructions will be sent by the board directly to the nursing student approximately three weeks prior to the licensing examination.

ITEM 3. Add the following new subrule 3.1(3):

3.1(3) Application — out-of-state graduates. Application for the licensing examination to practice as a registered nurse in Iowa shall be made to NCLEX (National Council Licensure Examination), P.O. Box 280, Seaside, California 93955-0289 and to the Iowa Board of Nursing, 1223 East Court Avenue, Des Moines, Iowa 50319. Applications for the licensing examination by graduates of nursing programs in other U.S. jurisdictions preparing registered nurse candidates shall be processed as follows:

NURSING, BOARD OF[590] (cont'd)

a. Application forms and instructions for filing shall be sent by the board directly to the applicant.

b. The applicant is responsible for submitting the following to the Iowa board of nursing:

(1) Completed Iowa board of nursing application for examination. The applicant is responsible for obtaining the signature of the head of the nursing program from which graduated for verification of eligibility for the licensing examination. The application will not be accepted unless filed at least fifteen days prior to the licensing examination as required by the Iowa Code.

(2) The licensing examination fee of \$40.00 made payable to the Iowa board of nursing. The examination fee of \$40.00 to be paid to the Iowa Board of Nursing is in addition to the NCLEX application fee as outlined in paragraph "c", subparagraph (2) of this subrule. The licensing examination fee is to cover the cost of administration of the examination and is not refundable.

(3) A legible copy of birth certificate (hospital birth certificate will not be accepted) prior to the license being issued.

(4) An official nursing transcript denoting the date of entry and the date of graduation forwarded to the board from the nursing program prior to the license being issued.

c. The applicant is responsible for submitting by certified mail to NCLEX seven weeks prior to the examination:

(1) The completed NCLEX application.

(2) An application fee (money order or certified check).

d. A candidate who does not meet the NCLEX deadline is to contact the Iowa board of nursing for further instructions.

e. Upon receipt of the Iowa board of nursing application, the remittance of \$40.00 and notification by NCLEX of the completion of their application process, an admission card and instructions will be sent by the board directly to the applicant approximately three weeks prior to the licensing examination.

ITEM 4. Renumber subrules 3.1(3) to 3.1(6) accordingly.

ITEM 5. Amend subrule 3.2(1), paragraph "a", subparagraph (3) to read as follows:

(3) The completed application shall be returned to the board accompanied by a ~~certified~~ legible copy of birth certificate (*hospital birth certificate will not be accepted*) and ~~\$25.00~~ \$56.00 remittance in the form of a check or money order made payable to the Iowa Board of Nursing.

ITEM 6. Amend rule 590—3.3(147) to read as follows:
590—3.3(147) Annual renewal. Renewal of license.

ITEM 7. Amend subrule 3.3(1) to read as follows:

3.3(1) In order to practice nursing in Iowa, a registered nurse shall renew his or her license ~~prior to July 1 of each year.~~ *every three years in the birth month.*

ITEM 8. Amend subrule 3.3(1), paragraph "a" to read as follows:

a. An application *and a continuing education report form* for renewal of license to practice as a registered nurse in Iowa shall be mailed to the licensee at least ~~ninety~~ *sixty* days prior to the expiration of said license.

ITEM 9. Amend subrule 3.3(1), paragraph "a", subparagraphs (1) and (2) to read as follows:

(1) The completed application *and continuing education report form* shall be returned to the Iowa Board of

Nursing, ~~State Office Building, 300-4th Street~~ *1223 East Court Avenue*, Des Moines, Iowa 50319 accompanied by a fee of ~~\$6.00~~ *\$36.00*.

(2) The application *or continuing education report form* shall be returned to the licensee if it is incomplete.

These rules are intended to implement Iowa Code sections 147.10, 147.29, 147.80, 152.7 and 152.8.

ARC 3472

**NURSING, BOARD OF[590]
NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Iowa Board of Nursing hereby gives Notice of Intended Action to adopt amendments to Chapter 4, "Licensure to Practice — Licensed Practical Nurse" appearing in the Iowa Administrative Code.

These rules relate to a change in the examination procedure and an increase in fees of the agency.

Any interested person may make written suggestions or comments prior to January 25, 1983. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, State Capitol Complex, 1223 East Court Avenue, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Executive Director at 515/281-3256 or in the office at 1223 East Court Avenue.

These rules are intended to implement Iowa Code sections 147.10, 147.29, 147.80, 152.7 and 152.8.

The following amendments are proposed.

ITEM 1. Amend chapter 4, "Licensure to Practice — Licensed Practical Nurse" by striking all references to "State Office Building, 300-4th Street" and inserting in lieu thereof the words "1223 East Court Avenue".

ITEM 2. Strike all of subrule 4.1(1) and insert in lieu thereof the following:

4.1(1) Official examination.

a. The board contracts with the National Council of State Boards of Nursing, Inc. to utilize the national licensing examination.

b. The passing score for the licensing examination is determined by the board.

c. The licensing examination shall be administered in Des Moines, Iowa under the terms of the contract as specified in paragraph "a" of this subrule.

d. Examination statistics are available to the public.

ITEM 3. Strike all of subrule 4.1(2) and insert in lieu thereof the following:

NURSING, BOARD OF[590] (cont'd)

4.1(2) Application - Iowa graduates. Application for the licensing examination to practice as a licensed practical nurse in Iowa shall be made to NCLEX (National Council Licensure Examination), P.O. Box 280, Seaside, California 93955-0280 and to the Iowa Board of Nursing, 1223 East Court Avenue, Des Moines, Iowa 50319.

a. Applications for the licensure examination by graduates of nursing programs in Iowa preparing licensed practical nurse candidates shall be processed as follows:

(1) Three months prior to each scheduled examination, the form entitled Students Completing Program shall be sent by the board directly to the head of the nursing program.

(2) The head of the nursing program is responsible for completing and returning the form entitled Students Completing Program at least two months prior to the scheduled examination.

(3) Application forms and instructions for filing shall be sent by the board directly to the head of the nursing program for each nursing student whose name appears on the form entitled Students Completing Program.

(4) The head of the nursing program is responsible for distributing the applications and instructions for filing to each nursing student being scheduled for the examination.

b. The nursing student is responsible for:

(1) Completing the Iowa board of nursing application for examination.

(2) Completing the NCLEX application.

(3) Mailing by certified mail, the NCLEX application with an application fee (money order or certified check) seven weeks prior to the examination. A nursing student who does not meet the NCLEX deadline is to contact the Iowa board of nursing for further instructions.

c. The head of the nursing program is responsible for:

(1) Assisting the nursing student in completing the forms correctly.

(2) Signing the Iowa board of nursing application for each nursing student verifying eligibility for the licensing examination.

(3) Collecting a licensing examination fee of \$30.00 from each nursing student being scheduled for the practical nurse licensing examination. The examination fee of \$30.00 to be paid to the Iowa board of nursing is in addition to the NCLEX application fee as outlined in paragraph "b", subparagraph (3) of this subrule. The licensing examination fee is to cover the cost of administration of the examination and is not refundable.

(4) Filing the Iowa board of nursing applications for each nursing student with one licensing examination remittance made payable to the Iowa Board of Nursing totaling the exact number of nursing students scheduled for the licensing examination. An application from a nursing student will not be accepted unless filed at least fifteen days prior to the licensing examination as required by the Iowa Code.

(5) Filing a legible copy of birth certificate (hospital birth certificate will not be accepted) for each nursing student prior to the license being issued.

(6) Filing an official nursing transcript denoting the date of entry and the date of graduation for each nursing student writing the licensing examination prior to the license being issued.

d. Upon receipt of the Iowa board of nursing application for each nursing student, the remittance totaling the exact number of nursing students scheduled for the licensing examination and notification by NCLEX of the

completion of their application process, an admission card and instructions will be sent by the board directly to the nursing student approximately three weeks prior to the licensing examination.

ITEM 4. Add the following new subrule 4.1(3):

4.1(3) Application — out-of-state graduates. Application for the licensing examination to practice as a licensed practical nurse in Iowa shall be made to NCLEX (National Council Licensure Examination), P.O. Box 280, Seaside, California 93955-0280 and to the Iowa Board of Nursing, 1223 East Court Avenue, Des Moines, Iowa 50319. Applications for the licensing examination by graduates of nursing programs in other U.S. jurisdictions preparing licensed practical nurse candidates shall be processed as follows:

a. Application forms and instructions for filing shall be sent by the board directly to the applicant.

b. The applicant is responsible for submitting the following to the Iowa board of nursing:

(1) Completed Iowa board of nursing application for examination. The applicant is responsible for obtaining the signature of the head of the nursing program from which graduated for verification of eligibility for the licensing examination. The application will not be accepted unless filed at least fifteen days prior to the licensing examination as required by the Iowa Code.

(2) The licensing examination fee of \$30.00 made payable to the Iowa Board of Nursing. The examination fee of \$30.00 to be paid to the Iowa board of nursing is in addition to the NCLEX application fee as outlined in paragraph "c", subparagraph (2) of this subrule. The licensing examination fee is to cover the cost of administration of the examination and is not refundable.

(3) A legible copy of birth certificate (hospital birth certificate will not be accepted) prior to the license being issued.

(4) An official nursing transcript denoting the date of entry and the date of graduation forwarded to the board from the nursing program prior to the license being issued.

c. The applicant is responsible for submitting by certified mail to NCLEX seven weeks prior to the examination:

(1) The completed NCLEX application.

(2) An application fee (money or certified check).

d. A candidate who does not meet the NCLEX deadline is to contact the Iowa board of nursing for further instructions.

e. Upon receipt of the Iowa board of nursing application, the remittance of \$30.00 and notification by NCLEX of the completion of their application process, an admission card and instructions will be sent by the board directly to the applicant approximately three weeks prior to the licensing examination.

ITEM 5. Renumber subrules 4.1(3) to 4.1(7) accordingly.

ITEM 6. Amend subrule 4.2(1), paragraph "a", subparagraph (3) to read as follows:

(3) The completed application shall be returned to the board accompanied by a ~~certified~~ legible copy of birth certificate (*hospital birth certificate will not be accepted*) and ~~\$25.00~~ \$56.00 remittance in the form of a check or money order made payable to the Iowa Board of Nursing.

NURSING, BOARD OF[590] (cont'd)

ITEM 7. Amend rule 590—4.3(147) to read as follows:
590—4.3(147) Annual renewal. Renewal of license.

ITEM 8. Amend subrule 4.3(1) to read as follows:

4.3(1) In order to practice nursing in Iowa, a licensed practical nurse shall renew his or her license ~~prior to July 1 of each year. every three years in the birth month.~~

ITEM 9. Amend subrule **4.3(1)**, paragraph "a" to read as follows:

a. An application and a continuing education report form for renewal of license to practice as a licensed practical nurse in Iowa shall be mailed to the licensee at least ~~ninety~~ sixty days prior to the expiration of said license.

ITEM 10. Amend subrule **4.3(1)**, paragraph "a", subparagraphs (1) and (2) to read as follows:

(1) The completed application and continuing education report form shall be returned to the Iowa Board of Nursing, 1223 East Court Avenue, Des Moines, Iowa 50319 accompanied by a fee of ~~\$6.00~~ \$36.00.

(2) The application or continuing education report form shall be returned to the licensee if it is incomplete.

These rules are intended to implement Iowa Code sections 147.10, 147.29, 147.80, 152.7 and 152.8.

comments should notify the commission office of their intent no later than the time prescribed for submitting written comments.

These rules are intended to implement Iowa Code section 117.27.

Amend rule 700—1.13(117) as follows:

700—1.13(117) Fees.

Annual Fee for salespersons license	\$10.00	\$45.00
Annual Fee for broker or firm.		
or trade name license.	\$20.00	\$90.00
Annual Fee for branch office		
or trade name license for		
remaining term of main license	\$10.00	\$60.00
Fee for duplicate license		
(Replacement or copy of original license)		\$10.00
Fee for change of status, type*, name, employment conversion, or other transaction (multiple changes at the same time may be made to a license for one fee.)		

*Change of type of firm requires a new license and new license fee.

Fee for change of address (applies only to sole proprietors and firms)

Examination fees are paid directly to the testing company at the prevailing rate as determined by the contract between the Iowa Real Estate Commission and the testing company.

ARC 3487**REAL ESTATE COMMISSION[700]****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 117.9, the Iowa Real Estate Commission gives Notice of Intended Action to amend rule 1.13(117) for the purpose of increasing the real estate license fees to cover all expenses of operating the office of the Iowa Real Estate Commission as required by Iowa Code section 117.27.

Persons interested in commenting on the proposed rule changes shall submit same to the Iowa Real Estate Commission no later than 4:30 p.m., February 16, 1983. Comments shall be submitted to the commission by sending or delivering them to the Commission office at 1223 E. Court Avenue, Suite 205, Des Moines, Iowa 50319.

The Iowa Real Estate Commission will hold a public hearing concerning this rule change at which time oral comments may be made to the commission. The public hearing will be held at 9:00 a.m. February 18, 1983, in the Commission office at 1223 E. Court Avenue, Suite 205, Des Moines, Iowa. Any individual wishing to present oral

ARC 3488**REAL ESTATE COMMISSION[700]****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 117.9, the Iowa Real Estate Commission gives Notice of Intended Action to amend subrules 1.27(2) and 1.27(6) for the purpose of clarifying for the industry the circumstances for returning earnest money and when funds must be in a trust account in instances when the broker is acting as a principal.

Persons interested in commenting on the proposed rule changes shall submit same to the Iowa Real Estate Commission no later than 4:30 p.m., February 16, 1983. Comments shall be submitted to the commission by sending or delivering them to the Commission office at 1223 E. Court Avenue, Suite 205, Des Moines, Iowa 50319.

The Iowa Real Estate Commission will hold a public hearing concerning these rules at which time oral comments may be made to the Commission. The public hearing will be held at 9:00 a.m. February 18, 1983, in the Commission office at 1223 E. Court Avenue, Suite 205,

REAL ESTATE COMMISSION[700] (cont'd)

Des Moines, Iowa. Any individual wishing to present oral comments should notify the Commission office of their intent no later than the time prescribed for submitting written comments.

These rules are intended to implement Iowa Code section 117.46(4).

Amend subrule 1.27(2) and add a new subrule 1.27(6) as follows:

1.27(2) Under no circumstances is a broker entitled to withhold any portion of the earnest money *as earned commission* when a transaction fails to consummate even if a commission is earned. The money must be returned to the purchaser or paid to the seller and the broker must look to the broker's employer for compensation.

1.27(6) Broker as principal.

a. *Purchase or sales: In transactions where the broker is a principal, all funds relating to the transaction shall, prior to the closing, be considered funds other than the personal funds of the broker as defined in Iowa Code section 117.46(4) and shall be deposited in the broker's trust account.*

b. *Property management: Funds for property management, including security deposits, shall not be placed in the broker's trust account when the broker owns a fifty percent or more interest in the property or when the broker has controlling interest in the ownership of the property even though owning less than a fifty percent interest therein.*

ARC 3489**REAL ESTATE COMMISSION[700]****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 117.9, the Iowa Real Estate Commission gives Notice of Intended Action to amend rule 2.3(117) to better qualify licensees of other jurisdictions to practice in Iowa and to assure equality with Iowa licensees.

Persons interested in commenting on the proposed rule change shall submit same to the Iowa Real Estate Commission no later than 4:30 p.m. February 16, 1983. Comments shall be submitted to the commission by sending or delivering them to the Commission office at 1223 E. Court Avenue, Suite 205, Des Moines, Iowa 50319.

The Iowa Real Estate Commission will hold a public hearing concerning this rule at which time oral com-

ments may be made to the commission. The public hearing will be held at 9:00 a.m. February 18, 1983, in the Commission office at 1223 E. Court Avenue, Suite 205, Des Moines, Iowa. Any individual wishing to present oral comments should notify the Commission office of their intent no later than the time prescribed for submitting written comments.

This rule is intended to implement Iowa Code section 117.21.

Rule 2.3(117), first unnumbered paragraph, is amended as follows:

700—2.3(117) Licensees of other jurisdictions. A person who is actively licensed in another state as a real estate salesperson or broker and has qualified for that license by passing an examination in that state, may be issued a comparable Iowa license ~~without further~~ by *successfully passing only the Iowa portion of the examination* under the following circumstances:

ARC 3476**REVENUE DEPARTMENT[730]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 17A.22, the Iowa Department of Revenue hereby gives Notice of Intended Action to amend Chapter 7, "Practice and Procedure Before the Department of Revenue", Iowa Administrative Code.

Presently rule 7.8(17A) provides for the filing of protests by persons who wish to contest a tax assessment, refund claim or another department action. There are instances where a person may wish only to seek a declaratory decision from the agency and in most cases, the procedure for seeking such a decision is through a petition for declaratory ruling under rule 7.25(17A). However, the department will generally refuse to issue a declaratory ruling under rule 7.25(17A) where the situation is such that an evidentiary hearing would be more appropriate to develop a basis for a decision. Under the present rule, it is very questionable whether a person can file a protest to seek contested case proceedings when a petition for declaratory ruling is not applicable in a situation where there has been no tax assessment, denial of a refund claim or department action. If there is no available administrative remedy in this situation, then the person could conceivably sue the department and seek a declaratory judgment via the courts because the department failed to make an administrative remedy available which, in fact, ought to be made available.

The purpose of the amendment to rule 7.8(17A) is to provide an additional administrative procedure when no

REVENUE DEPARTMENT[730] (cont'd)

other administrative remedy is available whereby persons can file a protest and obtain declaratory relief in a contested case proceeding. The department feels that this rule change would confer an additional benefit to the public as it makes clear that an administrative contested case remedy is available to persons who desire to utilize it but who, as yet, have not yet been the subject of any department action.

Rule 7.25(17A) is also amended. Currently, the department's rules give the Tax Review Committee the discretion to order a hearing on the disposition of a petition of a declaratory ruling. The rules do not define the type of hearing. This amendment clarifies rule 7.25(17A) that an oral conference, and not an evidentiary hearing, is contemplated. This amendment also makes it clear that petitions for declaratory rulings are disposed of on the basis of written submissions. The Tax Review Committee will maintain the discretionary authority to request a conference in order to ask questions or to clarify facts in order to dispose of a petition, but the petition will be resolved on the basis of written information. The rule change is consistent with Bonfield, The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, the Rulemaking Process, 60 Iowa L.Rev. 731, 814-815.

Any interested person may make written suggestions or comments on this proposed rule on or before February 4, 1983. Such written comments should be directed to the Deputy Director, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

Persons who want to orally convey their views should contact the Deputy Director at (515) 281-3346 or at Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by January 28, 1983.

This amendment is intended to implement Iowa Code sections 17A.1(2) and 17A.2(2).

The following amendment is proposed.

ITEM 1. Rule 730—7.8(17A) is amended by inserting the following new paragraph after the first unnumbered paragraph of the rule:

Any person who is not contesting any department action and who feels entitled to declaratory relief in which an evidentiary proceeding (contested case) would be required can file a protest under this rule.

ITEM 2. Amend rule 730—7.25(17A) by striking the first two unnumbered paragraphs after paragraph "g" and insert in lieu thereof, the following two new paragraphs:

Upon filing, the petition for declaratory ruling shall be given a docket number and the petition and any attachments thereto shall become a matter of public record. Briefs and exhibits which the petitioner desires the tax review committee to consider shall be attached to and filed with the petition.

Although no hearing will be granted to the petitioner or to any interested person in the usual course of disposition of a petition for a declaratory ruling, the tax review committee may, in its discretion, request an oral conference on the disposition of the petition. Since petitions for declaratory rulings will be disposed of on the basis of written information at the conclusion of the oral conference, the petitioner may be requested to resubmit its petition or be requested to submit a brief, exhibits or

other written information as the committee may deem necessary. Failure to submit the requested information can form a basis for declining to issue the requested declaratory ruling.

ARC 3477**REVENUE DEPARTMENT[730]
NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue hereby gives Notice of Intended Action to amend Chapter 11, "Administration", Chapter 12, "Filing Returns, Payment of Tax, Penalty and Interest", Chapter 17, "Exempt Sales", and Chapter 19, "Sales and Use Tax on Construction Activities", Iowa Administrative Code.

Effective January 1, 1983, certain permitholders are required to file sales tax deposits on a semimonthly basis. The amendment to subrule 11.10(1) provides the number of delinquent returns that will be allowed before a bond is required. Subrule 11.10(3) provides the amount of bond that will be required of semimonthly filers and further provides that the department will not accept a bond of less than one hundred dollars. Iowa Code section 422.45(20) exempts cities and counties from collecting tax on gambling activities. This exemption was effective July 1, 1979. Due to an oversight, rule 12.3(422) was not amended to exclude cities and counties.

The amendment to rule 17.8(422) is merely for clarification purposes. It makes no difference who the seller or buyer contracts with or who pays for the transportation for the interstate commerce exemption to apply.

The amendment to subrule 19.10(2) deletes traffic signal and street and parking lot lighting from an illustrative listing of property which under normal conditions becomes part of realty. In many instances, such property is attached to existing poles and would be considered tangible personal property. Therefore, each case must be determined on the facts of that case.

