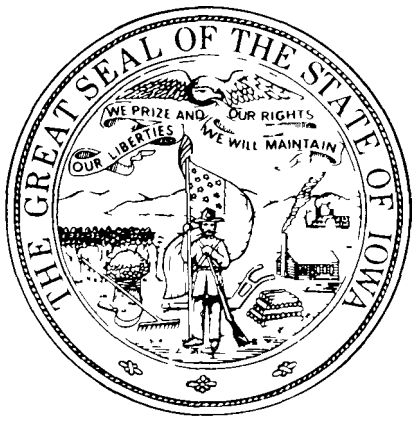




# IOWA ADMINISTRATIVE BULLETIN

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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

## PRINTING SCHEDULE FOR IAB

| ISSUE NUMBER | SUBMISSION DEADLINE | ISSUE DATE |
|---|---|---|
| 19 | Friday, February 25, 1983 | March 16, 1983 |
| 20 | Friday, March 11, 1983 | March 30, 1983 |
| 21 | Frdiay, March 25, 1983 | April 13, 1983 |

# SUBSCRIPTION INFORMATION

### Iowa Administrative Bulletin

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

| | | |
|---|---|---|
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# SUPPLEMENTAL AGENDA

The following rules [in addition to the agenda published in IAB 2/16/83] will be reviewed by the Administative Rules Review Committee at its regular meeting Tuesday,* March 8, 1983, 7:00 a.m. in Committee Room 116, State Capitol.

**Note: See agenda published in IAB 2/16/83.**

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Weights and measures 55.48(3)"c", ARC 3373 terminated **ARC 3593** ..... 3/2/83

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*Meeting date changed to March 7, 1983, 7:30 a.m.

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# PUBLIC HEARINGS

| AGENCY | HEARING LOCATION | DATE AND TIME OF HEARING |
|---|---|---|
| **ARTS COUNCIL[100]** | | |
| Policies and procedures, 2.3(17)<br>Form, 3.10<br>IAB 2/16/83 **ARC 3568**<br>(See also IAB 2/16/83 **ARC 3567**) | Arts Council Office<br>1223 E. Court Ave.<br>Des Moines, Iowa | March 8, 1983<br>10:00 a.m. |
| **COMMERCE COMMISSION[250]** | | |
| Annual meeting of electric utilities, 23.4<br>IAB 1/19/83 **ARC 3505** | Hearing Room<br>First Floor<br>Lucas State Office Bldg.<br>Des Moines, Iowa | March 3, 1983<br>10:00 a.m. |
| Service supplied by electric utilities, 20.7(13)<br>IAB 2/16/83 **ARC 3555** | Hearing Room<br>First Floor<br>Lucas State Office Bldg.<br>Des Moines, Iowa | March 24, 1983<br>10:00 a.m. |
| **CONSERVATION COMMISSION[290]** | | |
| Docks, 33.1(9), 33.1(10)<br>IAB 3/2/83 **ARC 3583** | Fourth Floor<br>Conference Room<br>Wallace State Office Bldg.<br>Des Moines, Iowa | March 22, 1983<br>10:00 a.m. |
| Dock management areas, 34.3, 34.4, 34.5<br>IAB 3/2/83 **ARC 3578** | Fourth Floor<br>Conference Room<br>Wallace State Office Bldg.<br>Des Moines, Iowa | March 22, 1983<br>10:00 a.m. |
| **EMPLOYMENT SECURITY[370]** | | |
| Claims and benefits, 4.22(1)<br>IAB 2/16/83 **ARC 3556** | Job Service Office<br>1000 E. Grand Ave.<br>Des Moines, Iowa | March 8, 1983<br>9:30 a.m. |
| **ENVIRONMENTAL QUALITY DEPARTMENT[400]** | | |
| Emission standards for contaminants, 4.2(4)<br>IAB 2/16/83 **ARC 3544** | Conference Room<br>Fifth Floor<br>Wallace State Office Bldg.<br>Des Moines, Iowa | March 18, 1983<br>10:30 a.m. |
| **IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523]** | | |
| Minimum loan requirement, 2.14<br>IAB 2/16/83 **ARC 3559**<br>(See also IAB 2/16/83 **ARC 3558**) | Authority offices<br>550 Liberty Bldg.<br>418 Sixth Ave.<br>Des Moines, Iowa | March 10, 1983<br>10:00 a.m. |
| **NATURAL RESOURCES COUNCIL[580]** | | |
| Definitions, Council-established flood plain-encroachment, flood plain or floodway construction<br>Amendments to chs 2, 4, 5<br>IAB 2/16/83 **ARC 3562** | Council Chambers<br>City Hall<br>220 Clay St.<br>Cedar Falls, Iowa | March 8, 1983<br>10:00 a.m. |
| **OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION[610]** | | |
| Procedures for hearings<br>Amendments to ch 1<br>IAB 3/2/83 **ARC 3574** | Second Floor<br>Conference Room<br>507 Tenth Street<br>Des Moines, Iowa | April 8, 1983<br>10:00 a.m. |
| **PAROLE BOARD[615]** | | |
| Granting parole, 4.1<br>IAB 2/16/83 **ARC 3551** | Parole Board Office<br>Fifth Floor<br>Hoover State Office Bldg.<br>Des Moines, Iowa | March 11, 1983<br>10:00 a.m. |
| Hearings, 7.6(2)<br>IAB 2/16/83 **ARC 3554** | Parole Board Office<br>Fifth Floor<br>Hoover State Office Bldg.<br>Des Moines, Iowa | March 11, 1983<br>10:00 a.m. |

| | | |
|---|---|---|
| **PLANNING AND PROGRAMMING[630]**<br>Youth affairs, 14.5<br>IAB 2/16/83 **ARC 3570**<br>(See also IAB 2/16/83 **ARC 3569** | Conference Room<br>Office for Planning and Programming<br>523 E. 12th St.<br>Des Moines, Iowa | March 9, 1983<br>9:00 a.m. |
| **PUBLIC SAFETY DEPARTMENT[680]**<br>Means of exit, amendments to ch 5<br>IAB 3/2/83 **ARC 3584** | Third Floor<br>Conference Room, east half<br>Wallace State Office Bldg.<br>Des Moines, Iowa | March 22, 1983<br>10:00 a.m. |
| **PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT AND DISABILITY SYSTEM TRUSTEES[690]**<br>Peace officers' retirement, amendments to ch 1<br>IAB 2/16/83 **ARC 3538** | Third Floor Conference Room<br>Wallace State Office Bldg.<br>Des Moines, Iowa | March 9, 1983<br>10:00 a.m. |
| **REAL ESTATE COMMISSION[700]**<br>Discipline and hearing procedures, ch 4<br>IAB 3/2/83 **ARC 3594** | Commission Office<br>1223 E. Court Ave.<br>Suite 205<br>Des Moines, Iowa | April 14, 1983<br>9:00 a.m. |
| **SOCIAL SERVICES DEPARTMENT[770]**<br>Block Grant-local purchase planning process, 131.6<br>IAB 2/16/83 **ARC 3561** | Courthouse Board Room<br>2nd Floor<br>Burlington, Iowa | March 15, 1983<br>10:00 a.m. |
| | St. Anthony's Regional Hospital<br>Education Room<br>South Clark<br>Carroll, Iowa | March 11, 1983<br>10:00 a.m. |
| | Cedar Rapids District Office<br>Department of Social Services<br>6th Floor Conference Room<br>221 - 4th Ave. S.E.<br>Cedar Rapids, Iowa | March 15, 1983<br>2:00 p.m. |
| | Community Hall<br>Central Fire Station Bldg.<br>Council Bluffs, Iowa | March 14, 1983<br>10:00 a.m. |
| | Restored Train Depot<br>116 West Adams<br>Creston, Iowa | March 14, 1983<br>1:30 p.m. |
| | Davenport District Office<br>Department of Social Services<br>Fifth Floor Bicentennial Bldg.<br>428 Western<br>Davenport, Iowa | March 10, 1983<br>10:00 a.m. |
| | Northeast Iowa Technical Institute<br>Box 400<br>Calmar, Iowa | March 10, 1983<br>10:00 a.m. |
| | Des Moines District Office<br>Conference Room<br>Department of Social Services<br>3609½ Douglas<br>Des Moines, Iowa | March 15, 1983<br>1:30 p.m. |

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

| | | |
|---|---|---|
| | Department of Social Services<br>Third Floor - Conlin Bldg.<br>1473 Central Ave.<br>Dubuque, Iowa | March 10, 1983<br>9:00 a.m. |
| | Webster County<br>Department of Social Services<br>23 North 7th St.<br>Fort Dodge, Iowa | March 9, 1983<br>1:30 p.m. |
| | Marshalltown Sub-District Office<br>Department of Social Services<br>206 West State Street<br>Marshalltown, Iowa | March 10, 1983<br>2:00 p.m. |
| | Mason City District Office<br>Department of Social Services<br>1531 South Monroe<br>Mason City, Iowa | March 10, 1983<br>1:30 p.m. |
| | Ottumwa Public Library<br>129 North Court<br>Ottumwa, Iowa | March 10, 1983<br>10:00 a.m. |
| | Sioux City District Office<br>Department of Social Services<br>808 - 5th Street<br>Sioux City, Iowa | March 10, 1983<br>3:00 p.m. |
| | Highway Patrol Bldg.<br>Highway 81 West<br>Spencer, Iowa | March 9, 1983<br>3:00 p.m. |
| | Second Floor Conference Room<br>Black Hawk County<br>Department of Social Services<br>KWWL Building<br>500 East Fourth Street<br>Waterloo, Iowa | March 9, 1983<br>10:00 a.m. |
| Basic needs of dependent children, 46.5(3)<br>IAB 3/2/83 **ARC 3582**<br>(See IAB 1/5/83 **ARC 3497**) | Auditorium<br>Wallace State Office Bldg.<br>Des Moines, Iowa | March 23, 1983<br>1:30 p.m. |

## ARC 3593

## AGRICULTURE DEPARTMENT[30]

### TERMINATION OF NOTICE

Notice of Intended Action to promulgate a substitute for 55.48(3), paragraph "c", relating to the advertisement of the price of liquid petroleum products for retail use appeared in the IAB on November 24, 1982 as ARC 3373. Rulemaking proceedings were initiated as a result of a Petition for Rulemaking filed by the Iowa Independent Oil Jobbers Association. The reason given for the proposed rule was clarification of consumer credit code/price posting requirements for cash and credit sales of liquid petroleum products.

A public hearing was conducted on December16 , 1982; and was attended by, among other interested persons, a representative of the Iowa Attorney General. The authority of the department to implement and enforce the proposed rule was explored. Subsequent to the public hearing, and on January 27, 1983, the Iowa Department of Justice advised that nothing in Iowa Code chapter 214A provides the department with the authority to regulate the method of metering the price of gasoline when a discount is offered for cash; and that even under the broad authority of section 215.18, which was cited as an implementing authority for the entire rule 30—55.48, the basis of the department's authority to promulgate such a rule was questionable. Iowa Code chapter 215 regulates weights and measures and makes no explicit reference to pricing.

Accordingly, the department hereby terminates the proceeding, pursuant to Iowa Code section 17A.4(1)"b".

## ARC 3583

## CONSERVATION COMMISSION[290]

### 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 106.32, 107.24, and 111.4, the State Conservation Commission hereby gives Notice of Intended Action to amend Chapter 33, "Docks", Iowa Administrative Code.

The proposed rule changes provide for electrical and fuel standards when used in conjunction with a dock on waters under the jurisdiction of the Conservation Commission.

Any interested person may make written suggestions or comments on this proposed amendment prior to March 22, 1983. Such written materials should be directed to the Director, State Conservation Commission, Wallace State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally may present those views in the Wallace State Office Building, fourth floor conference room on March 22, 1983, at 10:00 a.m.

At the hearing, persons will be asked to give their names and addresses for the record, and to confine their remarks to the subject of the rule.

This rule is intended to implement Iowa Code sections 106.32 and 111.4.

The following amendments are proposed:

Rule 290—33.1(111) is amended by adding the following new subrules:

**33.1(9)** Any electrical service on or leading to any dock where the use, storage, or dispensing of any fuel exists must comply with the "National Code, 1981 Edition NFPA 70-1981" and shall include ground fault circuit protection.

**33.1(10)** The storage, use, or dispensing of any fuel on a dock on or over public water or adjacent public land shall be in compliance with Iowa Code chapter 101 and all rules promulgated thereunder.

## ARC 3578

## CONSERVATION COMMISSION[290]

### 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 the Iowa Code sections 106.32, 107.24, and 111.4, the State Conservation Commission hereby gives Notice of Intended Action to amend Chapter 34, "Dock Management Areas", to the Iowa Administrative Code.

The proposed rule changes will provide for electrical and fuel standards when used in conjunction with docks in a dock management area. It also provides for some flexibility in the design and size of docks in an artificially constructed lagoon or harbor.

Any interested person may make written suggestions or comments on this proposed amendment prior to March 22, 1983. Such written materials should be directed to the Director, State Conservation Commission, Wallace State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally may present those views in the Wallace State Office Building, fourth floor conference room on March 22, 1983, at 10:00 a.m.

CONSERVATION COMMISSION[290] *(cont'd)*

At the hearing, persons will be asked to give their names and addresses for the record, and to confine their remarks to the subject of the rule.

This rule is intended to implement Iowa Code sections 106.32, 111.25, and 111.4.

The following amendments are proposed:

ITEM 1. **290—34.3(111)** Strike paragraph 3 and replace with the following:

3. Except in the confines of artificially constructed lagoon or harbor areas, all docks constructed in a dock management area shall be four feet wide and meet the "L" or "T" requirements and construction requirements or limitations of chapter 33 of the Iowa Administrative Code.

ITEM 2. **290—34.3(111)** Add new paragraph 4 to read as follows:

4. In the confines of artificially constructed lagoon and harbor areas the configuration and dimensions of the docks and catwalks shall be determined on an individual area basis taking into consideration the physical characteristics of the area, the mooring pattern of boats, and public safety.

ITEM 3. Strike 290—34.4(111) and replace with the following:

**290—34.4(111) Electrical standards.** Any electrical service on or leading to any dock constructed on or over public water must comply with the "National Electrical Code, 1981 Edition NFPA 70-1981", and shall include ground fault circuit protection. Electrical service crossing public property must be underground. Any permittee who installs electricity to a dock must upon request certify to the conservation commission that the electrical service meets the electrical code safety requirements.

ITEM 4. Add 290—34.5(111) as new rule:

**290—34.5(111) Fuel standards.** The storage, use, or dispensing of any fuel on a dock on or over public water or adjacent public land shall be in compliance with Iowa Code chapter 101 and all rules promulgated thereunder.

ITEM 5. Renumber the present **290—34.5(111)**, **34.6(111)** and **34.7(111)** to **34.6(111)**, 34.7(111) and **34.8(111)** to coincide with the addition of the new rule 290—34.5(111).

## ARC 3574

# OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION[610]

## 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 88.10, the Occupational Safety and Health Review Commission hereby gives Notice of Intended Action to amend Chapter 1, "Procedure for Hearings Before Review Commission," Iowa Administrative Code.

The rule recommending the form of pleadings is being amended to encourage the use of letter size paper. The rule concerning emergency proceedings is being amended to require an application for such a proceeding to include certain specified information. The rule adopting the standards of conduct required in Iowa courts is being amended to grant the review commission appropriate powers to enforce the standards. Finally, there are a number of minor changes in the rules which are meant to correct errors and clear up ambiguities.

Any interested person may make written suggestions or comments on these proposed rules prior to April 8, 1983. Written materials should be sent to the Executive Secretary, Occupational Safety and Health Review Commission, 507 Tenth Street, Des Moines, Iowa 50319. Persons may also make an oral presentation, in person or by telephone, of their views on these proposed rule changes at a public hearing to be held at 10:00 a.m., Friday, April 8, 1983 in the second floor conference room, 507 Tenth Street, Des Moines, Iowa. The telephone number is (515) 281-4159. These rules are intended to implement Iowa Code chapters 88 and 17A.

The following amendments are proposed.

ITEM 1. Subrule 1.1(14) is amended to read as follows:

**1.1(14)** "Proceeding" means any proceeding before the review commission ~~or a hearing officer~~.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION[610] *(cont'd)*

ITEM 2. Subrule 1.7(4) is amended to read as follows:

**1.7(4)** Proof of service *on other parties and intervenors* shall be accomplished by a written statement ~~of the same~~ which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

ITEM 3. Strike all of subrule 1.7(15) and insert in lieu thereof the following:

**1.7(15)** When settlement agreements are filed with the review commission they shall be posted for ten days at or near the place where the citation is required to be posted.

ITEM 4. Rule 610—1.7(88) is amended by adding the following new subrule 1.7(16):

**1.7(16)** If any party or intervenor fails to comply with the notice requirements of these rules, the review commission may issue appropriate orders.

ITEM 5. The line immediately following rule **610—1.12(88)** is amended to read as follows:

This rule is intended to implement *Iowa Code* section ~~88.10~~ *17A.3*~~, The Code~~.

ITEM 6. The line immediately following subrule **1.20(2)** is amended to read as follows:

This rule is intended to implement *Iowa Code* section ~~88.10~~ *88.8(3)*~~, The Code~~.

ITEM 7. Subrule 1.30(2) is amended to read as follows:

**1.30(2)** It is recommended that pleadings and other documents (other than exhibits) be typewritten, double spaced, on ~~legal~~ *standard* size paper (approximately 8½ inches by ~~14~~ *11* inches), have adequate margins and be *securely* fastened ~~at the upper left corner~~.

ITEM 8. Subrule 1.31(4) is amended to read as follows:

**1.31(4)** The ~~initial~~ *first* page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the ~~title~~ *caption*, the docket number, if known, assigned ~~by the review commission~~ *to the case.*

ITEM 9. Subrule **1.34(8)**, paragraph "b", is amended to read as follows:

b. The review commission shall docket and process such petition as an ~~expedited~~ *emergency* proceeding under 1.101(3).

ITEM 10. The line immediately following rule **610—1.37(88)** is amended to read as follows:

This rule is intended to implement *Iowa Code* section ~~88.10~~ *17A.9*~~, The Code~~.

ITEM 11. Rule 610—1.38(88) is amended to read as follows:

**610—1.38(88) Statement of position.** *In lieu of participating at the hearing any party or intervenor may file,* ~~AT~~ *at* any time prior to the commencement of the hearing, ~~any party or intervenor may file~~ a statement of position with respect to any issues to be heard.

ITEM 12. Subrule 1.55(2) first sentence is amended to read as follows:

**1.55(2)** Any person served with a subpoena shall, ~~within five days after the date of service of the subpoena~~ *at any time prior to the hearing,* move in writing to revoke or modify the subpoena if that person does not intend to comply.

ITEM 13. Subrule 1.62(1) is amended to read as follows:

**1.62(1)** Subject to the provisions of ~~1.62(3)~~ *1.62(2)*, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the review commission or to appeal the decision.

ITEM 14. Subrule 1.65(2) is amended to read as follows:

**1.65(2)** The review commission's ~~electronic~~ recording *or transcript* of the hearing shall be available to any interested person for examination at ~~all~~ reasonable times without cost. Upon receipt of a copy of a petition filed in a district court of Iowa praying that an order of the review commission be modified or set aside pursuant to *Iowa Code* section 88.9 or 104.10(2), ~~The Code,~~ the review commission shall~~; at the expense of the requesting party,~~ either

a. Have the electronic recording transcribed, certify the ~~transcription~~ *transcript*, and file it with the court, if no court reporter recorded the hearing, or

b. Contract with the court reporter to transcribe the reporter's notes; in which case the reporter shall certify the ~~transcription~~ *transcript*, and deliver the ~~transcription~~ *transcript* to the review commission for filing with the court.

ITEM 15. Rule 610—1.100(88) is amended by adding the following new subrule 1.100(4):

**1.100(4)** Settlement agreements shall be filed with the commission to permit final disposition of the contested case.

ITEM 16. The line immediately following rule **610—1.100(88)** is amended to read as follows:

This rule is intended to implement *Iowa Code* sections 88.10 *and 88.8(3)*~~, The Code~~.

ITEM 17. Rule 610—1.101(88) is amended to read as follows:

**610—1.101(88) ~~Expedited~~ *Emergency* proceeding.**

**1.101(1)** Upon *the* application of any party or intervenor, or upon its own motion, and for good cause shown, the review commission may order an ~~expedited~~ *emergency* ~~meeting~~ *proceeding. The party or intervenor shall include in its motion the hazards to which employees are exposed, the probable injuries which could occur from such exposure, and the number of employees exposed to each hazard.*

**1.101(2)** When such proceeding is ordered, the executive secretary shall notify all parties and intervenors.

**1.101(3)** The review commission in an ~~expedited~~ *emergency* proceeding shall make necessary ~~rulings~~ *orders* with respect to time for filing of pleadings and ~~with respect to all other matters, without reference to time set forth in these rules~~ *other documents* and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

ITEM 18. Rule 610—1.102(88) is amended to read as follows:

**610—1.102(88) Standards of conduct.** All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the state of Iowa. *The review commission may take appropriate action to enforce the standards of conduct including, but not limited to, excluding persons from the hearing or from further appearances before the review commission.*

## ARC 3584

# PUBLIC SAFETY DEPARTMENT[680]

## 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 sections 100.35 and 101.1, Department of Public Safety, State Fire Marshal Division, hereby gives Notice of Intended Action to amend Chapter 5, "Fire Marshal", regarding exits and fire escapes. Iowa Code chapter 103 has been rescinded and these rules address escapes and exits formerly addressed in Iowa Code chapter 103. The Code directs that rules shall be in keeping with the latest generally recognized safety criteria. In compliance with that direction, these amendments are to bring the department's rules into compliance with the most recent standards of the National Fire Protection Association and the Uniform Building Code.

Any interested person may make written suggestions or comments on these proposed rules prior to March 22, 1983. Such written suggestions or comments should be directed to the State Fire Marshal, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the State Fire Marshal's office on the second floor of the Wallace State Office Building.

There will be a public hearing on Tuesday, March 22, 1983 at 10:00 a.m. in the third floor conference room, east half, of the Wallace State Office Building. 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 State Fire Marshal at least one day prior to the date of the public hearing.

These rules are intended to implement Iowa Code chapter 107.

Here follows the substance of the intended action:

ITEM 1. Rescind rule 680—5.50(103) and insert in lieu thereof the following rules.

MEANS OF EXIT

**680—5.50(100) Exits.**

**5.50(1)** Scope. The fire marshal shall adopt, amend, promulgate and enforce rules and standards relating to safe exiting from new and existing buildings, facilities and structures as defined in Iowa Code section 100.35, in and for churches, lodge halls, courthouses, assembly halls, theaters, opera houses, hotels, colleges, schoolhouses, hospitals, health care facilities, amphitheaters, dormitories, restaurants, taverns, night clubs, public meeting places, apartment buildings and any other buildings or structures used for but not limited to, such purposes as deliberation, worship, entertainment, amusement or awaiting transportation.

**5.50(2)** The standards adopted by the commissioner of labor of the state of Iowa pursuant to Iowa Code section 88.5 with regard to fire safety, fire protection, exits and exit lights, and the elimination of fire hazards as they existed on January 1, 1982, are hereby adopted as the standards applicable to buildings, facilities and structures utilized by manufacturers.

**5.50(3)** The state fire marshal may, where buildings, structures or facilities are being constructed and enforced to local, state or federal codes equivalent to or more restrictive than the rules promulgated within, accept such codes as meeting the intent of this chapter.

**5.50(4)** General requirements. Every new and existing building, structure or facility, addition to, or portion thereof shall be provided with a safe means of exit as required by the provisions within this chapter.

EXCEPTION: As provided for by the specific occupancies enforced by the state fire marshal under his jurisdiction.

**5.50(5)** Approved type of fire extinguishers shall be provided on each floor, so located as to be accessible to the occupants and spaced so no person must travel more than seventy-five feet from any point to reach the nearest fire extinguisher.

**5.50(6)** In all buildings or structures of such size, arrangement or use, where delayed detection of a fire could endanger the occupants, the fire marshal may require an automatic fire detection and alarm system.

**5.50(7)** All fire and life safety equipment or devices shall be regularly and properly maintained in an operable condition at all times in accordance with nationally recognized standards. This includes fire extinguishing equipment, alarm systems, doors and their appurtenances, electric service, including appliances, cords and switches, heating and ventilation equipment, sprinkler systems, and exit facilities.

**5.50(8)** Excessive storage of combustible or flammable materials such as papers, cartons, magazines, paints, old clothing, furniture and similar materials shall not be permitted.

**5.50(9)** The state fire marshal shall have the authority to require compliance with nationally recognized standards when the occupancy uses, stores, develops or handles hazardous materials. Equipment used in conjunction with these types of materials must be of a type designated for the use so as to provide the necessary safety to life and property.

**5.50(10)** Food preparation facilities shall be protected in accordance with Vapor Removal Cooking Equipment, National Fire Protection Association Standard 96, and all such equipment be of an approved type and properly maintained.

**5.50(11)** Definitions. For the purpose of this chapter, certain terms are defined as follows:

a. Balcony, exterior exit, is a landing or porch projecting from the wall of a building, and which serves as a required exit. The long side shall be at least fifty percent open, and the open area above the guardrail shall be so distributed as to prevent the accumulation of smoke or toxic gases.

b. Basement is a usable or unused floor space not meeting the definition of a story. See specific occupancies for other provisions.

c. Continental seating is the configuration of fixed seating where the number of seats per row exceeds fourteen and required exits from the seating area are side exits.

PUBLIC SAFETY DEPARTMENT[680] *(cont'd)*

d. Dwelling is any building or portion thereof which contains not more than two dwelling units.

e. Exit. Exit is a continuous and unobstructed means of egress to a public way and shall include intervening aisles, doors, doorways, corridors, exterior exit balconies, ramps, stairways, smokeproof enclosures, horizontal exits, exit passageways, exit courts and yards.

f. Exit court is a yard or court providing access to a public way for one or more required exits.

g. Exit passageway is an enclosed exit connecting a required exit or exit court with a public way.

h. Horizontal exit is an exit from one building into another building on approximately the same level or through or around a wall constructed as required for a two-hour-occupancy separation and which completely divides a floor into two or more separate areas so as to establish an area of refuge affording safety from fire or smoke coming from the area from which escape is made.

i. Lodging house is any building or portion thereof containing not more than five guest rooms where rent is paid in money, goods, labor or otherwise.

j. Manufacture is the process of making, fabricating, constructing, forming, or assembling a product from raw, unfinished, or semifinished materials.

k. Mezzanine or mezzanine floor is an intermediate floor placed in any story or room. When the total of any such "mezzanine floor" exceeds thirty-three and one-third percent of the total floor area in that room, it shall be considered as constituting an additional "story". The clear height above or below a mezzanine floor construction shall not be less than seven feet.

l. Panic hardware is a door-latching assembly incorporating an unlatching device, the activating portion of which extends across at least one-half the width of the door on which it is installed.

m. Private stairway is a stairway serving one tenant only.

n. Public way is any street, alley or similar parcel of land essentially unobstructed from the ground to the sky which is deeded, dedicated or otherwise permanently appropriated to the public for public use and having a clear width of not less than ten feet.

o. Spiral stairway is a stairway having a closed circular form in its plan view with uniform section shaped treads attached to and radiating about a minimum diameter supporting column. The effective tread is delineated by the nosing radius line, the exterior arc (center line of railing) and the overlap radius line (nosing radius line of tread above). Effective tread dimensions are taken along a line perpendicular to the center line of the tread.

p. Story is that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a usable or unused underfloor space is more than six feet above grade as defined herein for more than fifty percent of the total perimeter or is more than twelve feet above grade as defined herein at any point, such usable or unused underfloor space shall be considered as a story.

q. Underground structure is a structure in which there is not direct access to outdoors or to another fire area other than by upward travel.

r. Windowless structure is a building lacking any means for direct access to the outside or outside openings for light or ventilation through windows.

**5.50(12)** Exit obstruction. Obstructions shall not be placed in the required width of an exit except projections permitted by this chapter.

**5.50(13)** Changes in elevation. Within a building, changes in elevation of less than twelve inches along any exit serving an occupant load of ten or more shall be by ramps.

EXCEPTION: Dwelling and lodging house occupancies and along aisles adjoining seating areas.

**5.50(14)** Accessibility. Buildings, facilities or structures required to be accessible to physically handicapped shall meet all the provisions of the Iowa state building code, administration section, division 7.

**680—5.51(100) Occupant load.**

**5.51(1)** Determination of occupant load. In determining the occupant load, all portions of a building shall be presumed to be occupied at the same time.

EXCEPTION Accessory use areas which ordinarily are used only by persons who occupy the main areas of an occupancy shall be provided with exits as though they are completely occupied, but their occupant load need not be included in computing the total occupant load of the building.

The occupant load for a building shall be determined in accordance with the following:

a. General. For areas without fixed seats, the occupant load shall be not less than the number determined by dividing the floor area assigned to that used by the occupant load factor set forth in Table No. 5-A. Where an intended use is not listed in Table No. 5-A, the authority having jurisdiction shall establish an occupant load factor based on a listed use which most nearly resembles the intended use.

For a building or portion thereof which has more than one use, the occupant load shall be determined by the use which gives the largest number of persons.

The occupant load for buildings or areas containing two or more occupancies shall be determined by adding the occupant loads of the various use areas as computed in accordance with the applicable provisions of this rule.

b. Fixed seating. For areas having fixed seats and aisles, the occupant load shall be determined by the number of fixed seats installed therein. The required width of aisles serving fixed seats shall not be used for any other purpose.

For areas having fixed benches or pews, the occupant load shall be not less than the number of seats based on one person for each eighteen inches of length of pew or bench.

Where booths are used in dining areas, the occupant load shall be based on one person for each twenty-four inches of booth length or major portion thereof.

c. Reviewing stands, grandstands, and bleachers. The occupant load for reviewing stands, grandstands and bleachers shall be calculated in accordance with rule 680—5.51(100).

**5.51(2)** Maximum occupant load. The maximum occupant load for other than an assembly use shall not exceed the capacity of exits as determined in accordance with this chapter.

The maximum occupant load for an assembly use shall not exceed the occupant load as determined in accordance with subrules 5.51(1) and 5.51(2).

EXCEPTION The occupant load for an assembly building or portion thereof may be increased, when approved

by the authority having jurisdiction, if all the requirements of this chapter are met for such increased number of persons. The authority having jurisdiction may require an approved aisle, seating or fixed equipment diagram to substantiate such an increase, and may require that such diagram be posted.

**5.51(3)** Posting of room capacity. Any room having an occupant load of fifty or more where fixed seats are not installed, and which is used for classroom, assembly or similar purpose, shall have the capacity of the room posted in a conspicuous place on an approved sign near the main exit from the room. Such signs shall be maintained legible by the owner or his authorized agent and shall indicate the number of occupants permitted for each room use.

**5.51(4)** Revised occupant load. After a building is occupied, any change in use or increase in occupant load shall comply with this chapter.

**680—5.52(100) Exits required.**

**5.52(1)** Number of exits. Every building or usable portion thereof shall have at least one exit, not less than two exits where required by Table No. 5-A and additional exits as required by these rules.

For purposes of these rules, basements and occupied roofs shall be provided with exits as required for stories.

Floors complying with the definition for mezzanines as described herein shall be provided with exits as specified in this chapter.

Two exits shall be provided from mezzanines having an occupant load of more than ten or when the area of the mezzanine exceeds two thousand square feet whichever is more restrictive. The occupant load of the mezzanine shall be added to the occupant load of the story or room in which it is located.

Every floor above or below the first story in every building shall have at least two exits and shall be remote from each other and so arranged and constructed as to minimize any possibility that both may be blocked by any one fire or other emergency.

EXCEPTIONS:

1. Where a single exit or limited dead end may be required by a specific occupancy or other provisions of the fire marshal's rules.

2. Except as provided in Table No. 5-A, only one exit need be provided from the second story within an individual dwelling unit. Each sleeping room shall have an egress or rescue window having a minimum net clear opening of 5.7 square feet. The minimum net clear height opening dimension shall be twenty-four inches. The minimum net clear opening width dimension shall be twenty inches. Where windows are provided as a means of egress or rescue they shall have a finished sill height not more than forty-four inches above the floor.

Every story or portion thereof having an occupant load of five hundred one to one thousand shall have not less than three exits.

Every story or portion thereof having an occupant load of one thousand one or more shall have not less than four exits.

The number of exits required from any story of a building shall be determined by using the occupant load of that story plus the percentages of the occupant loads of floors which exit through the level under consideration as follows:

1. Fifty percent of the occupant load in the first adjacent story above and the first adjacent story below, when a story below exits through the level under consideration.

2. Twenty-five percent of the occupant load in the story immediately beyond the first adjacent story.

The maximum number of exits required for any story shall be maintained until egress is provided from the structure.

**5.52(2)** Width. The total width of exits in feet shall be not less than the total occupant load served divided by fifty. Such width of exits shall be divided approximately equally among the separate exits. The total exit width required from any story of a building shall be determined by using the occupant load of that story plus the percentages of the occupant loads of floors which exit through the level under consideration as follows:

a. Fifty percent of the occupant load in the first adjacent story above and the first adjacent story below, when a story below exits through the level under consideration.

b. Twenty-five percent of the occupant load in the story immediately beyond the first adjacent story.

c. The maximum exit width required from any story of a building shall be maintained.

**5.52(3)** Arrangement of exits. If only two exits are required, they shall be placed a distance apart equal to not less than one-half of the length of the maximum overall diagonal dimension of the building or area to be served measured in a straight line between exits.

EXCEPTIONS: When exit enclosures are provided as a portion of the required exit and are interconnected by a corridor conforming to the requirements of subrule 5.54(7) exit separations may be measured along a direct line of travel within the exit corridor. Enclosure walls shall be not less than thirty feet apart at any point in a direct line of measurement.

When three or more exits are required, they shall be arranged a reasonable distance apart so that if one becomes blocked the others will be available.

**5.52(4)** Distance to exits. The maximum distance of travel from any point to an exterior exit door, horizontal exit, exit passageway or an enclosed stairway in a building not equipped with an automatic sprinkler system throughout shall not exceed one hundred fifty feet or two hundred feet in a building equipped with an automatic sprinkler system throughout. These distances may be increased one hundred feet when the last one hundred fifty feet is within a corridor complying with rule 5.54(100). In a one-story building classified as a factory or warehouse and in one-story airplane hangars, the exit travel distance may be increased to four hundred feet if the building is equipped with an automatic sprinkler system throughout and provided with approved smoke and heat ventilation system.

In a ramp or mechanical access open parking garage, the exit travel distance may be increased to two hundred fifty feet.

**5.52(5)** Exits through adjoining rooms. Rooms may have one exit through an adjoining or intervening room which provides a direct, obvious and unobstructed means of travel to an exit corridor, exit enclosure or until egress is provided from the building, provided the total distance of travel does not exceed that permitted by other provisions of this chapter. In other than dwelling units, exits shall not pass through kitchens, storerooms, rest rooms,

closets, employee locker rooms, soiled linen rooms, laundries, handicraft shops, repair shops or rooms or space used for the storage of combustible supplies and equipment, paint shops, or boiler and heater rooms.

EXCEPTIONS:

1. Rooms within dwelling units may exit through more than one intervening room.

2. Rooms with a cumulative occupant load of ten or less may exit through more than one intervening room.

Foyers, lobbies and reception rooms constructed as required for corridors shall not be construed as intervening rooms.

**5.52(6)** An approved automatic sprinkler system shall be installed in every story or basements of all buildings when the floor area exceeds 1,500 square feet and there is not provided at least twenty square feet of opening entirely above the adjoining ground level in each fifty lineal feet or fraction thereof of exterior wall in the basement on at least one side of the building. Openings shall have a minimum dimension of not less than thirty inches. Such openings shall be accessible to the fire department from the exterior.

When openings in a story are provided on only one side and the opposite wall of such story is more than seventy-five feet from such openings, the story shall be provided with an approved automatic sprinkler system, or openings as specified above shall be provided on at least two sides of an exterior wall of the story.

If any portion of a basement is located more than seventy-five feet from openings required in this section, the basement shall be provided with an approved automatic sprinkler system.

EXCEPTION: Except dwellings, lodging houses, private garage, sheds and agricultural buildings.

**5.52(7)** Underground structures. Underground structures which exceed 1,500 square feet per floor shall be protected throughout by an approved automatic sprinkler system.

Exits from underground structures involving upward travel, such as ascending stairs or ramps, shall be cut off from main floor areas. Stairtowers of two-hour construction shall be provided from underground structures when serving up to two floors. Stairtowers of four-hour construction shall be provided from underground structures serving more than two floors.

Outside smoke venting shall be provided to prevent the exits from becoming charged with smoke from any fire in the area served by the exits.

Emergency lighting shall be provided for all underground structures.

**680—5.53(100) Doors.**

**5.53(1)** General. This rule shall apply to every exit door serving an area having an occupant load of ten or more, or serving hazardous rooms or areas, except that subrules 5.53(3), 5.53(8), and 5.53(9) shall apply to all exit doors regardless of occupant load. Buildings or structures used for human occupancy shall have at least one exterior door that meets the requirements of subrule 5.53(5).

**5.53(2)** Swing. Exit doors shall be a side-hinged swinging door. Exit doors must swing in the direction of exit travel when serving any hazardous area or when serving an area having an occupant load of fifty or more.

a. Double-acting doors shall not be used as exits when any of the following conditions exists:

(1) The occupant load served by the door is one hundred or more.

(2) The door is part of a fire assembly.

(3) The door is part of a smoke and draft control assembly.

(4) Panic hardware is required or provided on the door.

b. A double-acting door shall be provided with a view panel of not less than two hundred square inches.

**5.53(3)** Type of lock or latch. Exit doors shall be openable from the inside without the use of a key or any special knowledge or effort.

EXCEPTIONS:

1. This requirement shall not apply to an exterior exit door when used as the primary entrance to the building if there is a readily visible, durable sign on or adjacent to the door stating "THIS DOOR TO REMAIN UNLOCKED DURING BUSINESS HOURS." The sign shall be in letters not less than one-inch high on contrasting background. The locking device must be a type that will be readily distinguishable as locked. The use of this exception may be revoked by the authority having jurisdiction for due cause.

2. Exit doors from individual dwelling units and guest rooms or residential occupancies having an occupant load of ten or less may be provided with a night latch, dead bolt or security chain, provided such devices are openable from the inside without the use of a key or tool and mounted at a height not to exceed forty-eight inches above the finished floor.

Manually operated edge or surface mounted flush bolts and surface bolts are prohibited. When exit doors are used in pairs and approved automatic flush bolts are used, the door leaf having the automatic flush bolts shall have no doorknob or surface mounted hardware. The unlatching of any leaf shall not require more than one operation.

EXCEPTION: Dwelling and lodging house occupancies.

**5.53(4)** Panic hardware. Panic hardware shall be provided for an occupancy of fifty or more. Panic hardware shall be of an approved type. The activating member shall be mounted at a height of not less than thirty inches nor more than forty-four inches above the floor. The unlatching force shall not exceed fifteen pounds when applied in the direction of exit travel.

**5.53(5)** Width and height. Every required exit doorway shall be of a size as to permit the installation of a door not less than three feet in width and not less than six feet eight inches in height. When installed, exit doors shall be capable of opening so that the clear width of the exit is not less than thirty-two inches. In computing the exit width required by subrule 5.52(2), the net dimension of the exitway shall be used.

**5.53(6)** Door leaf width. A single leaf of an exit door shall not exceed four feet in width.

**5.53(7)** Special doors. Revolving, sliding and overhead doors shall not be used as required exits.

a. Approved power-operated doors may be used for exit purposes. Such doors when swinging shall have two guide rails installed on the swing side projecting out from the face of the door jambs for a distance not less than the widest door leaf. Guide rails shall be not less than thirty inches in height with solid or mesh panels to prevent penetration into door swing and shall be capable of resisting a horizontal load at the top of the rail of not less than fifty pounds per lineal foot.

EXCEPTIONS:

1. Walls or other type separators may be used in lieu of the above guide rail, provided all the criteria are met.

2. Guide rails in industrial or commercial occupancies not accessible to the public may increase the open space between intermediate rails or ornamental pattern so that a twelve-inch diameter sphere cannot pass through.

3. Doors swinging toward flow of traffic shall not be permitted for use by untrained pedestrian traffic unless actuating devices start to function at least eight feet eleven inches beyond door in open position and guide rails extend six feet five inches beyond door in open position.

b. Clearances for guide rails shall be as follows:

(1) Six inches maximum between rails and leading edge of door at the closest point in its arc of travel.

(2) Six inches maximum between rails and the door in open position.

(3) Two inches minimum between rail at hinge side and door in open position.

(4) Two inches maximum between freestanding rails and jamb or other adjacent surface.

**5.53(8)** Floor level at doors. Regardless of the occupant load, there shall be a floor or landing on each side of a door. The floor or landing shall not be more than one-half inch lower than the threshold of the doorway. When doors are open over landings, the landing shall have a length of not less than five feet.

EXCEPTION: When the door opens into a stair of a smokeproof enclosure, the landing need not have a length of five feet.

**5.53(9)** Door identification. Glass doors shall conform to the requirements specified in Federal Specification DD-G-00451b and ANSI Standard Z97.1-1975.

Exit doors shall be so marked that they are readily distinguishable from the adjacent construction.

**5.53(10)** Additional doors. When additional doors are provided for egress purposes, they shall conform to all provisions of this chapter.

EXCEPTIONS: Approved revolving doors having leaves which will collapse under opposing pressures may be used in exit situations, provided:

1. Such doors have a minimum width of six feet six inches.

2. At least one conforming exit door is located adjacent to each revolving door.

3. The revolving door shall not be considered to provide any exit width.

**680—5.54(100) Corridors and exterior exit balconies.**

**5.54(1)** General. This section shall apply to every corridor serving as a required exit for an occupant load of ten or more. For the purposes of the section, the term "corridor" shall include "exterior exit balconies" and any covered or enclosed exit passageway, including walkways, tunnels and malls. Partitions, rails, counters and similar space dividers not over five feet nine inches in height above the floor shall not be construed to form corridors.

Exit corridors shall not be interrupted by intervening rooms.

EXCEPTION: Foyers, lobbies or reception rooms constructed as required for corridors shall not be construed as intervening rooms.

**5.54(2)** Width. Every corridor serving an occupant load of ten or more shall be not less than forty-four inches in width. Regardless of the occupant load, corridors in dwelling and lodging occupancies and within dwelling units in hotels, apartments, convent or monastery occupancies shall have a minimum width of thirty-six inches.

NOTE: See specific regulations for schools and institutions.

**5.54(3)** Height. Corridors and exterior exit balconies shall have a clear height of not less than seven feet measured to the lowest projection from the ceiling.

**5.54(4)** Projections. The required width of corridors shall be unobstructed.

EXCEPTION: Handrails and doors, when fully opened, shall not reduce the required width by more than seven inches. Doors in any position shall not reduce the required width by more than one half. Other nonstructural projections such as trim and similar decorative features may project into the required width one and one-half inches on each side.

**5.54(5)** Access to exits. When more than one exit is required, they shall be so arranged that it is possible to go in either direction from any point in a corridor to a separate exit, except for dead ends not exceeding twenty feet in length.

**5.54(6)** Changes in elevation. When a corridor or exterior exit balcony is accessible to the handicapped, changes in elevation of the floor shall be made by means of a ramp, except as provided for doors by subrule 5.53(8). Refer to state building code, division 7, handicapped access.

**5.54(7)** Construction. Walls of required exit corridors shall be of not less than one-hour fire-resistive construction and the ceiling shall be not less than that required for a one-hour fire-resistive floor or roof system.

EXCEPTIONS:

1. Corridors more than thirty feet in width where occupancies served by such corridors have at least one exit independent from the corridor. (See specific occupancy for covered malls.)

2. Exterior sides of exterior exit balconies.

3. In institutional occupancies such as jails, prisons, reformatories and similar buildings with open barred cells forming corridor walls, the corridors and cell doors need not be fire resistive.

When the ceiling of the entire story is an element of a one-hour fire-resistive floor or roof system, the corridor walls may terminate at the ceiling. When the room side fire-resistive membrane of the corridor wall is carried through to the underside of a fire-resistive floor or roof above, the corridor side of the ceiling may be protected by the use of ceiling materials as required for one-hour floor or roof system construction or the corridor ceiling may be made of the same construction as the corridor walls.

Ceilings of noncombustible construction may be suspended below the fire-resistive ceiling.

**5.54(8)** Wall and ceiling finish shall be in accordance with those requirements for a specific occupancy.

Interior finish in exits must be limited to Class A/Type I, or Class B/Type II will be permitted in a fully sprinklered building.

**5.54(9)** Openings.

a. Doors. When corridor walls are required to be of one-hour fire-resistive construction by subrule 5.54(7), every door opening shall be protected by a tight fitting smoke and draft control assembly having a fire protection rating of not less than twenty minutes when tested in

accordance with National Fire Protection Association Standard 252 without the hose stream test. The door and frame shall bear an approved label or other identification showing the rating thereof, the name of the manufacturer and the identification of the service conducting the inspection of materials and workmanship at the factory during fabrication and assembly. Doors shall be maintained self-closing or shall be automatic closing by actuation of an approved smoke detector. Smoke and draft control door assemblies shall be provided with a gasket so installed as to provide a seal where the door meets the stop on both sides and across the top.

EXCEPTIONS:

1. Viewports if required, may be installed having a hole not larger than one inch in diameter through the door, having at least a one-fourth-inch-thick glass disc and a metal holder which will not melt out when subject to temperatures of 1700° F.

2. Protection of openings in the interior walls of exterior exit balconies is not required.

b. Openings other than doors. Interior openings for other than doors or ducts shall be protected by fixed approved one-fourth-inch-thick wired glass installed in steel frames. The total area of all openings, other than doors, in any portion of an interior corridor shall not exceed twenty-five percent of the area of the corridor wall of the room which it is separating from the corridor.

For duct openings an approved fire damper shall be installed within the duct at each point the duct penetrates a fire resistive floor-ceiling of roof-ceiling assembly and fire rated corridor wall having openings into the corridor.

EXCEPTION: Protection of openings in the interior walls of exterior exit balconies is not required.

**5.54(10)** Location on property. Exterior exit balconies shall not be located in an area where openings are required to be protected due to location on the property.

**680—5.55(100) Stairways.**

**5.55(1)** General. Every stairway having two or more risers serving any building or portion thereof shall conform to the requirements of this section.

EXCEPTION Stairs or ladders used only to attend equipment are exempt from the requirements of this section.