Any interested person may make written suggestions or comment on these proposed amendments on or before February 4, 1983. Written comments should be directed to the Director, Excise Tax Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

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

Requests for a public hearing must be received by January 28, 1983.

REVENUE DEPARTMENT[730] (cont'd)

This amendment is intended to implement Iowa Code sections 411.42 subsection 3, 422.45 subsection 20, 422.52 and 1982 Iowa Acts, chapter 1022, section 4.

The following amendments are proposed.

ITEM 1. Amend subrule 11.10(1) paragraph "c" to read as follows:

c. Existing permitholders. Existing permitholders shall be required to post a bond or security when they have two or more delinquencies in remitting the sales tax or filing timely returns during the last twenty-four months if filing returns on a quarterly basis or have had four or more delinquencies during the last twenty-four months if filing returns on a monthly basis or have had eight or more delinquencies during the last twenty-four months if filing returns on a semimonthly basis. However, if the director has determined that reasonable cause existed for the late filing of any return or payment of any tax, the permitholder shall be granted one additional late filing within the twenty-four-month period.

ITEM 2. Amend subrule 11.10(3) to read as follows:

11.10(3) Amount of bond or security. When it is determined that a permitholder or applicant for a sales tax permit is required to post a bond or securities, the following guidelines will be used to determine the amount of the bond, unless the facts warrant a greater amount: *If the permitholder or applicant will be or is a semimonthly depositor, a bond or securities in an amount sufficient to cover three months sales tax liability will be required. If the permitholder or applicant will be or is a monthly depositor, a bond or securities in an amount sufficient to cover five months sales tax liability will be required. If the applicant or permitholder will be or is a quarterly filer, the bond or securities which will be required is an amount sufficient to cover nine months or three quarters of tax liability. The department does not accept bonds for less than one hundred dollars. If the bond amount is calculated to be less than one hundred dollars, a one hundred dollar bond is required.*

This rule is intended to implement Iowa Code chapters section 422.52, ~~422 and 423~~ as amended by 1982 Iowa Acts, chapter 1022, section 4.

ITEM 3. Amend rule 730—12.3(422) to read as follows: **730—12.3(422) Permits.** Sales tax permits will be required of all resident and nonresident persons making retail sales at permanent locations within the state. A permit must be held for each location except that retailers conducting business at a permanent location who also make sales at a temporary location are not required to hold a separate permit for any temporary location. All tax collected from the temporary location shall be remitted with the tax collected at the permanent location. Persons who are registered retailers pursuant to rule 29.1(423) relating to use tax may remit sales tax collected at a temporary location with their quarterly retailers use tax return. Retailers conducting a seasonal business shall also obtain a regular permit. However, returns will be filed on either a quarterly, semiannual or annual basis depending upon the number of quarters in which sales are made. Sales tax permits will be required of all persons, *except cities and counties*, who have sales activities from gambling.

This rule is intended to implement Iowa Code sections ~~422.53, the Code, 422.45(20) and 422.53.~~

ITEM 4. Amend rule 730—17.8(422), first paragraph to read as follows:

730—17.8(422) Sales in interstate commerce-goods shipped from this state. When tangible personal property is sold within the state and the seller is obligated to deliver it to a point outside the state or to deliver it to a common carrier or to the mails for transportation to a point without the state, *irrespective of who contracts with or pays for the transportation*, sales tax shall not apply, provided the property is not returned to a point within the state. Dodgen Industries, Inc. v. Iowa State Tax Commission, 1968 Iowa, 160 N.W. 2d 289 (Iowa 1968).

ITEM 5. Amend subrule 19.10(2), by rescinding paragraph "m" and relettering the remaining paragraphs accordingly.

ARC 3496

SOCIAL SERVICES
DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 239.18, the Department of Social Services proposes amending rules appearing in the IAC relating to aid to dependent children (Chapter 40). This change specifies the time when an applicant must report changes that occur during the application process. This rule provides uniform requirements and makes them closer to requirements in the food stamp program.

Consideration will be given to written data, views, or arguments thereto, received by the Bureau of Policy, Research, and Analysis, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319, on or before January 28, 1983.

This rule is intended to implement Iowa Code section 239.5.

Subrule 40.4(1) is amended to read as follows:

40.4(1) The decision with respect to eligibility shall be based primarily on information furnished by the applicant. The applicant shall promptly report at the time of the face-to-face interview any changes, as defined in 40.7(4)"e", which occurs during the application process after the date the application was signed. Any change which occurs after the interview shall be reported within ten days from the date the change occurred. The county shall notify the applicant in writing of additional information or verification that is required to establish eligibility for assistance. Failure of the applicant to supply the information or refusal to authorize the local office to secure the information from other sources shall serve as a basis for denial of assistance. Five working days shall be considered as a reasonable period for the applicant to supply the required information or verification. Any time taken beyond the five days shall be considered a delay on the part of the applicant.

ARC 3497**SOCIAL SERVICES
DEPARTMENT[770]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to Iowa Code section 239.18, the Department of Social Services proposes amending rules appearing in the IAC relating to aid to dependent children (Chapter 46). This rule specifies the percentage of basic needs to be withheld when recouping excess assistance. This change is being made to specify a certain percentage rather than a maximum.

Consideration will be given to written data, views, or arguments thereto, received by the Bureau of Policy, Research, and Analysis, Department of Social Services, Des Moines, Iowa 50319 on or before January 28, 1983.

This rule is intended to implement Iowa Code sections 239.5, 239.6, 239.14 and 239.17.

Subrule 46.5(3) is amended to read as follows:

46.5(3) Basic needs. Recoupment by withholding from basic needs is ~~limited to~~ *shall be* ten percent of the basic needs standard in accordance with the schedule in subrule 41.8(2), unless the client elects to have more withheld.

This rule is intended to implement Iowa Code section 249.3.

Subrule 52.1(3), paragraph "a", is amended to read as follows:

a. All available income of a recipient after *applicable* disregards shall be applied to meet the cost of care before payment is made through the state supplementary assistance program; ~~except during the month of approval.~~

(1) *Residents in the following situations shall apply income toward the cost of care beginning with the month of approval in the following circumstances:*

1. *Persons eligible for state supplementary assistance transferring from an intermediate care facility to a residential care facility or from one residential care facility to another.*

2. *Residents changing from private payment status to state supplementary assistance status while residing in an intermediate care facility.*

3. *Residents moving from an independent living arrangement to a residential care facility may retain enough of the first month's income to meet the maintenance or living expenses connected with the previous living arrangement. In such cases the department shall determine how much of the resident's income is available for first month client participation.*

(2) The income of the ~~recipient resident~~ shall have the following monthly disregards:

(1) 1. \$39.00 allowance to meet personal expenses.

(2) 2. When income is earned, \$65.00 plus one-half of any remaining earned income.

(3) 3. Established unmet medical needs, excluding private health insurance.

(4) 4. Funds to meet the basic needs of dependents living in the home of the recipient according to subrule 51.3(4).

ARC 3498**SOCIAL SERVICES
DEPARTMENT[770]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 217.6 and chapter 249, the Department of Social Services proposes amending rules appearing in the IAC relating to state supplementary assistance (chapter 52). These rules change policy on first month client participation for persons in residential care facilities to that in effect for intermediate care facilities. This brings about consistency between the programs and produces a savings in residential care expenditures.

Consideration will be given to written data, views, or arguments thereto, received by the Bureau of Policy, Research, and Analysis, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before January 28, 1983.

ARC 3502**SOCIAL SERVICES
DEPARTMENT[770]****TERMINATION OF NOTICE**

Notice is hereby given that the Department of Social Services is terminating further rulemaking proceedings under the provisions of Iowa Code section 17A.4(1)"b" for proposed rules on medical assistance (chapter 78). The proposed change expanded the policy on auxiliary personnel employed by physicians. Notice of Intended Action was published in the IAB November 10, 1982 as ARC 3354. The department has decided to further review the requirement for on-site supervision before proceeding with any changes to the rule.

ARC 3501**SOCIAL SERVICES
DEPARTMENT[770]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Social Services proposes amending rules appearing in the IAC relating to medical assistance (chapters 77, 78, and 79). These rules change the method recipients will receive eyeglasses from an optometrist or optician. Eyeglasses will be ordered by an optometrist or optician from one laboratory which will provide the glasses at a set price. This method will result in a cost savings in optometric services while maintaining a quality product.

Consideration will be given to written data, views, or arguments thereto, received by the Bureau of Policy, Research, and Analysis, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before January 28, 1983.

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

ITEM 1. Rule 770—77.6(249A) is amended to read as follows:

770—77.6(249A) Optometrists. All optometrists licensed to practice in the state of Iowa are eligible to participate in the program. Optometrists in other states are also eligible if duly licensed to practice in that state. *All optometrists shall obtain eyeglasses (frames or lenses) from the designated laboratory for medical assistance recipients.*

ITEM 2. Rule 770—77.7(249A) is amended to read as follows:

770—77.7(249A) Opticians. All opticians in the state of Iowa are eligible to participate in the program. Opticians in other states are also eligible to participate.

Note: Opticians in states having licensing requirements for this professional group must be duly licensed in that state. *All opticians must obtain eyeglasses (frames or lenses) from the designated laboratory for medical assistance recipients.*

ITEM 3. Add the following new rule:

770—77.23(249A) Ophthalmic laboratory. The ophthalmic laboratory awarded the contract for single and multifocal lenses and frames is eligible to participate under the terms of the contract.

ITEM 4. Subrule 78.6(12) is amended to read as follows:

78.6(12) Actual laboratory cost of costs for contact lenses. An invoice must accompany the claim.

ITEM 5. Subrule 78.6(13) is rescinded and the following inserted in lieu thereof:

78.6(13) All lenses and frames for single focal or multifocal lenses or frames for eyeglasses shall be ordered from the designated ophthalmic laboratory. Note: Photogray and cosmetic gradient tint lenses may not be ordered.

ITEM 6. Subrule 78.7(4) is amended to read as follows:

78.7(4) Repairs or replacement of frames, lenses, or component parts. A charge will be approved for service in addition to the actual laboratory cost of materials as evidenced by an invoice attached to the claim, when eyeglass lenses or frames are ordered from the designated ophthalmic laboratory providing no charge is made for any other professional service. Payment will be approved for replacement of glasses when the original glasses have been lost or damaged beyond repair. When the glasses no longer adequately correct the recipient's vision, payment will be approved for lenses only.

The actual laboratory cost, not to exceed \$13.50, for frames. An invoice must accompany the claim.

ITEM 7. Subrule 78.7(5) is amended to read as follows:

78.7(5) Lenses, contact Contact lenses, and artificial eyes. Note: Payment will not be made for photogray or cosmetic gradient tints.

ITEM 8. Rule 770—78.7(249A) is amended by adding new subrules:

78.7(10) All lenses or frames must be ordered from the designated ophthalmic laboratory. Note: Photogray and cosmetic gradient tint lenses may not be ordered.

78.7(11) Replacement glasses, when the original glasses have been lost or damaged beyond repair, may be ordered from the designated ophthalmic laboratory. When the glasses no longer adequately correct the recipient's vision, only lenses may be ordered from the designated laboratory.

ITEM 9. Subrule 79.1(2) is amended by adding the following to the list of noninstitutional providers:

18. Designated ophthalmic laboratory	Contracted price for eyeglasses (frames and lenses)
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ITEM 10. Subrule 79.1(6) is amended by adding a new paragraph.

c. For eyeglasses (lenses and frames), payment shall be made only to the ophthalmic laboratory designated by the department in accordance with 770—77.23(249A) and shall be reimbursed in accordance with terms of the contract.

ITEM 11. Subrule 79.1(8) is amended to read as follows:

79.1(8) After reimbursement for medical assistance has been determined in accordance with appropriate procedures in place for each provider, this amount shall be reduced by a factor of two and one-half percent except for payments made to physicians, an intermediate care facility, intermediate care facility for the mentally retarded, state mental health institutes, hospitals after October 1, 1982, the lenses or frames purchased from the designated ophthalmic laboratory, and the ingredient cost on prescription drugs.

ARC 3499**SOCIAL SERVICES
DEPARTMENT[770]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Social Services proposes amending rules relating to medical assistance (chapter 78). This will allow for payment of medically necessary hysterectomies without an acknowledgment of sterilization when the recipient is already sterile or in emergency cases. Federal regulations now provide for this reasonable exception to the informed consent and it relieves the recipient of unnecessary forms.

Consideration will be given to written data, views, and arguments thereto, received by the Bureau of Policy, Research and Analysis, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before January 28, 1983.

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

Subrule 78.1(16), paragraph "j", is rescinded and the following inserted in lieu thereof:

j. Payment will be made for a medically necessary hysterectomy only when it is performed for a purpose other than sterilization and only when one or more of the following conditions are met:

(1) The individual or representative has signed an acknowledgment that she has been informed orally and in writing from the person authorized to perform the hysterectomy that the hysterectomy will make the individual permanently incapable of reproducing, or

(2) The individual was already sterile before the hysterectomy, the physician has certified in writing that the individual was already sterile at the time of the hysterectomy and has stated the cause of the sterility, or

(3) The hysterectomy was performed as a result of a life-threatening emergency situation in which the physician determined that prior acknowledgment was not possible and the physician includes a description of the nature of the emergency.

ARC 3500**SOCIAL SERVICES
DEPARTMENT[770]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Social Services proposes amending rules appearing in the IAC relating to medical assistance (chapter 79). This change removes procedures relating to provider appeals and makes reference to the chapter on fair hearings and appeals. This will avoid duplication in the rules.

Consideration will be given to written data, views, or arguments thereto, received by the Bureau of Policy, Research, and Analysis, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before January 28, 1983.

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

Rule 770—79.4(249A) is rescinded and the following inserted in lieu thereof:

770—79.4(249A) Appeal by provider of care. Providers may appeal decisions of the department according to rules in 770—chapter 7.

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

ARC 3480**AGING, COMMISSION ON THE[20]**

Pursuant to Iowa Code section 17A.3, the Iowa Commission on the Aging emergency rescinds portions of rule 20-4.2(249B), Iowa Administrative Code, "Long-term Care Ombudsman Program", dealing with the care review committee program. Questions concerning the agency's authority to promulgate some of these rules and the need to co-ordinate rulemaking with the health department makes further study appropriate at this time.

In compliance with Iowa Code section 17A.4(2), the Commission finds good cause to believe that public participation is impracticable as the agency wishes to immediately reflect its sensitivity to those concerns.

The Commission 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 amendment be made effective after filing with the Administrative Rules Coordinator on December 29, 1982, to prevent confusion on the part of the public as to the intent and thrust of its rulemaking undertaken in ARC 3393.

The following amendments are adopted.

ITEM 1. Subrule 4.2(1) is amended to read as follows:

4.2(1) General rule. The state agency shall operate a statewide long-term care ombudsman program in cooperation with appropriate state and local agencies such as the office of the state citizens' aide ombudsman, the state department of health, and the area agencies on aging. The program shall include the administration of the care review committee system (Iowa Code section ~~135C.25~~).

ITEM 2. Subrule 4.2(4) paragraph "f" is rescinded.

[Filed emergency 12/17/82, effective 12/29/82]

[Published 1/5/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/5/83.

ARC 3462**CREDIT UNION DEPARTMENT[295]**

Pursuant to the authority of Iowa Code section 533.52, rules of the Credit Union Department appearing in the IAC relating to the location of the Credit Union Department office are hereby amended.

The Credit Union Department finds that notice and public participation are unnecessary because this amendment merely corrects the department address. Therefore this rule is filed pursuant to Iowa Code section 17A.4(2).

The Credit Union Department finds that this rule confers a benefit to the public by providing the current

location of the department. Therefore this rule is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

This rule amendment shall become effective upon filing December 8, 1982.

Amend subrule 1.3(1) as follows:

1.3(1) Central organization - administrator. The administrator is appointed by the governor and approved by the senate. The administrator is the head of the Credit Union Department with offices located at ~~300 Fourth Street, 1st Floor~~, 1209 East Court Avenue, Executive Hills West, in Des Moines, Iowa 50319. Rules may be promulgated by the administrator subject to prior approval by the board. The administrator may employ such personnel as necessary to carry out the provisions of the credit union law.

This rule is intended to implement Iowa Code section 533.52.

[Filed emergency 12/8/82, effective 12/8/82]

[Published 1/5/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/5/83.

ARC 3463**CREDIT UNION DEPARTMENT[295]**

Pursuant to the authority of Iowa Code sections 17A.3 and 533.1, rules of the Credit Union Department appearing in the IAC relating to the location where membership meetings must be held are hereby amended as approved by the Credit Union Review Board at their regular meeting on December 6, 1982.

The Credit Union Department finds that notice and public participation are unnecessary. A number of credit unions have found it necessary in the last several years to hold their annual meetings outside the county of organization because of the size of the facility required to accommodate all those in attendance. Adding the words "or contiguous counties" gives them more flexibility in securing an adequate facility and limiting the location to county of organization or contiguous counties ensures that the location will be reasonably accessible to the members. Therefore this rule is filed pursuant to 17A.4(2).

The Credit Union Department finds that this rule confers a benefit on the public, in this case credit union boards of directors and the membership, in that it eliminates the requirement of prior approval to hold the meeting in a county adjacent to the county of organization and provides the opportunity to the members of meeting in a facility large enough to accommodate them without overcrowding. Such flexibility may also provide lower costs for rental of the facility and meals. Therefore this rule is filed pursuant to the Iowa Code section 17A.5(2)"b"(2).

This rule amendment shall become effective upon filing December 8, 1982.

CREDIT UNION DEPARTMENT[295] (cont'd)

Amend subrule 2.1(5) as follows:

2.1(5) Organizational meeting and annual or special meetings. All meetings shall be held *either* in the county, *or contiguous counties*, where the articles of incorporation and certificate of organization have been filed. ~~unless~~ ~~prior~~ Prior approval ~~is~~ *must be* received from the administrator to call such meeting at some other location *not named in this rule*.

This rule is intended to implement Iowa Code section 533.1.

[Filed emergency 12/8/82, effective 12/8/82]

[Published 1/5/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/5/83.

ARC 3464

CREDIT UNION DEPARTMENT[295]

Pursuant to the authority of Iowa Code section 533.30(1) rules of the Credit Union Department appearing in the IAC relating to the procedure requirement pertaining to the membership voting by mail ballot on a merger proposal are hereby amended as approved by the Credit Union Review Board at their regular meeting on December 6, 1982.

The Credit Union Department finds that notice and public participation are unnecessary. The change is a technical amendment necessitated by conflicting reporting requirements between 13.4(1) and 13.5(2). Therefore this rule is filed pursuant to 17A.4(2).

The Credit Union Department finds that this rule confers a benefit on the public, in this case credit union boards of directors. It is impossible under the present rule for a board to comply with 13.5(2) because it requires the board to notify the membership of the results of the vote within a period of time inconsistent with the requirements of 13.4(1). Therefore this rule is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

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

This rule amendment shall become effective upon filing December 8, 1982.

Amend subrule 13.5(2) to read as follows:

13.5(2) No more than ten days following the ~~date~~ ~~certification of the meeting vote as required in 13.4(1)~~ the board of the merging credit union shall inform the membership by mail the results of the vote and the date the merger is to take place.

[Filed emergency 12/8/82, effective 12/8/82]

[Published 1/5/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/5/83.

ARC 3474

HEALTH DEPARTMENT[470]

Pursuant to the authority of Iowa Code section 147A.4, the Iowa State Board of Medical Examiners and the Iowa State Department of Health emergency adopts and implements a change regarding Chapter 132, "Advanced Emergency Medical Care", Iowa Administrative Code pertaining to a change in a date certain.

In compliance with Iowa Code section 17A.4(2), the board and the department find that public notice and participation is unnecessary as this change involves extending a date certain to permit the continuance of the EMT-D pilot study program through December 31, 1983. It would be impractical to submit this change under Notice of Intended Action as it would not become effective in time to prevent the disruption of the advanced EMT-D pilot study program.

In compliance with Iowa Code section 17A.5, the board and the department find that immediate implementation of this change confers a benefit upon the public as without this action the EMT-D pilot study would terminate eliminating the availability of this type of emergency medical prehospital care provided by service programs authorized at the advanced EMT-D level to the public prior to the confirmation of its validity through sufficient study and evaluation.

This change has been reviewed and approved by the department and the board on November 10, 1982, and December 9, 1982, respectively.

This rule change is intended to implement Iowa Code section 147A.5 effective December 30, 1982.

ITEM 1. 470—132.12(147A) is amended as follows:

132.12(4) This pilot program shall be in effect until ~~December 31, 1982~~ *December 31, 1983*. On that date any individual certification or service program authorization granted under this rule shall be void.

[Filed emergency 12/16/82, effective 12/30/82]

[Published 1/5/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/5/83.

ARC 3482

HOUSING FINANCE
AUTHORITY[495]

Pursuant to the authority of Iowa Code section 220.5, subsection 15, the Iowa Housing Finance Authority adopted, at a meeting of the board held November 17, 1982, Chapter 4, "General Revenue Bond Procedures", and Chapter 5, "Small Business Loan Program."