**5.55(2)** Width. Stairways serving an occupant load of fifty or more shall be not less than forty-four inches in width. Stairways serving an occupant load of forty-nine or less shall be not less than thirty-six inches in width. Private stairways serving an occupant load of less than ten shall be not less than thirty inches in width.

Handrails may project into the required width a distance of three and one-half inches from each side of a stairway. Other nonstructural projections such as trim and similar decorative features may project into the required width one and one-half inches on each side.

**5.55(3)** Rise and run. The rise of every step in a stairway shall be not less than four inches nor greater than seven and one-half inches. The run shall be not less than ten inches as measured horizontally between the vertical planes of the furthermost projection of adjacent treads. Except as permitted in subrule 5.55(4) the largest tread run within any flight of stairs shall not exceed the smallest by more than three-eighths inch. The greatest riser height within any flight of stairs shall not exceed the smallest by more than three-eighths inch.

EXCEPTIONS:

1. Private stairways serving an occupant load of less than ten and stairways to unoccupied roofs may be constructed with an eight-inch maximum rise and nine-inch minimum run.

2. Where the bottom riser adjoins a sloping public way, walk or driveway having an established grade and serving as a landing, a variation in height of the bottom riser of not more than three inches in every three feet of stairway width is permitted.

**5.55(4)** Circular stairways. Circular stairways may be used as an exit, provided the minimum width of run is not less than ten inches and the smaller radius is not less than twice the width of the stairway. The largest tread width or riser height within any flight of stairs shall not exceed the smallest by more than three-eighths inch.

**5.55(5)** Landings. Every landing shall have a dimension measured in the direction of travel equal to the width of the stairway. Such dimension need not exceed four feet when the stair has a straight run. A door swinging over a landing shall not reduce the width of the landing to less than one half its required width at any position in its swing nor by more than seven inches when fully open.

EXCEPTION: Stairs serving an unoccupied roof are exempt from these provisions.

**5.55(6)** Basement stairways. When a basement stairway and a stairway to an upper story terminate in the same exit enclosure, an approved barrier shall be provided to prevent persons from continuing on into the basement. Directional exit signs shall be provided as specified in this chapter.

**5.55(7)** Distance between landings. There shall be no more than twelve feet vertically between landings.

**5.55(8)** Handrails.

a. Stairways shall have handrails on each side, and every stairway required to be more than eighty-eight inches in width shall be provided with not less than one intermediate handrail for each eighty-eight inches of required width. Intermediate handrails shall be spaced approximately equal across the entire width of the stairway. Handrails shall be able to withstand fifty pounds per lineal foot both horizontally and vertically.

EXCEPTIONS:

1. Stairways forty-four inches or less in width and stairways serving one individual dwelling unit in residential occupancies may have one handrail provided on the open side or sides.

2. Private stairways thirty inches or less in width may have handrails on one side only.

b. Handrails shall be placed not less than thirty inches nor more than thirty-four inches above the nosing of treads. They shall be continuous the full length of the stairs and except for private stairways at least one handrail shall extend not less than six inches beyond the top and bottom riser. Ends shall be returned or shall terminate in newel posts or safety terminals.

The handgrip portion of handrails shall be not less than one and one-fourth inches nor more than two inches in cross-sectional dimension or the shape shall provide an equivalent gripping surface. The handgrip portion of handrails shall have a smooth surface with no sharp corners.

Handrails projecting from a wall shall have a space of not less than one and one-half inches between the wall and the handrail.

PUBLIC SAFETY DEPARTMENT[680] *(cont'd)*

**5.55(9)** Guardrails or guards. All unenclosed floor and roof openings, open and glazed sides of landings and ramps, balconies or porches which are more than thirty inches above grade or floor below, and roofs used for other than service of the building shall be protected by a guardrail. Guardrails shall not be less than forty-two inches in height. Open guardrails and stair railings shall have intermediate rails or an ornamental pattern such that a sphere six inches in diameter cannot pass through. The height of stair railings on open sides may be as specified for handrails in subrule 5.55(8) in lieu of providing a guardrail. Ramps shall, in addition, have handrails as required by 5.55(8) or the state building code, division 7 (handicapped accessibility) if applicable.

EXCEPTIONS:

1. Guardrails on a balcony immediately in front of the first row of fixed seats and which are not at the end of an aisle may be twenty-six inches in height.
2. Guardrails need not be provided on the loading side of loading docks.
3. Guardrails need not be provided on the auditorium side of a stage or enclosed platform.

**5.55(10)** Exterior stairway protection. All openings in the exterior wall below or within ten feet, measured horizontally, of an exterior exit stairway serving a building over two stories in height shall be protected by a self-closing fire assembly having a three-fourths hour fire-protection rating.

EXCEPTION: Openings may be unprotected when two separated exterior stairways serve an exterior exit balcony.

**5.55(11)** Interior stairway construction. Interior stairways shall be constructed as specified in rule 680—5.58(100).

Except when enclosed usable space under stairs is prohibited by subrule 5.58(7), the walls and soffits of the enclosed space shall be protected on the enclosed side as required for one-hour fire-resistive construction.

All required interior stairways which extend to the top floor in any building four or more stories in height shall have, at the highest point of the stair shaft, an approved hatch openable to the exterior not less than sixteen square feet in area with a minimum dimension of two feet.

EXCEPTION: The hatch need not be provided on smokeproof enclosures or on stairways that extend to the roof with an opening onto that roof.

**5.55(12)** Exterior stairway construction. Exterior stairways shall be of noncombustible material except that on steel, iron, masonry, concrete or wood buildings not exceeding two stories in height, they may be of wood not less than two inches in nominal thickness.

Exterior stairways shall not project into yards where protection of openings is required.

Enclosed usable space under stairs shall have the walls and soffits protected on the enclosed side as required for one-hour fire-resistive construction.

**5.55(13)** Stairway to roof. In every building four or more stories in height, one stairway shall extend to the roof surface, unless the roof has a slope greater than four in twelve. See subrule 5.55(11) for roof hatch requirements.

**5.55(14)** Headroom. Every stairway shall have a headroom clearance of not less than six feet six inches. Such clearances shall be measured vertically from a plane parallel and tangent to stairway tread nosings to the soffit above at all points.

**5.55(15)** Stairway numbering system. An approved sign shall be located at each floor level landing in all enclosed stairways of buildings four or more stories in height. The sign shall indicate the floor level, the terminus of the top and bottom of the stairway and the identification of the stairway. The sign shall be located approximately five feet above the floor landing in a position which is readily visible when the door is in the open or closed position. Signs shall conform to the following:

a. The sign shall be a minimum twelve inches x twelve inches.

b. The stairway location shall be placed at the top of the sign in one-inch-high block lettering with one-fourth-inch stroke. (Stair No. 1 or west stair.)

c. The stairway's upper terminus shall be placed under the stairway identification in one-inch-high block lettering with one-fourth-inch stroke (roof access or no roof access).

d. The floor level number shall be placed in the middle of the sign in five-inch-high lettering with three-fourths-inch stroke. The mezzanine levels shall have the letter "M" preceding the floor number. Basement levels shall have the letter "B" preceding the floor number.

e. The lower and upper terminus of the stairway shall be placed at the bottom of the sign in one-inch-high block lettering with one-fourth-inch stroke.

f. These signs shall be maintained in an approved manner.

**680—5.56(100) Ramps.**

**5.56(1)** General. Ramps used as exits shall conform to the provisions of this rule and state building code, division 7.

**5.56(2)** Width. The width of ramps shall be as required for stairways.

**5.56(3)** Slope. The slope of ramps required to be accessible to the handicapped shall meet the requirements of the state building code, administrative section, division 7. The slope of other ramps shall not be steeper than one vertical to eight horizontal.

When provided with fixed seating, the main floor of the assembly room of an assembly occupancy may have a slope not steeper than one vertical to five horizontal.

**5.56(4)** Landings. Ramps having slopes steeper than one vertical to fifteen horizontal shall have landings at the top and bottom, and at least one intermediate landing shall be provided for each five feet of rise. Top landings and intermediate landings shall have a dimension measured in the direction of ramp run of not less than five feet.

Doors in any position shall not reduce the minimum dimension of the landing to less than forty-two inches and shall not reduce the required width by more than three and one-half inches when fully open.

**5.56(5)** Handrails. Ramps having slopes steeper than one vertical to fifteen horizontal shall have handrails as required for stairways, except that intermediate handrails shall not be required. Ramped aisles need not have handrails on sides serving fixed seating.

**5.56(6)** Construction. Ramps shall be constructed as required for stairways.

**5.56(7)** Surface. The surface of ramps shall be roughened or shall be of slip resistant materials.

PUBLIC SAFETY DEPARTMENT[680] *(cont'd)*

**680—5.57(100) Horizontal exit.**

**5.57(1)** Used as a required exit. A horizontal exit may be considered as a required exit when conforming to the provisions of this chapter. A horizontal exit shall not serve as the only exit from a portion of the building, and when two or more exits are required, not more than one half of the total number of exits or total exit width may be horizontal exits.

**5.57(2)** Openings. All openings in the two-hour fire-resistive wall which provides a horizontal exit shall be protected by a fire assembly having a fire protection rating of not less than one and one-half hours. Such fire assembly shall be automatic closing upon actuation of a smoke detector.

**5.57(3)** Discharge areas. A horizontal exit shall lead into a floor area having capacity for an occupant load not less than the occupant load served by such exit. The capacity shall be determined by allowing three square feet of net clear floor area per ambulatory occupant and thirty square feet per nonambulatory occupant.

**680—5.58(100) Stairway, ramp and escalator enclosures.**

**5.58(1)** General. Every interior stairway, ramp or escalator shall be enclosed as specified in this rule.

EXCEPTIONS:

1. In other than institutional occupancies, an enclosure will not be required for a stairway, ramp or escalator serving only one adjacent floor and not connected with corridors or stairways serving other floors.
2. Stairs within individual apartments in hotels, apartments, monasteries and convent occupancies need not be enclosed.
3. Stairs in open parking garages, open on two or more sides used exclusively for parking or storage of automobiles need not be enclosed.
4. Completely sprinklered buildings may be unenclosed up to three floors.

**5.58(2)** Used as an exit. Any escalator or moving walk serving as a required exit shall be enclosed in the same manner as an exit stairway.

EXCEPTION: In buildings required to have automatic sprinklers throughout, enclosures shall not be required for escalators or moving walks where the top of the opening at each story is provided with a draft curtain and automatic fire sprinklers are installed around the perimeter of the opening within two feet of the draft curtain. The draft curtain shall enclose the perimeter of the unenclosed opening and extend from the ceiling downward at least twelve inches. The spacing between sprinklers shall not exceed six feet.

**5.58(3)** Enclosure construction. Enclosure walls shall be of not less than two-hour fire-resistive construction in buildings more than four stories in height and shall be of not less than one-hour fire-resistive construction elsewhere.

**5.58(4)** Openings into enclosures. There shall be no openings into exit enclosures except exit doorways and openings in exterior walls. All exit doors in an exit enclosure shall be protected by a fire assembly having a fire-protection rating of not less than one hour where one-hour shaft construction is required. Doors shall be maintained self-closing or shall be automatic closing by actuation of an approved smoke detector. The maximum transmitted temperature end point shall not exceed 450° F. above ambient at the end of thirty minutes of the fire exposure.

**5.58(5)** Extent of enclosure. Stairway and ramp enclosures shall include landings and parts of floors connecting stairway flights and shall also include a corridor on the ground floor leading from the stairway to the exterior of the building. Enclosed corridors or passageways are not required from unenclosed stairways. Every opening into the corridor shall comply with the requirements of subrule 5.58(4).

EXCEPTION: In office buildings, a maximum of fifty percent of the exits may discharge through a street floor lobby, provided the required exit width is free and unobstructed and the entire street floor is protected with an automatic sprinkler system.

**5.58(6)** Barrier. A stairway in an exit enclosure shall not continue below the grade level exit unless an approved barrier is provided at the ground floor level to prevent persons from accidentally continuing into the basement.

**5.58(7)** Use of space under stair. There shall be no enclosed usable space under stairways in an exit enclosure, nor shall the open space under such stairways be used for any purpose.

**680—5.59(100) Smokeproof enclosures.**

**5.59(1)** General. A smokeproof enclosure shall consist of a vestibule and continuous stairway enclosed from the highest point to the lowest point by walls of two-hour fire-resistive construction. The supporting frame shall be protected as set forth in fire codes or the provision of the authority having jurisdiction.

In buildings with air-conditioning systems or pressure air supply serving more than one story, an approved smoke detector shall be placed in the return air duct or plenum prior to exhausting from the building or being diluted by outside air. Upon activation the detector shall cause the return air to exhaust completely from the building without any recirculation through the building. Such devices may be installed in each room or space served by a return-air duct.

**5.59(2)** When required. In a building having a floor used for human occupancy which is located more than four stories or sixty-five feet above the lowest level of fire department vehicle access, all of the required exits shall be smokeproof enclosures.

EXCEPTION: Smokeproof enclosures may be omitted, provided all enclosed exit stairways are equipped with a barometric dampered relief opening at the top and the stairway supplied mechanically with sufficient air to discharge a minimum of 2500 cubic feet per minute through the relief opening while maintaining a minimum positive pressure of 0.25 inch water column in the shaft relative to atmospheric pressure with all doors closed. Activation of the mechanical equipment shall be in accordance with subrule 5.59(7) paragraph "f".

**5.59(3)** Outlet. A smokeproof enclosure shall exit into a public way or into an exit passageway leading to a public way. The exit passageway shall be without other openings and shall have walls, floors and ceiling of two-hour fire-resistive construction.

**5.59(4)** Barrier. A stairway in a smokeproof enclosure shall not continue below the grade level unless an approved barrier is provided at the ground level to prevent persons from accidentally continuing into the basement.

**5.59(5)** Access. Access to the stairways shall be by way of a vestibule or open exterior exit balcony constructed of noncombustible materials.

PUBLIC SAFETY DEPARTMENT[680] *(cont'd)*

**5.59(6)** Smokeproof enclosure by natural ventilation.

a. Doors. When a vestibule is provided, the door assembly into the vestibule shall have a one and one-half-hour fire-resistive rating, and the door assembly from the vestibule to the stairs shall be a smoke and draft control assembly having not less than a twenty minute fire protection rating. Doors shall be maintained self-closing or shall be automatic closing by actuation of an approved smoke detector.

When access to the stairway is by means of an open exterior exit balcony, the door assembly to the stairway shall have a one and one-half-hour fire-resistive rating and shall be maintained self-closing or shall be automatic closing by actuation of an approved smoke detector.

b. Open air vestibule. The vestibule shall have a minimum dimension of forty-four inches in width and seventy-two inches in direction of exit travel. The vestibule shall have a minimum of sixteen square feet of opening in a wall facing an exterior court, yard or public way at least twenty feet in width.

**5.59(7)** Smokeproof enclosure by mechanical ventilation.

a. Doors. The doors assembly from the building into the vestibule shall have a one and one-half-hour fire-resistive rating and the door assembly from the vestibule to the stairway shall be a smoke and draft control assembly having not less than a twenty-minute fire-resistive rating. The door to the stairways shall be provided with a drop-sill or other provision to minimize the air leakage. The doors shall be automatic closing by actuation of an approved smoke detector or in the event of a power failure.

b. Vestibule size. Vestibules shall have a minimum dimension of forty-four inches in width and seventy-two inches in direction of exit travel.

c. Vestibule ventilation. The vestibule shall be provided with not less than one air change per minute, and the exhaust shall be 150 percent of the supply. Supply air shall enter and exhaust air shall discharge from the vestibule through separate tightly constructed ducts used only for that purpose. Supply air shall enter the vestibule within six inches of the floor level. The top of the exhaust register shall be down from the top of the smoke trap and shall be entirely within the smoke trap area. Doors, when in the open position, shall not obstruct duct openings. Duct openings may be provided with controlling dampers if needed to meet the design requirements but are not otherwise required.

d. Smoke trap. The vestibule ceiling shall be at least twenty inches higher than the door opening into the vestibule to serve as a smoke and heat trap and to provide an upward moving air column. The height may be decreased when justified by engineering design and field testing.

e. Stair shaft air movement system. The stair shaft shall be provided with a dampered relief opening at the top and supplied mechanically with sufficient air to discharge a minimum of 2500 cubic feet per minute through the relief opening while maintaining a minimum positive pressure of 0.05-inch of water column in the shaft relative to atmosphere with all doors closed and a minimum of 0.10-inch water column difference between the stair shaft and the vestibule.

f. Operation of ventilating equipment. The activation of the ventilating equipment shall be initiated by an approved smoke detector installed outside the vestibule door in an approved location. The activation of the closing device on any door shall activate the closing devices on all doors of the smokeproof enclosure at all levels. When the closing device for the stair shaft and vestibule doors is activated by an approved smoke detector or power failure, the mechanical equipment shall operate at the levels specified in paragraphs "c" and "e".

g. Standby power. Standby power for mechanical ventilation equipment shall be provided by an approved self-contained generator set to operate whenever there is a loss of power in the normal house current. The generator shall be in a separate room having a minimum one-hour fire-resistive occupancy separation and shall have a minimum fuel supply adequate to operate the equipment for two hours.

h. Acceptance testing. Before the mechanical equipment is accepted by the authority having jurisdiction, it shall be tested to confirm that the mechanical equipment is operating in compliance with these requirements.

i. Emergency lighting. The stair shaft and vestibule shall be provided with emergency lighting. A standby generator which is installed for the smokeproof enclosure mechanical ventilation equipment may be used for such stair shaft and vestibule power supply.

**680—5.60(100) Exit courts.**

**5.60(1)** General. Every exit court shall discharge into a public way or exit passageway.

**5.60(2)** Width. Exit court minimum widths shall be determined in accordance with provisions based on the occupant load and such required width shall be unobstructed to a height of seven feet except for projections permitted in corridors by this chapter. The minimum exit court width shall be not less than forty-four inches.

When the width is reduced from any cause, the reduction shall be affected gradually by a guardrail at least three feet in height and making an angle of not more than thirty degrees with the axis of the exit court.

**5.60(3)** Number of exits. Every exit court shall be provided with exits as determined by this chapter.

**5.60(4)** Construction and openings. When an exit court serving a building or portion thereof having an occupant load of ten or more is less than ten feet in width, the exit court walls shall be a minimum of one-hour fire-resistive construction for a distance of ten feet above the floor of the court and all openings therein shall be protected by fire assemblies having a fire-protection rating of not less than three-fourths hours.

**680—5.61(100) Exit passageways.**

**5.61(1)** Construction and openings. The walls of exit passageways shall be without openings other than required exits and shall have walls, floors and ceilings of the same period of fire resistance as required for the walls, floors and ceilings of the buildings served with a minimum of one-hour fire-resistive construction. Exit opening through the enclosing walls of exit passageways shall be protected by fire assemblies having a three-fourths-hour fire-protection rating.

**5.61(2)** Detailed requirements. Except for construction and opening protection as specified in subrule 5.61(1) above, exit passageways shall comply with the requirements for corridors as specified in rule 5.54(100).

**680—5.62(100) Exit illumination.**

**5.62(1)** General. Except within individual dwelling units, guest rooms and sleeping rooms, exits shall be illuminated at any time the building is occupied with light having intensity of not less than one footcandle at floor level.

PUBLIC SAFETY DEPARTMENT[680] *(cont'd)*

EXCEPTION: In auditoriums, theaters, concert or opera halls and similar assembly uses, the illumination at floor level may be reduced during performance to not less than 0.2 footcandle.

Fixtures required for exit illumination shall be supplied from separate circuits or sources of power where these are required by subrule 5.62(2).

**5.62(2)** Power supply.

a. Separate branch circuits. The power supply for exit illumination shall be provided by two separate branch circuits of the normal premises wiring system, unless an emergency system is installed, where the occupant load served by the exiting system exceeds the following:

(1) One hundred in both medium and high hazard occupancies and in hotels and apartment occupancies.

(2) Fifty in institutional occupancies.

(3) Three hundred in all other occupancies.

One of the required circuits shall supply only fixtures used for exit illumination or exit signs. The other circuit may supply current to other outlets.

**5.62(3)** Emergency power supply. The power supply for exit illumination shall normally be provided by the premises wiring system. In the event of its failure, illumination shall be automatically provided from an emergency system where the occupant load served by the exiting system exceeds fifty.

EXCEPTION: Churches with an occupancy of three hundred or less, used exclusively for religious worship, shall not be required to have emergency lighting.

Emergency systems shall be supplied from an approved rechargeable system or an on-site generator and the system shall be installed in accordance with the requirements of the electrical code.

**680—5.63(100) Exit signs.**

**5.63(1)** Where required. Exit signs shall be installed at required exit doorways and where otherwise necessary to clearly indicate the direction of egress when the exit serves an occupant load of fifty or more.

EXCEPTION: Main exterior exit doors which obviously and clearly are identifiable as exits need not be signed when approved by the authority having jurisdiction.

**5.63(2)** Graphics. The color and design of lettering, arrows and other symbols on exit signs shall be in high contrast with their background. Words on the sign shall be in block letters six inches in height with a stroke of not less than three-fourths inch.

**5.63(3)** Illumination. Signs shall be approved internally illuminated by not less than two electric lamps.

**5.63(4)** Power supply.

a. Separate branch circuits. When separate branch circuits are required for exit illumination by subrule 5.62(2) current supply to one of the lamps for exit signs shall be from a circuit having outlets only for other exit signs or exit illumination. Power to the other lamp shall be from a separate circuit that may supply other outlets.

b. Separate sources of power. When separate sources of power are required for exit illumination by subrule 5.62(3), power to one of the lamps for exit signs shall be from storage batteries or an on-site generator set and the system shall be installed in accordance with the National Electrical Code and National Fire Protection Association Standard 70, latest edition.

**680—5.64(100) Aisles.**

**5.64(1)** General. Aisles leading to required exits shall be provided from all portions of the buildings.

**5.64(2)** Width. Aisle widths shall be provided in accordance with the following:

a. In areas serving employees only, the minimum aisle width may be twenty-four inches but not less than the width required by the number of employees served.

b. In public areas of mercantile, office, plant and workshop occupancies, and in assembly occupancies without fixed seats, the minimum clear aisle width shall be thirty-six inches where tables, counter, furnishings, merchandise or other similar obstructions are placed on one side of the aisle only and forty-four inches where such obstructions are placed on both sides of the aisle.

c. In assembly occupancies with fixed seats.

(1) With standard seating, every aisle shall be not less than three feet when serving seats on only one side and not less than forty-two inches wide when serving seats on both sides. Such minimum width shall be measured at the point furthest from the exit, cross aisle or foyer and such minimum width shall be increased by one and one-half inches for each five feet of length toward the exit, cross aisle or foyer.

(2) With continental seating as specified in rule 5.65(100) side aisles shall be provided and be not less than forty-four inches in width.

**5.64(3)** Distances to nearest exit. In areas occupied by seats and in assembly occupancies without seats, the line of travel to an exit door by an aisle shall be not more than one hundred fifty feet. Such travel distance may be increased to two hundred feet if the building is provided with an approved automatic sprinkler system.

**5.64(4)** Aisle spacing. With standard seating, aisles shall be so located that there will be not more than six intervening seats between any seat and the nearest aisle.

With continental seating, the number of intervening seats may be increased provided the seating configuration conforms with the requirements specified in rule 5.65(100).

When benches or pews are used, the number of seats shall be based on one person for each eighteen inches of length of pew or bench.

**5.64(5)** Cross aisles. Aisles shall terminate in a cross aisle, foyer or exit. The width of the cross aisle shall be not less than the sum of the required width of the widest aisle plus fifty percent of the total required width of the remaining aisles leading thereto. In assembly and education occupancies, aisles shall not have a dead end greater than twenty feet in length.

**5.64(6)** Vomitories. Vomitories connecting the foyer or main exit with the cross aisles shall have a total width not less than the sum of the required width of the widest aisle leading thereto plus fifty percent of the total required width of the remaining aisles leading thereto.

**5.64(7)** Slope. The slope portion of aisles shall be not steeper than one vertical in eight horizontal, except as permitted in subrule 5.56(3).

**5.64(8)** Steps. Steps shall not be used in an aisle when the change in elevation can be achieved by a slope conforming to subrule 5.64(7). A single step or riser shall not be used in any aisle. Steps in aisles shall extend across the full width of the aisle and shall be illuminated. Treads and risers in such steps shall comply with subrule 5.55(3).

PUBLIC SAFETY DEPARTMENT[680] *(cont'd)*

**680—5.65(100) Seat spacing.**

**5.65(1)** Standard seating. With standard seating, the spacing of rows of seats shall provide a space of not less than twelve inches from the back of one seat to the front of the most forward projection of the seat immediately behind it as measured horizontally between vertical planes.

**5.65(2)** Continental seating. The number of seats per row for continental seating may be increased subject to all of the following conditions:

a. The spacing of unoccupied seats shall provide a clear width between rows of seats measured horizontally as follows (automatic or self-rising seats shall be measured in the seat-up position, other seats shall be measured in the seat-down position):

1. 18 inches between rows for 1 to 18 seats
2. 20 inches between rows for 19 to 35 seats
3. 21 inches between rows for 36 to 45 seats
4. 22 inches between rows for 46 to 59 seats
5. 24 inches between rows for 60 seats or more.

b. Exit doors shall be provided along each side aisle of the row of seats at the rate of one pair of doors for each five rows of seats.

c. Each pair of exit doors shall provide a minimum clear width of sixty-six inches discharging into a foyer, lobby or the exterior of the building.

d. There should be not more than five seat rows between pairs of doors.

**5.66** to **5.99** Reserved.

ITEM 2. Rescind rules 680—5.100(103), 5.101(103), 5.102(103), 5.150(103), 5.151(103), 5.152(103), 5.153(103) and 5.200(103), and insert in lieu thereof the following rules:

LIFE SAFETY REQUIREMENTS FOR EXISTING BUILDINGS

**680—5.100(100) Exits and escapes.**

**5.100(1)** General. All buildings must meet the requirements set forth in General Rules and Regulations for Means of Exit with the following exceptions permitted for existing buildings. The purpose of rules 680—5.100(100) to 680—5.105(100) is to provide a reasonable degree of safety to persons occupying existing buildings that do not conform with the minimum requirements of this code by providing for reasonable and equivalent safety.

EXCEPTION: One- and two-family dwellings, private garages, carports, sheds and agricultural buildings.

**5.100(2)** Effective date. Existing buildings will be classified as those constructed prior to the effective date of these rules.

**5.100(3)** Change of occupancy classification. A change from one occupancy classification to another, in any building or structure, whether necessitating a physical alteration or not, may be made only if such building or structure conforms with the requirements of rules applying to new buildings or the proposed new use.

**5.100(4)** Provisions of this chapter shall comply to existing buildings as well as new, except that the authority having jurisdiction may permit conditions legally in existence at the time of the adoption of these rules.

Those buildings, structures or facilities not legally in existence or not meeting these rules at the time of their adoption shall within a reasonable period designated by the state fire marshal or the authority having jurisdiction complete the work necessary.

**5.100(5)** In existing buildings, where compliance would be difficult or would result in unnecessary hardship, the state fire marshal may grant exceptions to these rules but only when it is clearly evident that reasonable and equivalent safety is thereby secured. Existing buildings and structures shall not be occupied or used in violation of the provisions of these rules.

**680—5.101(100) Exits.**

**5.101(1)** Number of exits. Every floor above or below the first story used for human occupancy shall have access to at least two separate exits, one of which may be an exterior fire escape complying with 5.101(4) of this section.

An exit ladder device may be used only when:

a. It serves an occupant load of ten or less or a single dwelling unit or guest room.

b. The building does not exceed three stories in height.

c. The access is adjacent to an opening as specified for emergency egress or rescue or from a balcony.

d. It does not pass in front of any building opening below the unit being served.

e. The availability of activating the device for the ladder is accessible only from the opening or balcony served.

f. It is so installed that it will not cause a person using it to be within six feet of exposed electrical wiring.

g. All load-bearing surfaces and supporting hardware shall be of noncombustible materials. Exit ladder devices shall have a minimum width of twelve inches when in the position intended for use. The design load shall be not less than 400 pounds for 16-foot length and 600 pounds for 25-foot length.

h. Exit ladder devices shall be capable of withstanding an applied load of four times the design load when installed in the manner intended for use. Test loads shall be applied for a period of one hour.

**5.101(2)** Stair construction. All required stairs shall have a minimum run of nine inches and a maximum rise of eight inches and shall have a minimum width of thirty inches exclusive of handrails. Every stairway shall have at least one handrail. A landing having a minimum thirty-inch run in the direction of travel shall be provided at each point of access to the stairway.

EXCEPTION: Fire escapes as provided for in this section. Exterior stairs shall be of noncombustible construction.

EXCEPTION: On buildings of types III, IV, V, provided the exterior stairs are constructed of wood not less than two-inch nominal thickness. See Table No. 5-B.

**5.101(3)** Corridors. Corridors serving as a required exit for an occupant load of thirty or more shall have walls and ceilings of not less than one-hour fire-resistive construction as required by this chapter.

Existing walls surfaced with wood lath and plaster in good condition or one-half-inch gypsum wallboard or openings with fixed wired glass set in steel frames are permitted for corridor walls and ceilings and occupancy separations when approved. Doors opening into such corridors shall be protected by twenty minutes fire assemblies or solid wood doors not less than one and three-fourth inches thick. Where the existing frame will not accommodate the one and three-fourths-inch thick door, a one and three-eighths-inch thick solid bonded wood core door or equivalent insulated steel door shall be permitted. Doors shall be self-closing or automatic-closing by smoke

detection. Transoms and openings other than doors from corridors to rooms shall comply with subrule 5.54(8) of this code or shall be covered with a minimum of five-eighths-inch gypsum wallboard or equivalent material on both sides. Transoms shall be fixed in a closed position.

EXCEPTION: Existing corridor walls, ceilings and opening protection not in compliance with the above may be continued when such buildings are protected with an approved automatic sprinkler system throughout. Such sprinkler system may be supplied from the domestic water system if it is of adequate volume and pressure.

**5.101(4)** Fire escapes.

a. Existing fire escapes which in the opinion of the authority having jurisdiction comply with the intent of this section may be used as one of the required exits. The location and anchorage of fire escapes shall be of approved design and construction.

b. Fire escapes shall comply with the following:

(1) Access from a corridor shall not be through an intervening room.

(2) All openings within ten feet shall be protected by three-fourths-hour fire assemblies. When located within a recess or vestibule, adjacent enclosure walls shall be of not less than one-hour fire-resistive construction.

(3) Egress from the building shall be by a clear opening having a minimum dimension of not less than twenty-nine inches. Such openings shall be openable from the inside without the use of a key or special knowledge or effort. The sill of an opening giving access shall be at the floor of the building or balcony.

(4) Fire escape stairways and balconies shall support the dead load plus a live load of not less than one hundred pounds per square foot and shall be provided with a top and intermediate handrail on each side. The pitch of the stairway shall not exceed sixty degrees with a minimum width of eighteen inches. Treads shall be not less than four inches in width and the rise between treads shall not exceed ten inches. All stair and balcony railings shall support a horizontal force of not less than fifty pounds per lineal foot of railings.

(5) Balconies shall be not less than forty-four inches in width with no floor opening other than the stairway opening greater than five-eighths inch in width. Stairway openings in such balconies shall be not less than twenty-two inches by forty-four inches. The balustrade of each balcony shall be not less than thirty-six inches high with not more than nine inches between balusters.

(6) Fire escapes shall extend to the roof or provide an approved gooseneck ladder between the top floor landing and the roof when serving buildings four or more stories in height having roofs with less than 4:12 slope. Approved gooseneck ladders shall be designed and connected to the building to withstand a horizontal force of one hundred pounds per lineal foot, each rung shall support a concentrated load of five hundred pounds placed anywhere on the rung. All ladders shall be at least fifteen inches wide, located within twelve inches of the building and shall be placed flatwise relative to the face of the building. Ladder rungs shall be at least three-fourths-inch in diameter and shall be located twelve inches on center. Openings for roof access ladders through cornices and similar projections shall have minimum dimensions of thirty inches by thirty-three inches.

(7) The lowest balcony shall be not more than eighteen feet from the ground. Fire escapes shall extend to the ground or be provided with counterbalanced stairs reaching to the ground.

(8) Fire escapes shall not take the place of stairways required by the codes under which the building was constructed.

(9) Fire escapes shall be kept clear and unobstructed at all times and maintained in good working order.

(10) All fire escapes shall have walls or guards on both sides, with handrails not less than thirty inches nor more than forty-two inches high measured vertically from a point on the stair tread one inch back from the leading edge.

(11) All supporting members for balconies and stairs that are in tension and are fastened directly to the building shall pass through the wall and be securely fastened on the opposite side or they shall be securely fastened to the framework of the building. Where opposite metal members pass through walls, they shall be protected effectively against corrosion.

(12) Tread construction must be solid, with one-half-inch diameter perforations permitted.

**5.101(5)** Exit and fire escape signs. Exit signs shall be provided as required by rule 5.62(100).

EXCEPTION: The use of existing exit signs may be continued when approved by the authority having jurisdiction.

All doors or windows providing access to a fire escape shall be provided with fire escape signs.

**680—5.102(100) Enclosure of vertical shafts.**

**5.102(1)** Interior vertical shafts, including but not limited to stairways, elevator hoistways, service and utility shafts, shall be enclosed by a minimum of one-hour fire-resistive construction. All openings into such shafts shall be protected with one-hour fire assemblies which shall be maintained self-closing or be automatic closing by smoke detection. All other openings shall be fire protected in an approved manner.

EXCEPTIONS:

1. An enclosure will not be required for openings serving only one adjacent floor, unless otherwise required by specific occupancies.

2. Stairways need not be enclosed in a continuous vertical shaft if each story is separated from other stories by one-hour fire-resistive construction or approved wired glass set in steel frames.

3. Vertical openings need not be protected if the building is protected by an approved automatic sprinkler system, and does not exceed three stories.

**5.102(2)** Reserved.

**680—5.103(100) Standpipes.**

**5.103(1)** Any buildings over four stories in height shall be provided with an approved Class I or III standpipe system.

**5.103(2)** Reserved.

**680—5.104(100) Separation of occupancies.**

**5.104(1)** Occupancy separations shall be provided as required by the authority having jurisdiction, with a minimum of one hour either vertically or horizontally or both. When approved by the authority having jurisdiction, existing wood lath and plaster in good condition or one-half-inch gypsum wallboard may be acceptable where one-hour occupancy separations are required.

**5.104(2)** Reserved.

**680—5.105(100) Dead-end corridors.**

**5.105(1)** In existing buildings, when correction of a dead-end corridor is impractical, dead-end corridor length of specific occupancies may be extended, provided

PUBLIC SAFETY DEPARTMENT[680] *(cont'd)*

additional smoke detection and safeguards are installed, as determined by the authority having jurisdiction. Occupancy and dead-end corridor lengths are as follows:

| | | | |
|---|---|---|---|
| Residential | 35 feet | Business (Office) | 50 feet |
| Mercantile | 50 feet | Industrial | 50 feet |

**5.105(2)** Reserved.

**5.106 to 5.229** Reserved.

## ARC 3594

# 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 proposes action by adding chapter 4 to outline the procedures to be followed by the Iowa Real Estate Commission relative to disciplinary matters heard by the Commission.

Persons interested in commenting on the proposed rules shall submit same to the Iowa Real Estate Commission no later than 4:30 p.m. April 12, 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. April 14, 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.

These rules are intended to implement Iowa Code sections 117.9, 117.29, 117.34, 117.35, 117.36, 117.40, 117.41, 117.52, 258A.2"c", 258A.3, 258A.4, 258A.6, 258A.8 and 258A.9.

Chapter 4 is proposed as follows:

### CHAPTER 4
### DISCIPLINE AND HEARING PROCEDURE

**700—4.1(117) Discipline and hearing procedure.** The Iowa real estate commission has authority derived from Iowa Code chapter 117, entitled "Real Estate Brokers and Salesmen", and from Iowa Code chapter 258A, entitled "Continuing Professional and Occupational Education" to impose discipline for any violation of these two chapters, or the rules promulgated thereunder.

**700—4.2(117) Method of discipline.** The Iowa real estate commission has authority to impose, after proper procedures have been initiated and followed, the following disciplinary penalties:

1. Revocation of license.
2. Suspension of license until further order of the commission or for a specified period.
3. Nonrenewal of license.
4. Prohibit permanently, until further order of commission or for a specified period, the engaging in specified procedures, methods or acts.
5. Probation.
6. Require additional education or training.
7. Require or order a physical or mental examination.
8. Issue citation, warning or reprimand.
9. Impose civil penalties not to exceed one thousand dollars.
10. Such other sanctions allowed by law as may be appropriate, or any combination of the above penalties as the commission may choose.

**700—4.3(117) Discretion of commission.** The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed against a particular licensee or groups of licensees.

1. The relative seriousness of the violation as it relates to assuring the citizens of this state a high standard of professional service.
2. The facts of the particular violation.
3. Number of prior violations.
4. Seriousness of prior violations.
5. Whether remedial action has been taken.
6. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee.
7. The impact of a particular activity upon the public or upon the profession as a whole.

**700—4.4(117) Confidentiality of investigative files.** Complaint files, and investigation files, and all other investigation reports and other investigating information in the possession of the commission or its employees or agents which relates to licensee discipline shall be privileged and confidential, and shall not be subject to discovery, subpoena, or other means of legal compulsion for their release to any person other than the licensee and the commission, its employees and agents involved in licensee discipline, or be admissible in evidence in any judicial or administrative proceeding other than the proceeding involving licensee discipline. However, a final written decision and finding of fact of the commission in a disciplinary proceeding shall be public record, including orders, assurance of voluntary compliance and dismissed complaints.

**700—4.5(117) Proceedings.** The proceeding for revocation or suspension of a license to engage in real estate practices or to discipline a person licensed to practice the real estate profession or the denial of a license, shall be substantially in accord with the following procedures which are an elaboration of, alternative to, or in addition to the procedures stated in Iowa Code sections 117.29, 117.34, 117.35, 117.36, 117.37, 117.38, 117.39, 117.40, 117.41, 117.43, and 117.44.

**700—4.6(117) Investigation.** The commission shall, upon receipt of a complaint in writing, or may upon its own motion, pursuant to other evidence received by the commission, review and investigate alleged acts or omis-

sions which the commission reasonably believes constitutes cause under applicable law or administrative rule for licensee discipline.

**700—4.7(117) Form and content of the written complaint.** A complaint shall be made in writing and shall be signed by at least one complainant or an authorized representative of the complainant. The complaint may be in the form of a letter or affidavit or it may be made using an official complaint form which may be obtained from the commission office upon request. A written complaint shall contain the following information:

1. The full name, address and telephone number of the complainant.
2. The full name, address and telephone number, if known, of the respondent.
3. A concise statement of the facts which clearly and accurately apprise the commission of the allegations against the respondent.

**700—4.8(117) Place and time of filing.** The complaint may be delivered personally or by mail to the executive director of the commission at the office of the commission. Timely filing is encouraged to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been substantially altered during the period of delay.

**700—4.9(117) Investigation of allegations.** In order to determine if probable cause exists for a hearing on the complaint, the executive director, or someone designated by the executive director, shall cause an investigation to be made into the allegations of the complaint. The respondent may be furnished with information upon request concerning the complaint and given the opportunity to informally present a defense to the director respecting the allegations of the complaint prior to the commencement of a contested case. This position or defense may be submitted in writing; however, a personal conference with the executive director or investigator may be held as a matter of right upon request.

**700—4.10(117) Depositions and subpoenas.** The commission, and its executive director, shall have the authority to hold and take depositions, subpoena books, papers, records and any other evidence necessary for the commission to determine whether it should institute a hearing proceeding.

**700—4.11(117) Investigation report.** Upon completion of the investigation, the executive director or designee shall prepare a report for the commission's consideration. This report shall contain the position or defense of the respondent, discuss jurisdiction and may set forth any legal arguments and authorities applicable to the case.

**700—4.12(117) Informal settlement.** The executive director or the respondent may request that an informal conference be held to determine whether licensee discipline can be resolved in a just manner and in furtherance of the public interest. Neither the executive director nor respondent is required to use this informal procedure. If the executive director and respondent agree to negotiate a settlement, the various points of a proposed settlement, including a stipulated statement of facts, shall be set forth in writing. The proposed settlement shall be binding if approved by the commission and signed by both the commission chairperson (or a member designated by the chairperson) and the respondent and respondent's counsel, if respondent has counsel.

**700—4.13(117) Refusal to set hearing.** Reasons for refusal to set hearing by the commission may include but are not necessarily limited to the following:

1. Triviality of the allegation.
2. Sufficiency of evidence.
3. Effort to resolve problem on the local level.
4. Lack of clarity of the issue.
5. Lack of jurisdiction.

**700—4.14(117) Ruling on the initial inquiry.**

**4.14(1)** Rejection. If a determination is made by the commission to reject the case, the complaint shall be returned to the complainant along with a statement specifying the reasons for rejection. A letter of explanation concerning the decision of the commission shall be sent to the respondent.

**4.14(2)** Requirement of further inquiry. If determination is made by the commission to order further inquiry, the complaint and recommendations by the investigator(s) shall be returned to the investigator(s) along with an oral statement specifying the information deemed necessary.

**4.14(3)** Acceptance of the case. If a determination is made by the commission to initiate contested case proceedings the commission may enter into an informal settlement, issue a citation, warning or reprimand or proceed with formal disciplinary proceedings through contested case proceedings.

**4.14(4)** Private prosecution of the case. If the commission has declined to further investigate or hold hearing on the case at the initial inquiry stage then a complainant may, at complainant's expense (other than the ordinary cost of commission and staff activities) serve written notice upon the executive director of complainant's desire to have the commission sit as a hearing authority and perform those hearing functions as otherwise would be held.

**700—4.15(117) Withdrawal or amendment.** A complaint may be amended or withdrawn at any time prior to official notification of the parties and thereafter at the sole discretion of the commission. The commission may choose to pursue a matter even after a complainant has withdrawn.

**700—4.16(117) Order for hearing or complaint.** The commission may, upon its own motion or upon receipt of a complaint in writing, issue an order fixing the time and place for hearing, a written notice of hearing together with a statement of the charges, shall be served upon the licensee at least twenty days before said hearing by certified mail return receipt requested or by police or sheriff offices to the last known business address of the licensee. Delivery of personal notice to the licensee, or failure to accept receipt of certified mailing by the licensee, shall constitute commencement of the contested case proceeding or hearing procedure.

**700—4.17(117) Statement of charges.** The statement of charges shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, and shall be in sufficient detail to enable the efficient preparation of the respondent's defense. The statement of charges shall specify the statute(s) and any rule(s) which are alleged to have been violated, and may also include any additional information which the commission deems appropriate to the proceedings.

**700—4.18(117) Notice of hearing.** The notice of hearing shall state:

REAL ESTATE COMMISSION[700] *(cont'd)*

1. The date, time and place of hearing.
2. A statement that the party may be represented by legal counsel at all stages.
3. A statement of the legal authority and jurisdiction under which the hearing is to be held.
4. A reference to the statutes and rules involved.
5. A short and plain statement of the matter asserted.
6. A statement that the respondent has the right to appear at a hearing and be heard.
7. A statement requiring the respondent to submit an answer, and outlined in rule 4.19(117) within ten days after receipt of the notice of hearing.
8. A statement requiring the respondent within the period of ten days after receipt of the notice of hearing to:

Acknowledge receipt of the notice of hearing on the form provided with the notice.

State whether the respondent will require an adjustment of the date and time of the hearing; and

Furnish the commission with a list of potential witnesses, and their current addresses which the respondent intends to have called.

9. A statement informing the party that a response is required and that disciplinary sanctions may be imposed against the party for failure to file a response in accordance with these rules. Such sanctions could be any of the penalties listed in rule 4.2(117) or a combination thereof.

**700—4.19(117) Form of answer.** The answer shall be captioned "Before the Iowa Real Estate Commission": and shall be titled: "ANSWER." The answer shall contain the following information:

1. The name, address and telephone number of the respondent.
2. Specific statements regarding any or all allegations in the complaint which shall be in the form of admissions, denials, explanations, remarks or statements of mitigating circumstances.
3. Any additional facts or information the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

**700—4.20(117) Continuances.** A party has no automatic right to a continuance or delay of the commission's hearing procedure or schedule. However, a party may request a continuance of the executive director no later than ten days prior to the date set for hearing. Within ten days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating or emergency circumstances. The executive director shall have power to grant continuances after consultation, if needed, with the chairperson of the commission. A commissioner shall not be contacted in person, by mail or telephone by a party seeking a continuance.

**700—4.21(117) Prehearing conference.** The presiding officer, hearing officer or the executive director either on their own motion or at the request of the respondent may hold a prehearing conference which shall be scheduled not less than two days prior to the hearing. The prehearing conference shall be for the purpose of identifying and premarking exhibits and other documents as well as determining stipulations or other means of limiting the issues of the hearing. Neither the commission nor respondent shall be required to stipulate to any issues but stipulation is encouraged.

**700—4.22(117) Appearance.** The licensee shall have the right to appear in person, and have legal counsel, before the commission at the licensee's expense.

**700—4.23(117) Subpoena powers.** In accordance with Iowa Code section 117.36, the commission has authority to subpoena persons, books, papers, records and any other real evidence, whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding (hearing). After service of the notice of hearing the following procedures are available to the parties:

1. Commission subpoenas for persons, books, papers, records and other real evidence will be issued to a party or for a party upon request. Application should be made to the executive director and the executive director shall issue all subpoenas for both parties upon request.
2. Discovery procedures applicable to civil actions are available to the parties in proceedings under these rules.
3. Evidence obtained by subpoena or through discovery shall be admissible at the hearing under 4.29(117) or by statute.
4. The evidence outlined in Iowa Code section 17A.13(2) where applicable and relevant shall be available to a party upon request.

**700—4.24(117) Refusal to obey subpoena.** In the event of a refusal to obey a subpoena, the commission may petition the district court for its enforcement. Upon proper showing the court shall order the person to obey the subpoena, and if the person fails to obey the order of the court, he or she may be found guilty of contempt of court.

The presiding officer of a hearing or the hearing officer may also administer oaths and affirmations, take or order that depositions be taken, and grant immunity to a witness from disciplinary proceedings initiated by the commission which might otherwise result from the testimony to be given by the witness.

**700—4.25(117) Failure of respondent to appear.** If a respondent upon whom a proper notice of hearing has been served, fails to appear in person at the hearing, the commission or hearing officer shall proceed to conduct the hearing, and the respondent shall be bound by the results of such hearing to the same extent as if the licensee were present.