These rules were originally published in IAB, September 15, 1982, as emergency adopted rules, ARC 3206.

HOUSING FINANCE AUTHORITY[495] (cont'd)

Notice of intent to adopt such rules was published in IAB, September 15, 1982, as ARC 3207. These emergency rules were amended by an emergency adopted rule published in IAB, October 27, 1982, as ARC 3341, which repealed chapters 4 and 5, effective January 25, 1983.

The rules contained herein will replace the emergency adopted and implemented rules which are being repealed effective January 25, 1983, by ARC 3341. The general revenue bond procedures, chapter 4, provide a uniform set of rules for applying for revenue bond financing through the Housing Finance Authority. These procedures are applicable to small business loans under 1982 Iowa Acts, chapter 1173. The small business loan program, chapter 5, contains eligibility and review criteria for small business loans under 1982 Iowa Acts, chapter 1173.

Changes from the notice were made in rules 4.7(220), 5.3(220), subrule 5.10(6) and rule 5.23(220).

Additional changes from such notice are that ARC 3459, an emergency adopted and implemented rule filed with the Administrative Rules Coordinator on December 3, 1982, published IAB December 22, 1982, has been included herein. Notice of the agency's intention to adopt such a rule was also filed on December 3, 1982, with the Administrative Rules Coordinator, published IAB December 22, 1982, as ARC 3460. The inclusion of the substance of ARC 3459 is intended only to prevent its repealer by ARC 3341. The Housing Finance Authority still considers the substance of ARC 3459 to be an emergency adopted and implemented rule, and still considers the notice of ARC 3460 to be in effect. The substance of ARC 3459 is found herein as rule 4.5(220).

These rules are intended to implement Iowa Code chapter 220, as amended by 1982 Iowa Acts, chapter 1173.

These rules will become effective on January 25, 1983. The Housing Finance Authority finds, pursuant to section 17A.5(2)"b"(2) that the normal effective date of these rules thirty-five days after publication should be waived and the rules be made effective on January 25, 1983, as they confer a benefit upon the public by making available the benefits of a government program which the legislature mandated.

ITEM 1. Chapter 4 is rescinded and the following adopted in lieu thereof:

CHAPTER 4

GENERAL REVENUE BOND PROCEDURES

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

495—4.2(220) Participating lenders. The authority will disseminate a summary of the programs for which revenue bond financing is authorized to mortgage lenders located within Iowa. Any mortgage lender as defined in

Iowa Code section 220.1, subsection 14, as amended by 1982 Iowa Acts, chapter 1173, section 2, may apply to become a participating lender in an authority program providing financing through revenue bonds by submitting a signed letter of interest in a form prescribed by the authority to the authority. A letter of interest may be submitted at any time and upon approval by the authority the participating lender shall be obligated to abide by applicable program guidelines. At its regular monthly meetings, the authority will review letters of interest received since the last board meeting and approve letters of interest from qualified mortgage lenders. After approval, the lenders shall be considered IHFA revenue bond participating lenders.

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

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

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

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

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

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

495—4.5(220) Public hearing and approval.

4.5(1) Public hearing. After January 1, 1983, the authority will not issue a bond for a specific project unless, prior to issuance, the authority has conducted a public hearing conforming to the applicable requirements of the United States Internal Revenue Code of 1954

HOUSING FINANCE AUTHORITY[495] (cont'd)

and the regulations promulgated thereunder. The hearing shall be preceded by a notice thereof published at least fourteen days prior to the date of the hearing in a newspaper published and of general circulation in the county where the project is located. The notice shall include but not be limited to the date, time and place of the hearing, the name of the project sponsor, and a general description of the project.

The hearing shall be held at the authority's offices in Des Moines, or another location stated in the notice, unless at or prior to the time scheduled for the hearing, the authority receives a written request that a local hearing be held. In the event a local hearing is requested, the previously scheduled hearing shall be canceled, and notice of a hearing in the local area shall be published in the time and manner stated above. The local hearing shall be held at the date, time and place specified in the new notice, which time and place shall be reasonably convenient to persons affected by the project.

The public hearing may be held by a staff member or board member of the authority.

4.5(2) Approval of elected official. After January 1, 1983, the authority will not issue a bond for a specific project unless, prior to issuance, the governor or another elected official of the state designated by the governor, shall approve the issuance of a bond. Following the public hearing opportunity referred to in subrule 4.5(1), the authority shall prepare and send to the governor's office, or the office of an elected official of the state designated by the governor, a statement describing each bond or series of bonds which it proposes to issue, along with a summary of the public comments received with respect thereto, if any.

495—4.6(220) Procedures following bond issuance. No bond proceeds may be used by a nonqualified user nor for a nonqualified purpose. Following disbursement of the bond proceeds, the participating lender and project sponsor shall certify to the authority that the proceeds were used by a qualified project sponsor for a qualified purpose.

4.6(1) Assumption of loans, substitution of collateral and transfer of property. Loans may not be assumed without the prior approval of the authority and then only if the purchaser of the property is an eligible project sponsor for IHFA revenue bond financing. In any situation where collateral is substituted, or property transferred other than a sale of the entire operation financed by IHFA revenue bonds, the benefits of the loan deriving from the tax-exempt rate of interest on the bonds must remain with the operation financed by the revenue bonds, and no transferee may thereby obtain the benefits of the IHFA loan.

4.6(2) Reserved.

495—4.7(220) Right to audit. The authority shall have at all times the right to audit the records of the participating lender and the operation financed by IHFA revenue bonds relating to the loan and bond to ensure that bond proceeds were used by a qualified user and for a qualified purpose. The authority or a designee acting under instructions of the authority may exercise this right.

These rules are intended to implement Iowa Code chapter 220, as amended by 1982 Iowa Acts, chapter 1173.

ITEM 2. Chapter 5 is rescinded and the following adopted in lieu thereof:

CHAPTER 5
SMALL BUSINESS LOAN PROGRAM
PART I
GENERAL

495—5.1(220) Program description. This program is intended to allow qualified small businesses to obtain loans at below market interest rates for qualified purposes through tax-exempt financing. Loans will be available from a participating lender under the IHFA small business loan program. Project sponsors shall apply directly to the participating lenders, who shall make credit and risk evaluations and otherwise make the decision, based on sound lending practices, whether or not to extend credit to the project sponsor.

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

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

495—5.2(220) Waiver. The authority may by resolution waive or vary particular provisions of these rules to conform to requirements of the federal government in connection with a small business loan with respect to which federal assistance, insurance or guaranty is sought, provided the waiver does not conflict with Iowa Code chapter 220, as amended by the 1982 Iowa Acts, chapter 1173.

495—5.3(220) Urban revitalization. To assist in improving the economy of areas which have been designated as a revitalization area under state law, applications for businesses located or to be located in such areas may be given priority by the authority. A minimum of ten percent of the bonding authority authorized by the legislature for use on small business loans shall be reserved for use and application in those areas of the state designated as urban revitalization areas.

5.4 to 5.9 Reserved.

PART II
DEFINITIONS

495—5.10(220) Definitions. As used in connection with the small business loan program, the following terms have the meanings indicated.

5.10(1) "Annual gross revenues" means total sales, before deducting returns and allowances but after deducting corrections and trade discounts, sales taxes and excise taxes based on sales, as determined in accordance with Generally Accepted Accounting Principles.

5.10(2) "Application" means those documents required by the participating lender and the authority, which shall include all of the information required by rule 5.20 (220).

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

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5.10(4) "Eligible project sponsor" means a small business as defined in 1982 Iowa Acts, chapter 1173.

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

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

5.10(7) "Participating lender" means a mortgage lender as defined in Iowa Code section 220.1, subsection 14, as amended by 1982 Iowa Acts, chapter 1173, that has submitted a letter of interest to the authority which has been approved by the board of the authority.

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

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

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

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

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

5.11 to 5.19 Reserved.

PART III

LOAN CRITERIA AND DOCUMENTATION

495—5.20(220) Application. Eligible project sponsors for small business loans shall apply directly to participating lenders in the IHFA small business loan program in accordance with the procedures in chapter 4 of these rules.

495—5.21(220) Public benefit. Before approving a small business development revenue bond issue for any project sponsor, the authority must find that the proposed project will result in one or more of the following:

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

495—5.22(220) Loan criteria.

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

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

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

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

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

4. Plans for recordkeeping, personnel and financial management;

5. Plans for marketing.

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

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

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

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

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

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

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

495—5.23(220) Good character. A project sponsor must be of good character, to be determined in the following manner by the participating lender:

1. A project sponsor who has never been convicted of a felony is of good character.

2. A project sponsor who has been convicted of a felony but who has been restored to full rights of citizenship by the governor pursuant to Iowa Code section 248.12, is of good character.

3. A project sponsor who has been convicted of a felony but who has not been restored to full rights of citizenship by the governor may be presumed to be of

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good character if no legal restrictions apply to the operation of the business for which they are seeking financing by a person so convicted.

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

5. If the good character of the project sponsor cannot be established as provided in paragraphs 1 to 3 herein, the lender shall notify the housing finance authority for further guidance.

These rules are intended to implement Iowa Code chapter 220, as amended by 1982 Iowa Acts, chapter 1173.

[Filed emergency after notice 12/17/82, effective 1/25/83]
[Published 1/5/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/5/83.

ARC 3503**IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523]**

Pursuant to the authority of Iowa Code section 175.6(14), rules of the Iowa Family Farm Development Authority appearing in IAC Chapter 2 relating to the Beginning Farmer Loan Program are hereby amended. These rules change the process to be used for issuance of a bond to include an opportunity for public comment and approval of the issuance by the Governor or other designated state official.

The Iowa Family Farm Development Authority finds that notice and public participation are unnecessary. The amendments are a result of revised federal regulations and the authority has no choice but to adopt them. If they are not adopted, the authority will be unable to issue bonds in its Beginning Farmer Loan Program. Therefore these amendments are filed pursuant to Iowa Code section 17A.4(2).

The authority also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of these amendments thirty-five days after publication should be waived and the amendments made effective on January 1, 1983, as these amendments allow the authority to continue to confer a benefit on the public. The Family Farm Development Authority will not have to cease issuing bonds in the Beginning Farmer Loan Program because of the absence of a public hearing and approval by the governor or other designated elected official.

The Iowa Family Farm Development Authority adopted these amendments December 15, 1982.

These amendments are intended to implement Iowa Code section 175.12 and 1981 Iowa Acts, chapter 68.

These amendments shall become effective January 1, 1983.

Rule 523—2.12(175,69GA,ch68) is amended to read as follows:

523—2.12(175,69GA,ch68) Issuance of bond. *The authority will not issue a bond for the purpose of financing a project for a specific beginning farmer unless, prior to the issuance, the authority has conducted a public hearing conforming to the applicable requirements of the United States Internal Revenue Code of 1954 and the regulations promulgated thereunder. Upon receipt of a completed application, in a form prescribed by the authority, the secretary or executive administrator of the authority may set a date, time and place for the hearing. The hearing shall be preceded by a notice thereof published at least fourteen days prior to the date of the hearing in a newspaper published and of general circulation in the county where the project is located. The notice shall include, but not be limited to, the date, time and place of the hearing, the name of the beginning farmer, a general description of the project, and the right of individuals to request a local hearing.*

The hearing shall be held at the authority's offices in Des Moines, or other location stated in the notice, unless at or prior to the time scheduled for the hearing, the authority receives a written request that a local hearing be held. In the event a local hearing is requested, the previously scheduled hearing may be canceled, the secretary or executive administrator of the authority may set a date, time, and place for a local hearing and notice of the hearing in the local area shall be published in the time and manner stated above. The date, time and place for the local hearing shall be reasonably convenient to persons affected by the project.

Public hearings may be held by a staff member, board member of the authority, or other qualified hearing officer.

The authority will not issue a bond for the purpose of financing a project by a specific beginning farmer unless, prior to the issuance, the governor or another elected official of the state designated by the governor, shall approve the issuance of the bond. Following the public hearing, the authority shall prepare and send to the governor's office, or the office of the elected official of the state designated by the governor, a statement describing each bond or series of bonds which it proposes to issue, along with a summary of the public comments received with respect thereto, if any.

Following approval of the loan by the authority, and upon completion of a public hearing and approval of the bond issuance by the governor or another elected state official designated by the governor, the authority will issue a bond, to be purchased by the participating lender, in the amount and fitting the terms of the loan to the beginning farmer. The principal and interest on the bond is a limited obligation payable solely out of the revenues derived from the loan to the beginning farmer and the underlying collateral or other security furnished by or on behalf of the beginning farmer. The participating lender shall have no other recourse against the authority. The principal and interest on the bond does not constitute an indebtedness of the authority or a charge against its general credit or general fund.

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[Published 1/5/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/5/83.

ARC 3504**IOWA FAMILY FARM
DEVELOPMENT AUTHORITY[523]**

Pursuant to the authority of Iowa Code section 175.6(14), rules of the Iowa Family Farm Development Authority appearing in IAC Chapter 4 relating to the Soil Conservation Loan Program are hereby amended. These rules change the process to be used for the issuance of a bond to include an opportunity for public comment and approval of the issuance by the governor or other designated elected state official.

The Iowa Family Farm Development Authority finds that notice and public participation are unnecessary. The amendments are a result of revised federal regulations and the authority has no choice but to adopt them. If they are not adopted, the authority will be unable to issue bonds in the Soil Conservation Loan Program. Therefore these amendments are filed pursuant to Iowa Code section 17A.4(2).

The authority also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of these amendments thirty-five days after publication should be waived and the amendments made effective on January 1, 1983 as these amendments allow the authority to continue to confer a benefit on the public. The Iowa Family Farm Development Authority will be able to issue bonds in the Soil Conservation Loan Program in an effort to help eradicate the soil erosion problem.

The Iowa Family Farm Development Authority adopted these amendments December 15, 1982.

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

These amendments shall become effective January 1, 1983.

Rule 523—4.4(69GA,ch1243) is amended to read as follows:

523—4.4(69GA,ch1243) Issuance of bond. *The authority will not issue a bond for the purpose of financing a project for a specific beginning farmer unless, prior to the issuance, the authority has conducted a public hearing conforming to the applicable requirements of the United States Internal Revenue Code of 1954 and the regulations promulgated thereunder. Upon receipt of a completed application, in a form prescribed by the authority, the secretary or executive administrator of the authority may set a date, time and place for the hearing. The hearing shall be preceded by a notice thereof published at least fourteen days prior to the date of the hearing in a newspaper published and of general circulation in the county where the project is located. The notice shall include, but not be limited to, the date, time and place of the hearing, the name of the beginning farmer, a general description of the project, and the right of individuals to request a local hearing.*

The hearing shall be held at the authority's offices in Des Moines, or other location stated in the notice, unless at or prior to the time scheduled for the hearing, the authority receives a written request that a local hearing be held. In the event a local hearing is requested, the previously scheduled hearing may be canceled, the secretary or executive administrator of the authority may set a date, time, and place for a local hearing and notice of the hearing in the local area shall be published in the time and manner stated above. The date, time and place for the local hearing shall be reasonably convenient to persons affected by the project.

Public hearings may be held by a staff member, board member of the authority, or another qualified hearing officer.

The authority will not issue a bond for the purpose of financing a project by a specific beginning farmer unless, prior to the issuance, the governor or another elected official of the state designated by the governor, shall approve the issuance of the bond. Following the public hearing, the authority shall prepare and send to the governor's office, or the office of the elected official of the state designated by the governor, a statement describing each bond or series of bonds which it proposes to issue, along with a summary of the public comments received with respect thereto, if any.

Following approval of the loan by the authority and upon completion of a public hearing and approval of the bond issuance by the governor or another elected state official designated by the governor, the authority will issue a bond, to be purchased by the participating lender, in the amount and fitting the terms of the loan to the landowner(s) or operator(s). The principal and interest on the bond is a limited obligation payable solely out of the revenues derived from the loan to the landowner(s) or operator(s) and the underlying collateral or other security furnished by or on behalf of the landowner(s) or operator(s). The participating lender shall have no other recourse against the authority. The principal and interest on the bond does not constitute an indebtedness of the authority or a charge against its general credit or general fund.

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ARC 3486**PUBLIC SAFETY
DEPARTMENT[680]**

Pursuant to the authority of Iowa Code section 100.35, the Iowa Department of Public Safety emergency adopts rules, Chapter 5, "Fire Marshal," regarding exits and fire escapes.

The Department hereby rescinds the following rules which were published as adopted rules as ARC 3391 in the November 24, 1982 Iowa Administrative Bulletin: 680—5.50(100) to 5.65(100) and 680—5.100(100) to 5.105(100). The Department adopts in lieu of these rules, those which were effective prior to the action of ARC 3391, which are as follows: 680—5.50(103), 5.100(103), 680—5.101(103), 680—5.102(103), 680—5.150(103), 680—5.151(103), 680—5.152(103), 680—5.153(103), and 680—5.200(103).

The Code Editor is requested to exercise the discretion granted in Iowa Code section 17A.6(3), which permits the omission from the Iowa Administrative Bulletin of any

PUBLIC SAFETY DEPARTMENT[680] (cont'd)

rule which would be unduly expensive to print or process, and pursuant to that section, the department will make available for no more than the cost of its reproducing, copies of this rulemaking until such time as it is available in permanent printed form in the Iowa Administrative Code.

In compliance with Iowa Code section 17A.4(2), the Department finds that public participation would be contrary to the public interest as this action rescinds rules which had a considerable number of amendments from the noticed rules and require even further study and comments from the public prior to adoption. The rules which the department is adopting in lieu of these are rules which have been effective since December 19, 1956, November 25, 1955, and August 17, 1977 respectively.

The Department also finds, pursuant to 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 December 17, 1982 as it confers a benefit upon the public to ensure speedy and uniform compliance with the Department's legislative mandate.

This rule implements Iowa Code section 100.35.

Rescind rules as adopted in ARC 3391 and the Code Editor is requested to insert in lieu thereof those rules that were effective prior to the adoption of ARC 3391, which are as follows: 680—5.50, 680—5.100, 680—5.101, 680—5.102, 680—5.150, 680—5.151, 680—5.152, 680—5.153 and 680—5.200.

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provide the second alternative method of computing the amount of the deposit when actual tax is not reported and remitted.

The department also finds, pursuant to 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 January 1, 1983, after filing with the Administrative Rules Coordinator as it confers a benefit upon the public to provide an alternative method of reporting and remitting semimonthly deposits.

This rule is intended to implement Iowa Code section 422.52 as amended by 1982 Iowa Acts, chapter 1022, section 3.

The following amendment is adopted:

Amend rule 730—12.1(422) to read as follows:

730—12.1(422) Returns and payment of tax. Every retailer collecting more than fifty dollars in tax in any one month shall make a monthly deposit with the department. A retailer collecting between fifty and five hundred dollars a month shall deposit the actual amount of tax collected during the month or an amount equal to not less than thirty percent of the amount of tax collected and paid during the preceding quarter. A retailer collecting five hundred dollars or more a month shall deposit the actual amount of tax collected. This deposit is due by the twentieth of the month following the month in which the tax is collected and applies only to the first two months in the quarter.

On the quarterly return, every retailer shall report the gross sales for the entire quarter, listing allowable deductions and figuring tax for the entire quarter. Space is provided on the return for a deduction of tax deposited the first and second months of the quarter. The quarterly return is due on or before the last day of the month following the end of the quarter.

Effective January 1, 1983, retailers collecting fifty dollars a month and not more than four thousand dollars in tax in a semimonthly period shall deposit the actual amount of tax collected during the month or an amount equal to one-third of the amount of tax collected and paid during the preceding quarter.

Every retailer collecting more than four thousand dollars in tax in a semimonthly period shall make a semimonthly deposit with the department. A retailer collecting more than four thousand dollars in a semimonthly period shall deposit (1) the actual amount of tax collected or an amount equal to not less than one-sixth of the amount of tax collected and paid during the preceding quarter or (2) the actual amount of tax collected or an amount equal to not less than one-sixth of the amount of tax collected and paid during the same quarter of the previous year. The method of reporting selected by the retailer, either option 1 or option 2, shall remain consistent for at least four quarters. The first semimonthly deposit is for the period from the first of the month through the fifteenth of the month and is due on or before the twenty-fifth of the month. The second semimonthly deposit is for the period from the sixteenth through the end of the month and is due on or before the tenth day of the month following the month of collection. A deposit is not required for the last semimonthly period of the calendar quarter.

On the quarterly return, every retailer shall report the gross sales for the entire quarter listing allowable deductions and figuring tax for the entire quarter. Space is provided on the return for a deduction of tax deposited for the previous five semimonthly deposits. The quarterly

ARC 3479

REVENUE DEPARTMENT[730]

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue hereby emergency adopts a rule to amend Chapter 12, "Filing Returns, Payment of Tax, Penalty and Interest", Iowa Administrative Code.

The rule implements 1982 Iowa Acts, chapter 1022, section 3. The rule allows retailers collecting more than four thousand dollars in a semimonthly period an alternative method of computing the tax deposit in lieu of the actual amount due.