**700—4.26(117) Record of proceedings.** Oral proceedings shall be recorded either by mechanical or electrical means, or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party at the expense of the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed and maintained in accordance with the provisions of Iowa Code section 17A.12(7). Any party to a proceeding may record, at the party's own expense, stenographically or electronically, any portion or all of the proceedings.

**700—4.27(117) Hearings.** A hearing may be conducted before the full commission, or one or more members of the commission, or before an administrative hearing officer in accordance with Iowa Code section 17A.11.

**4.27(1)** When a hearing is held before the commission, or a small number of commissioners, the commission chairperson or someone designated by the chairperson shall act as the presiding officer. The presiding officer or hearing officer shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and to rule on all motions and objections.

**4.27(2)** The presiding officer and commission members have the right to conduct a direct examination of the testimony of a witness at the time the testimony is given or at a later stage during the proceeding. Direct examination and cross-examination by commission members is subject to objections properly raised in accordance with the rules of evidence noted in subrules 4.29(1) and 4.29(2).

**700—4.28(117) Order of proceedings.** Before testimony is presented, the record shall show the identity of any commission members present, the identity of the hearing panel or hearing officer, the identity of the primary parties and their representatives, and of the fact that all testimony is being recorded. Hearings before the commission or a panel of the commission or before a hearing officer shall generally be conducted in the following order, subject to modification at the discretion of the commission or of the panel of the commission conducting the proceedings. Hearings are open to the public and will be conducted in public session.

1. The presiding officer or designee may read a summary of the charges and answers thereto, and other responsive pleadings filed by the respondent prior to the hearing.

2. The assistant attorney general or other person representing the state or commission interest before the commission shall make a brief opening statement which will include a summary of the charges and the witnesses and documents to support such charges.

3. The respondent or respondents shall each be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desire to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent.

4. The presentation of evidence on behalf of the public.

5. A summary, at the close of the evidence on behalf of the state or commission of the case and what was sought to be proven.

6. The presentation of evidence on behalf of the respondent(s).

7. Rebuttal evidence on behalf of the state or commission, if any.

8. Rebuttal evidence on behalf of the respondent(s), if any.

9. Closing arguments first on behalf of the state or commission, then on behalf of the respondent, and then on behalf of the state or commission, if any.

**700—4.29(117) Rules of evidence-documentary evidence-official notice.**

**4.29(1)** Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial.

**4.29(2)** Objections to evidentiary offers may be made and shall be noted in the record. Motions and offers to amend the pleadings may also be made at the hearing and shall be noted in the record together with the rulings thereon.

**4.29(3)** Subject to the above requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

**4.29(4)** Documentary evidence may be received in the form of copies if the original is not readily available. Documentary evidence may be received in the form of excerpts if the entire document is not relevant. Accurate copies of any document should be made in advance of the hearing, in as far as possible, in sufficient numbers for all members of the commission and shall be furnished to those members of the commission sitting at the hearing and to opposing parties. Upon request, parties shall be given the opportunity to compare the copy with the original, if available.

**4.29(5)** Witnesses at the hearing, or persons whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

**4.29(6)** Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the commission. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the commission determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

**700—4.30(117) Final decision.**

**4.30(1)** When three or more members of the commission preside over the reception of the evidence at the hearing, the commission's decision is a final decision.

**4.30(2)** If the hearing is conducted by fewer than three members of the commission as specified in rule 4.27(117) or by an administrative hearing officer, the decision is a proposed decision and subject to the review provisions of rule 4.32(117).

a. A proposed or final decision shall be in writing and shall consist of the following parts:

(1) A concise statement of the facts which support the findings of fact.

(2) Findings of fact. A party may submit proposed findings of fact and where this is done, the decision shall include a ruling on each proposed finding.

b. Conclusions of law which shall be supported by cited authority or reasoned opinion.

c. The decision or order which sets forth the action to be taken or the disposition of the case.

d. The decision may include any of the following conclusions:

(1) That the respondent be exonerated.

(2) Revocation of license.

(3) Suspension of license until further order of the commission or for a specified period.

(4) Nonrenewal of license.

(5) Prohibit permanently, until further order of the commission or for a specific period, the engaging in specified procedures, methods or acts.

(6) Probation.

(7) Require additional education or training.

(8) Require re-examination.

(9) Order a physical or mental examination with periodic reports to the commission, if deemed necessary.

(10) Issue citation and warning.

(11) Impose civil penalties not to exceed one thousand dollars.

(12) Such other sanctions allowed by law as may be appropriate.

**700—4.31(117) Notification of decision.** As a courtesy the parties will be telephoned, if possible, to advise them of the decision of the commission. All parties to a proceeding hereunder shall be promptly furnished with a copy of any final or proposed decision or order either in person or by first-class mail.

**700—4.32(117) Proposed decision—appeal to commission—procedures and requirements.** A proposed decision as defined in rule 4.30(117) becomes a final decision unless appealed in accordance with the following procedure:

1. A proposed decision may be appealed to the commission by a party to the decision who is adversely affected thereby. An appeal is begun by serving on the executive director, either in person or by certified mail, a notice of appeal within seven days after service of the proposed decision or order on the appealing party. The appealing party shall be the appellant and all other parties to the appeal shall be the appellee(s).

2. Within seven days after servicing a notice of appeal, the appellant shall serve five copies of the exceptions, if any, together with the brief and argument desired by appellant. The appellant shall also furnish copies to each appellee by first-class mail. Any appellee to the appeal shall have fourteen days after service of exceptions and brief on the executive director to file a responsive brief and argument. Except for the notice of appeal, the above time requirements will be extended by stipulation of the parties and may be extended upon application approved by a member of the commission or executive director.

3. Oral argument of the appeal is discretionary but may be required by the commission upon its own motion. At the times designated for filing briefs and arguments either party may request oral argument. If a request for oral argument is granted or such is required, the executive director shall notify all parties of the date, time and place. The commission chairperson or a designated commissioner shall preside at the oral argument and determine the procedural order of the proceedings.

4. The record on appeal shall be the entire record made before the hearing panel or administrative hearing officer.

**700—4.33(117) Motion for rehearing.** Within twenty days after issuance of a final decision, any party may file an application for a rehearing. The application shall state the specific grounds for rehearing and the relief sought. Copies shall be timely mailed to all other parties. The application shall be deemed denied if not granted within twenty days after service upon the executive director.

**4.33(1)** Upon a rehearing, the commission shall consider facts not presented in the original proceeding if:

a. Such facts arose after the original proceeding; or

b. The party offering such evidence could not reasonably have provided such evidence at the original proceedings; or

c. The party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding. Except that this subrule shall not relieve any party of its obligation to control its own evidence and defense.

**4.33(2)** The decision made upon rehearing may incorporate by reference any and all parts of the decision made upon the conclusion of the original proceeding.

**4.33(3)** The commission may be polled by telephone for voting to grant or deny a motion for rehearing. The executive director shall maintain written records within that case file on the telephone poll vote. At the next meeting of the commission it shall be an order of business to make such vote on the motion formally of record for the commission minutes.

**700—4.34(117) Final decision.** The final decision of the commission, presiding officer or hearing officer shall be filed with the executive director who shall within ten working days from such filing enter an order revoking or suspending the real estate license of the respondent(s), or discipline such real estate licensee if directed by the decision. The executive director shall also cause the decision and order to be entered upon the permanent records of the licensee. A copy of the decision and order shall immediately be sent by first class mail to the licensee's last known post office address.

**700—4.35(117) Judicial review and appeal.** Judicial review of the commission's action may be sought in accordance with the Iowa administrative procedure Act, from and after the date of the commission's order.

**700—4.36(117) Commission decision.** The commission's decision and order revoking or suspending a license or disciplining a licensee shall remain in force and effect until the appeal is finally determined and disposed of upon its merit.

**700—4.37(117) Rules of general applicability.** Ex parte communications, separation of functions, judicial review and appeals shall be in accordance with the Iowa administrative procedure Act.

**700—4.38(117) Publication of decisions.** Final decisions of the commission relating to disciplinary procedures may be transmitted to the appropriate professional association(s), other states, and news media.

**700—4.39(117) License denial.** Any request to have a hearing before the commission concerning the denial of a license shall be submitted by the applicant in writing to the executive director by certified mail, return receipt requested, within thirty days of the mailing of a notice of denial of a license.

**700—4.40(117) Hearing on license denial.** At a hearing held by the commission after an applicant has been denied a license, the burden of presenting evidence and information or documents to support the applicant's position shall be the responsibility of the applicant. The applicant shall have the burden of going forward and the commission, after a hearing on the license denial, shall use its experience, expertise, specialized knowledge and past history of the applicant when considering the application. In no event shall the commission be required to grant a license to the applicant. The commission shall not be considered to have "charges" or "claims" against the applicant as it would during a hearing held for disciplinary purposes.

## ARC 3581

# 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 14, "Computation of Tax", Chapter 15, "Determination of a Sale and Sale Price", Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage", Chapter 19, "Sales and Use Tax on Construction Activities", and Chapter 26, "Sales and Use Tax on Services", Iowa Administrative Code. The substance of these rules is also submitted as Emergency Adopted and Implemented, and will also be published in the Iowa Administrative Bulletin on March 2, 1983, ARC 3580.

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

The rule amendments are made to implement 1983 Iowa Acts, Senate File 184.

The rule amendments in Chapters 14, 15, 18 and 26 provide for the sales and use tax rate increase from three percent to four percent, provide a bracket system for computing the sales or use tax at four percent, and correct examples using a sales tax rate of three percent. The rule amendments also list special transition rules to determine whether sales, use, and service tax is payable at the three percent or four percent rate. The rule amendment to Chapter 19, allows construction contractors to apply to the department for a refund of the additional one percent sales or use tax paid on goods, wares or merchandise incorporated into real estate in the fulfillment of a written contract fully executed prior to March 1, 1983, and provides the method and information needed to secure a refund.

Any interested person may make written suggestions or comment on these proposed amendments on or before April 1, 1983. Such written comments should be directed to the Director, Excise Tax Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

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

Requests for a public hearing must be received by March 25, 1983.

These rules are intended to implement Iowa Code sections 421.14, 422.43, 422.47 and 423.2 as amended by 1983 Iowa Acts, Senate File 184.

## ARC 3590

# REVENUE DEPARTMENT[730]

## NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 421.14, 427.1(32), 425.8 and 426A.7, the Iowa Department of Revenue hereby gives Notice of Intended Action to amend Chapter 80, "Property Tax Credits and Exemptions", Iowa Administrative Code.

Items 1 to 7 contain amendments to implement 1982 Iowa Acts chapter 1246, which provides for the one-time filing of claims for the homestead tax credit and military service tax exemption. In addition, these items contain minor language revisions.

Item 8 is amended to clarify that the transfer of property does not by itself offset the property's eligibility to receive a pollution control exemption.

Item 9 reflects the provisions of 1982 Iowa Acts, chapter 1190, which pertains to the one-time filing of claims for personal property tax credit and the assessment of personal property.

Item 10 provides that a person may be given the additional personal property tax credit up to the time the taxes are paid in full.

Item 11 clarifies as to whom leased personal property is to be assessed.

Item 12 provides that only property classified as industrial realty can receive the chapter 427B exemption. It also provides that a taxpayer cannot receive the partial industrial exemption on property previously assessed in Iowa and provides that industrial machinery qualifies for partial industrial exemption only if it changes, rather than expands, an existing operational status.

Item 13 clarifies the application procedure for the partial industrial exemption.

Item 14 implements 1982 Iowa Acts chapter 1023 by: (a) Providing that machinery assessed pursuant to that bill cannot receive a chapter 427B exemption, (b) defining when the property is considered to be acquired, and (c) clarifying that computers do not have to be located in an industrial establishment to be assessed pursuant to HF 2171.

Any interested person may make written suggestions or comment on these proposed amendments on or before April 1, 1983. Such written comments should be directed to the Property Tax Administrator, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

Persons who want to orally convey their views should contact the Property Tax Administrator at (515) 281-

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

5731 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 March 25, 1983.

These rules are intended to implement Iowa Code chapters 425, 426A, 427 and 428.

The following amendments are proposed.

ITEM 1. Subrule **80.1(1)** paragraph "a" is amended to read as follows:

a. No homestead tax credit shall be allowed unless the application for homestead tax credit is signed by the owner of the property or his or her qualified designee and filed with the city or county assessor on or before July 1 of the year in which the credit is *first* claimed. *(1946 O.A.G. 37). Once filed, the claim for credit is applicable to the current year and subsequent years and no further filing shall be required providing the homestead is owned and occupied by the claimant or the claimant's spouse on July 1 of each year.* ~~(1946 O.A.G. 37)~~

ITEM 2. Subrule **80.1(1)** paragraph "f" is rescinded.

ITEM 3. Subrule **80.1(2)** paragraph "a" is amended to read as follows:

a. If homestead property is owned jointly by persons who are not related or formerly related by blood, marriage or adoption, no homestead tax credit shall be allowed unless all the owners actually occupy the homestead property ~~at the time the application for credit is filed and intend to do so for at least six months during the year in which the credit is claimed~~ *on July 1 of each year.* (1944 O.A.G. 26; Letter O.A.G. October18, 1941).

ITEM 4. . Subrule **80.1(2)** paragraph "k" is amended to read as follows:

k. A person owning a homestead dwelling located upon land owned by another person or entity is not eligible for a homestead tax credit. (1942 O.A.G. 160, *O.A.G. #82-4-9).* This rule is not applicable to a person owning a homestead dwelling pursuant to chapter 499B, The Code. ~~(1979 O.A.G. #79-12-2).~~

ITEM 5. Subrule **80.1(4)** paragraph "a" is amended by striking the paragraph and inserting in lieu thereof the following new paragraph and amending the implementation clause at the end of the rule.

*a. If the homestead property is conveyed to another person prior to July 1 of any year, the new owner must file a claim for credit by July 1 to obtain the credit for that year. If the property is conveyed on or after July 1, the credit shall remain with the property for that year providing the previous owner was entitled to the credit.*

This rule is intended to implement *Iowa Code* ~~sections 425.1 to 425.15~~ *chapter 425,* ~~The Code~~ *as amended by 1982 Iowa Acts, chapter 1246.*

ITEM 6. Subrule **80.2(1)** paragraph "a" and the implementation clause at the end of the rule are amended to read as follows:

a. No military service tax exemption shall be allowed unless the application for the military service tax exemption is signed by the owner of the property or his or her qualified designee and filed with the city or county assessor on or before July 1 of the year in which the exemption is *first* claimed (1970 O.A.G. 437). *Once filed, the claim for exemption is applicable to the current year and subsequent years and no further filing shall be required providing the claimant or the claimant's spouse owns the property on July 1 of each year.*

This rule is intended to implement *Iowa Code* chapter 426A and sections 427.~~35 to~~ *and* 427.~~76, The Code,~~ *as amended by 1982 Iowa Acts, chapter 1246.*

ITEM 7. Subrule **80.2(3)** paragraph "a" is amended to read as follows:

a. When the owner of homestead property is also eligible for a military service tax exemption and claims the ~~same~~ *exemption* on the homestead property, the military service tax exemption shall be applied prior to the homestead tax credit when computing net property tax. (Ryan v. State Tax Commission, 235 Iowa 222, 16 N.W.2d 215).

ITEM 8. Subrule **80.3(6)** is amended by adding the following sentence at the end of the subrule:

*If the property is conveyed to another person, the exemption shall be continued to the new owner for the remaining portion of the exemption period providing all eligibility requirements have been complied with.*

ITEM 9. Subrule 80.5(2) is amended to read as follows:

**80.5(2)** A claim for a personal property tax credit shall not be allowed unless the application for credit is signed by the owner of the personal property or the owner's authorized representative and filed with the city or county assessor on or before July 1 of the year in which the credit is *first* claimed. *(OP. ST. BD. TAX REV. 97, 101, 102, 107, 108). Once filed, the claim for credit is applicable to the current year and subsequent years and no further filing shall be required.* ~~(OP. ST. BD. TAX REV. 97, 101, 102, 107, 108).~~

ITEM 10. Subrule **80.5(8)** is amended by adding the following new sentence at the end of the subrule:

*A personal property owner entitled to the additional credit may be given such credit up until the time when the taxes applicable to the credit have been paid.*

ITEM 11. Rule 730—80.5(427A) is amended by adding the following new subrule and amending the implementation clause at the end of the rule:

**80.5(10)** Personal property is to be assessed to the owner of such property subject to the following exclusions:

a. If the lessor (owner) of the personal property resides in the county where the property is located, the lessee may voluntarily request that the property be listed and taxed to such lessee.

b. If the lessor (owner) of the personal property does not reside in the county where the property is located, the property must be listed and taxed to the lessee. (O.A.G. #66-4-4).

The personal property tax credit should be allowed to the person to whom the property is assessed, providing all criteria for receiving the credit have been satisfied.

This rule is intended to implement *Iowa Code* chapter 427A~~, The Code~~, as amended by *1982 Iowa Acts chapter 1190 and Iowa Code chapter 428.*

ITEM 12. Subrule **80.6(5)** is amended by adding the following new paragraphs:

d. Only property assessed and classified as industrial real estate pursuant to subrule 71.1(6) is eligible to receive the partial property tax exemption (O.A.G. #81-2-18).

e. A taxpayer cannot receive the partial property tax exemption for machinery or equipment if the machinery or equipment was previously assessed in the state of Iowa. Machinery and equipment previously used in another

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

state may qualify for the partial exemption if all criteria for receiving the partial exemption are satisfied.

f. Machinery and equipment is eligible to receive the partial property tax exemption if it changes the existing operational status other than by merely maintaining or expanding the existing operational status. This rule applies whether the machinery and equipment is placed in a new building, an existing building, or a reconstructed building. If new machinery is used to produce an existing product more efficiently or to produce merely a more advanced version of the existing product, the existing operational status would only be maintained or expanded and the machinery would not be eligible for the exemption. However, if the new machinery produces a product distinctly different from that currently produced, the existing operational status has been changed.

ITEM 13. Subrule **80.6(6)** paragraph "a" is amended to read as follows:

a. An eligible property owner shall file an application for exemption with the assessor ~~by~~ *between January 1 and* February 1, *inclusive*, of the year for which the value added is first assessed for tax purposes. *An application cannot be filed if a valid ordinance has not been enacted in accordance with Iowa Code section 427B.1 (O.A.G. #82-3-5). If an application is not filed by February 1 of the year for which the value added is first assessed, the taxpayer cannot receive in subsequent years the partial exemption for that value added (O.A.G. #82-1-17). However, if a taxpayer has received prior approval in accordance with Iowa Code section 427B.4, and subrule 80.6(2), the application is to be filed by not later than February 1 of the year for which the total value added is first assessed as the approved completed project.* ~~An industrial new construction project having received prior approval in accordance with subrule 80.6(2) shall file an application for exemption with the assessor by February 1, of the year the property is fully assessed for tax purposes as a completed new construction project.~~

ITEM 14. Chapter 80 is amended by adding the following new rule:

**730—80.7(69GA, ch 1023) Assessment of computer and industrial machinery.**

**80.7(1)** Machinery and equipment first acquired or leased after December 31, 1981, and assessed pursuant to 1982 Iowa Acts, chapter 1023, is not eligible to receive the partial property tax exemption. Machinery and equipment shall be considered to have been acquired after December 31, 1981, if it is first assessed for taxation as of January 1, 1983, or a subsequent year.

**80.7(2)** The assessment of property assessed under Iowa Code section 427A.1(1)"j" and acquired or initially leased after December 31, 1981, is limited to thirty percent of the property's net acquisition cost regardless of the classification of the real estate in which the property is located.

**80.7(3)** For machinery and equipment and computers first leased after December 31, 1981, the net acquisition cost shall be the cost at which based upon the terms of the lease and general market conditions the property would have been acquired were it purchased instead of leased.

## ARC 3597

# 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 unemployed parent (chapter 42). This clarifies a current rule and specifies that co-operation with Job Service counseling is considered part of an active search for employment. This rule provides a form to document that requirements have been met.

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 March 25, 1983.

This rule is intended to implement Iowa Code section 239.2.

Subrule 42.4(4) is rescinded and the following inserted in lieu thereof:

**42.4(4)** Active search for employment or training. While the application is pending and after assistance has been approved, the parent shall comply with the following active search requirements.

a. The parent shall actively search for employment or training for employment.

(1) The parent who is out of work due to failure to make an active and earnest search for work as described in IAC 370—4.22(1)"c" which results or would result in disqualification for job insurance benefits shall not be considered unemployed.

(2) The qualifying parent shall document the search using form PA—2142—5, Job Search, upon request. Failure to do so will result in cancellation.

(3) The requirement that the qualifying parent actively search for employment or training for employment shall be suspended for participants in approved training programs.

(4) The requirement that the qualifying parent actively search for employment or training for employment continues throughout the month in which the case is suspended.

b. The parent shall not, without good cause: End, limit, or reduce hours of employment; refuse job search assistance or counseling when a counselor is assigned from job service; refuse a bona fide offer of employment or training for employment. Failure to follow up on a referral which could result in a bona fide offer of employment or training shall be considered the same as a refusal.

## ARC 3582

# SOCIAL SERVICES DEPARTMENT[770]

## AMENDED NOTICE OF INTENDED ACTION

The Notice of Intended Action published in the January 5, 1983 IAB as ARC 3497 under the authority of Iowa Code section 249A.4 proposing amendment to rules relating to aid to dependent children (chapter 46) is amended by adding notice of oral presentations. The proposed rule specifies the percentage of basic needs to be withheld when recouping excess assistance.

Oral presentations may be made by appearing at the following meeting. Written testimony will also be accepted at that time.

Des Moines - March 23, 1983 at 1:30 p.m.
Wallace State Office Building Auditorium
East Ninth and Grand Avenue
Des Moines, IA 50319

## ARC 3598

# SOCIAL SERVICES DEPARTMENT[770]

## NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 234.6 the Department of Social Services proposes amending rules appearing in the IAC relating to general provisions (chapter 130). This rule adds state supplemental assistance to the list of income sources that can be documented annually rather than every six months.

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 March 25, 1983.

This rule is intended to implement Iowa Code section 234.4.

Subrule 130.2(5) is amended as follows:

**130.2(5)** Eligibility shall be redetermined in the same manner as an application at least every six months except that for individuals whose family gross monthly income is derived exclusively from social security benefits, ~~or~~ supplemental security income *or state supplemental assistance*, or a combination thereof, redetermination shall be made at least every twelve months.

## ARC 3599

# 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 Sections 232.142(5) and 217.6, the Department of Social Services proposes amending rules appearing in the IAC relating to children in need of assistance or children found to have committed a delinquent act (chapter 141). This rule limits reimbursement for shelter care from the juvenile justice county base fund to the predispositional care provided after the expiration of the first thirty days of foster care eligibility. Other court-ordered shelter care is paid from foster care funds. This rule also outlines the procedures to be followed by county or multicounty juvenile detention homes to receive reimbursement from the department.

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 March 25, 1983.

These rules are intended to implement Iowa Code sections 232.142 and 232.141.

ITEM 1. Amend the catch words to rule 770—141.5(232) as follows:

770—141.5(232) ~~Reimbursement to counties.~~ *Juvenile justice county base reimbursement.*

Further amend 145.5(3) paragraph "a", subparagraph (8) as follows:

(8) The expense of treatment or care ordered by the court whenever legal custody of a minor is transferred by the court; the minor is placed by the court with someone other than the parents; homemaker-home health aide service is provided under *Iowa Code* section 232.80~~. The Code~~; or a minor is given a physical or mental examination or treatment under order of the court and no provision is otherwise made by the law for payment for the care, examination, or treatment of the minor. Care and treatment expenses for which no other provision for payment is made by law that shall be reimbursable include court ordered:

In-home services, family therapy, and aftercare.