In compliance with Iowa Code section 17A.4(2), the department finds that public notice and participation is impractical. The 1982 Iowa Acts, chapter 1022, section 3 provides for semimonthly reporting and remittance of state sales tax when retailers exceed four thousand dollars in a semimonthly period. This provision becomes effective January 1, 1983, and the present rule does not

REVENUE DEPARTMENT[730] (cont'd)

return is due on or before the last day of the month following the end of the calendar quarter.

Effective January 1, 1980, if it is expected that the total annual tax liability of a retailer will not exceed one hundred twenty dollars for a calendar year, the retailer may request, and the director may grant, permission to file and remit sales tax on a calendar year basis. The returns and tax will be due and payable no later than January 31 following each calendar year in which the retailer carried on business.

Following are nonexclusive examples the department could reasonably expect to be within the guidelines for annual reporting:

1. A person selling tangible personal property or taxable services where a major portion of the business is the selling of tangible personal property or taxable services exempt from the imposition of tax; such as a wholesaler whose sales are primarily for resale, or a contractor whose business is primarily new construction.

2. A person whose business is primarily seasonal, or a person engaged in part-time selling of tangible personal property or taxable services.

3. A person whose sales are of a nontaxable service and who may, on occasion, sell tangible personal property incidental to the service.

When the due date falls on Saturday, Sunday, or a legal holiday, the return or deposit will be due the first business day following such Saturday, Sunday, or legal holiday. If a return or deposit is placed in the mails, properly addressed and postage paid, and postmarked on or before the due date for filing, no penalty will attach should the return or deposit not be received until after that date. Mailed returns should be addressed to the Iowa State Excise Tax Division, Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code sections 421.14, 422.51 and 422.52 as amended by 1982 Iowa Acts, Senate File 2080 and House File 2475 chapter 1022, section 3.

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application month; allow parents separate household, roomer, or boarder status if one is a recipient of supplemental security income or social security because of disability or blindness; permit persons receiving supplemental security income on presumptive eligibility to receive shelter cost and excess medical deductions. The regulations also change provisions in regard to strikers. The household must have been eligible for food stamps prior to the strike. The higher of prestrike or during-strike income is counted and the requirement for work registration will be based on the individual's situation prior to the strike.

The Department of Social Services finds that notice and public participation are unnecessary. The change meets the criteria in 770—1.5(17A). The changes are mandated by changes in federal regulations and the state must adopt these changes in order to stay in compliance and not lose federal funds. 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. Most of the changes extend benefits to certain individuals, enabling them to become eligible for or receive more food stamps. The rule also puts Iowa into compliance with federal regulations and is necessary to protect Iowa's participation in the food stamp program. Therefore, this rule is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Social Services adopted this rule December 15, 1982. This rule is intended to implement Iowa Code section 234.12. This rule shall become effective January 1, 1983.

Rule 770—65.3(234), first paragraph, is amended to read as follows:

770—65.3(234) Administration of program. The food stamp program shall be administered in accordance with the Food Stamp Act of 1977 and in accordance with federal regulation, Title 7, Parts 270 through 282 as amended to ~~May 14, 1982~~ November 19, 1982.

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[Published 1/5/83]

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ARC 3493

SOCIAL SERVICES
DEPARTMENT[770]

Pursuant to the authority of Iowa Code section 234.6, rules of the Department of Social Services appearing in the IAC relating to the food stamp program (chapter 65) are hereby amended. The rule adopts final regulations published in the Federal Register November 19, 1982, relating to 7 CFR Parts 271, 272, and 273. The regulations permit fifty-nine-year-old applicants to be considered as sixty years old if they will be sixty by the end of the

ARC 3481

AGING, COMMISSION ON[20]

Pursuant to the authority of Iowa Code section 17A.3, the Iowa Commission on the Aging hereby adopts rules to amend Chapter 4, Iowa Administrative Code, rule 20—4.25(249B) "Designation of Planning and Service Areas".

The Commissioners adopted the amended rules at their regular meeting on December 2, 1982, after considering comment received at the public hearing on November 3, 1982.

The rules were published as Notice of Intended Action in the Iowa Administrative Bulletin on October 13, 1982, as ARC 3305.

The rules provide a clear and standardized procedure for the designation of planning and service areas and the criteria upon which the determination will be made.

The change from the Notice of Intended Action is limited to the addition of the words "or settlement(s)" in five places where "Indian reservation(s)", "Indian reservation" or "Indian reservations" occur, 4.25(3)"a", 4.25(4)"c" (in both the first and second sentences), 4.25(4)"c"(1), and 4.25(4)"c"(2).

These rules are intended to implement Iowa Code chapter 249B, and become effective February 9, 1983.

ITEM 1. Subrule 4.25(2) is amended by reorganizing and renumbering the current paragraphs, with some modification.

Reletter paragraph "a" as "b" and insert the word "affected" before "units".

Reletter "b" as "e" and strike the last word "area" and insert "areas".

Reletter paragraphs "c" and "d" as "f" and "a", respectively.

Reletter paragraph "e" as "c" and strike the last word "area" and insert "areas".

Reletter paragraph "f" as "d".

ITEM 2. Subrule 4.25(3) is amended to read as follows:
4.25(3) Application for designation. Procedure for designation of planning and service areas.

a. *Application for designation.* The commission will provide an opportunity to apply for designation as a planning and service area to any unit of general purpose local government, or region any regional metropolitan area of 100,000 or more population or a governing tribal organization(s) of an Indian reservation(s) or settlement(s).

1. *Eligible applicants interested in applying for designation as a planning and service area will send a letter of intent and request an information packet and application form to the state agency office identified in subrule 2.1(2).*

2. *The completed application for designation as a planning and service area must be received at the state agency office at a minimum of 180 days prior to the beginning of the state fiscal year.*

3. *Upon receipt of a letter of intent to apply for designation as a planning and service area, the state agency will furnish the area agency(ies) in the potential remaining planning and service area(s) with form(s) to provide the required information regarding the potential planning and service area(s).*

b. *Public hearing.* The commission will hold a public hearing which will be chaired by the executive director or the director's designee for the purpose of receiving the views of public officials of units of general purpose local governments and of the general public.

1. *The executive director will set a reasonable place, date and time for the public hearing and publish advance notices of the public hearing which will contain specific information about participation in the hearing.*

2. *The executive director will send letters of notification to all county boards of supervisors, all mayors of incorporated cities, the area agency on aging advisory council chairperson of the affected planning and service area(s), the area agencies on aging, and to the applicant. Letters of notification will also be sent to known senior citizen groups and service providers in the affected planning and service area(s). The notification shall include a comment form to provide an opportunity to indicate approval or disapproval and the reasons for approval or disapproval.*

3. *The executive director will receive written comments from any interested person prior to the public hearing. Presentations and testimony at the public hearing shall be time-limited and must be prearranged with the state agency office.*

c. *Application review and recommendation.* Subsequent to the public hearing, the executive director shall review the application, the information forms, the written comments and salient comments made at the hearing, to prepare a written recommendation to the commissioners that is based on the predetermined criteria for designation of a planning and service area.

d. *Commissioners' action.* The commissioners shall act on the application for designation as a planning and service area at a regularly held commission meeting subsequent to receiving the executive director's recommendation and prior to the beginning of the new fiscal year.

e. *Subsequent actions.*

1. *The commission shall amend its state plan if designation of any planning and service area is changed in accordance with rule 3.7(249B).*

2. *The commissioners shall designate an area agency on aging grantee to serve any changed planning and service area(s) in accordance with rule 5.1(249B) following the procedures indicated in subrule 5.1(2).*

ITEM 3. Add subrules 4.25(4) and 4.25(5) as follows:

4.25(4) Criteria to be considered in the application and the information form.

a. Distribution in the state of persons aged sixty and older, including those with the greatest economic need;

1. Whether the proposed planning and service area contains at least five percent of the state's elderly population.

2. Whether the proposed planning and service area contains five percent of the state's elderly population which is at or below the poverty level.

3. Whether the potential remaining planning and service area(s) contains at least five percent of the state's elderly population.

4. Whether the potential remaining planning and service area(s) contains five percent of the state's elderly population which is at or below the poverty level.

5. Whether the proposed planning and service area has unique demographic characteristics pertaining to the elderly which set it apart from the existing planning and service area(s).

6. Whether the potential remaining planning and service area has unique demographic characteristics pertaining to the elderly which set it apart from the existing planning and service area(s).

AGING, COMMISSION ON[20] (cont'd)

b. The incidence of need for services provided under the Older Americans Act;

1. The number of persons residing within the proposed planning and service area who are currently served by Older Americans Act programs,

2. The number of persons residing within the potential remaining planning and service area(s) who are currently served by Older Americans Act programs,

3. The number of eligible persons within the proposed planning and service area who are currently not utilizing services offered under the Older Americans Act,

4. The number of eligible persons within the potential remaining planning and service area(s) who are currently not utilizing services offered under the Older Americans Act,

5. Whether the proposed planning and service area has the financial resources available to provide matching funds for supportive services, nutrition services, multipurpose senior centers, and legal services as specified in the Older Americans Act,

6. Whether the potential remaining planning and service area(s) has the financial resources to provide matching funds for supportive services, nutrition services, multipurpose senior centers, and legal services as specified in the Older Americans Act,

7. Whether the proposed planning and service area has service providers available to provide for supportive services, nutrition services, multipurpose senior centers, and legal services as specified in the Older Americans Act,

8. Whether the potential remaining planning and service area(s) has service providers available to provide for supportive services, nutrition services, multipurpose senior centers, and legal services as specified in the Older Americans Act.

c. The boundaries of units of general purpose local government, regional planning areas, Indian reservations or settlements, existing economic development districts, and areas within the state established for planning and administering human services including the areawide comprehensive planning and development districts or regions established pursuant to office for management and budget circular A-95, part IV, (January 13, 1976). The state agency may include all portions of an economic development district or an Indian reservation or settlement(s) within a single planning and service area.

1. Whether the proposed planning and service area divides established boundaries of:

Units of general purpose local governments.

Regional planning areas.

Indian reservations or settlement(s).

Existing economic development districts.

Areas within the state established for planning and administering human services.

2. Whether the potential remaining planning and service area divides the established boundaries of:

Units of general purpose local governments.

Regional planning areas.

Indian reservations or settlement(s).

Existing economic development districts.

Areas within the state established for planning and administering human services.

3. Whether the proposed planning and service area has unique characteristics which set it apart geograph-

ically from the existing planning and service area.

4. Whether the potential remaining planning and service area(s) has unique characteristics which set it apart geographically from the existing planning and service area.

4.25(5) Other relevant criteria.

a. The views of public officials of the units of general purpose local government;

1. Whether the public officials from the unit(s) of general purpose local government within the proposed planning and service area indicate their approval or disapproval and their reasons for approval or disapproval of the proposed planning and service area. Written comments will be solicited by the executive director,

2. Whether the public officials from the unit(s) of general purpose local government within the potential remaining planning and service area(s) indicate their approval or disapproval of the proposed planning and service area, and their reasons for approval or disapproval. Written comments will be solicited by the executive director.

b. The recommendation of the area agency on aging advisory council in the affected planning and service area(s);

1. Whether the views of the area advisory council of the existing planning and service area indicates its approval or disapproval of the proposed planning and service area, and its reasons for approval or disapproval,

2. Whether the views of the area advisory council of the existing planning and service area(s) indicates its approval or disapproval of the potential remaining planning and service area(s), and its reasons for approval or disapproval.

c. The recommendations from the executive director of the commission on the aging;

1. Whether the executive director of the commission on the aging recommends approval or disapproval of the proposed planning and service area designation, and the reasons for approval or disapproval,

2. Whether the executive director of the commission on the aging recommends approval or disapproval of the potential remaining planning and service area(s) designation(s), and the reasons for approval or disapproval.

d. Other relevant factors;

1. Whether the views of interested individuals, organizations and the general public indicate approval or disapproval of the proposed planning and service area, and the reasons for approval or disapproval. Written comments will be solicited by the executive director,

2. Whether the views of interested individuals, organizations, and the general public indicate approval or disapproval of the potential remaining planning and service area(s), and the reasons for approval or disapproval. Written comments will be solicited by the executive director.

3. Whether there will be an increase or decrease in the total number of administrative units or dollars for service delivery statewide.

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ARC 3490**AGRICULTURE DEPARTMENT[30]**

Pursuant to the authority of Iowa Code sections 159.5(11) and 189.2(2), the Iowa Department of Agriculture adopts amendments to Chapter 2, "Referendum", Iowa Administrative Code. The present rules on referendums were promulgated for the purpose of conducting initial referendums. The likelihood of any further initial referendums is remote. These rules guarantee the integrity of each person's vote, while at the same time, eliminate procedures that are cumbersome, costly or inefficient.

Notice of Intended Action was published in the IAB October 27, 1982, as ARC 3324. A public hearing was held on November 18, 1982, on the proposed rules. The proposed rules have been modified slightly as a consequence of comments received by the participants at the hearing, for clarification and grammatical purposes. Changes from the proposed rules published under Notice include the following: 2.4(1)"g" and 2.4(2)"g" for clarification of expenses incurred in conducting a referendum and 2.4(3) for clarification of providing a list of absentee ballots.

These rules are intended to implement Iowa Code chapters 181, 179, 185, 185C and 196A.

These rules will become effective on February 9, 1983.

Rescind Chapter 2, "Referendum", in its entirety, and insert in lieu thereof the following:

**CHAPTER 2
REFERENDUM**

30—2.1(159) Purpose. In order to establish uniform procedures and provide for consistent eligibility guidelines in commodity referendums, it is the policy of the Iowa department of agriculture to enumerate the following rules:

30—2.2(159) Definitions.

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

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

2.2(3) "Producer", as prescribed in the specific statutory authority for each commodity referendum, means the following:

a. "Producer", in a referendum conducted under Iowa Code chapter 181, means every person who raises cattle or veal calves for slaughter or who feeds cattle or veal calves for slaughter, or both.

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

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

d. "Producer", in a referendum conducted under Iowa Code chapter 196A, means any person who owns, or contracts for the care of, five hundred or more layer-type chickens, the eggs of which are sold in this state through commercial channels, including, but not limited to, eggs

for hatching, which have been produced by the producer's own flock.

2.2(4) "Statement" means a statement, certification, affidavit or other document furnished by the department which specifies the qualifications required for producer eligibility.

2.2(5) "Election judge" means a person or persons selected by the secretary to administer referendum procedures at county voting places.

2.2(6) "Marketing year" means the previous three hundred sixty-five days from the referendum date unless otherwise established by specific statutory authority.

30—2.3(159) Voter eligibility.

2.3(1) Business organizations. Only one vote may be cast on behalf of any business organization.

a. Association, college, co-operative, corporation, foundation, university: Only an officer may cast one vote for this business organization.

b. Fiduciary: Only the court-appointed legal representative of an estate, trust, conservatorship, guardianship or other fiduciary relationship may cast one vote for the business held in trust.

c. Partnership/joint venture: If the ownership of the commodity is held in the partnership name or in joint ownership, only one partner/owner may cast one vote. It is the responsibility of the partnership/joint venture to decide who will vote.

2.3(2) Landlord and tenant. Each may cast one vote if each meets the definition of "producer". For corn and soybeans, a landlord may vote only if corn or soybeans were grown on a "crop share" basis; a landlord may not vote if land was rented on a "cash rent" basis.

2.3(3) Husband and wife. If the commodity is held in legal title by both husband and wife, it is the responsibility of the husband and wife to decide who will vote. Only one spouse may cast one vote when the commodity is held in joint ownership. If each meets the "producer" definition as a separate entity, then each may cast one vote.

2.3(4) Proxy voting. No producer may vote by proxy (on behalf of another producer). Farm managers may not vote for their clients.

2.3(5) Multiple operations. An individual or business organization who meets the definition of a "producer" in more than one county or on more than one tract of land, may vote once in their own name. If more than one vote is cast, only one vote, cast in the county of residence, will be counted.

2.3(6) Producer within the previous marketing year. An individual or business organization must have been a "producer" as defined in 2.2(3), paragraphs "a" through "d", in the previous marketing year.

30—2.4(159) Referendum methods and procedures.

A referendum may be conducted by either of two methods: (1) Mail ballot or (2) at county voting places. These two methods of conducting referendums are mutually exclusive. The secretary shall approve that balloting procedure which shall best effectuate the policies and purposes of the referendum to be voted upon.

2.4(1) Mail ballot procedures.

a. The secretary may designate such person(s) as is necessary to administer the mail ballot procedure.

b. The official referendum date shall be established by the secretary, and shall be the last date on which completed balloting materials may be postmarked for receipt by the department.

AGRICULTURE DEPARTMENT[30] (cont'd)

c. The department shall announce referendum procedures and producer qualification information by means of publication of legal notice in at least five Iowa newspapers of general circulation at least thirty days prior to the referendum date.

d. At least fifteen days prior to the referendum date, the department shall mail balloting materials to producers, using the best list reasonably available to the secretary.

e. All ballots shall be the responsibility of the secretary, who shall establish a time and place for counting of ballots.

f. To maintain vote anonymity, the department shall provide for return of the ballot in a sealed envelope, unless otherwise indicated in the notice. Producer eligibility may be certified prior to the referendum date; however, votes shall not be counted until the referendum date has passed.

g. If the referendum passes, all expenses incurred by the department in conducting the referendum shall be paid from the fund created by passage.

If the referendum fails, the producer association which petitions for an initial referendum (or for a subsequent referendum if one fails to pass) shall be liable for all costs and expenses incurred by the department in conducting the referendum.

h. All ballots, tabulation forms and producer statements shall be retained by the department for a minimum of six months following the referendum date.

2.4(2) County voting place procedures.

a. The secretary shall designate an official voting place(s) in each county. An eligible producer may vote in any Iowa county, when county voting places are in use, with the exception of producers voting in a referendum under chapters 185 and 185C. Said producers may vote only in a county in the crop reporting district in which they reside. The counties within each crop reporting district are as follows:

CROP REPORTING DISTRICT NO. 1

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

CROP REPORTING DISTRICT NO. 2

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

CROP REPORTING DISTRICT NO. 3

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

CROP REPORTING DISTRICT NO. 4

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

CROP REPORTING DISTRICT NO. 5

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

CROP REPORTING DISTRICT NO. 6

Benton	Jackson	Linn
Cedar	Johnson	Muscatine
Clinton	Jones	Scott
Iowa		

CROP REPORTING DISTRICT NO. 7

Adair	Fremont	Page
Adams	Mills	Pottawattamie
Cass	Montgomery	Taylor

CROP REPORTING DISTRICT NO. 8

Appanoose	Madison	Union
Clarke	Marion	Warren
Decatur	Monroe	Wayne
Lucas	Ringgold	

CROP REPORTING DISTRICT NO. 9

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

b. The secretary shall establish the hours for voting and a time period, up to a maximum of three days, for voting in the referendum. If voting takes place on more than one date, the official referendum date shall be the last day on which voting is allowable.

c. The department shall announce referendum procedures, producer qualification information and location of voting places by means of publication of legal notice in at least five Iowa newspapers of general circulation at least thirty days prior to the referendum date.

d. After signing a producer statement furnished by the department, each producer shall receive a ballot. Each marked ballot shall be placed in a sealed ballot box during the voting period.

e. The election judge shall have the following responsibilities in conducting the referendum:

(1) The election judge shall secure an appropriate ballot box which shall be kept sealed during the voting period.

(2) The election judge shall distribute voting materials and instructions, assist in the balloting process, observe the deposit of ballots in the sealed box, and be responsible for maintaining the integrity and security of the ballots.

(3) The election judge shall, after voting has been completed and the voting place closed, count the ballots and telephone the tentative tabulation to the office of the secretary.

(4) The election judge shall return the ballots, along with the original "producer statements" and the "Certification of Judges and Official Vote Tabulation", to the department within twenty-four hours following the closing of the voting place. All ballots not used shall be destroyed by the election judge.

f. The secretary shall review the tabulation of votes and producer statements received from county election judges. If the number of signed producer statements is greater than the number of ballots cast, the number of ballots shall stand as the official vote total for the county. If the number of ballots cast exceeds the number of signed producer statements, then the following reduction procedure shall be used:

AGRICULTURE DEPARTMENT[30] (cont'd)

Excess Ballots	Reduce Votes On Prevailing Side	Reduce Votes On Losing Side
1	1	0
2	1	1
3	2	1
4	2	2
5	3	2
6	3	3
7	4	3
8	4	4
9	5	4
10	5	5

If the vote is tied, each side will be reduced by $\frac{1}{2}$ vote for each excess ballot

g. If the referendum passes, all expenses incurred by the department in conducting the referendum shall be paid from the fund created by passage.

If the referendum fails, the producer association which petitions for an initial referendum (or for a subsequent referendum if one fails to pass) shall be liable for all costs and expenses incurred by the department in conducting the referendum.

h. All ballots, tabulation forms and producer statements shall be retained by the department for a minimum of six months following the referendum date.