Outpatient counselling.

Diagnosis and evaluation on an outpatient basis.

Physical or mental examinations ordered pursuant to *Iowa Code* sections 232.49 or 232.98 except those set forth in subparagraph 141.5(3)"b"(3) below or those eligible for payment pursuant to *Iowa Code* chapter 249A~~. The Code~~.

Services ordered under family in need of assistance proceedings.

~~Court ordered, predispositional shelter~~ *Shelter* care *in excess of thirty days of care provided to a child prior to disposition* at rates set out in the department's subrule 137.11(3).

ITEM 2. 770—Chapter 141 is amended by adding a new rule:

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

**770—141.6(232) Reimbursement of approved county and multicounty juvenile detention and shelter care homes.**

**141.6(1)** Definitions.

a. "Allowable costs" means those expenses of the county or multicounties related to the establishment, improvements, operation, and maintenance of county or multicounty juvenile detention homes.

b. "County or multicounty" means that the governing body is a county board of supervisors or a combination of representatives from county boards of supervisors.

**141.6(2)** Availability of funds. Any year that the Iowa legislature makes funds available for this program, the department shall accept requests for reimbursement from eligible facilities.

**141.6(3)** Eligible facilities. The following county and multicounty juvenile homes approved by the department under standards of Iowa Code chapter 232 and 770—Chapter 105 Iowa Administrative Code shall be eligible to submit a request for reimbursement under this program when the home submits its allowable costs within the time frames of 141.6(5):

a. Juvenile detention homes.

b. Juvenile shelter care homes which do not receive reimbursement from the department under 770—137.11(3).

**141.6(4)** Reimbursement. The reimbursement for the participating facilities shall be determined by the following formula:

$$\frac{\text{Legislative Appropriation}}{\text{Total allowable costs of participating facilities}} \times \text{Each participating facility's allowable costs.} = \text{Reimbursement}$$

The amount of reimbursement to any facility shall not exceed fifty percent of the allowable costs of the fiscal year.

**141.6(5)** Submission of allowable costs. County and multicounty juvenile detention homes shall submit their allowable costs for the previous fiscal year to the Department of Social Services, Division of Administration, First Floor, Hoover State Office Building, Des Moines, Iowa 50319 by October 1 of the next fiscal year. Only facilities which submit allowable costs by October 1 shall be considered as an eligible facility for determining the reimbursement rate or receiving reimbursement.

**141.6(6)** Notification of reimbursement rate. The department shall notify all eligible facilities of the reimbursement rate for the previous fiscal year by October 15 of the current fiscal year.

**141.6(7)** Submission of voucher. Eligible agencies shall submit a state Voucher 1 to the department at the address in 141.6(5) by November 15 of the current fiscal year in order to receive reimbursement for the previous fiscal year.

**141.6(8)** Reimbursement. Reimbursement will be made by December 15 to those participating facilities which have complied with these rules.

## NOTICE - USURY

In accordance with the provisions of 1979 Iowa Acts, Chapter 130, the Superintendent of Banking has determined that the maximum lawful rate of interest provided for in Iowa Code section 535.2, as amended, shall be:

| | |
|---|---|
| May 1, 1981 - May 31, 1981 | 15.00% |
| June 1, 1981 - June 30, 1981 | 15.75% |
| July 1, 1981 - July 31, 1981 | 16.00% |
| August 1, 1981 - August 31, 1981 | 15.50% |
| September 1, 1981 - September 30, 1981 | 16.25% |
| October 1, 1981 - October 31, 1981 | 17.00% |
| November 1, 1981 - November 30, 1981 | 17.25% |
| December 1, 1981 - December 31, 1981 | 17.25% |
| January 1, 1982 - January 31, 1982 | 15.50% |
| February 1, 1982 - February 28, 1982 | 15.75% |
| March 1, 1982 - March 31, 1982 | 16.50% |
| April 1, 1982 - April 30, 1982 | 16.50% |
| May 1, 1982 - May 31, 1982 | 15.75% |
| June 1, 1982 - June 30, 1982 | 15.75% |
| July 1, 1982 - July 31, 1982 | 15.50% |
| August 1, 1982 - August 31, 1982 | 16.25% |
| September 1, 1982 - September 30, 1982 | 16.00% |
| October 1, 1982 - October 31, 1982 | 15.00% |
| November 1, 1982 - November 30, 1982 | 14.25% |
| December 1, 1982 - December 31, 1982 | 13.00% |
| January 1, 1983 - January 31, 1983 | 12.50% |
| February 1, 1983 - February 28, 1983 | 12.50% |
| March 1, 1983 - March 31, 1983 | 12.50% |

## ARC 3591

## AGRICULTURE DEPARTMENT[30]

Pursuant to the authority of Iowa Code sections 189.2(2), 214.10 and 215.24, the Iowa Department of Agriculture hereby rescinds subrule 55.48(3)"c" appearing in Chapter 55, "Weights and Measures". This subrule regulated the posting and the method of metering the price of gasoline when a discount is offered for cash.

Subsequent to the adoption of rule 30—55.48(214A,215), the Iowa Independent Oil Jobbers Association requested that subrule 55.48(3) be rescinded in its entirety and a new subrule adopted. Rulemaking proceedings were initiated in response to their petition for rulemaking. Notice of Intended Action to amend subrule 55.48(3) appeared in the IAB November 24, 1982 as ARC 3373. At the public hearing held on December 16, 1982, the authority of the department to promulgate and enforce subrule 55.48(3)"c" or the proposed amendment, was explored by interested persons, including a representative of the Department of Justice. The considerations addressed in the subrule 55.48(3)"c" relate to consumer credit code requirements. Nothing in chapters 214A or 215 provides the department with authority to regulate the method of metering the price of gasoline when a discount is offered for cash.

In compliance with Iowa Code section 17A.4(2), the department finds that public notice and participation is unnecessary for the good reason that this proposed action, along with the substantive rule and the question of implementing authority, were the subjects considered at the public hearing of December 16, 1982. Opportunity for oral and written comment has been afforded all interested persons.

The department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of this rule thirty-five days after publication should be waived and the rule be made effective upon filing with the Administrative Rules Coordinator on Friday, February 15, 1983, as it removes a restriction on the public and the retailers of liquid petroleum products; and confers a benefit on the public by eliminating a rule from Chapter 55, "Weights and Measures" that should be promulgated and administered pursuant to Iowa Code chapter 537.

The Department of Agriculture adopted this subrule 55.48(3) on May 7, 1982, and was effective June 30, 1982.

This rule implements Iowa Code section 537.6117.

ITEM 1. Rescind subrule **55.48(3)**, paragraph "c", in its entirety.

ITEM 2. Reletter subrule **55.48(3)**, paragraphs "d" and "e", to read 55.48(3), paragraphs "c" and "d" respectively.

[Filed emergency 2/15/83, effective 2/15/83]
[Published 3/2/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/2/83.

## ARC 3595

## MERIT EMPLOYMENT DEPARTMENT[570]

Pursuant to the authority of Iowa Code section 19A.9, the Iowa Merit Employment Department emergency adopts and implements an amendment to Chapter 4, "Pay Plan", Iowa Administrative Code.

This amendment provides for the administration of pay for internship appointments made to the administrative intern class. Persons appointed as interns may be paid at or below the established entrance rate for the class. The employing agency has authority to pay a salary based on the kind and level of work that will be assigned.

In compliance with Iowa Code section 17A.4(2), the agency finds that notice and public participation would be unnecessary as there are no changes in the subrule. It was inadvertently omitted in a previous filing of adopted rules (ARC 3458).

The department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of this subrule thirty-five days after publication should be waived and the rule be made effective upon filing with the Administrative Rules Coordinator on February 11, 1983 to provide continuous administration of this pay subrule since its original adoption on February 10, 1982.

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

Subrule **4.5(1)** is amended by adding the following paragraph:

g. Pay for internship appointments. When an internship appointment is made to the administrative intern class, code 00705, the employee may be paid at any established rate of pay (step) in the pay plan to which that class is assigned that does not exceed the first step or entrance rate of pay established for the class.

[Filed emergency 2/11/83, effective 2/11/83]
[Published 3/2/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/2/83.

## ARC 3585

## NURSING, BOARD OF[590]

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Iowa Board of Nursing hereby emergency adopts 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.

Notice of Intended Action was published in IAB 14, January 5, 1983 as ARC 3471.

The Iowa Board of Nursing finds, pursuant to Iowa Code 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 upon filing with the Administrative Rules Coordinator on February 10, 1983, as the examination procedures have already been changed by the national organization

offering the test; the increased fees are needed immediately to help offset the deficit of FY'83. Each month that passes we lose about $9,500 additional revenue because of the old fees. We could start the fee collection before February 15, 1983, the date that the April licensees must be sent materials for renewal of licensure. If we wait until April 6, 1983, when these rules would be adopted by normal procedure, we will lose $9,500 a month for license renewals of April and May. If the delay were any longer, we will lose $23,000 in fees collected on those taking the registered nurse examination in July, because applications must be out in early April.

The Iowa Board of Nursing adopted these rules on a telephone conference call held February 9, 1983.

These rules are identical to those published as Notice of Intended Action, except for these indicated grammatical changes:

Item 8. Subrule 3.3(1) paragraph "a"

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 sixty days prior to the expiration of ~~said~~ *the* license.

Item 9. Subrule 3.3(1) paragraph "a" subparagraph (2)

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

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

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 by money order or certified check seven weeks prior to the examination. A nursing student who does not meet the NCLEX deadline should 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 the state certified copy of the original birth certificate 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 93955-0280 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 registered 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 the applicant graduated for verification of license examination eligibility. The application will not be accepted unless filed at least fifteen days prior to the licensing examination as required by Iowa Code section 147.29.

(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

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

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 the state certified copy of the original birth certificate 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 by 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 *the state certified copy of the original* birth certificate 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~~ *the* 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~~ *may* 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.

[Filed emergency after notice 2/10/83, effective 2/10/83]
[Published 3/2/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/2/83.

# ARC 3586

## NURSING, BOARD OF[590]

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Iowa Board of Nursing hereby emergency adopts 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.

Notice of Intended Action was published in IAB 14, January 5, 1983 as ARC 3472.

The Iowa Board of Nursing finds, pursuant to Iowa Code 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 upon filing with the Administrative Rules Coordinator on February 10, 1983, as the examination procedures have already been changed by the national organization offering the test; the increased fees are needed immediately to help offset the deficit of FY '83. Each month that passes we lose about $3,500 additional revenue because of the old fees. We could start the fee collection before February 15, 1983, the date that the April licensees must be sent materials for renewal of licensure. If we wait until April 6, 1983, when these rules would be adopted by normal procedure, we will lose $3,500 a month for license renewals of April and May.

The Iowa Board of Nursing adopted these rules on a telephone conference call held February 9, 1983.

These rules are identical to those published as Notice of Intended Action, except for these indicated grammatical changes:

Item 9. 4.3(1) paragraph "a"

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 sixty days prior to the expiration of ~~said~~ *the* license.

Item 10. 4.3(1) paragraph "a" subparagraph (2)

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

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

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 by money order or certified check seven weeks prior to the examination. A nursing student who does not meet the NCLEX deadline should 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 the state certified copy of the original birth certificate 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 the applicant graduated for verification of license examination eligibility. The application will not be accepted unless filed at least fifteen days prior to the licensing examination as required by Iowa Code section 147.29.

(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 the state certified copy of the original birth certificate 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 by 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 $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 *the state certified copy of the original* birth certificate 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~~ *the* 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, ~~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~~ *may* 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.

[Filed emergency after notice 2/10/83, effective 2/10/83]
[Published 3/2/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/2/83.

## ARC 3587

## 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 1983 Iowa Acts, Senate File 184. The rule provides that retailers who make semimonthly or monthly deposits based on the amount of taxes collected in a preceding quarter or during the same quarter of the previous year must adjust the estimates to reflect the four percent rate imposed by Senate File 184.

In compliance with Iowa Code section 17A.4(2), the department finds that public notice and participation is impractical. The rule merely provides that deposits based on estimates must reflect the change in the tax rate. Iowa Code section 422.52(1) currently requires certain retailers to make semimonthly or monthly deposits based on the actual amount collected, which would reflect the change in tax rate, or based on prior quarter collections. The use of historical data to make an estimate of the tax due would not reflect the rate change to four percent. This rule requires that semimonthly and monthly depositors who do not remit actual tax collected must consider the change in tax rates when making deposits on the basis of previous sales activity.

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 March 1, 1983, after filing with the Administrative Rules Coordinator as it confers a benefit upon the public to provide the method of reporting and remitting deposits under the four percent tax rate.

This rule is intended to implement Iowa Code section 422.52.

The following amendments are adopted.

ITEM 1. Amend rule **730—12.1 (422)** by inserting after unnumbered paragraph four, the following new paragraph:

Retailers required to make semimonthly or monthly deposits under any of the above methods of estimating tax based upon a period when the tax rate was three percent shall adjust deposits for periods beginning on or after March 1, 1983, to reflect the increase in the tax rate to four percent as provided in 1983 Iowa Acts, Senate File 184.

ITEM 2. The implementation clause at the end of rule **12.1(422)** is amended as follows:

This rule is intended to implement Iowa Code sections 421.14, 422.51, and 422.52 as amended by 1982 Iowa Acts, chapter 1022, section 3:, *and 1983 Iowa Acts, Senate File 184.*

[Filed emergency 2/10/83, effective 3/1/83]
[Published 3/2/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/2/83.

## ARC 3580

## 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 rules to amend Chapter 14, "Computation of Tax", Chapter 15, "Determination of a Sale and Sale Price", Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage", Chapter 19, "Sales and Use Tax on Construction Activities", and Chapter 26, "Sales and Use Tax on Services", Iowa Administrative Code.

The rule amendments are made to implement 1983 Iowa Acts, Senate File 184.

The rule amendments in Chapters 14, 15, 18 and 26 provide for the sales, services and use tax rate increase from three percent to four percent, provide a bracket system for computing the sales, services and use tax at four percent, and correct examples using a sales tax rate of three percent. The rule amendments also list special transition rules to determine whether sales, use, and service tax is payable at the three percent or four percent rate. The rule amendment in Chapter 19, allows construction contractors to apply to the department for a refund of the additional one percent sales or use tax paid on goods, wares or merchandise incorporated into real estate in the fulfillment of a written contract fully executed prior to

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

March 1, 1983, and provides the method and information needed to secure a refund.

In compliance with Iowa Code section 17A.4(2), the department finds that public notice and participation is impractical.

The 1983 Iowa Acts, Senate File 184, increases the sales, services and use tax from three percent to four percent, and makes special provisions for construction contracts. The provisions become effective March 1, 1983 and the present rules state the tax rate is three percent.

The department also 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 March 1, 1983, after filing with the Administrative Rules Coordinator as it confers a benefit upon the public to ensure speedy and uniform compliance with the department's legislative mandate.

These rules also are published as a Notice of Intended Action, ARC 3581, to solicit public comment.

These rules are intended to implement Iowa Code sections 421.14, 422.43, 422.47 and 423.2 as amended by 1983 Iowa Acts, Senate File 184.

The following rules are adopted.

ITEM 1. Amend rule 730—14.1(422) to read as follows:

**730—14.1(422) Tax not to be included in price.** When a retailer price-marks an article for retail sale and displays or advertises the same to the public with such price-mark, the price so marked or advertised shall include only the sale price of such article unless it is stated on the price-mark that the price includes tax.

*For taxable transactions prior to March 1, 1983*

EXAMPLE: The advertised or marked price is $1.00. When sale is made, the purchaser pays or agrees to pay $1.03, which represents the purchase price plus tax, which when added becomes a part of the sale price or charge.

This rule does not prohibit advertising or displaying the sale price plus tax or the price including tax, as shown in the following examples:

"This dress-$10.00 plus tax", or "This dress-$10.00 plus 30 cents tax", or "This dress-$10.30 including tax".

When a retailer conspicuously advertises in such manner and position so that it may be readily seen and read by the public, that the price "includes tax", the retailer will be allowed to determine gross receipts by dividing the total of such receipts which included tax by one hundred three percent.

*For periods after February 28, 1983*

*EXAMPLE: The advertised or marked price is $1.00. When sale is made, the purchaser pays or agrees to pay $1.04 which represents the purchase price plus tax, which when added becomes a part of the sale price or charge.*

*This rule does not prohibit advertising or displaying the sale price plus tax or the price including tax, as shown in the following examples:*

*"This dress-$10.00 plus tax", or "This dress-$10.00 plus 40 cents tax", or "This dress-$10.40 including tax".*

*When a retailer conspicuously advertises in such manner and position so that it may be readily seen and read by the public, that the price "includes tax", the retailer will be allowed to determine gross receipts by dividing the total of such receipts which included tax by one hundred four percent.*

However, where an invoice is sent to the purchaser as a part of the sale, such invoice must either show the tax separate from the purchase price or it must be stated on each invoice that tax is included in the purchase price. If the invoices state "tax included" the seller may determine gross receipts by the one hundred three percent *or one hundred four percent* method described above. It shall be the responsibility of the retailer who uses or has used the one hundred three percent *or one hundred four percent* method for reporting to provide proof that it has complied with the method of advertising or displaying the sale price, as described above.

*This rule is intended to implement Iowa Code chapters 422 and 423, as amended by 1983 Iowa Acts, Senate File 184.*

ITEM 2. Amend rule **14.2(422,423)** the second and third unnumbered paragraphs to read as follows:

Pursuant to the foregoing provisions, the department has adopted the following bracket system for the application of tax

~~SALES TAX SCHEDULE~~

~~$0.00 - $0.14 = $0.00~~
~~0.15 - 0.44 = 0.01~~
~~0.45 - 0.74 = 0.02~~
~~0.75 - 1.14 = 0.03~~
~~1.15 - 1.44 = 0.04~~
~~1.45 - 1.74 = 0.05~~
~~1.75 - 2.14 = 0.06~~
~~2.15 - 2.44 = 0.07~~
~~2.45 - 2.74 = 0.08~~
~~2.75 - 3.14 = 0.09~~
~~3.15 - 3.44 = 0.10~~
~~3.45 - 3.74 = 0.11~~
~~3.75 - 4.14 = 0.12~~
~~4.15 - 4.44 = 0.13~~
~~4.45 - 4.74 = 0.14~~
~~4.75 - 5.14 = 0.15~~
~~5.15 - 5.44 = 0.16~~
~~5.45 - 5.74 = 0.17~~

*TAX SCHEDULE*

*$0.00 - $0.12 = $0.00*
*0.13 - 0.37 = 0.01*
*0.38 - 0.62 = 0.02*
*0.63 - 0.87 = 0.03*
*0.88 - 1.12 = 0.04*
*1.13 - 1.37 = 0.05*
*1.38 - 1.62 = 0.06*
*1.63 - 1.87 = 0.07*
*1.88 - 2.12 = 0.08*
*2.13 - 2.37 = 0.09*
*2.38 - 2.62 = 0.10*
*2.63 - 2.87 = 0.11*
*2.88 - 3.12 = 0.12*
*3.13 - 3.37 = 0.13*
*3.38 - 3.62 = 0.14*
*3.63 - 3.87 = 0.15*
*3.88 - 4.12 = 0.16*
*4.13 - 4.37 = 0.17*
*4.38 - 4.62 = 0.18*
*4.63 - 4.87 = 0.19*
*4.88 - 5.12 = 0.20*
*5.13 - 5.37 = 0.21*
*5.38 - 5.62 = 0.22*
*5.63 - 5.87 = 0.23*

For sales larger than $5.~~74~~ *87* tax shall be computed at straight ~~three~~ *four* percent; one-half cent or more shall be treated as one cent.

When practicable, the department shall cooperate with retailers in applying the tax schedule; but in no event shall the same be administered in any manner that will result in the collection of substantially more than ~~three~~ *four* percent of the amount on which tax shall be computed.

*This rule is intended to implement Iowa Code chapters 422 and 423 (1981) as amended by 1983 Acts, Senate File 184.*

ITEM 3. Amend 730—chapter 14 of the rules by adding the following new rule at 14.3 now marked "Rescinded."

**730—14.3(422,423) Taxation of transactions due to rate change.** The following transition provisions shall apply in determining whether or not the transaction is subject to the three percent or four percent sales, services, or use tax rate.

1. The four percent sales tax rate applies to sales of tangible personal property where the sales contract is entered into on or after March 1, 1983. Jones v. Gordy, 169 Md. 173, 180 Atl. 272 (1935).

EXAMPLE: A enters into a sales contract with B to purchase a tractor from B. This contract (offer and acceptance) is made on February 28, 1983. The tractor is delivered to A on March 3, 1983 and A pays B on March 10, 1983. Since the contract was entered into prior to March 1, 1983, the sales tax in this example is on the three percent rate.

EXAMPLE: A desires to purchase a computer from B. On February 28, 1983, A orders the computer from B and the parties agree that the contract of sale is made when B makes delivery of the computer to A. B delivers the computer on March 10, 1983. In this example, the sales tax is at the rate of four percent because the sales contract was not made until March 10, 1983, when B made delivery. Prior to that time, there was no binding sales contract.

EXAMPLE: On December 23, 1982, A enters into an installment sale contract with B to purchase a television set. The contract allows A to make monthly payments for 36 months. Since sales tax is due at the time of a conditional sale agreement, under these circumstances the tax is payable at the three percent rate of the sales price. The installment payments made on and after March 1, 1983, do not accrue any further tax. In this example, if A had made a credit card purchase prior to March 1, 1983, tax would accrue at the rate of three percent at the time of sale.

2. The four percent use tax rate applies to the use of tangible personal property in this state where the first taxable use occurs on or after March 1, 1983.

EXAMPLE: On January 24, 1983, A and B enter into a sales contract outside of Iowa for the purchase by A from B of a machine. The machine is not delivered to A until March 16, 1983. The delivery to A constitutes a use by A in Iowa for the first time of the machine. Under these circumstances, the machine is subject to the four percent rate since the tax rate in effect at the time of use (March 16, 1983) governs where property is purchased outside of Iowa. See City of Ames v. State Tax Commission, 246 Iowa 1016, 71 N.W.2d 15 (1955).

3. The four percent services tax rate applies to the rendering, furnishing, or performing of services where the service contract is entered into on or after March 1, 1983.

EXAMPLE: On February 1, 1983, A enters into a service contract with B to provide test laboratory services. The services are performed by B on March 4, 1983 and the results of such services are forwarded to A on March 8, 1983. Under these circumstances, the test laboratory services are subject to services tax at the three percent rate because the service contract was made on February 1, 1983, which is prior to March 1, 1983.

EXAMPLE: On February 1, 1983, B offers to perform test laboratory services for A. A and B agree that the offer is not accepted until B actually performs the test laboratory services. The services are performed on March 4, 1983 and the results forwarded to A on March 8, 1983. Under these circumstances, the test laboratory services are subject to tax at the four percent rate because the contract was not made until the services were performed on March 4, 1983.

EXAMPLE: On February 26, 1983, A contacts B, a plumber, to perform some plumbing services in A's home. B replies that the services cannot be performed until March 2, 1983. On March 2, 1983, the plumbing services are performed by B who then presents a bill to A. Under these circumstances, the service contract was not made until B performed the plumbing services on March 2, 1983. Therefore, service tax is payable at the four percent rate.