2.4(3) Absentee ballot procedures. When the referendum method is by designated county voting place, any qualified producer may receive an absentee ballot from the department upon request. The ballot and signed producer statement must be returned to the secretary postmarked no later than midnight of the official referendum date. The secretary shall maintain a list of those producers to whom absentee ballots have been provided and shall provide a list of same to all voting sites in the county of residence of the producer.

If the producer could not be at home in time to utilize an absentee ballot mailed from the secretary, and if the regular balloting materials have been received by the county extension office, the county extension director may sign a ballot and provide this to the producer, upon the producer signing a producer certification statement. The completed ballot will be placed in a separate sealed envelope. This ballot envelope and the signed producer certification statement will be placed in an envelope and returned to the office of the secretary for counting.

30—2.5(159) Contesting referendum results.

2.5(1) In mail ballot referendums. Written objection to the certification of any producer may be filed with the secretary within thirty days following the date of the counting of the votes. Challenges must include such affidavits or documentation as to substantiate alleged objections.

2.5(2) In county voting places. If at the time of voting, procedural or eligibility questions arise, the election judge shall have the producer sign a separate producer statement and complete balloting materials. The ballot shall be marked and placed in a sealed envelope. Both the sealed ballot envelope and producer statement shall be placed in a separate envelope and set aside and not counted. The election judge shall list all facts of the situation or documentation presented by the person making the objection on the envelope or on a separate sheet to be included in the envelope. All materials shall be

returned to the secretary who shall determine whether such vote shall be counted.

30—2.6(159) Official certification. Within sixty days following the referendum date, the secretary shall certify referendum vote totals and officially declare the outcome.

These rules are intended to implement Iowa Code chapters 181, 179, 185, 185C and 196A.

[Filed 12/17/82, effective 2/9/83]

[Published 1/5/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/5/83.

ARC 3473

BEER AND LIQUOR CONTROL DEPARTMENT[150]

Pursuant to the authority of Iowa Code sections 123.20 and 123.21, the Iowa Beer and Liquor Control Department's Council, on December 10, 1982, adopted amendments to 150—Chapter 9 entitled "Procurement Leasing of State Liquor Stores."

Notice of Intended Action was published in the Iowa Administrative Bulletin, October 27, 1982, as ARC 3321.

These rules allow the department to award lease bids and delete bidders' current right of appeal to the executive council.

Two representatives of the department appeared in front of the Administrative Rules Review Committee on November 10, 1982, at which time these rules were discussed. The public hearing scheduled for November 30, 1982, in the department was not held because no one attended it. The department received no written or oral comments from the general public on these rules.

There are no changes from the Notice of Intended Action.

These rules are intended to implement Iowa Code sections 123.20 and 123.21.

These rules will become effective February 9, 1983.

The following rules are adopted.

ITEM 1. Subrule 9.11(4) is amended to read as follows:
9.11(4) Formal bid award. ~~Final determination~~ *Termination* of all bid awards will be made by the beer and liquor control ~~council~~ *department*.

This rule is intended to implement Iowa Code sections 123.20 and 123.21.

ITEM 2. Rule 150—9.16(123) is amended to read as follows:

150—9.16(123) Bidders appeal. Any bidder, whose bid has been timely filed, and who is aggrieved by the award of the beer and liquor control ~~council~~ *department*,

BEER AND LIQUOR CONTROL DEPARTMENT[150] (cont'd)

may appeal the decision by filing a written appeal to the chairman of the Iowa Beer and Liquor Control Council, 1918 S.E. Hulsizer Avenue, Ankeny, Iowa 50021, within seven days of receipt of the written notice from the department of bid award, that the bid was not accepted by the department, exclusive of Saturdays, Sundays, and legal holidays. Upon receipt of the written decision of the chairman of the council, the bidder may, if desired, appeal the decision by filing a written appeal with the Iowa executive council within seven days of the date of the chairman's written decision, exclusive of Saturdays, Sundays and legal holidays.

This rule is intended to implement Iowa Code sections 123.20 and 123.21.

[Filed 12/16/82, effective 2/9/83]

[Published 1/5/83]

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ARC 3467

BLIND, COMMISSION FOR[160]

Pursuant to the authority of Iowa Code sections 17A.3 and 601B.6(8), the Iowa Commission for the Blind adopted on December 4, 1982, an amendment to Chapter 1, "General Organization and Administration," Iowa Administrative Code.

Notice of Intended Action was published in IAB, September 15, 1982, as ARC 3218.

The amendment is identical to that published as Notice of Intended Action.

This rule will become effective February 10, 1983.

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

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

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

[Filed 12/15/82, effective 2/10/83]

[Published 1/5/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/5/83.

ARC 3483

HOUSING FINANCE
AUTHORITY[495]

Pursuant to the authority of Iowa Code section 220.5, subsection 15, the Iowa Housing Finance Authority adopted, at a meeting of the board held September 27, 1982, amendments to subrule 1.8(11), defining "Low or moderate income family."

This rule was originally published in IAB, July 7, 1982, as ARC 3009, as an emergency adopted and implemented rule. Notice of intent to adopt such a rule was also published in IAB, as ARC 3007 on July 7, 1982.

This rule determines the maximum income limit for a family to be eligible for IHFA financing. It declares a dollar income limit for existing programs, and establishes a formula for determining future limits. It also establishes that the IHFA board may, for future programs, establish an income limit without public notice, under the procedure permitted by Iowa Code section 17A.4, subsection 2.

Subrule 1.8(11) has been changed from the rule as originally published.

This rule will become effective on February 9, 1983.

This rule is intended to implement Iowa Code chapter 220.

Subrule 1.8(11) is rescinded and the following adopted in lieu thereof:

1.8(11) Low or moderate income family.

a. A family whose adjusted income is less than the amount determined by the authority by using standard mortgage credit underwriting techniques to be necessary to purchase a single family residence at a price of up to 110% of the average area purchase price (as defined in Section 103A(f) of the United States Internal Revenue Code of 1954, as amended, and the Regulations promulgated thereunder) at conventional rates and terms, and who does not own real property, other than that for which eligibility for financing is presently being determined, with a market value of \$10,000.00 or greater.

b. The authority shall by rule which may be adopted without notice determine the maximum permissible adjusted income separately for each series or issue of bonds prior to or at the time the bonds are issued. The authority may by rule after notice revise maximums from time to time, and may revise the maximum for any one series or issue of bonds independently from the maximums for any other series or issue of bonds.

Pursuant to Iowa Code section 17A.4, subsection 2, the authority has determined that it would be impracticable or contrary to the public interest for the initial determinations to be made after giving notice of its intended action in accordance with section 17A.4, subsection 1, because in most cases the authority will issue bonds in thirty to forty-five days after making a determination. Giving notice of its intended action would slow down the issuance of bonds by from two to four weeks, and interest rates could rise in the period of delay necessitated by the rulemaking procedures to the point that bonds could not be sold.

The result would be that Iowa residents would be unable to receive the benefits of mortgage financing from the sale of tax-exempt bonds.

Furthermore, the notice is unnecessary as the determination by the authority will be based on standards that are widely known in the mortgage credit underwriting field.

HOUSING FINANCE AUTHORITY[495] (cont'd)

As the discretion of the authority in initially setting the maximum permissible adjusted income is quite restricted, notice is not necessary before adopting the initial limit.

c. The maximum permissible adjusted incomes for persons and families who are mortgagors under the following series or issue bonds shall be as stated below:

1977 Series A	\$20,000.00
1979 Series A	\$20,000.00
1982 Issue A to buy newly built housing	\$33,100.00
1982 Issue A to buy previously occupied housing	\$24,900.00

This rule is intended to implement Iowa Code chapter 220.

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facilities under Iowa Code chapter 135C, or child foster care facilities under Iowa Code chapter 237, at below market interest rates through tax-exempt financing. Loans will be available from a participating lender under IHFA General Revenue Bond Procedures. Project sponsors shall apply directly to the participating lenders who shall make credit and risk evaluations and otherwise make the decision, based on sound lending practices, whether or not to extend credit to the project sponsor.

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

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

495—6.2(220,69GA,ch 1187) Waiver. The authority may by resolution waive or vary particular provisions of these rules to conform to requirements of the federal government in connection with a loan to a group home facility with respect to which federal assistance, insurance or guaranty is sought, provided such waiver does not conflict with Iowa Code chapter 220, as amended by 1982 Iowa Acts, chapter 1187.

6.3 to 6.9 Reserved.

PART II
DEFINITIONS

495—6.10(220,69GA,ch 1187) Definitions. As used in connection with the group home facilities loan program, the following terms have the meanings indicated:

6.10(1) "Application" means those documents required by the participating lender and the authority, which shall include all of the information required by rule 495—6.20(220, 69GA, ch 1187).

6.10(2) "Eligible project sponsor" means a sponsor of group homes of fifteen beds or less licensed as a health care facility under Iowa Code chapter 135C, or licensed as a child foster care facility under Iowa Code chapter 237.

6.10(3) "Group home of fifteen beds or less" means a building, or a portion of a building, together with the necessary fixtures, equipment, staff and records, which provides meals, housing, appropriate care and supervision to fifteen or fewer persons unrelated to the operators living together in a shared setting. A single project sponsor may obtain financing for more than one group home of fifteen beds or less located on the same or adjoining tracts of land even if the group homes are physically connected or share common areas so long as each group home is separate and self-sufficient, and could be separately licensed if the other group homes or common areas were destroyed.

6.10(4) "Participating lender" means a mortgage lender as defined in Iowa Code section 220.1, subsection 14, as amended, that has submitted a letter of interest to the authority which has been approved by the board of the authority.

6.11 to 6.19 Reserved.

ARC 3484

HOUSING FINANCE AUTHORITY[495]

Pursuant to the authority of Iowa Code section 220.5, subsection 15, the Iowa Housing Finance Authority adopted, at a meeting of the Board held December 16, 1982, a new Chapter 6 "Group Home Facilities Loan Program".

These rules were originally published in IAB October 27, 1982, as Notice of Intended Action. ARC 3331.

These rules provide the administrative mechanism to implement the program to make financing available to group homes of fifteen beds or less licensed as either health care facilities or child foster care facilities. It is expected that group homes for the developmentally disabled will be most interested in this program.

Change from the Notice was made in rule 6.22(220, 69GA, ch 1187), paragraph 4.

These rules will become effective on February 9, 1983.

These rules are intended to implement Iowa Code chapter 220, as amended by 1982 Iowa Acts, chapter 1187.

The Housing Finance Authority adopts the following new chapter.

CHAPTER 6 GROUP HOME FACILITIES LOAN PROGRAM

PART I GENERAL

495—6.1(220,69GA,ch 1187) Program description. This program is intended to permit the financing of group homes of fifteen beds or less licensed as health care

HOUSING FINANCE AUTHORITY[495] (cont'd)

PART III
LOAN CRITERIA AND DOCUMENTATION

ARC 3485

HOUSING FINANCE
AUTHORITY[495]

495—6.20(220,69GA,ch 1187) Application. Eligible project sponsors for group home facilities loans shall apply directly to participating lenders in the group home facilities program in accordance with the procedures in chapter 4 of housing finance authority rules.

495—6.21(220,69GA,ch 1187) Public benefit. Before approving a group home facility revenue bond issue for any project sponsor, the authority must find that the proposed project will result in one or more of the following:

1. The group home would be placed in an area of the state where a need exists for a facility of that type.

2. The tax-exempt bond financing will result in an interest rate paid by the facility that is significantly lower than the rate which they would pay without such financing.

495—6.22(220,69GA,ch 1187) Eligibility. To be eligible for a group home facility loan, a project sponsor must meet the following conditions:

1. Project sponsors may be individuals, partnerships, or profit making or nonprofit corporations licensed to do business in the state of Iowa.

2. The project to be built or acquired must be located within the state of Iowa.

3. The project to be built must be a group home of fifteen beds or less as defined in these rules.

4. If an existing facility is being acquired by a new owner, the project must be already licensed either as a child foster care facility pursuant to Iowa Code chapter 237, or as a health care facility pursuant to Iowa Code chapter 135C. If the construction of a new facility is being financed, the project sponsor must obtain any preconstruction certifications that may be available to the effect that if the project is completed and operated in accordance with plans, that the project could be licensed. If any project fails to become licensed or loses its licensure, the authority may "call" the bond or bonds involved. Any risk associated with such an occurrence, which would destroy the favorable federal tax treatment given the project, shall be borne by the lender and the project sponsor.

5. The project sponsor must be capable of operating, maintaining and managing the group home facility.

6. The project must have a current Certificate of Need issued by the health facilities council pursuant to Iowa Code chapter 135, if to be licensed as a health care facility.

These rules are intended to implement Iowa Code chapter 220, as amended by the 1982 Iowa Acts, chapter 1187.

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Pursuant to the authority of Iowa Code section 220.5, subsection 15, the Iowa Housing Finance Authority adopted, at a meeting of the Board held December 16, 1982, a new Chapter 7 "Contested Case Proceedings."

These rules were originally published in IAB, November 10, 1982, as Notice of Intended Action, ARC 3367.

These rules provide the Housing Finance Authority, which has not previously had such rules, with the mechanism to resolve proceedings which should be handled as contested case proceedings.

Changes from the Notice were made in rules 7.2(17A,220), 7.3(17A,220), 7.4(17A,220), 7.7(17A,220) and 7.9(17A,220).

These rules will become effective on February 9, 1983.

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

The Housing Finance Authority adopted the following new chapter.

CHAPTER 7

CONTESTED CASE PROCEEDINGS

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

495—7.2(17A,220) Right to contested case proceedings. In any case in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined after an opportunity for an evidentiary hearing, any party aggrieved by action of the staff of the authority may request review of the action by the board of the authority at its next regularly scheduled board meeting. An aggrieved party may request either an informal resolution of the complaint or may request contested case proceedings. The staff of the authority may also initiate contested case proceedings without a request by an aggrieved party. An evidentiary hearing need not be provided if there are no factual issues. In those cases, policy issues shall be presented to the board at its next meeting.

495—7.3(17A,220) Time limit for request. A request for contested case proceedings must be made by an aggrieved party within sixty days after official notification of an action, provided however that the authority may defer the granting of any relief until the next bond issue if the bond proceeds necessary to give a party relief from a previous issue have been exhausted.

495—7.4(17A,220) Notice of contested case. After receiving a timely request for contested case proceedings, or when contested case proceedings are initiated by staff without a request, notice complying with Iowa Code section 17A.12, subsection 2, shall be mailed by staff, certified mail, return receipt requested. Alternatively, staff may give notice in any manner permitted by the Iowa Rules of Civil Procedure, for the commencement of a civil action, or give notice in accordance with any applicable "long arm statutes."

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

HOUSING FINANCE AUTHORITY[495] (cont'd)

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

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

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

495—7.9(17A,220) Petition for receipt of additional evidence. If, prior to the issuance of the final decision, any party feels that the submission of additional evidence is necessary, the party shall request an opportunity to present additional evidence by mailing a request to the chair of the authority's board by ordinary mail, c/o the authority's office at 550 Liberty Building, Des Moines, Iowa 50309. The party shall, in addition, notify all opposing parties by certified mail, return receipt requested, including in such notice to the opposing parties all information submitted to the chair.

The chair shall review the requests and either reject the request or establish an additional hearing no sooner than seven calendar days from the chair's decision. The chair shall notify the parties of a decision to accept additional evidence by certified mail, return receipt requested. Notice of a decision to reject additional evidence may be by ordinary mail.

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

[Filed 12/17/82, effective 2/9/83]
[Published 1/5/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/5/83.

ARC 3465**INSURANCE DEPARTMENT[510]**

Pursuant to the authority of Iowa Code sections 258A.2 and 505.8, the Iowa Department of Insurance hereby adopts amendments to Chapter 11, "Continuing Education for Insurance Agents", Iowa Administrative Code.

Notice of Intended Action was published in the IAB on October 27, 1982, as ARC 3332.

Formerly, only resident insurance agents had to comply with the continuing education requirements of chapter 11. Iowa Administrative Code. All nonresident agents

were excepted from these continuing education requirements. The amendment will remove this blanket exception and clarify the remaining exception. These changes were proposed as a result of a letter ruling to Representative William Harbor from the Office of the Attorney General for the state of Iowa. Iowa Code section 258A.1(3) provides:

"A person licensed to practice an occupation or profession in this state shall be deemed to have complied with the continuing education requirements of this state... for periods that the person is a resident of another state or district having a continuing education requirement for the occupation or profession and meets all requirements of that state or district for practice therein..."

The rule adopted will limit the exception to nonresident agents subject to and in compliance with continuing education requirements in their resident state or district.

This rule was adopted on December 10, 1982 after considering all written comments. No oral comments were made at the November 23, 1982 public hearing.

No changes were made from the Notice of Intended Action.

This rule amendment is intended to implement Iowa Code chapter 258A and shall become effective February 9, 1983.

The following amendment is adopted:

Rescind subrule 11.1(3) and insert the following in lieu thereof:

11.1(3) These rules do not apply to:

a. A nonresident agent who resides in a state or district having a continuing education requirement for insurance agents and who meets all requirements of that state or district for practice therein;

b. An agent who is qualified and licensed only for credit accident and health and credit life (CRDT).

[Filed 12/10/82, effective 2/9/83]

[Published 1/5/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/5/83.

ARC 3478**REVENUE DEPARTMENT[730]**

Pursuant to the authority of Iowa Code section 421.14, the Iowa Department of Revenue hereby adopts an amendment to Chapter 10, "Interest", Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume V, Number 10, on November 10, 1982, as ARC 3347.

This amendment is adopted in order to implement 1981 Iowa Acts, chapter 131. This legislation, which became effective on July 1, 1981, requires the director of revenue to determine the interest rate for each calendar year. The director has determined that the rate of interest

REVENUE DEPARTMENT[730] (cont'd)

on interest bearing taxes arising under Code Title XVI, shall be fourteen percent for calendar year 1983. The rate is two percent below the average prime rate charged by banks on short-term business loans as published in the Federal Reserve Bulletin for the twelve months ending September 30, 1982. For the past twelve months the average prime rate was sixteen percent.

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

This rule is identical to that published under Notice of Intended Action. The amendment will become effective February 9, 1983, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

This rule amendment is intended to implement 1981 Iowa Acts, chapter 131.

The following amendment is adopted:

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

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

[Filed 12/17/82, effective 2/9/83]

[Published 1/5/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/5/83.

ARC 3494

SOCIAL SERVICES[770]

Pursuant to the authority of 1981 Iowa Acts, chapter 78, section 4, rules of the Department of Social Services appearing in the IAC relating to alternative diagnostic facilities (chapter 34) are hereby amended. The mental health and mental retardation commission adopted these rules December 7, 1982.

Notice of Intended Action regarding these rules was published in the IAB October 13, 1982 as ARC 3277. These rules are the standards for alternative diagnostic facilities. Major changes from previous rules relate to the requirements of supervision for qualification as a mental health professional, requirements of notification of institutes or alternative programs of referral, and deletion of references to substance abuse.

An "of" was added after "reporting" in 34.3(4). These rules are intended to implement 1981 Iowa Acts, chapter 78, sections 4 and 18. These rules shall become effective February 9, 1983.

770—Chapter 34 is rescinded and the following inserted in lieu thereof:

CHAPTER 34
ALTERNATIVE DIAGNOSTIC FACILITIES

770—34.1(69GA, ch78) Definitions. Unless otherwise indicated, the following definitions shall apply to the specific terms used in these rules:

34.1(1) "Alternative diagnostic facility" means any organization or individual designated by the county board of supervisors to implement the preliminary diagnostic evaluation policy (1981 Iowa Acts, chapter 78, section 15) when a county is not served by a community mental health center capable of the diagnostic evaluations. An alternative diagnostic facility may be the outpatient service of a state mental health institute or any organization or individual able to furnish the requisite skills and to meet the standards set forth in this chapter by the mental health and mental retardation commission.

34.1(2) "Mental health professional" means a person who:

a. Holds at least a master's degree in a mental health field, including, but not limited to, psychology, counseling and guidance, nursing and social work; or is a doctor of medicine (M.D.) or doctor of osteopathic medicine and surgery (D.O.); and,

b. Holds a current Iowa license when required by Iowa licensure law; and,

c. Has at least two years of post-degree experience, supervised by a mental health professional, in assessing mental health problems and needs of individuals and in providing appropriate mental health services for those individuals.

34.1(3) "Preliminary diagnostic evaluation" means an assessment of a person's mental health problems and needs in order to determine the most appropriate service for the person. The evaluation includes, but is not limited to, an assessment of the individual's needs, abilities, disabilities, and relevant environmental factors. Where possible, there is collaboration with the individual's family or significant others as appropriate.

770—34.2(69GA, ch78) Function. An alternative diagnostic facility shall:

34.2(1) Perform a preliminary diagnostic evaluation of a person who is being considered for admission to a state mental health institute on a voluntary basis pursuant to Iowa Code chapter 229 in order to:

a. Confirm that admission of the person to a state mental health institute is appropriate to the person's mental health needs, and that no suitable alternative method of providing the needed services in a less restrictive setting, in or nearer to the person's home community, is currently available. When results of the evaluation indicate that admission to the mental health institute is appropriate, the evaluator shall inform the institute of the results.

b. Confirm that admission to a state mental health institute is not appropriate to the person's mental health needs. When results of the evaluation indicate that a treatment program, other than that of a state mental health institute, is more appropriate, and the individual agrees, the evaluator shall make arrangements with the alternative program to accept the referral.

SOCIAL SERVICES DEPARTMENT[770] (cont'd)

34.2(2) Assist the court and, insofar as possible, provide or designate a physician to perform a prehearing examination of a respondent required under Iowa Code section 229.8, subsection 3, paragraph "b".

770—34.3(69GA, ch78) Standards. In order to be designated as an alternative diagnostic facility, a facility shall meet the following standards:

34.3(1) The facility shall have clearly defined lines of authority and accountability so that a contractual agreement may be entered into with a county for the provision of preliminary diagnostic evaluations.

34.3(2) The preliminary diagnostic evaluation shall be performed by a mental health professional within a reasonable time frame, not to exceed forty-eight hours.

34.3(3) The mental health professional shall be familiar with the mental health institute serving the area and with the treatment resources of the community served.

34.3(4) The facility shall have written procedures for timely reporting of results of evaluations to the selected treatment resource.

34.3(5) The facility shall have written policies and procedures to safeguard the consumer's right to treatment, confidentiality, and freedom of choice. The policies and procedures shall be in conformance with federal and state laws and rules.

34.3(6) The facility shall have written procedures for fees for services.

34.3(7) The facility shall comply with procedures for uniform reporting of statistical data as established by the division of mental health, mental retardation, and developmental disabilities.

34.3(8) The facility shall comply with the standards for the maintenance and operation of public and private facilities offering services to mentally ill persons as adopted by the mental health and mental retardation commission.

These rules are intended to implement 1981 Iowa Acts, chapter 78, sections 4 and 18.

[Filed 12/17/82, effective 2/9/83]
[Published 1/5/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/5/83.

ARC 3495**SOCIAL SERVICES
DEPARTMENT[770]**

Pursuant to the authority of Iowa Code section 237.3, rules of the Department of Social Services appearing in the IAC relating to licensing and regulation of all group living foster care facilities for children (chapter 114) are hereby amended. The Council on Social Services adopted this rule December 15, 1982.

Notice of Intended Action regarding this rule was published October 13, 1982, as ARC 3278. This rule allows some facilities licensed prior to July 1, 1981, to house five children in a room.

This rule is identical to that published under notice. This rule is intended to implement Iowa Code section 237.3. This rule shall become effective February 9, 1983.

Subrule **114.3(2)**, paragraph "b," subparagraph (3), is amended to read as follows:

(3) Not sleep more than four children per room. *Facilities licensed prior to July 1, 1981 meeting current square footage requirements shall be allowed to house five children per room.*

[Filed 12/17/82, effective 2/9/83]
[Published 1/5/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/5/83.

ARC 3475**TRANSPORTATION,
DEPARTMENT OF[820]****07 MOTOR VEHICLE DIVISION**

Pursuant to the authority of Iowa Code section 307.10, the Transportation Commission, on December 14, 1982, adopted amendments to 820—[07,F] chapter 2 entitled "Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight."

A Notice of Intended Action for these rule amendments was published in the October 27, 1982 Iowa Administrative Bulletin as ARC 3330.

Item 1 allows the department to increase the security deposit required for charge accounts to an amount sufficient to cover the average number of trip permits ordered in a month.

Item 2 clarifies the limitations for annual and single-trip permit movements on the interstate system and allows the department to waive these limitations in special or emergency situations.

Item 3 summarizes the axle limitations given in this chapter and substitutes them for the current "bridge formula" which is no longer useful.

Item 6 amends the rule on annual permits to include factory-built structures as specified in 1982 Iowa Acts, chapter 1075, and provides a convenient telephone-telegraph procedure for the issuance of annual permits.

Item 9 amends the rule for single-trip permits to comply with 1982 Iowa Acts, chapter 1143, which allows movers of buildings to register the combined gross weight of vehicle and load on a single-trip basis.

Item 11 is a rewrite of the escort requirements. Traffic control responsibility is clarified and official authorization for escorts has been discontinued. Items 4, 10 and 12 also contain amendments in compliance with this rule.

Item 12 requires the permitholder to report any violation to the issuing authority.

Items 5, 7, 8 and 10 provide editorial changes or clarifications of a nonsubstantive nature.

These rule amendments are identical to the ones published under notice except for the following: In subparagraph 2.1(15)"a"(4), an incorrect length measurement has been deleted, a paragraph requiring measurement of

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

vertical clearances has been added to subrule 2.4(2), and a paragraph requiring a warning light on some rear-end projections has been added to subrule 2.4(3).

These rule amendments are intended to implement Iowa Code chapters 321 and 321E.

These rule amendments are to be published as adopted in the January 5, 1983 Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective February 9, 1983.

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of Iowa Code section 307.10, rules 820—[07,F] chapter 2 entitled "Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight" are hereby amended.

ITEM 1. Strike all of paragraph 2.1(13)"b" and insert in lieu thereof the following:

b. At the discretion of the issuing authority, a payment procedure may be established to allow monthly billing for permits. The following procedures shall apply:

(1) Applicants shall deposit sufficient funds with the issuing authority to guarantee payment of fees for the average number of permits ordered monthly. Deposits may be used to pay outstanding fees due when payment is not received upon billing.

(2) Monthly billings shall be sent to account holders.

(3) All future single-trip permit activity may be suspended after written notice of suspension to the account holder when the following requirements are not met:

Payment shall be received within thirty days from the date of billing.

Account holders shall submit the original permit to the permit issuing office when movement is completed.

All information listed on the account holder's permit shall match the information listed on the permit issuing authority's permit.

(4) Account privileges may be permanently canceled after written notice to the account holder when requirements listed in paragraph 2.1(13)"b" are not met.

(5) Any account holder in good standing may close the account and request return of the deposit. Accounts closed under these circumstances may be reopened.

ITEM 2. Strike all of subrule 2.1(15) and insert in lieu thereof the following:

2.1(15) Movement on the interstate system (as defined in Iowa Code subsection 306.3(3)).

a. An annual or single-trip permit shall be issued for movement on the interstate system provided:

(1) The specific permit route is free from maintenance and construction work or other hazardous conditions.

(2) The specific permit route is not subject to an abnormally high traffic volume due to a special event.

(3) A minimum speed of forty miles per hour can be maintained.

(4) The combined dimensions of the vehicle with load or construction machinery do not exceed 11 feet 9 inches in width, the height of underpasses, power lines or other established height restrictions, and a total gross weight of 80,000 pounds.

(5) The combined dimensions of the vehicle with mobile home or factory-built structure do not exceed 14 feet 0 inches in width, the height of underpasses, power lines or other established height restrictions, 85 feet 0 inches in overall length, and a total gross weight of 80,000 pounds.

(6) An alternate primary route with a roadway width of twenty-four feet is not available.

(7) The average daily traffic on the alternate primary route exceeds three thousand vehicles.

(8) The travel distance is equal for both systems or is greater for the alternate primary route.

b. In special or emergency situations and only at the discretion of the permit issuing authority, the provisions of paragraph 2.1(15)"a" may be waived.

ITEM 3. Strike all of subrule 2.1(16) and insert in lieu thereof the following:

2.1(16) Schedule of maximum axle weights and maximum gross weights.

a. For vehicles and loads weighing up to and including 80,000 pounds, no single axle shall exceed 20,000 pounds, no tandem axle shall exceed 34,000 pounds, and all other axle configurations shall conform with the formula defined in Iowa Code section 321.463.

b. For vehicles and loads weighing in excess of 80,000 pounds but not in excess of 100,000 pounds, no single axle shall exceed 20,000 pounds, no tandem axle shall exceed 36,000 pounds, no three-axle assembly shall exceed 54,000 pounds, and no four-axle assembly shall exceed 72,000 pounds.

c. For vehicles and loads in excess of 100,000 pounds, no axle shall exceed 20,000 pounds.

d. For tire sizes and weights allowed between the maximum and minimum indicated in Iowa Code section 321E.7, the following formula shall apply: Axle weight = 20,000 pounds + (tire width - 18) x 1,882 pounds.

ITEM 4. The first unnumbered paragraph of subrule 2.1(17) is amended to read as follows:

2.1(17) Applications for permits and ~~escort authorization~~ for movements on the primary highway system shall be made and permits and ~~authorizations~~ shall be issued on department of transportation Forms 442009; ~~and 442010 and 444010~~ which are hereby incorporated by reference. Any applications to proper authorities for a permit ~~or escort authorization~~ made upon Forms 442009; ~~and 442010 and 444010~~ shall be sufficient and accepted as properly made by local authorities.

ITEM 5. Amend rule [07,F]2.1(321E) by adding the following implementation clause at the end of the rule:

This rule is intended to implement Iowa Code sections 321.452 to 321.466 and chapter 321E.

ITEM 6. Subrule 2.3(1) is amended to read as follows:
2.3(1) Annual permits (issued for a period of one year) for:

a. Vehicles and indivisible loads including mobile homes *and factory-built structures* not to exceed the following dimensions and weights:

(1) Width — 12 feet 5 inches including appurtenances.

(2) Length — 75 feet 0 inches overall. Front-end projection may ~~in~~ at the discretion of the *permit* issuing authority exceed 15 feet.

(3) Height (~~legal~~) — 13 feet 10 inches.

(4) Weight (legal including registration tolerances) — 20,000 pounds (single axle), 34,000 pounds (tandem axle), ~~42,000 pounds (triple axle)~~ and 80,000 pounds (total gross weight). (See schedule in *subrule 2.1(16) of this chapter.*)

(Construction machinery may have a gross weight of 36,000 pounds on any single axle equipped with a minimum size 26.5-inch by 25-inch flotation pneumatic tires and a maximum gross weight of 20,000 pounds on any

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single axle equipped with minimum size 18-inch by 25-inch flotation pneumatic tires, provided that the total gross weight of the vehicle or a combination of vehicles does not exceed a maximum of 80,000 pounds. For tire sizes and weights allowed between the maximum and minimum indicated, the following formula shall apply: Axle weight = 20,000 pounds + (tire width - 18) x 1,882 pounds.)

(5) *Movement is allowed for an Unlimited distance.*

b. *Construction equipment and vehicles with indivisible loads including mobile homes and factory-built structures not to exceed the following dimensions and weights:*

(1) Width — 14 feet 6 inches.

(2) Length — 85 feet 0 inches overall. Front-end projection may in at the discretion of the permit issuing authority exceed 15 feet.

(3) Height (legal) — 13 feet 6 inches.

(4) Weight (legal including registration tolerances) — 20,000 pounds (single axle), 34,000 pounds (tandem axle), ~~42,000 pounds (triple axle)~~, and 80,000 pounds (total gross weight). (See schedule in subrule 2.1(16) of this chapter.)

(Construction machinery may have a gross weight of 36,000 pounds on any single axle equipped with a minimum size 26.5-inch by 25-inch flotation pneumatic tires and a maximum gross weight of 20,000 pounds on any single axle equipped with minimum size 18-inch by 25-inch flotation pneumatic tires, provided that the total gross weight of the vehicle or a combination of vehicles does not exceed a maximum of 80,000 pounds. For tire sizes and weights allowed between the maximum and minimum indicated, the following formula shall apply: Axle weight = 20,000 pounds + (tire width - 18) x 1,882 pounds.)

(5) *Movement is Restricted to trip distances not to exceed a total of 50 highway and street miles in total aggregate.*

c. *Vehicles with indivisible loads not to exceed the following dimensions and weights:*

(1) Width (legal) — ~~(legal)~~ 8 feet 0 inches.

(2) Length — 100 feet 0 inches overall. Front-end projection may in at the discretion of the permit issuing authority exceed 15 feet.

(3) Height (legal) — ~~(legal)~~ 13 feet 6 inches.

(4) Weight — (legal including registration tolerances) — 20,000 pounds (single axle), 34,000 pounds (tandem axle), ~~42,000 pounds (triple axle)~~, and 80,000 pounds (total gross weight). (See schedule in subrule 2.1(16) of this chapter.)

(Construction machinery may have a gross weight of 36,000 pounds on any single axle equipped with a minimum size 26.5-inch by 25-inch flotation pneumatic tires and a maximum gross weight of 20,000 pounds on any single axle equipped with minimum size 18-inch by 25-inch flotation pneumatic tires, provided that the total gross weight of the vehicle or a combination of vehicles does not exceed a maximum of 80,000 pounds. For tire sizes and weights allowed between the maximum and minimum indicated, the following formula shall apply: Axle weight = 20,000 pounds + (tire width - 18) x 1,882 pounds.)

(5) *Movement is Restricted to trip distances not to exceed a total of 50 highway and street miles in total aggregate.*

d. *The movement of truck trailers manufactured or assembled in the state of Iowa shall be limited to the following:*

(1) Width — 10 feet 0 inches.

(2) Length — 70 feet 0 inches overall. Front-end projection may in the discretion of the issuing authority exceed 15 feet.

(3) Height (legal) — 13 feet ~~10~~ 6 inches.

(4) Weight — legal including registration tolerances.

(5) Speed ~~N~~ot to exceed 45 miles per hour.

(6) *Only on roadways of 24 feet in width or more. Roadway width shall be at least 24 feet.*

(7) *Movement shall be Solely for the purpose of delivery or transfer from the point of manufacture or assembly to another point of manufacture or assembly within the state or to a point outside the state.*

e. *Vehicles with divisible loads of hay, straw or stover not to exceed the following dimensions and weights:*

(1) Width — 12 feet 5 inches.

(2) Length (legal) — ~~(legal)~~ in accordance with Iowa Code section 321.457.

(3) Height — 13 feet 10 inches.

(4) Weight (legal including registration tolerances) — ~~(legal including registration tolerances)~~ not to exceed 80,000 pounds or license class tonnage.

f. *Annual permits from the department for movement on the primary highway system shall be issued: only upon receipt of a fully completed application form by mail or when the applicant appears in person. Annual permits shall expire on the last day of the month one year from date of issuance. A fee of ten dollars shall be payable prior to issuance of the permit.*

(1) *By mail from the Office of Operating Authority, 5238 N.W. Second Avenue, Des Moines, Iowa, upon receipt of the proper permit application form and the permit fee.*

(2) *In person when the applicant appears at the Office of Operating Authority, 5238 N.W. Second Avenue, Des Moines, Iowa, or at a highway division resident maintenance engineer's office.*

(3) *By telephone-telegraph from the office of operating authority provided a certificate of public liability insurance in the amounts listed in subrule 2.1(14) of this chapter is on file with that office.*

g. *A fee of \$10.00 shall be charged for each annual permit, payable prior to the issuance of the permit. An annual permit shall expire on the last day of the month one year from the date of issuance.*

ITEM 7. Paragraph 2.3(2)"f" is amended to read as follows:

f. *Vehicles with indivisible loads exceeding the total gross weight of 100,000 pounds may be moved in special or emergency situations if the gross weight on any axle does not exceed 20,000 pounds.*

Weight — gross weight on any axle shall not exceed 20,000 pounds including tolerances.

ITEM 8. Subparagraph 2.3(2)"h"(1) is amended to read as follows:

(1) *A fee of \$5.00 shall be charged for each single-trip permit payable prior to the issuance of the permit. A single-trip permit shall be effective for five days.*

ITEM 9. Amend paragraph 2.3(2)"h" by renumbering subparagraphs (2), (3) and (4) as (3), (4) and (5) respectively and by adding the following new subparagraph (2):

(2) *A registration fee shall be charged for vehicles transporting buildings, except mobile homes and factory-*

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built structures, on a single-trip basis. The vehicle shall be registered for the combined gross weight of the vehicle and load. The fee shall be five cents per ton exceeding the registered weight per mile of travel. Fees shall not be prorated for fractions of miles.

ITEM 10. Paragraph 2.3(2)"i" is amended to read as follows:

i. Single-trip permits from the department for movement on the primary highway system shall be issued:

(1) ~~By the office of operating authority, motor vehicle division, Iowa state department of transportation, Des Moines, Iowa, upon receipt of permit application and the permit fee by mail.~~

(2) (1) ~~In person~~ When the permit applicant appears ~~in person~~ at the ~~Office of Operating Authority, motor vehicle division 5238 N.W. Second Avenue, Des Moines, Iowa, or at a highway division resident maintenance engineer's office.~~

(2) (2) By telephone-telegraph provided the specific route will allow the dimensions and weight of the load. Upon approval of the permit application submitted, a telegram permit may then be issued ~~provided that in cases where an escort is required for the move, a civilian or official escort is indicated on the application.~~

(4) ~~By the highway division resident maintenance engineer's office when application is made in person.~~

~~An additional approval may be required by the office of operating authority.~~

ITEM 11. Strike all of rule [07,F]2.4(321E) and insert in lieu thereof the following:

820—[07,F]2.4(321E) Escorting.

2.4(1) Escort qualification. An escort shall be a person aged 18 or over who possesses a valid chauffeur's or operator's license, has a properly equipped vehicle, and who carries proof of public liability insurance in the amounts of \$100,000/\$200,000/\$50,000.

2.4(2) Escorting responsibilities.

a. The escorting vehicle shall be approximately the size of a normal passenger automobile or pickup with sufficient mobility to be able to assist in an emergency and designed to afford clear and unobstructed vision both front and rear. In questionable cases the office of operating authority shall determine if a vehicle meets these conditions.

b. The escorting vehicle shall have an amber revolving light at least seven inches high and seven inches in diameter with at least a 100-candlepower lamp providing 360° warning. A light of smaller dimensions shall not be permitted unless a strobe light is used. While escorting a permit load, the revolving light shall be mounted on top of the escort vehicle and shall be burning. Additional escort vehicle markings may be approved or required by the permit issuing authority.

c. An 18-inch by 18-inch red flag shall be mounted on each corner of the front bumper of the escort vehicle.

d. The escort shall remain a distance of approximately 300 feet in front or to the rear of the load. However, when traveling within the corporate limits of a city, the escort shall maintain a reasonable and proper distance consistent with existing traffic conditions.

e. A separate escort shall be provided for each load hauled under escort.

f. All traffic laws and provisions of the oversize permit for the load shall be obeyed.

g. The escort shall not assume responsibility for stopping traffic. An on-duty peace officer, as defined in

Iowa Code subsections 321.1(45) and 801.4(7), shall be contacted to provide any traffic control needed.

h. Immediately prior to an escorting trip, the escort shall determine that the escorting vehicle is in a safe operational condition and that the dimensions of the vehicle and load are in compliance with the permit issued.

i. Escort fees charged by state and local authorities shall not exceed eight dollars per hour per escort vehicle. The total fee shall not exceed eighty dollars for a ten-hour day.

j. A pole used for measuring vertical clearances shall be carried on the escort vehicle. The escort shall be required to measure all vertical clearances whenever the height of the permitted vehicle exceeds 14 feet 4 inches.

2.4(3) Movements requiring escort or revolving light.

a. One escort shall be required in the front or rear, at the discretion of the permit issuing authority, when:

(1) The width of the vehicle with load exceeds roadway lane width (one-half traveled portion of the road) or exceeds 14 feet 0 inches on the interstate system.

(2) The height of vehicle and load exceeds 14 feet 4 inches.

(3) The length of the vehicle with load exceeds 100 feet 0 inches.

b. Either a properly equipped escort vehicle, an amber revolving light mounted on the towing unit, at least seven inches high and seven inches in diameter with at least a 100-candlepower lamp providing 360° warning, or a strobe light visible from both the front and rear of the vehicle shall be required when:

(1) Length of the vehicle with load exceeds 80 feet 0 inches but does not exceed 100 feet 0 inches.

(2) Front-end projection exceeds 25 feet 0 inches.

(3) Rear-end projection exceeds 20 feet 0 inches.

(4) Weight of the vehicle with load exceeds 80,000 pounds.

c. An amber revolving light at least seven inches high and seven inches in diameter with at least a 100-candlepower lamp providing 360° warning, or a strobe light, shall be required on the rear of a load whenever the rear-end projection exceeds 10 feet 0 inches.

d. The permit issuing authority at its discretion may require additional escorts when deemed necessary.

This rule is intended to implement Iowa Code sections 321.1, 321E.8, 321E.9, 321E.26, 321E.28 and 801.4.

ITEM 12. Rule [07,F]2.5(321E) is amended to read as follows:

820—[07,F]2.5(321E) Permit violations. All permit and escort violations are to be reported to the issuing authority by the arresting officer and the permit holder. If a permit holder or escort is found to have committed five or more violations within a twelve month period, willfully violated permit provisions, the office of operating authority may, after notice and hearing, suspend, modify or revoke the permit privileges of the permit holder or license of the escort, and no additional permits or licenses are to be issued for a time period consistent with Iowa Code section 321E.20; The Code.

This rule is intended to implement Iowa Code sections 321E.14, 321E.16, 321E.17, 321E.18, 321E.19 and 321E.20; The Code.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/5/83.