EXAMPLE: On February 7, 1983, A enters into a service contract with B to repair A's automobile. The contract provides that A may make installment payments for 12 months. B completes repairs on the automobile on March 7, 1983. Since sales tax is due at the time of the installment service agreement, under these circumstances the tax is three percent of the contract price. Installment payments made on and after March 1, 1983, do not accrue any further tax. This situation is different from a service contract entered into prior to March 1, 1983 which requires periodic payments for continuous services, as set forth under transition provision No. 6.

EXAMPLE: A, a civic center, contracts with B, an orchestra, to perform on March 10, 1983. The contract is made on January 26, 1983. A sells tickets of admission for B's March 10, 1983 concert. The tickets are sold in the month of February and from March 1 to and including March 9, 1983. Under these circumstances, all ticket sales in February 1983 are subject to tax at the three percent rate and all ticket sales in March 1983 are subject to tax at the four percent rate. In this example, the contract between A and B is not a taxable service contract. The taxable service contracts are the sales of admission tickets between A and the purchasers of the tickets. The date when the taxable service contracts are made controls whether the tax rate is three percent or four percent.

4. If a service contract is made in this state, the four percent use tax rate applies when the service contract is entered into on or after March 1, 1983.

See examples under transition provision No. 3 for application of services use tax where service contract is made in this state.

5. If the product or result of a taxable service contract which is consummated outside of this state is first used in this state on or after March 1, 1983, the four percent use tax rate applies.

EXAMPLE: On February 14, 1983, A and B enter into a machine repair contract outside of Iowa for repair of A's machine outside of this state. On February 28, 1983, the machine is delivered to B who makes the repair and

returns the machine to A in Iowa on March 1, 1983. Under these circumstances, the product or result of the taxable machine repair service is first used by A on March 1, 1983. Therefore, the four percent tax rate applies.

6. If a service contract is entered into prior to March 1, 1983 and the contract requires periodic payments, payments made or due on or after March 1, 1983 under the contract are subject to the four percent sales, services, or use tax rate. Broadacre Dairies v. Evans, 193 Tenn. 441 246 S.W.2d 78 (1952)

EXAMPLE: A and B enter into an agreement for lease of equipment on April 1, 1981. The lease is for a term of five years and requires monthly payments. A is the lessee and B is the lessor. For all rental payments made on or after March 1, 1983, the tax rate is four percent.

EXAMPLE: On May 1, 1980, A joined a private club and pays membership fees for the privilege of participating in athletic sports provided club members. A is required to make periodic payments every three months, such payments to be made in January, April, July, and October of each year. Under these circumstances, A's April 1, 1983 payment and periodic payments made thereafter are subject to tax at the four percent rate.

7. Gross receipts from the sales, furnishing, or service of gas, electricity, water, heat, and communication service are subject to the sales, services, and use tax at the four percent rate when the date of billing the customer falls on or after March 1, 1983.

EXAMPLE: A is the customer of the B water utility. A receives a bill from the B water company on March 1, 1983, but the billing date on the bill states that it is February 28, 1983, for the months of January 1983, December 1982, and November 1982. Under these circumstances, the billing date is February 28, 1983, and the sales tax should be billed at the rate of three percent.

EXAMPLE: A is the customer of the B electric utility company. A receives a bill from the B company on March 2, 1983. There is no billing date set forth on the bill. The bill was mailed by the B company to A on February 28, 1983. Under these circumstances, the billing date is February 28, 1983, and the sales tax should be billed at the rate of three percent. Had B listed a billing date in its books and records as a receivable different than the mailing date, i.e., February 26, 1983, this latter date (February 26, 1983) would be considered the billing date.

EXAMPLE: A is the customer of the B rural electric cooperative (REA). A is responsible for reading its meter and remitting the proper amount for electricity and sales tax to B. B, in its tariff filed with the Iowa commerce commission has set forth the first date of each month as the last day for its customers to read their meters. B does not send a bill to A. Under these circumstances of customer self-billing where no bill is sent by B to A, the first date of each month is the billing date and where that date falls on March 1, 1983, and the first date of each month thereafter, the sales tax should be paid at the rate of four percent.

If the date set forth in the tariff had been the last day of the month, then a self-billing attributable to February 28, 1983, would require payment of sales tax at the three percent rate.

EXAMPLE: A is the customer of B telephone company. A receives a bill from B company on March 3, 1983, covering intrastate long distance telephone calls in February 1983, and local service in March 1983. The billing date on the face of the bill is February 28, 1983. Under these circumstances, all telephone services, local and intrastate long distance, should be billed sales tax at the rate of three percent.

If, in this example, the billing date on the bill had been March 1, 1983, the sales tax should be billed at the rate of four percent for all telephone services, local and intrastate long distance.

8. The four percent use tax rate applies to motor vehicles subject to registration when the purchaser of the vehicle does not exercise an Iowa use of the vehicle prior to March 1, 1983.

EXAMPLE: A purchases a motor vehicle from B and takes possession of the vehicle in Iowa on February 28, 1983. On March 1, 1983, A attends the office of the county treasurer, applies for registration of the vehicle, and tenders the amount of Iowa use tax. Under these circumstances, because A "used" the vehicle prior to March 1, 1983, the use tax rate is three percent.

EXAMPLE: A and B motor vehicle dealer enter into a binding contract for A to purchase from B a motor vehicle on February 26, 1983. The vehicle cannot be delivered to A until March 3, 1983, and A applies to the county treasurer for registration of the vehicle on March 4, 1983. Under these circumstances, A first used the vehicle in Iowa on March 3, 1983 (the date when the vehicle was delivered to A) and Iowa use tax is imposed at the four percent rate.

This rule is intended to implement *Iowa Code* chapters 422 and 423 ~~of the Code~~ *as amended by 1983 Iowa Acts, Senate File 184.*

ITEM 4. Amend subrule 15.19(3) to read as follows:

**15.19(3)** All the provisions of subrule 15.19(2) apply to the trade-in of vehicles subject to registration when the trade involves retailers of vehicles.

When vehicles subject to registration are traded between persons neither of which is a retailer of vehicles subject to registration, the conditions set forth in 15.19(2) "a" and "b" need not be met. The purchase price is only that portion of the purchase price represented by the difference between the total purchase price of the vehicle subject to registration acquired and the amount of the vehicle subject to registration traded.

Example: John Doe has an automobile with a value of $2,000.00. John and his neighbor Bill Jones who has an automobile valued at $3,500.00 decide to trade automobiles. John pays Bill $1,500 cash. Vehicles subject to registration are subject to use tax which is payable to the County Treasurer at the time of registration. In this example John would owe use tax on $1,500.00~~, or $45.00 use tax,~~ since this is the amount John paid Bill and tax is only due on the cash difference. Bill would not owe any use tax on the vehicle acquired through the trade.

Example: Joe has a Ford automobile with a value of $5,000.00. Joe and his friend Jim who has a Chevrolet automobile also valued at $5,000.00 decide to trade automobiles. Joe and Jim make an even trade, automobile for automobile with no money changing hands. In this example there is no tax due on either automobile because there is no exchange of money.

ITEM 5. Amend rule 730—16.1(422) to read as follows:

**730—16.1(422) Tax imposed.** The Iowa Retail Sales Tax is imposed *for periods prior to March 1, 1983* at the rate of three percent *and for periods after February 28, 1983 at the rate of four percent* of the gross receipts from the sale at retail of tangible personal property and certain

enumerated services. *However, see rule 14.3(422, 423) for transition provisions to determine whether the three percent or four percent rate applies.*

The remaining rules under this chapter deal with certain specific attributes of the Iowa Retail Sales Tax, but such rules are by no means exclusive in explaining what are taxable sales and are not exclusive in explaining which transactions constitute taxable sales. There are other transactions which constitute taxable sales under the law and which are not specifically dealt with in these rules.

This rule is intended to implement *Iowa Code* sections ~~422.42 and~~ 422.43, ~~the Code~~ *as amended by 1983 Iowa Acts, Senate File 184.*

ITEM 6. Amend subrule **18.31(2)** the last four unnumbered paragraphs to read as follows:

Therefore, as long as body shops separately itemize on their invoices to their customers the amounts for labor, parts, and for "materials", body shops should collect sales tax on the labor and the parts, but not on the "materials" as enumerated in this rule.

EXAMPLE: A body shop repairs a motor vehicle by replacing a fender and painting the vehicle. In doing the repair work, the body shop uses rags, sealer and primer, paint, solder, thinner, bolts, nuts and washers, masking tape, sandpaper, waxes, buffing pads, chamois, solder and polishes. In its invoice to the customer, the labor is separately listed at $300, the part (fender) is separately listed at $300, and the category of "materials" is separately listed for a lump sum of $100, for a total billing of $700. The Iowa sales tax ~~which~~ *computed by* the body shop should *be on $600* ~~charge its customer is $18 (3% x $600)~~ which is the ~~tax~~ *amount* attributable to the labor and the parts. The materials consumed by the body shop were separately listed and would not be included in the tax base for "gross taxable services" as defined in Iowa Code section 422.42(16)~~, the Code~~ which is taxable in *Iowa Code* section 422.43~~, The Code~~.

In this example, if the "materials" were not separately listed on the invoice, but had been included in either or both of the labor or part charges by marking up such charges, the body shop would have to collect sales tax on the full charges for parts or labor even though tax was paid on materials by the body shops to its supplier at time of purchase. ~~Thus, if the labor charge was listed at $400 instead of $300, sales tax of $12 (3% x $400) would have to be collected by the body shop on such labor charge. The tax on parts would equal $9 (3% of $300) for a total tax of $21.00 ($9 + $12) which would be charged to the customer.~~

This rule is intended to implement *Iowa Code* sections 422.42(3), 422.43 and 423.2~~, The Code~~ *as amended by 1983 Iowa Acts, Senate File 184.*

ITEM 7. Amend rule **730—19.2(422,423)** by adding the following at the end of the existing rule.

Effective March 1, 1983 the sales and use tax rate increased from three percent to four percent.

Construction contractors may make application to the department for a refund of the additional one percent sales or use tax paid on goods, wares or merchandise incorporated into an improvement to real estate in the fulfillment of a written contract fully executed prior to March 1, 1983.

The claim for refund is to be filed on forms provided by the department within one year of the date the tax was paid, and shall contain the following information.

Documentation that a written contract existed prior to March 1, 1983.

Copies of invoices or other information required by the department showing that the four percent sales or use tax has been paid to a retailer or directly to the department.

Any other information required by the department to support the claim for refund.

The refund shall not apply to equipment transferred in fulfillment of a mixed construction contract. (See rules 19.9(422, 423) and 19.10(422, 423).)

EXAMPLE: A and B enter into a written contract on December 10, 1982, whereby B is to build a manufacturing plant for A and also to furnish the plant equipment for a lump sum fee. B, as the contractor, is the consumer of the building materials incorporated into the manufacturing plant. B is the retailer of the equipment which is sold to A. Under these circumstances, B should pay tax at the rate of four percent on purchase of building materials purchased on and after March 1, 1983. B would then be eligible to claim a refund on the additional one percent tax attributed to such building material purchases because the written contract was executed prior to March 1, 1983. The sale of the equipment from B to A is subject to three percent sales tax if the December 10, 1982, contract was executed in Iowa and constitutes the sale of the equipment. See transition provision No. 1 under rule 14.3(422, 423).

If the sale of the equipment from B to A occurred outside of Iowa, and the equipment is delivered to the plant, installed, and is first used by A on or after March 1, 1983, the Iowa use tax applies at the rate of four percent. See transition provision No. 2 under rule 14.3(422, 423). If such equipment, purchased outside of Iowa, is so delivered, installed, and first used by A prior to March 1, 1983, Iowa use tax is imposed at the rate of three percent.

EXAMPLE: A and B enter into a written construction contract on January 12, 1983. A is the sponsor and B is the general contractor. On March 4, 1983, B enters into a written subcontract with C, a subcontractor, to install a cement foundation. Under these circumstances B, because B's contract was executed prior to March 1, 1983, is eligible to claim a refund of the additional one percent tax attributable to building materials purchased by B on or after March 1, 1983. C is not eligible to claim such refund upon such purchases because C's construction subcontract was executed after March 1, 1983.

ITEM 8. Amend rule 730—26.1(422) to read as follows:

**730—26.1(422) Definition.** The phrase "persons engaged in the business of" as used herein shall mean persons who offer the named service to the public or to others for a consideration whether such person offers the service continuously, part-time, seasonally or for short periods. The Iowa sales tax law imposes *for periods prior to March 1, 1983* a tax of three percent, *and for periods after February 28, 1983 at the rate of four percent* upon the gross receipts from the rendering, furnishing or performing at retail of certain enumerated services, hereinafter described in more detail in this chapter.

[Filed emergency 2/9/83, effective 3/1/83]

[Published 3/2/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/2/83.

## ARC 3592

# AGRICULTURE DEPARTMENT[30]

Pursuant to Iowa Code sections 159.5(11), 189.2(2) and 189A.13, the Iowa Department of Agriculture hereby adopts amendments to Chapter 43, "Meat and Poultry", Iowa Administrative Code.

The rules governing meat and poultry processing and inspections were last amended in 1976. These adopted 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.

Notice of Intended Action was published in the IAB January 5, 1983, as ARC 3469. A public hearing was held on January 26, 1983, on the proposed rules. No comments were received. Therefore, these rules are identical to those published under notice, other than grammatical change made to rule 43.10(189A, 167).

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

These rules will become effective on April 6, 1983.

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 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:

1. IOWA INSP'D AND CONDEMNED

2. 


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

AGRICULTURE DEPARTMENT[30] *(cont'd)*

**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 slaughter houses, 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 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, 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.

AGRICULTURE DEPARTMENT[30] *(cont'd)*

**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).

[Filed 2/15/83, effective 4/6/83]
[Published 3/2/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/2/83.

# ARC 3573

## ARCHITECTURAL EXAMINERS, BOARD OF[80]

Pursuant to the authority of Iowa Code sections 118.5 and 258A.4, the Board of Architectural Examiners, at a meeting January 28, 1983, adopted changes to Chapters 1, 2, 4 and 5, Iowa Administrative Code.

Notice of Intended Action was published in IAB 13 dated December 22, 1982 as ARC 3436.

Chapter 1 changes the address of the board. Chapter 2 is updated to incorporate Circular of Information #1, published in 1982 by the National Council of Architectural Registration Boards which spells out procedures for the Architectural Registration Examination and its requirements for eligibility. Chapters 4 and 5 are changes of a housekeeping nature.

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

These rules will become effective April 6, 1983.

ITEM 1. Amend chapter 1 as follows:

**1.1(1)** President. The president shall~~, when present,~~ preside at all meetings, shall appoint all committees, shall sign all certificates, and shall otherwise perform all duties pertaining to the office of the president.

**80—1.2(118,17A) ~~Headquarters~~ *Office* of the board.** The mailing address of the board shall be: Iowa Board of Architectural Examiners, State Capitol Complex, Des Moines, Iowa 50319. *The physical location of the board shall be: Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319.*

ITEM 2. Rescind chapter 2 and insert the following:

CHAPTER 2
REGISTRATION

**80—2.1(118,17A) Application for registration.** Applicants for registration are required to make application to the National Council of Architectural Registration Boards, 1735 New York Avenue, Northwest, Washington, D.C. 20006 for a council record. A completed state application form and a completed council record shall be filed in the board office before an application will be considered by the board. If prerequisite to examination, the state application form and the council record shall be filed in the board office not fewer than sixty days before the date scheduled for the examination.

**2.1(1)** The board, by approval of three of its members who are registered architects, may waive examination requirements for architects registered during the current year in another state or country where the qualifications prescribed at the time of registration were equal to those prescribed in Iowa. Registrations in Iowa will be automatically revoked if the registrant's registration in any other state is revoked for statutory reasons or incompetence.

**2.1(2)** Except as provided in the preceding subrule, to qualify for registration, all applicants shall pass all divisions of the "Architect Registration Examination" (ARE) prepared and issued by the National Council of Architectural Registration Boards (NCARB). Applicants who have previously passed any portion of formerly required NCARB examinations will be granted credit for those portions passed in accordance with procedures established by NCARB. Divisions of the examination may be passed or failed separately in accordance with procedures established by NCARB.

ARCHITECTURAL EXAMINERS, BOARD OF[80] *(cont'd)*

**80—2.2(118,17A) Admittance to examination.** To be admitted to the examination, an applicant for registration shall have completed eligibility requirements (except for registration) for NCARB certification and shall have completed education credits equivalent to five years of professional education and training credits equivalent to three years of practical training.

**2.2(1)** All requirements shall have been verified by the council record and attained in accordance with Appendix "A" to Circular of Information No. 1, 1982, issued by the National Council of Architectural Registration Boards (NCARB).

**2.2(2)** Practical training shall have been equivalent to "Training Requirements for Intern Architect Development Program (IDP) Applicants for NCARB Certification" in accordance with Appendix "B" to Circular of Information No. 1, 1982 issued by the NCARB. "IDP Periodic Assessment Reports" forms, published by NCARB, verified by signature of a registered architect, shall have been completed to demonstrate attainment of an aggregate of the minimum number of value units in each training area and submitted by the applicant at the time of application.

**80—2.3(118,17A) Certificates.** Certificates issued to applicants who become registered architects shall contain the registrant's name, state registration number and the signatures of the board president, vice president and secretary-treasurer. All registrations are renewable July 1 every two years. All registrants will be mailed a notice of renewal and a wallet card indicating current registration.

**80—2.4(118,17A) Fee schedule.** Under the authority provided in Iowa Code chapter 118, the following fees are hereby adopted:

Examination fees:

| | |
|---|---|
| Entire ARE examination | $250.00 |
| Division A | $ 37.00 |
| Division B | $ 37.00 |
| Division C | $ 62.00 |
| Division D | $ 19.00 |
| Division E | $ 15.00 |
| Division F | $ 10.00 |
| Division G | $ 19.00 |
| Division H | $ 24.00 |
| Division I | $ 27.00 |
| Registration fee (plus $2.50 per month until renewal date) | $ 30.00 |
| Application fee (reciprocal) | $ 20.00 |
| Biennial renewal fee | $ 90.00 |
| Reinstatement fee | $100.00 |
| Duplicate certificate fee | $ 20.00 |
| Roster fee (except to registered architects and governmental agencies) | $ 25.00 |

ITEM 3. Rescind Chapter 4 and insert the following:

CHAPTER 4
RULES OF CONDUCT

**80—4.1(118,17A) Rules of conduct.**

**4.1(1)** Competence.

a. In practicing architecture, an architect shall act with reasonable care and competence, and shall apply the technical knowledge and skill which is ordinarily applied by architects of good standing, practicing in the same locality.

b. In designing a project, an architect shall take into account all applicable state and municipal building laws and regulations. While an architect may rely on the advice of other professionals (e.g., attorneys, engineers and other qualified persons) as to the intent and meaning of the regulations, once having obtained such advice, an architect shall not knowingly design a project in violation of these laws and regulations.

c. An architect shall undertake to perform professional services only when the architect, together with those whom the architect may engage as consultants, are qualified by education, training and experience in the specific technical areas involved.

d. No person shall be permitted to practice architecture if, in the board's judgment upon receipt of medical testimony or evidence the person's professional competence is substantially impaired by physical or mental disabilities.

**4.1(2)** Conflict of interest.

a. An architect shall not accept compensation for services from more than one party on a project unless the circumstances are fully disclosed to and agreed to (such disclosures and agreement to be in writing) by all interested parties.

b. If an architect has any business association or direct or indirect financial interest which is substantial enough to influence judgment in connection with the architect's performance or professional services, the architect shall fully disclose, in writing, to the client or employer the nature of the business association or financial interest, and if the client or employer objects to the association or financial interest, the architect will either terminate the association or interest or offer to give up the commission or employment.

c. An architect shall not solicit or accept compensation from material or equipment suppliers in return for specifying or endorsing the products.

d. When acting as the interpreter of building contract documents and the judge of contract performance, an architect shall render decisions impartially, favoring neither party to the contract.

**4.1(3)** Full disclosure.

a. An architect, making public statements on architectural questions, shall disclose when compensation is being received for making the statements.

b. An architect shall accurately represent to a prospective or existing client or employer the architect's qualifications and the scope of qualifications and responsibility in connection with work for which the architect is claiming credit.

c. If, in the course of work on a project, an architect becomes aware of a decision taken by the employer or client against the architect's advice which violates applicable state or municipal building laws and regulations and which will, in the architect's judgment, adversely affect the safety to the public of the finished project, the architect shall:

(1) Report the decision to the local building inspector or other public official charged with enforcement of the applicable state or municipal building laws and regulations.

(2) Refuse to consent to the decisions, and

(3) In circumstances where the architect reasonably believes that other decisions will be taken, notwithstanding the architect's objection, terminate the architect's services with reference to the project.

ARCHITECTURAL EXAMINERS, BOARD OF[80] *(cont'd)*

d. An architect shall not deliberately make a materially false statement or fail deliberately to disclose a material fact requested in connection with application for registration or renewal of registration.

e. An architect shall not assist the application for registration of a person known by the architect to be unqualified in respect to education, training, experience or character.

f. An architect possessing knowledge of a violation of these rules by another architect shall report the knowledge to the board.

**4.1(4)** Compliance with laws.

a. An architect shall not, in the conduct of architectural practice, knowingly violate any state or federal criminal law.

b. An architect shall neither offer nor make any payment to a government official (whether elected or appointed) with the intent of influencing the official's judgment in connection with a prospective or existing project in which the architect is interested.

c. An architect shall comply with the registration laws and regulations governing professional practice in any United States jurisdiction.

**4.1(5)** Professional conduct.

a. Each office maintained for the preparation of drawings, specifications, reports or other professional work shall have an architect resident regularly employed in that office having direct knowledge and supervisory control of such work.

b. An architect shall not sign or seal drawings, specifications, reports or other professional work for which the architect does not have direct professional knowledge and direct supervisory control; provided, however, that in the case of the portions of professional work prepared by the architect's consultants, registered under this or another professional registration law of this jurisdiction, the architect may sign or seal that portion of the professional work if the architect has reviewed that portion, has coordinated its preparation and intends to be responsible for its adequacy.

c. An architect shall neither offer nor make any gifts to any public official with the intent of influencing the official's judgment in connection with a project in which the architect is interested.

d. An architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.

Failure by a registrant to adhere to these rules of conduct shall cause the registration to be reviewed by the board and shall, at the discretion of the board, be cause for a reprimand, suspension or revocation of the registration.

ITEM 4. Add the following new chapter:

CHAPTER 5
DISCIPLINARY ACTION

**80—5.1(118) Disciplinary action.** The board may, upon its own recognizance, initiate disciplinary procedures for violations of the board rules or the Iowa Code against any registrant.

**5.1(1)** Charges against a registrant brought by a third party must be filed with the board in writing over the complainant's signature and with substantiating evidence to support the complainant's allegations. The complaint, which will be held in confidence as required by law, will be reviewed by the board at its next meeting. If the board concurs in the seriousness of the charges made by the complainant, the board will, in writing, advise the registrant of the charges involved. The registrant will have thirty days from receipt of the board's notice to answer the charges in writing. The registrant may additionally request a peer review finding or personal appearance before the board. The board will then review the charges made. The board may, at that time, based upon the evidence presented, take one or more of the following actions:

a. Dismiss the charges.

b. Suspend the registrant's registration as authorized by law.

c. Revoke the registrant's registration.

d. Fine the registrant as authorized by law.

e. Suspend the registration and impose a fine as authorized by law.

f. Impose a period of probation.

g. Require additional professional education or re-education.

h. Issue a citation and a warning respecting registrant's behavior.

i. Informally stipulate and settle any matter of registrant's discipline.

j. Reprimand.

k. Refer the charges to a peer review committee.