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

Executive Order #46

Whereas, Executive Order Number Fifteen of April 2, 1973 sets forth the purpose and provisions for equal employment opportunity and affirmative action in state government and the special obligation the State of Iowa has to have its operations serve as a model for business, industry, labor and education; and

Whereas, it is, therefore, the policy of the State of Iowa to provide equal opportunity in state employment to all persons on the basis of merit and fitness to perform the work required and to prohibit discrimination because of race, creed, color, religion, natural origin, sex, age and physical and mental disability; and

Whereas, the State is committed to the maximum utilization of its human resources in all areas of its employment;

Now, Therefore, I, Robert D. Ray, Governor of the State of Iowa, by the power and authority vested in me by the Constitution and by the Laws of Iowa, do hereby proclaim that all agency heads, members of governing boards and commissions, and other public officers and employees are committed to improvement in affirmative action, and that the following initiatives will be taken to further affirmative action and equal employment opportunity in state government programs.

To that end, the following state agencies shall take on the responsibility of executing this Order:

1. The Iowa Civil Rights Commission, through the State Affirmative Action Administrator, shall coordinate the affirmative action efforts

- of all state agencies responsible to the Governor. This coordination shall include such activities as proposing uniform affirmative action planning standards in consultation with state agencies; monitoring personnel data necessary to maintain an ongoing assessment of affirmative action efforts in state government; and working with individual state agencies on corrective action plans. These efforts shall be implemented by administrative rules as necessary.
2. The Merit Employment Department shall coordinate the collection and analysis of personnel data and equal employment opportunity reporting. To that end, the Merit Employment Department shall annually conduct a study of the various pre-employment processes under its jurisdiction. The results of this study shall be made available to the State Affirmative Action Administrator and affected agencies. The Merit Employment Department is further authorized to establish and convene a State Recruitment Coordinating Committee, consisting of personnel and affirmative action administrators from state agencies. Committee members shall be appointed by the Director of the Merit Employment Department with the concurrence of their agency head. The Committee will assist the Merit Employment Department in conducting the annual pre-employment processes study and with any necessary remedial recruitment action.
 3. All state agencies shall make available affirmative action training for administrative and supervisory employees and employees working in a capacity related to personnel administration. The Iowa Management Training Board, in conjunction with the Iowa Merit Employment Department, shall provide formal courses to aid in meeting this requirement.
 4. The Department of General Services, Department of Transportation, and other state agencies responsible to the Governor which assign personnel to buildings rented, leased or owned by the State, shall, for those buildings for which they are responsible, develop and have available a comprehensive plan and schedule to remedy remaining architectural barriers and bring state owned, leased and rented facilities into compliance with Section 504, of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794) as amended by P.L. 93-516, 88 Stat. 1619 (29 USC 706). These actions shall be done

in cooperation with state agencies occupying such buildings and organizations representing the special interests of the handicapped.

5. Agencies not included under the executive authority of the Governor are encouraged to adopt these affirmative action measures and develop affirmative action plans based on uniform affirmative action planning standards promulgated as administrative rules by the Iowa Civil Rights Commission.

An Affirmative Action Task Force shall be appointed and convened by the Office of the Governor in June, 1983, and annually thereafter, to review progress in complying with this Order. The Task Force shall include representatives of the Iowa Civil Rights Commission, the Iowa Merit Employment Department, and other state agencies covered by this Order.

In Testimony Whereof, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 21st day of December in the year of our Lord one thousand nine hundred eighty-two.



Robert Ray
Governor

SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

November, 1982COUNTIES AND COUNTY OFFICERS

Prisoners. §§ 356.2, 356.12, Code of Iowa 1981. When an individual, arrested and charged with the commission of a felony, is temporarily detained in a municipal jail pending transfer to the county jail, the cost of his medical expenses is the responsibility of the county wherein the criminal charge was filed, rather than of the municipality. (Hunacek to Shirley, Dallas County Attorney, 11/19/82) #82-11-7(L)

CRIMINAL LAW

Restitution. 1982 Iowa Acts Chapter 1162. Restitution is no longer only imposed as a "condition of probation." Restitution must be ordered in addition to imposition of other sentencing alternatives. (Blink to Loebach, Judicial Magistrate, 11/19/82) #82-11-8(L)

ELECTIONS

Voter Registration; Challenge; Cancellation. Chapter 47: § 47.4; Chapter 48: §§ 48.15, 48.31. A registration may be challenged pursuant to section 48.15 upon allegation of a reason or reasons sufficient, under law, to invalidate the registration. A registration shall be canceled pursuant to section 48.31 upon any of the grounds specifically enumerated in subsection 1 through 6. The fact that an individual no longer resides at the residence at which he or she is registered is not sufficient, under law, to challenge a voter registration pursuant to section 48.15. The fact that an individual no longer resides at the residence at which he or she is registered is not one of the grounds upon which a voter registration shall be canceled pursuant to section 48.31. A challenge filed pursuant to section 48.31 should be processed directly after the challenge is received. The Code does not provide for any method by which the county commissioner of elections can intervene to correct or remove a challenged registration. Any attempt to selectively update or correct voter registrations may impact disproportionately among registered voters and generate claims that the county commissioner of elections is discriminating among different classes of registered voters in violation of the doctrine of equal protection. If the voter registration is legitimately canceled pursuant to section 48.31 before the challenge is processed, the county commissioner should notify the registrant of the cancellation by the method provided in section 48.31 and notify the parties that the challenge is moot by first-class mail. A second regularly scheduled election which occurs more than seventy days after the challenge is filed cannot delay

processing even if that election occurs less than seventy days after a preceding regularly scheduled election. A change in registration renders a challenge moot when the change corrects or obviates the defect alleged in the challenge. If the challenge is rendered moot, the commissioner should proceed to notify the parties. If the challenge is not rendered moot, the commissioner should continue to process the challenge with respect to the changed registration. The commissioner cannot require an allegation in good faith that one or more of the conditions set forth in section 48.31 exists as a prerequisite to processing a challenge. No statutory authority authorizes a commissioner to consider evidence in support of a challenge prior to an evidentiary hearing. (Pottorff to White, Assistant Johnson County Attorney, 11/19/82) #82-11-4

ENVIRONMENTAL

Department of Soil Conservation; Abandoned Mine Land Reclamation Program. 12 U.S.C. 1231 et. seq. Iowa Code §§ 83.21, 83.22, 83.23; 780 I.A.C. ch. 27. The Department of Soil Conservation has the authority under Iowa law to conduct the Abandoned Mine Land Reclamation Program in accordance with federal law. The rules contained in 780 I.A.C. ch. 27 are in accordance with Iowa and federal requirements for the A.M.L. program. (Norby to Gulliford, Director, Department of Soil Conservation, 11/24/82) #82-11-10(L)

Hazardous Wastes. Iowa Code § 455B.134 (1981); 1981 Iowa Acts Chapter 152, Sections 2(6), 3(1), 3(4); 42 U.S.C. 6921 et seq.; 400 I.A.C. § 45; 40 C.F.R. § 122.23. Iowa's hazardous waste site licensing law exempts facilities which existed on the effective date of the Department of Environmental Quality rule listing the waste and which have met certain other requirements. Existing hazardous waste facilities which have interim status under federal Environmental Protection Agency rules are likely to be exempt from Iowa's site licensing law. (Ovrom to Rapp, State Representative, 11/19/82) #82-11-6(L)

Water and Waste Management/Delegation of Powers. Iowa Const. art. III, § 1; 1981 Iowa Acts, Ch. 1199, Section 4; Iowa Code § 455B.5(3) (1981). Statutory provision that all rules enacted by Water, Air and Waste Management Commission to carry out a federal regulation must be no more restrictive than the federal regulation is an unconstitutional delegation of state legislative power to the federal government. (Ovrom to Ballou, Executive Director, Iowa Department of Environmental Quality, 11/12/82) #82-11-2(L)

HEALTH

Ambulances; Emergency Medical Services; Fees Charged by Tax-Supported Services. Iowa Code §§ 331.422(25), 347.14(13), 359.42, 384.24(3)(1) and 613.17, as amended by 1982 Iowa Acts, ch. 1198, § 1. An emergency medical unit, funded with local property taxes may charge a fee to persons using the service. If the voluntary personnel or the unit itself

receives more than a nominal compensation for these services, the volunteers or the unit would lose the coverage of the "Good Samaritan" law. A publicly funded unit may charge fees to nonresidents who require the service. Fees charged should be deposited with the county general fund, the general fund of the city, the treasurer of the county hospital or the township clerk, depending on which entity operates the service. (Brammer to Krewson, State Representative, 11/19/82) #82-11-9(L)

STATE OFFICERS AND DEPARTMENTS

Professional Licensing Boards; Dispensing of Prescription Drugs. 1980 Session Laws, 68th G.A., ch. 1036, § 33. Laws enacted by the legislature but printed only in the session laws and omitted from the permanent edition of the Code of Iowa because they are not of "a general and permanent nature" have full force and effect. The law enacted in § 33 of ch. 1036 of the 1980 Session Laws is effective "until legislation has been enacted to affirm or modify the attorney general's opinion" issued on July 5, 1979. The law enacted in § 33 of ch. 1036 of the 1980 Session Laws entitles any individual practitioner "to continue the practices" which all practitioners of the respective profession had generally followed under the laws of this state prior to issuance of the attorney general's opinion on July 5, 1979. The law enacted in § 33 of ch. 1036 of the 1980 Session Laws does not prohibit any licensing board from issuing a declaratory ruling on the subject of the standard of practice with respect to dispensing which was in effect prior to issuance of the attorney general's opinion on July 5, 1979. (Pottorff to Schwengels, State Senator, 11/30/82) #82-11-11(L)

TAXATION

Mobile Home Tax Period. Iowa Code § 135D.24 (1981), as amended by 1982 Iowa Acts, ch. 1251, § 2. The semiannual tax periods for mobile home tax, as set forth in § 135D.24, as amended, are March 1 through August 31 and September 1 through the last day of February. (Donahue to Bair, Director, Iowa Department of Revenue, 11/9/82) #82-11-1(L)

Reasonable Cause Precluding Payment of Penalty. Iowa Code §§ 422.25(2), 422.68(1) (1981). The Department of Revenue has the responsibility to make case-by-case factual determinations of what constitutes reasonable cause under Iowa Code § 422.25(2) (1981). (Schulir to De Groot, State Representative, 11/19/82) #82-11-5(L)

TRANSPORTATION

Railroads; Real Property. Iowa Code § 327G.77 (Supp. 1981). Where railroad abandons right-of-way acquired by conveyed easement, easement is extinguished and property reverts to grantor's successor; statutory reversion of railroad right-of-way does not apply to easement by conveyance where reversion is specified in grant. (Ewald to Anstey, Appanoose County Attorney, 11/19/82) #82-11-3

STATUTES CONSTRUEDCode, 1981Opinion

47.4	82-11-4
48.15	82-11-4
48.31	82-11-4
83.21	82-11-10(L)
83.22	82-11-10(L)
83.23	82-11-10(L)
135D.24	82-11-1(L)
327G.77	82-11-3
347.14(13)	82-11-9(L)
356.2	82-11-7(L)
356.15	82-11-7(L)
359.42	82-11-9(L)
384.24	82-11-5(L)
422.68(1)	82-11-5(L)
455B.134	82-11-6(L)
613.17	82-11-9(L)

68th G.A.Opinion

Ch. 1036, § 33	82-11-11(L)
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Iowa ActsOpinion

Ch. 1199, § 4	82-11-2(L)
Ch. 152, §§ 2,3,4	82-11-6(L)
Ch. 1162	82-11-8(L)
Ch. 1198, § 1	82-11-9(L)

I.A.C.Opinion

400, § 45	82-11-6(L)
780, § 27	82-11-10(L)

C.F.R.Opinion

40, § 122.23	82-11-6(L)
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SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA
FILED - December 22, 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. 68009. STATE v. FRONING.

Appeal from Story District Court, David R. Hansen and Newt Draheim, Judges. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by Reynoldson, C.J. (12 pages \$4.80)

The defendant appeals from his conviction and sentence for first-degree theft by misappropriation, a violation of Iowa Code section 714.1(2). OPINION HOLDS: I. The defendant's pretrial motion to produce documentary evidence, untimely under Iowa Rule of Criminal Procedure 10(4) (1981), should not have been granted even though the trial court found that the untimeliness of motion did not prejudice the State since such prejudice is not a factor in rule 10(4) which permits an untimely motion to be granted only on a showing of good cause which the defendant did not attempt to make; the denial of the motion was not an abuse of discretion where there is an absence of any showing that defendant's substantial rights were prejudiced; the denial of defendant's pretrial motion to produce documentary evidence did not deprive him of his sixth amendment right to confrontation. II. In view of defense counsel's unavailability to view these documents consisting of checks and bank statements we cannot say trial court's decision to admit the exhibits, overruling the defendant's objections to such evidence because the State failed to comply with the trial court's pretrial disclosure order, was "for reasons clearly untenable or to an extent clearly unreasonable"; the trial court did not abuse its discretion in admitting the evidence in question. III. We are not required to address the merits of the objection that expert testimony relating to a "lapping scheme" invaded the province of the jury where similar testimony was in the record without objection; ordinarily, error cannot be grounded on admission of the cumulative testimony.

No. 67371. EASTER LAKE ESTATES, INC. v. IOWA NATURAL RESOURCES COUNCIL

Appeal from Polk District Court, Ray Hanrahan, Judge.

Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by Uhlenhopp, J. (13 pages \$5.20)

The owner of a mobile home court appeals from the affirmance by district court of an order of the Iowa Natural Resources Council requiring removal of mobile homes from a floodplain within five years. OPINION HOLDS: I. The one-year limitation period for commencement of proceedings contained in the fourth paragraph of Iowa Code section 455A.33 (1979) is applicable only to proceedings resulting from failure to obtain a construction permit and not to proceedings for abatement of a nuisance pursuant to the first two paragraphs of section 455A.33; the record does not show action by the city council that would render a construction permit unnecessary pursuant to Iowa Code section 455A.35 (1979); abatement of the nuisance would not deprive the mobile home court or its tenants of property without due process of law; the argument that the mobile home court did not receive constitutional notice of the natural resources council hearing cannot be considered when raised for the first time on appeal. II. Under the record as a whole, the agency decision has substantial evidentiary support and was not characterized by abuse of discretion. III. Substantial evidence appears in the record from which agency could reasonably find as it did that the area in question is a floodplain subject to its jurisdiction.

No. 67000. TROESTER v. SISTERS OF MERCY HEALTH CORP.

Appeal from Dubuque District Court, Roger F. Peterson, Judge.

Reversed and remanded. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Schultz, J.

(16 pages \$6.40)

Plaintiff appeals from the pretrial dismissal of her action to recover for decedent's allegedly wrongful death. After plaintiff, the administrator of decedent's estate, commenced this wrongful death action, decedent's estate was closed and plaintiff was discharged as administrator. Defendants moved to dismiss the action, asserting that only an administrator could commence and maintain a wrongful death action, and plaintiff had been discharged. Although decedent's estate was then reopened and plaintiff reappointed administrator, the district court granted the motion to dismiss. OPINION HOLDS: I. It was proper for the district court to consider in ruling on the motion to dismiss the undisputed fact that plaintiff had been discharged as administrator and then reappointed; the court may decide an issue of subject matter jurisdiction or capacity to sue at any time when it has the necessary facts in the record before it; where evidence is required on these issues, it is a better practice to utilize in the pretrial state our summary judgment procedure; we still do not approve of "speaking motions" directed at deficiencies in the pleadings. II. The district court erred in granting the motion to dismiss; the closing of an estate does not automatically terminate an action commenced on behalf of the estate; however, at some time a successor or assignee must come forward to replace the plaintiff; capacity to sue must be distinguished from the cause of action.

No. 67380. STAFFORD v. VALLEY COMMUNITY SCHOOL DISTRICT.

Appeal from Fayette District Court, Frank D. Elwood, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by Reynoldson, C.J. (11 pages \$4.40)

Plaintiff teacher appeals from district court's annulment of a writ of certiorari challenging defendant board's finding, in a termination proceeding, that she was a probationary teacher and therefore was not entitled to appeal to an adjudicator. OPINION HOLDS: I. The plaintiff is precluded from relitigating the issue that the adjudicator has sole jurisdiction to determine her probationary status by our holding in Stafford v. Valley Community School District, 298 N.W.2d 307 (Iowa 1980), that the plaintiff had not established a clear and certain right to have her appeal to the adjudicator processed by the board; the district court should not be reversed for holding there was no procedural defect in the board's refusal to process plaintiff's appeal because it determined she was a probationary teacher. II. There is no illegality in the board's position that plaintiff's activity as a tutor for the district in the 1976-77 school year did not qualify as employment as a teacher under Iowa Code section 279.19 and thus that she was a probationary teacher not entitled to appeal the board's decision to terminate her employment pursuant to Iowa Code section 279.17.

No. 67616. IN RE MARRIAGE OF WELBES.

Appeal from Benton District Court, Larry J. Conney, Judge. On review from Iowa Court of Appeals. Affirmed as modified. Considered en banc. Opinion by LeGrand, J. Dissent by McCormick, J. (8 pages \$3.20)

Further review was granted of the Iowa Court of Appeals affirmance of the trial court decree granting custody of the parties' minor child to respondent. OPINION HOLDS: We agree with the trial court and the court of appeals that the best interests of the child will be served if her father has custody; we decline to disturb the visitation schedule established by the decree, except for one minor modification relating to weekend visitation; the mother's application for attorney fees is denied. DISSENT ASSERTS: The child's father has never demonstrated either an ability or willingness to accept the responsibilities of parenting on a sustained day-to-day basis; I would award custody of the child to her mother.

NO. 67026. JASPER COUNTY SAVINGS BANK V. GILBERT.

Appeal from Jasper District Court, Thomas Mott, District Associate Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McGiverin and Carter, JJ. Opinion by McGiverin, J. (13 pages \$5.20)

Defendants appeal denial of counterclaim which sought the statutory penalty for alleged violations of the Truth in Lending Act, 15 U.S.C. § 1601 et. seq. (1976). OPINION HOLDS: I. Defendant's sole contention on appeal is that technical defects in the document labeled "Security Agreement, Note and Disclosure Statement" make plaintiff liable to defendants for twice the finance charge, the costs of the action and reasonable attorney fees under the federal Truth in Lending Act; substantial compliance with the act is generally sufficient, however, unless the error involves disclosure of the finance charge or annual percentage rate. II. The Act does not require the lender to disclose that the dollar amount of the cost of credit for simple interest loans will increase if the consumer makes late payments; the note clearly disclosed that the final payment was subject to change if payments had not been made when due; the inclusion of a paragraph explaining delinquency charges on precomputed loans is not misleading in a disclosure statement for a simple interest loan, and the "delinquency charge" required to be disclosed does not encompass the increased cost of interest due to a customer's failure to make timely payments; the number of payments was adequately disclosed; the bank's disclosure of its security interests was substantial and accurate; the bank's security interest in proceeds was not required to be disclosed at all, as it was merely incidental. III. The arrangement of paragraphs with the most essential provisions first helped to promote a full disclosure of the credit terms in a logically sequential manner.

NO. 67488. IN RE GUARDIANSHIP OF COLLINS.

Appeal from Washington District Court, Dick R. Schlegel, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Larson and Schultz, JJ. Opinion by McCormick, J. (8 pages \$3.20)

Contract purchaser appeals from judgment for conservator in action concerning enforceability of a real estate contract. OPINION HOLDS: I. In the combination of circumstances in this record, we find that at least the defense of waiver was presented. II. Lack of capacity to understand a contract for the sale of real property the ward had entered into before establishment of the guardianship has not been established. III. The present case presents a classic waiver situation; for reason adequate to Christena, she unilaterally insisted on giving up the very right to interest her conservator now seeks to reclaim; the change in the contract was therefore not subject to rules governing contract modification; the trial court erred in refusing to give effect to the waiver.

NO. 66832. GOETZMAN V. WICHERN.

Appeal from Polk District Court, James P. Denato, Judge.
Reversed and remanded. Considered en banc. Opinion by
McCormick, J. Dissent by Carter, J. (33 pages \$13.20)

Plaintiff appeals from judgment on jury verdict for defendant in medical malpractice action. OPINION HOLDS: I. Plaintiff's objection to the instructions was sufficient to preserve for review the issue of whether the common law of Iowa should be changed to substitute the doctrine of comparative negligence for the existing doctrine of contributory negligence. II. The record does not support a finding that plaintiff was not prejudiced by the court's ruling on her objection to submission of contributory negligence as a bar to recovery. III. Iowa Code section 619.17 (burden of pleading and proving contributory negligence placed on defendant) modified the common law doctrine of contributory negligence but did not codify it. IV. The arguments for deference to the legislature in the present case are substantially outweighed by the considerations reflected in the decisions of other courts that have addressed the issue, the analyses of the commentators, and the concept of the judicial role exemplified in past decisions of this court. V. In all cases in which contributory negligence has previously been a complete defense, it is hereby supplanted by the doctrine of comparative negligence; in such cases contributory negligence will not bar recovery but shall reduce it in the proportion that the contributory negligence bears to the total negligence that proximately caused the damages. VI. The doctrine shall apply to (1) the present case, (2) all cases tried or retried after the date of filing of this opinion, and (3) all pending cases, including appeals, in which the issue has been preserved. DISSENT ASSERTS: Today the court discards an established legal doctrine shaped over more than a century of application and ventures forth on a new and unmarked course; the proponents of comparative negligence should not be permitted to sell the doctrine on the basis of its manifest logic, but should be required to produce empirical data which tends to establish the relative fairness of the competing legal doctrines in actual operation rather than on a theoretical level; also, conversion to a system of comparative negligence should be by legislative act, if at all, to avoid the positive injustice produced by retroactive application of the new rule; I would affirm the trial court.

NO. 67889. STATE V. GAFFNEY.

Appeal from Buchanan District Court, T. H. Nelson, Judge.
Sentence vacated and case remanded. Considered en banc. Per
Curiam. Dissent by Carter, J. (3 pages \$1.20)

The State was granted discretionary review of trial court sentence imposing only a fine upon conviction of a forcible felony. OPINION HOLDS: Imposition of only a fine for a forcible felony, Iowa Code § 702.11, was illegal and void because the applicable statutes mandate the imposition of a

sentence of incarceration, as determined in State v. Peterson N.W.2d _____ (Iowa 1982), filed today; although the sentence imposed in Peterson involved a class "D" felony, while the present case involves a class "C" felony, the issue of statutory interpretation is the same as to all forcible felons. DISSENT ASSERTS: I dissent for the reasons expressed in my dissent in State v. Peterson.

NO. 68237. STATE V. MASTERSON.

Appeal from Linn District Court, Thomas M. Horan, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Larson and Schultz, JJ. Per curiam.

(2 pages \$.80)

Defendant appeals from his conviction for first-degree murder. OPINION HOLDS: Because the evidence was sufficient to support the jury's verdict, the trial court did not err in overruling defendant's motions for acquittal of first degree murder and for new trial; a rational jury could have accepted or rejected the testimony in whole or in part of any of the witnesses, lay or expert, regarding the defendant's capacity to form a specific intent.

NO. 67400. STATE V. PETERSON.

Appeal from Dubuque District Court, T. H. Nelson, Judge. Sentence vacated and case remanded. Considered en banc. Opinion by McGiverin, J. Dissent by Carter, J.

(15 pages \$6.00)

The State was granted discretionary review of trial court sentence imposing only a fine upon conviction of a forcible felony. OPINION HOLDS: I. It would not be in compliance with the legislative intent on forcible felonies to preclude a deferred judgment, deferred sentence, and a suspended sentence and yet permit a fine instead of a sentence of confinement; subsection 901.5(2) (court may impose fine) is not relevant because the sentencing option of a fine-only is not authorized by law for the offense involved here. II. Section 902.9(4) specifies the maximum penalty for conviction of a class "D" felony -- five years imprisonment and a \$1000 fine -- but provides for the fine only as an addition to whatever option is exercised by the court relating to incarceration; in view of section 909.2 (court may impose fine in addition to imprisonment when authorized), which more appropriately bears on class "D" felony cases, the penalty for such offenses, and the general purpose of chapter 909, we conclude that section 909.1 is inapplicable to defendant's case. III. A class "D" forcible felon must be sentenced to confinement and in addition, may be fined; however, the trial court had no authority to impose a fine-only sentence; the sentence is void; defendant

must be resentenced. IV. There is no merit in defendant's contention that the State is reneging on a plea bargain; before resentencing, defendant will be permitted to "show for cause against the judgment . . . any sufficient ground for new trial, or an arrest of judgment." DISSENT ASSERTS: Section 902.9(4) by its express terms purports only to establish the maximum penalty for conviction of a class "D" felony; use of the words "in addition may be sentenced to a fine," in describing the maximum penalty provided by law, does not necessarily imply that a fine alone is not permissible; if section 909.1 is to be accorded its clear and unambiguous meaning, it authorizes the imposition of a fine "instead of any other sentence," thereby squarely disposing of the issue now before the court in a manner contrary to the result adopted in the majority opinion; the sentence which the trial court imposed in the present case was authorized by law; I would affirm the trial court's sentence.

NO. 68522. WENMAN V. STATE.

Appeal from Johnson District Court, William R. Eads, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McGiverin, and Carter, JJ. Opinion by McGiverin, J.
(7 pages \$2.80)

Applicant appeals from dismissal of his application for postconviction relief pursuant to Iowa Code chapter 663A. OPINION HOLDS: For the purposes of Iowa Code section 663A.8, applicant has failed to establish by a preponderance of the evidence "sufficient reason" why he failed to file a motion in arrest of judgment that would allow him to preserve in the trial court and on direct appeal the grounds he now urges in this postconviction action; a postconviction proceeding may not be used to attack a guilty plea on the same grounds on which direct appeal had failed because of defendant's failure to file a motion in arrest of judgment after being advised of his right to do so and the consequences for not doing so.

NO. 67492. SCHULLER V. HY-VEE FOOD STORES, INC.

Appeal from Linn District Court, Robert Osmundson, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Larson and Schultz, JJ. Opinion by McCormick, J.
(10 pages \$4.00)

Plaintiffs appeal from judgment on jury verdict for defendant in personal injury and loss of consortium negligence action based on plaintiff Dennis Schuller's fall over a canister ashtray in defendant's Marion grocery store. OPINION HOLDS: I. Evidence of absence of prior accidents may be admitted without specific proof of the existence of the same circumstances "when the experience sought to be proved is so extensive as to justify the inference that it included an adequate number of situations like the one in suit"; we find

no abuse of trial court discretion in admitting the evidence; evidence that a third party might have moved the ashtray was admissible on the issue of proximate cause. II. We find no abuse of discretion in four trial court rulings excluding evidence plaintiffs sought to introduce. III. The trial court did not err in its jury instructions or specifications of negligence; the instructions were neither confusing nor misleading in the respects claimed; in determining the contributory negligence of a person injured while on business premises, the fact that one's attention may be distracted by merchandise on display is a factor to be weighed in the person's favor; the same factor bears on the issue of the defendant's negligence; the trial court erred both in refusing to modify the lookout instruction to incorporate this concept and in refusing to instruct on it in relation to defendant's duty; plaintiffs were entitled to a requested instruction which would have informed the jury that defendant was charged with the knowledge of its employees; the comparative negligence doctrine shall be applicable upon retrial in accordance with this court's holding in Goetzman v. Wichern, _____ N.W.2d _____ (Iowa 1982).

NO. 67493. KOETHE V. JOHNSON.

Appeal from Polk District Court, Ray Hanrahan, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McGiverin, and Carter, JJ. Opinion by McGiverin, J. (16 pages \$6.40)

Plaintiff creditor, a former landlord of the debtor, challenges by discretionary review the denial of a garnishment action against a debtor's employer. OPINION HOLDS: I. The wage assignment previously made by the debtor to satisfy his court-imposed child support obligation was a "garnishment" within the meaning of the federal Consumer Protection Act, which limits the portion of a debtor's disposable earnings which may be subjected to garnishment. II. The debtor's "disposable earnings," within the meaning of the federal Consumer Protection Act, include the portion of his wages which were previously assigned to meet the child support obligation; therefore the computation of a permissible garnishment under the Act must be based on a percentage of the debtor's disposable earnings without subtracting the child support payments. III. The debtor's employer, the Des Moines Water Works, is a "public employer" within the meaning of Iowa Code section 642.2, which governs garnishment of a public employer. IV. The restrictions on garnishment found in section 537.5105(2) of the Iowa Consumer Credit Code do not apply to garnishments of a public employer unless the debt was incurred in a consumer credit transaction. V. When a debtor's payroll period differs from a calendar week, the exemption allowed by the federal Consumer Protection Act should be calculated by using the disposable earnings which are payable for a payroll period, rather than for a calendar week.

NO. 66985. IN RE ESTATE OF VOTTELER.

Appeal from Marshall District Court, David R. Hansen, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by McCormick, J. (8 pages \$3.20)

The plaintiff was injured when she was attacked by a former patient of the decedent psychiatrist. The plaintiff filed a claim against the psychiatrist's estate, alleging the psychiatrist had breached a duty to warn that the patient posed a danger of violence to the plaintiff. The trial court granted the defendant a summary judgment, and the plaintiff appeals. OPINION HOLDS: We do not decide whether to adopt the rule that a psychotherapist can under some circumstances have a duty to warn that a patient poses a danger of violence to a foreseeable victim; even under such a rule, the present record would be insufficient to demonstrate a genuine issue of material fact on the allegations of negligence and proximate cause; the present record lacks any basis for finding the therapist knew of the danger or should be charged with such knowledge; moreover, the evidence has sufficient force to charge the victim with knowledge of the danger as a matter of law.

No. 68191. STATE V. HALL.

Appeal from Warren District Court, M. C. Herrick, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McGiverin, and Carter, JJ. Per Curiam. (2 pages \$.80)

The defendant was convicted of committing sexual abuse in the third degree upon his thirteen-year-old daughter. He appeals from the conviction and the resulting sentence of imprisonment. OPINION HOLDS: The defendant was not denied equal protection by the statutory scheme which mandates a sentence of imprisonment for all forms of sexual abuse, including those which involve incest and its attendant emotional difficulties; the legislature was constitutionally entitled to decide that all forms of sexual abuse, including incest, should be punished by imprisonment for maximum deterrent effect.

No. 68163. STATE V. BLEEKER.

Appeal from Story District Court, R. K. Richardson, Judge. Reversed and remanded. Considered en banc. Opinion by Harris, J. Dissent by Carter, J. (10 pages \$4.00)

The State appeals from an order granting a new trial because of an evidentiary ruling prohibiting a wife from testifying against her estranged husband over his objection based on the marital testimonial privilege statute, Iowa Code section 622.7. Defendant entered his estranged wife's house,

apparently through a window, and viciously attacked Kenneth Zea, who was living with defendant's estranged wife. Although his attack was directed toward Zea, defendant struggled with, and slightly injured, his wife. OPINION HOLDS: I. Iowa Code section 622.7 cannot be interpreted to make the marital testimonial privilege available only to a witness-spouse. II. Even though defendant was not being prosecuted for a crime committed directly against his wife, she was a victim of his violence, and under the circumstances of this case, which include the wife's willingness to testify, the statute's exception to the husband-wife privilege for "a crime committed one against the other" applies. III. The trial court was right in its original determination to admit the testimony and, we conclude, was wrong in later determining it had erred and granting a new trial. DISSENT ASSERTS: The parties were legally married at the time of the events to which the wife testified, a circumstance which permits the husband to claim the privilege when her testimony is subsequently offered against him; although it may be, as the majority suggests, that in the assault against Zea defendant simultaneously assaulted his wife, that circumstance does not satisfy the requirements of the statute that the testimony be offered in a prosecution for a crime against the wife.

No. 67361. WALKER SHOE STORE, INC. v. HOWARD'S HOBBY SHOP.

Appeal from Black Hawk District Court, Carroll Engelkes and Roger F. Peterson, Judges. Reversed and remanded. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McGiverin and Carter, JJ. Opinion by LeGrand, J. (9 pages \$3.60)

Defendant appeals from summary judgment for plaintiff in the amount of \$25,074.45 for damage resulting from a fire which originated in escaped fuel oil on defendant's premises and spread to plaintiff's property. OPINION HOLDS: I. Defendant filed an answer to counts I and II and a motion to dismiss count III, all as part of the same instrument; the trial court properly held that the motion to dismiss was not timely because it was not filed before answer. II. The trial court was right in denying defendant's application for adjudication of law points. III. Lubin v. City of Iowa City, 257 Iowa 383, 131 N.W.2d 765 (1965) (strict liability for damage done by escape of water from municipal system), is clearly distinguishable from the present case; plaintiff was not entitled to summary judgment.

No. 67158. STATE v. GREGORY.

Appeal from Jackson District Court, J. Hobart Darbyshire, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McCormick, and McGiverin, JJ. Opinion by LeGrand, J. (8 pages \$3.20)

Defendant appeals his conviction and sentence of first degree murder in violation of Iowa Code section 707.2. OPINION HOLDS: I. The inculpatory statements made by the defendant were not the fruit of an illegal warrantless arrest since the officers had probable cause to arrest the defendant and exigent circumstances were not required to make an arrest without a warrant where defendant's sister gave her permission for the officers to enter her home where the arrest occurred. II. Under State v. Gramenz, 256 Iowa 134, 142-43, 126 N.W.2d 285, 290-91 (1964), defendant was not entitled to a diminished responsibility instruction; the trial court did not err in refusing the requested instruction. III. The testimony of state witnesses verifying the circumstances related by the defendant in his confession and his testimony that he shot the victim constituted ample "other proof" that the defendant committed the crime as required by Iowa Rule of Criminal Procedure 20(4) to submit the confession for jury consideration.

No. 67549. McCONNELL v. IOWA DEPARTMENT OF JOB SERVICE.

Appeal from Polk District Court, Harry Perkins, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by Schultz, J. (7 pages \$2.80)

This appeal involves review of an Iowa Department of Job Service decision disqualifying petitioner from receipt of unemployment benefits because he was discharged from his employment for loafing and reading on the job, acts constituting misconduct. On judicial review the district court found that it had jurisdiction and affirmed the department's action. OPINION HOLDS: I. Iowa Code section 4.1(22) should be applied to interpret Iowa Code section 96.6(2) in cases where the last day of the time period for filing an appeal from an initial decision by a claims deputy falls on Sunday; petitioner's administrative appeal was timely. II. Substantial evidence was introduced which supports the department's decision that petitioner was discharged for misconduct; the evidence was admissible in administrative proceedings even if it was hearsay.

No. 67634. RUSSELL v. JOHNSTON.

Appeal from Des Moines District Court, Harlan W. Bainter, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by Schultz, J. (10 pages \$4.00)

Plaintiffs, decedent's heirs, appeal from a declaratory judgment that they are not entitled to any of decedent's estate. A month before he married defendant Marie K. Johnston, decedent executed a will leaving

his entire estate to Marie if she was still living thirty days after his death and to his friend Don Rappenecker if she was not. The marriage was later dissolved. After decedent died, Don assigned his interest in decedent's estate to Marie. OPINION HOLDS: I. The legislature intended that, pursuant to Iowa Code Section 633.271, any provision in a will in favor of a former spouse of a decedent is to be revoked when there is a divorce or dissolution of marriage prior to death; this provision is equally applicable when the marriage of the parties takes place after execution of the will; section 633.271 revokes all provisions of the will in favor of Marie. II. The doctrine of gift by implication is applicable here; after examining the entire will and the circumstances surrounding decedent at the time he executed the will, we conclude he intended a general plan to leave his property to Marie, but if that bequest failed then to Don; Marie is entitled to decedent's estate as assignee of Don.

No. 67257. LUSTER v. BRODERICK.

Certiorari to Scott District Court, Jack F. Broderick, District Associate Judge. Writ sustained with directions. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by Schultz, J. (5 pages \$2.00)

In their consolidated certiorari actions plaintiffs claim that the defendant, their sentencing judge, acted illegally in responding to their assertions of inability to pay fines by imposing appearance bonds and later incarcerating them when they could not satisfy the bond requirement. OPINION HOLDS: A sentencing court has no authority to impose bond, and incarceration upon failure to post bond, for the apparent purpose of enforcing the collection of a fine; the purpose of a general postconviction appearance bond is to ensure the appearance of the released defendant following a determination of an appeal or other delay in the commencement of sentence; there is no statutory provision that expressly or impliedly allows for the imposition of an appearance bond upon failure to pay a fine.

No. 67922. STATE v. DAVIS.

Appeal from Scott District Court, James R. Havercamp, Judge. Modified and affirmed. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McGiverin, and Carter, JJ. Opinion by Uhlenhopp, J. (14 pages \$5.60)

Defendant appeals from conviction of first-degree kidnapping and second-degree sexual abuse. OPINION HOLDS: I. A defendant must take the stand and testify and the prosecutor must use his prior statement to impeach before the defendant can raise a constitutional claim such as we have here--that the statement could not be used for impeachment because it was involuntary; as the defendant here did not take the stand the constitutional issue was not properly raised and prejudice was not shown. II. The district court did not abuse its discretion in overruling defendant's motion for change of venue. III. The victim's in-court identification of defendant from her two brief observations of him at the scene, her photo identification, and

the fingerprint evidence generated a jury question on identification. IV. Defendant should not have been convicted of both sexual abuse and first-degree kidnapping because sexual abuse was an element of the kidnapping and was therefore an included offense; we nullify the judgment and sentence for sexual abuse. V. The record is insufficient to permit us to pass upon defendant's claim that his trial counsel did not perform within the range of normal competency; he may present it by postconviction proceedings if he chooses.

No. 67714. STATE v. ELAM.

Appeal from Black Hawk District Court, Peter Van Metre, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Carter, J. (12 pages \$4.80)

Defendant appeals from his conviction of first-degree murder in violation of Iowa Code section 707.2. OPINION HOLDS: I. The trial court did not err in excluding as irrelevant to the issue of justification expert psychological testimony tending to show defendant's inordinate wariness and unusual fear of death. II. An instruction permitting the jury to infer malice from the use of a dangerous weapon did not unconstitutionally shift the burden of proof. III. Testimony concerning a threat made by a third person was not hearsay and was relevant because the threat was made by a co-conspirator. IV. The evidence was sufficient to prove beyond a reasonable doubt that defendant did not act with justification in shooting the victim.

No. 67139. FRONING & DEPPE, INC. v. SOUTH STORY BANK & TRUST CO.

Appeal from Story District Court, James C. Smith, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, McGiverin, Harris, and Carter, JJ. Opinion by Carter, J. (5 pages \$2.00)

Defendant South Story Bank appeals from a summary judgment for plaintiff on defendant's counterclaim for abuse of process. OPINION HOLDS: There was no abuse of process by plaintiff because its use of the legal process was proper in the regular prosecution of the proceedings.

No. 66884. IOWA HEALTH SYSTEMS AGENCY, INC. v. WADE.

Appeal from Polk District Court, Harry Perkins, Jr., Judge. Reversed and remanded. Considered by LeGrand, P.J., and Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by Larson, J. (8 pages \$3.20)

Intervenor Northwest Community Hospital proposed to build a new facility and sought reimbursement for interest and depreciation expenses incident to the project. Under federal law, detailed studies of need and cost are required at the state level before the reimbursement request will be acted upon. It was determined by a review hearing officer that an earlier recommendation disapproving the proposed move had been affected by bias and prejudice and a remand to the study committee was ordered. After remand the study committee recommended the reimbursement. That recommendation was rejected by the Commission of Public Health and the application for reimbursement was disapproved. That decision was appealed to a hearing officer, who reversed on the ground that the ruling was not supported by substantial evidence. The agency responsible for conducting the feasibility study and the study committee sought judicial review. The hospital intervened to support the rulings of the review

officers. The district court affirmed, and the petitioners appealed. **OPINION HOLDS:** There was sufficient evidence to support the order of disapproval; it is unnecessary to reach the issue of whether the earlier reversal of the committee recommendation of disapproval was proper.

No. 67062. STATE v. SCHERTZ.

Appeal from Scott District Court, James R. Havercamp, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by Larson, J. (7 pages \$2.80)

Defendant was convicted of kidnapping in the first degree in violation of Iowa Code section 710.2, murder in the second degree in violation of section 707.3, and theft in the second degree in violation of section 714.2. She appeals from her kidnapping conviction asserting the trial court erred in denying her motion for judgment of acquittal. On appeal, she argues the State failed to present sufficient evidence to show that she was a principal or aider and abettor to the kidnapping and to establish that the victim was tortured. **OPINION HOLDS:** I. Defendant's motion for judgment of acquittal on the kidnapping charge did not embrace her first contention of error, that there was insufficient evidence to show the defendant was a principal or aider and abettor; error on that issue was not preserved. II. The evidence was sufficient for a rational jury to have concluded that the victim was intentionally subjected to torture.

No. 67060. STATE v. LeCOMPTE.

Appeal from Scott District Court, James R. Havercamp, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Larson, and Schultz, JJ. Opinion by Larson, J. (7 pages \$2.80)

Defendant appeals from conviction of first-degree murder, kidnapping, and second-degree theft. **OPINION HOLDS:** I. The defendant's objection to the trial court's instruction on compulsion did not preserve the other grounds urged in his brief and the only issue for review regarding the instruction is whether "the defense of compulsion is not negated by the happening of physical injury"; the portion of section 704.10 (defense of compulsion) which makes the defense inapplicable where there has been a "physical injury" to the victim clearly applies as well if the victim dies; the compulsion defense is not available to an aider and abettor even if physical injury is suffered by the victim, if that injury is actually caused by another person; as an aider and abettor, defendant's use of the compulsion defense is subject to the same limitations as is a principal's. II. Defendant contends the evidence of a threat against him made by a co-defendant while both were imprisoned awaiting trial was relevant because it corroborated his compulsion defense; the trial court's ruling denying admissibility on grounds the evidence was irrelevant and remote was within its proper discretion.

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