**5.1(2)** The peer review committee will meet within a sixty-day period to review and determine the facts of the charges and make recommendations to the board. The peer review committee will consist of three architects registered to practice in and residing in Iowa and eligible, by their length of practice, to be appointed to the board of architectural examiners. A peer review committee will be appointed by the board for each complaint as needed.

**5.1(3)** The findings of the peer review committee will be reviewed at the next meeting of the board of architectural examiners at which time the charges will be dropped or disciplinary action will be taken. The peer review committee's actions shall be reported to the board in writing and will become a part of the board's records.

**5.1(4)** If, in the opinion of the board or the peer review committee, additional investigation is determined to be advisable or necessary, the board may employ, at public expense, the necessary investigators or legal counsel to provide them with the information needed to fulfill their responsibilities. The method and kind of investigators employed will be determined by the board to fit each individual action and will be done at a regular board meeting with a majority of the members of the board concurring in the employment. The findings of the investigation will be reported to the board for the board's or peer review committee's use in determining the disposition of the disciplinary action.

**5.1(5)** The National Council of Architectural Registration Boards and the home board of a registrant not residing in Iowa will be notified if the registrant's Iowa registration is revoked or suspended or if the registrant is fined.

**5.1(6)** Notice of any disciplinary action taken by the board will be made public by means available to the board.

[Filed 2/7/83, effective 4/6/83]

[Published 3/2/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/2/83.

## ARC 3600

# AUDITOR OF STATE[130]

Pursuant to the authority of 1982 Iowa Acts, chapter 1253, section 13, and Iowa Code section 17A.5(1), the Supervisor of Savings and Loan Associations, under the direction of the Auditor of State, hereby adopts a new chapter, 130—Chapter 13, "Leasing of Personal Property." This chapter provides general guidelines for savings and loan associations to follow in the leasing of personal property to customers.

Notice of Intended Action was published as ARC 3491 on January 5, 1983. A hearing on the Notice was scheduled for January 26, 1983, however, there were no participants. There were also no written comments or suggestions submitted from the public.

The 1982 Session of the Iowa General Assembly passed legislation to permit savings and loan associations to acquire and lease personal property to customers. The new statute requires that either individual leases be approved by the Supervisor, or that leases be made pursuant to personal property lease guidelines or a rule of general applicability to leasing.

The adopted rule contains no changes to the Notice of Intended Action.

The new rule is to become effective April 6, 1983 pursuant to Iowa Code section 17A.5(2).

The adopted rule implements 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 financer of the property.

**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;

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

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).

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[Published 3/2/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/2/83.

## ARC 3602

## COMMERCE COMMISSION[250]

The Iowa State Commerce Commission hereby gives notice, pursuant to Iowa Code section 17A.4 that on February 9, 1983, the Commission issued an order in Docket No. RMU-82-1. In Re: Deregulation Of The Terminal Equipment For Intrastate Telephone Utilities, "Order Adopting Rules," amending Iowa Administrative Code 250—Chapter 16 "Accounting" and Chapter 22 "Rates Charged and Service Supplied by Telephone Utilities" concerning treatment of existing and new customer premise equipment by intrastate telephone public utilities.

Notice of Intended Action was published in the July 21, 1982 Iowa Administrative Bulletin as ARC 3057, setting forth specific inquiries concerning deregulation of the terminal equipment (or customer premise equipment) market for intrastate telephone utilities. A second Notice of Intended Action in this docket setting forth specific proposed rules was published in the December 8, 1982 Iowa Administrative Bulletin as ARC 3434. The changes from the Notice of Intended Action include changes to the definitions of customer premise equipment and the use of appropriate defined terms throughout the rules, shortening the time from one hundred twenty days to sixty days in which telephone utilities will be required to file tariffs after the effective date of the rules, shortening the time from sixty days to thirty days after the effective date of the rules in which telephone utilities will be required to notify customers concerning the rules, and changing the contents of the notice which must now be approved by the Commission. Further changes in the rules include shortening the time following notification from ninety days to thirty days during which a telephone utility must continue to offer customer premise equipment pursuant to current tariffs, eliminating the requirements for customer choice indication, and moving deferred taxes related to the customer premise equipment to utility companies' below-the-line accounts (Alternative A in the proposed rules).

The rules are intended to implement Iowa Code sections 476.1, 476.2. 476.8 and 476.9. The adopted rules will be effective thirty-five days from publication in the Iowa Administrative Bulletin, April 6, 1983.

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

"Customer premise equipment" means all terminal equipment normally used on the customer's premise owned by the customer or owned by the telephone utility or some other supplier and leased to the customer, including the terminal equipment located on the customer's premise or held in inventory, excluding coin-operated, public, semipublic or pay telephone equipment.

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

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

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

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

Rescind paragraph "p" and insert in lieu thereof:

p. "Customer provision" means customer purchase or lease of CPE or purchase of new inside station wiring from the telephone company or customer purchase or lease of CPE or new inside station wiring from any other supplier.

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

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

Rescind paragraph "an" and insert in lieu thereof:

an. "Other supplier" means the customer or any entity other than the telephone utility providing, repairing, or maintaining CPE or new inside station wiring or repairing or maintaining existing inside station wiring.

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

Add new abbreviation to be inserted alphabetically.

"CPE"—Customer Premise Equipment.

ITEM 3. Add new rule 250—22.9(476) as follows:

**250—22.9(476) Customer premise equipment (CPE).**

**22.9(1)** Treatment of CPE, CPE shall be deregulated in the following manner:

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

b. Each telephone utility shall within sixty days after the effective date of these rules file a revised tariff which states that the utility no longer provides CPE on a

regulated utility basis and which removes CPE from the tariffed items.

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

d. For at least thirty days following the notification required in 22.9(3) the telephone utility shall continue to offer CPE pursuant to tariffs on file with this commission prior to the effective date of these rules.

**22.9(2)** Suppliers. Customers may secure the provision, repair or maintenance of CPE from any supplier including a telephone utility.

**22.9(3)** Customer notification. Each telephone utility shall within thirty days after the effective date of these rules, notify its customers of the provisions of these rules. The notice must be approved by this commission and shall contain the following information:

a. A definition of CPE.

b. A notice that as of the CPE transition date, CPE will be deregulated and the customer will be allowed to secure CPE from any supplier, except that customers obtaining CPE under current contract with a utility are still subject to that contract.

c. A statement that the charges for CPE and the associated services will no longer be regulated by this commission.

d. A list of typical CPE units and the present monthly rates for such units.

e. A statement that a listing of utility-owned CPE in use by a specific customer can be obtained by that customer from the utility.

f. A list of possible customer options for securing CPE.

**22.9(4)** Standards for CPE. A telephone utility shall allow customers to secure the provision, repair, and maintenance of CPE from any supplier provided however that:

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

b. Telephone utilities shall generally endeavor to answer any question concerning the installation, repair, and maintenance of CPE.

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

d. Telephone utilities shall file tariffs which set forth the service requirements under which CPE may be connected with multiparty service.

ITEM 4. Subrule **22.2(5)**, paragraph "u", is amended as follows:

Rescind the words ", utility-provided terminal equipment".

Rescind subparagraphs (1) and (2).

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

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

Paragraph "j", in line 2, rescind the words "terminal equipment" and insert in lieu thereof "CPE".

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

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

Paragraph "g", in line 2, rescind the word "Terminal" and insert in lieu thereof the words "Customer Premise".

Paragraph "g", subparagraph (1), rescind the words "terminal equipment" and insert in lieu thereof the word "CPE".

Paragraph "g", subparagraph (2), rescind the words "terminal equipment" and insert in lieu thereof the word "CPE".

Paragraph "g", subparagraph (3), in lines 2 and 3, after the word "wiring" insert the word "or CPE".

Paragraph "g", subparagraph (4), rescind the words "terminal equipment" and insert in lieu thereof the word "CPE".

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

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

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

In lines 1 and 2, rescind the words "and terminal equipment".

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

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

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

Paragraph "d", in line 4, rescind the words "terminal equipment,".

ITEM 10. Subrule **22.4(5)** is amended as follows:

In line 2, rescind the word "telephone" and insert in lieu thereof "transmission".

ITEM 11. Subrule **22.5(8)** is amended as follows:

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

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

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

Paragraph "h" is rescinded.

Paragraph "i," in line 2, rescind the word "station" and insert in lieu thereof "regulated equipment".

ITEM 13. Subrule **22.6(1)** is amended as follows:

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

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

ITEM 14. Rule **250—22.10(476)** is amended as follows:

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

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

Paragraph "a", subparagraph (2), in line 4, rescind the word "equipment" and insert in lieu thereof "CPE".

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

ITEM 15. Subrule **22.13(2)** is amended as follows:

Paragraph "b", rescind subparagraph (1) and renumber the remaining subparagraphs.

ITEM 16. Subrule **16.5(5)** is amended as follows: Add new definitions at the end alphabetically.

"Customer premise equipment" means all terminal equipment normally used on the customer's premise owned by the customer or owned by the telephone utility or some other supplier and leased to the customer, including the terminal equipment located on the customer's premise or held in inventory, excluding coin-operated, public, semipublic or pay telephone equipment.

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

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

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

ITEM 17. Subrule **16.5(9)** is amended as follows:

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

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

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

ITEM 18. Subrule **16.5(11)** is amended as follows:

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

In lines 3 and 9, rescind the words "station apparatus" and insert in lieu thereof "customer premise equipment".

ITEM 19. Rescind subrule 16.5(12) and insert in lieu thereof:

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

ITEM 20. Subrule **16.5(13)** is amended as follows:

In line 3, rescind ", except 231".

In lines 3 and 4, rescind "(Note also §§31.2—20, 31.2—21 and account 231)."

ITEM 21. Subrule **16.5(14)**, paragraph "(a)," is amended as follows:

In lines 1 and 2, rescind the words ", other than station apparatus,".

In line 4, rescind the words "and account 231".

ITEM 22. Subrule **16.5(15)** is amended as follows:

In line 1, rescind the words "Add new section 31.106 as follows:" and insert in lieu thereof, "Add to section 31.103 as follows:".

In line 2, rescind "31.106 Leased telephone equipment."

In line 3, rescind the letter "(a)".

In line 4, rescind the words "leased telephone" and insert in lieu thereof "premise".

In line 7, rescind the words "leased telephone" and insert in lieu thereof "customer premise".

In line 9, rescind the letter "(b)".

ITEM 23. Rescind subrule 16.5(16) and insert in lieu thereof:

**16.5(16)** Revise Note E of section 31.122 to read as follows:

Note E: This account shall not include items in stock which are includable in account 124, telephone equipment held for sale.

Add new letter (e) to section 31.122 as follows:

(e) This account will also include material or equipment purchased for inventory in connection with public and semipublic telephone equipment.

ITEM 24. Subrule **16.5(17)** is amended as follows:

In line 5, rescind the parenthetical phrase "(Note account 231)" and insert in lieu thereof "(Note account 103)".

In line 9, rescind the words "selling telephone equipment" and insert in lieu thereof "leasing and selling customer premise equipment".

ITEM 25. Subrule **16.5(18)** is amended as follows:

In line 4, rescind the words "of station apparatus" and insert in lieu thereof "in account 235, Public and semipublic telephone equipment".

In line 5, rescind the parenthetical phrase "(Note also account 605)."

In line 9, rescind the words "of apparatus" and insert in lieu thereof "in account 235, Public and semipublic telephone equipment".

ITEM 26. Subrule **16.5(19)**, paragraph "b" is amended as follows:

In line 3, rescind the word "station".

In line 4, rescind the words "apparatus and" and the "s" on accounts and "231 and".

Add a new paragraph to subrule **16.5(19)** to read as follows:

Add new note (e) to section 31.171 to read as follows:

(e) After customer premise equipment transition date accumulated depreciation for customer premise equipment will no longer be recorded in this account, but shall be credited in account 175.

ITEM 27. Subrule **16.5(20)** is amended as follows:

Rescind section 31.175 and insert in lieu thereof:

31.175 Depreciation reserve for customer premise equipment. The account will include the accumulated depreciation on customer premise equipment transferred to this account from account 31.171, Depreciation reserve station apparatus and depreciation reserve large PBX. Furthermore, this account will include the additional accumulations of depreciation with the corresponding charge to account 31.320, Cost and expenses of selling telephone equipment.

ITEM 28. Subrule **16.5(21)** is amended as follows:

In lines 2 and 9, rescind "320,".

In lines 3 and 10, rescind the words "station apparatus" and insert in lieu thereof "public and semipublic telephone equipment".

ITEM 29. Add a new paragraph to subrule **16.5(22)** to read as follows:

Add note to read as follows:

NOTE: The above references to equipment do not refer to customer premise equipment.

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ITEM 30. Rescind subrule 16.5(23) and insert in lieu thereof:

**16.5(23)** In paragraph (b)(2) of section 31.2-25, delete the words ", other than station apparatus and station connections,". The first sentence of paragraph (b)(2), as amended, will read:

(2) Minor items: This group includes any part or element of plant which is not designated as a retirement unit.

ITEM 31. Rescind subrule 16.5(24) and insert in lieu thereof:

**16.5(24)** Delete paragraph (b)(3) of section 31.2-25.

ITEM 32. Subrule **16.5(26)**, paragraph "(e)", is amended as follows:

In line 11, rescind the word "telephones" and insert in lieu thereof "public and semipublic telephone equipment" and strike the comma before "conduit" and insert "and"; strike the comma after "conduit" and insert ".".

In line 12, rescind the words "small private branch exchanges, and booths".

Add a new paragraph to subrule **16.5(26)** to read as follows:

Add new instruction for telephone plant accounts.

31.2-28 to read as follows:

31.2-28 As of customer premise equipment transition date the installation and maintenance of customer premise equipment by a telephone utility shall be a nonutility function, and the investments, costs, and revenues associated therewith shall not be included in a telephone utility's revenue requirement for ratemaking purposes.

ITEM 33. Rescind subrule 16.5(27) and insert in lieu thereof:

**16.5(27)** Delete section 31.231. (See subrule 16.5(45)

Amend section 31.221 as follows:

Rescind paragraph (a) and insert in lieu thereof:

(a) This account shall include the original cost of electrical instruments, apparatus, and equipment, other than station equipment used for official business or installed on customer's premise, in central offices (including terminal and test rooms), repeater stations and test stations used in transmitting traffic and operating signals, and similar equipment in operator's schools and other centralized locations. (See also Notes E and F.)

Items are amended as follows:

After the item "Covers for transmission power apparatus" insert "Data sets. (See also Note E of this account.)" and "Desk sets, hand sets, wall sets, and combined sets, including those used at main, extension, and private branch exchange stations. (See also Note E of this account.)"

After the item "Engines, including special foundations not a part of buildings" insert "Facsimile equipment. (See also Note E of this account.)"

After the item "Meters" insert "Mobile telephone equipment. (See also Note E of this account.)"

After the item "Power plants" insert "Printer-telegraph equipment. (See also Note E of this account.)" and "Private branch exchange equipment. (See also Note E of this account.)"

After the item "Rolling ladders" insert "Station switching and signaling devices. (See also Note E of this account.)"

Add Note E, F and G as follows:

Note E: The cost of station equipment for use in official business that is not an integral part of the switching system shall be charged to account 261.

Note F: When station equipment that is installed costs less than $200 per property (retirement) unit the cost shall be charged to account 604, Repairs of central office equipment.

Note G: This account shall include the investment in network channel terminating equipment and subscriber pair gain equipment regardless of its location.

ITEM 34. Subrule **16.5(29)**, Note A, is amended as follows:

In line 4, rescind the words "equipment includable in account 234,".

In line 5, rescind the "," following "Large private branch exchanges" and rescind "Large" and insert in lieu thereof "large".

ITEM 35. Add new paragraphs to subrule **16.5(30)** to read as follows:

Delete section 31.234. (See subrule 16.5(45)

Add new section 31.235 as follows:

31.235 Public and semipublic telephone equipment.

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

Pedestal — a complete installation with or without a base plate.

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

Telephone set — a complete item.

Semipublic extensions.

ITEM 36. Subrule **16.5(31)** is amended as follows:

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

ITEM 37. Subrule **16.5(33)** is amended as follows:

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

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

Revise the first paragraph in section 31.261 as follows:

31.261 Furniture and office equipment.

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

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

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

ITEM 38. Subrule **16.5(34)** is amended as follows:

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

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Revenues from customer premise equipment leases and sales ".

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

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

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

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

In item 1 of Account 319, insert the words "lease or" after "Revenues from" and rescind the words "telephone" and insert in lieu thereof "customer premise".

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

In item 1 of Account 320, rescind the word "telephone" and insert in lieu thereof "customer premise" and insert the words "leasing or" after "the purpose of".

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

In item 4 of Account 320, insert the words "customer premise" after "materials for" and insert the words "lease or" before "sales".

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

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

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

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

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

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

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

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

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

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

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

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

ITEM 39. Rescind subrule 16.5(36) and insert in lieu thereof the following:

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

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

Amend paragraph (b)(3) of 31.5-50 to read as follows:

(3) Amounts of service charges for regulated supplemental or auxiliary equipment furnished in rendering service to a customer.

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

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

Add new paragraph to Note in section 31.6-60 to read as follows:

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

ITEM 40. Rescind subrule 16.5(37) and insert in lieu thereof the following:

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

(c) The cost of repairs may include certain costs of station installations, and the costs of reinstalling, connecting, disconnecting, and removing station apparatus, but if these expenses or any other repair expenses are are associated with customer premise equipment, they will be recorded in account 320.

ITEM 41. Subrule **16.5(38)** is amended as follows:

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

ITEM 42. Subrule **16.5(39)** is amended as follows:

Rescind NOTE and insert in lieu thereof the following:

NOTE: Amounts charged customers for moves and changes of customer premise equipment shall be credited to account 319. If the moves and changes involve related equipment, the amount will be charged to the appropriate 600 account.

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

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

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

ITEM 43. Subrule **16.5(41)** is amended as follows:

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

Add NOTE to read as follows:

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

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

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

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

**16.5(44)** Divide accounts 31.231 and 31.234 into three separate categories of: (1) Official company station equipment, (2) coin-operated, public, semipublic or pay telephone equipment, and (3) customer premise equipment. Any allocation of the depreciation reserve should serve to determine, to the extent possible, the approximate vintage of each category of customer premise equipment. The original cost will be divided by the estimated life thereof multiplied by the number of years in service. The book reserve will be allocated to each category based on the ratio of the calculated reserve to the book reserve. Telephone utility owned customer premise equipment will be reclassified to account 31.103, Miscellaneous physical property. The remaining asset categories of accounts 31.231 and 31.234 will be reclassified to the relevant accounts on a functional basis rather than by type of equipment.

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

**16.5(45)** Each of the categories in 16.5(44) will be reclassified to eliminate account 31.231, Station apparatus, and account 31.234, Large private branch exchange, from the telephone utility's regulated rate base. Equipment should be accounted for on a functional rather than type of equipment basis. Under this approach the company used equipment that handles the switching of traffic would be recorded in account 31.221, Central office equipment and the company used equipment that handles the company's own internal business operations would be recorded in account 31.261, Furniture and office equipment. All company telephone sets, teletypewriters, radio equipment, facsimile equipment, key systems and all PBX's or other terminal equipment shall be recorded in account 31.221 or account 31.261 based on function. The stock items included in account 31.231, Station apparatus, applicable to CPE will be transferred to account 31.124, Telephone equipment held for sale. Other stock items included in account 31.231 not applicable to customer premise equipment will be transferred to account 31.122, Materials and supplies.

The deferred taxes related to the customer premise equipment will transfer with the customer premise equipment to nonoperating balance sheet accounts. Deferred taxes will be transferred to account 176.2, Accumulated deferred income taxes — other.

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

**16.5(46)** Accordingly, the cradle-to-grave method of accounting will not be used for the new account 31.235, but instead the more traditional retirement unit basis of depreciation accounting including the establishment of a continuing property record (CPR) on an accounting area basis will be used. Furthermore, other material or equipment purchased for inventory in connection with public and semipublic telephone equipment will be recorded in account 31.122, Material and supplies, instead of account 31.231. The telephone company, at its option, should be permitted to begin using this account to record inventory purchased for public and semipublic telephones effective January 1, 1983, and thereafter.

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

**16.5(47)** When the customer premise equipment is transferred from the regulated rate base, the telephone company will record the original cost of the equipment in account 31.103, Miscellaneous physical property. Furthermore, the current rules associated with account 31.103 that pertain to recording all revenues and expenses below-the-line, namely account 31.319, Revenues from customer premise equipment leases and sales, and account 31.320, Cost and expenses of leasing and selling customer premise equipment, will continue. Moreover, the appropriate depreciation reserve associated with customer premise equipment will be recorded in account 31.175, Depreciation reserve customer premise equipment. All applicable taxes will be recorded in accounts 31.326, Federal income taxes — nonoperating, 31.327, Other nonoperating taxes and account 31.176.2, Accumulated deferred income taxes - other.

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[Published 3/2/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/2/83.

# ARC 3579

# CONSERVATION COMMISSION[290]

Pursuant to the authority of Iowa Code section 107.24, the State Conservation Commission at their regular meeting on February 3, 1983, adopted the following amendment to Chapter 8, "Use of Firearms", Iowa Administrative Code.

Notice of Intended Action was published in IAB 11, November 24, 1982, as ARC 3381.

This rule restricts the use or possession of firearms on certain game management areas.

There are no changes from the Notice of Intended Action.

This rule implements Iowa Code section 109.6.

This rule will become effective April 6, 1983.

Rule 290—8.1(109) is amended by adding the following new subrule:

**8.1(3)** McIntosh Wildlife Area. The use or possession of any firearms, except shotguns, on any portion of the McIntosh Wildlife Area in Cerro Gordo County is prohibited.

This rule is intended to implement Iowa Code section 109.6.

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[Published 3/2/83]

EDITOR'S NOTE For replacement pages for IAC, see IAC Supplement, 3/2/83.

## ARC 3601

# HEALTH DEPARTMENT[470]

BOARD OF MORTUARY SCIENCE EXAMINERS

Pursuant to the authority of Iowa Code sections 147.76 and 156.3, the rules of the Board of Mortuary Science Examiners, which appear in the IAC relating to premortuary college educational requirements (chapter 147) are hereby amended. The board adopted the amendment February 7, 1983.

Notice of Intended Action regarding the rule was published in the IAB November 10, 1982 as ARC 3363.

The rule provides that the premortuary college science requirement is sixteen semester or twenty-four quarter hours of natural sciences which may consist of chemistry, biology, zoology, anatomy, histology, microbiology, or physiology.

The rule is the same as published under Notice.

The rule is intended to implement Iowa Code section 156.3.

The rule shall become effective April 7, 1983.

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

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

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[Published 3/2/83]

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## ARC 3596

# NURSING, BOARD OF[590]

Pursuant to the authority of Iowa Code sections 17A.3, 147.53 and 152.1, the Iowa Board of Nursing adopts rules creating a new Chapter 7, "Advanced Registered Nurse Practitioners".

These rules relate to the general educational, clinical and continuing education requirements to practice as a Certified Registered Nurse Anesthetist, Certified Nurse-Midwife, Certified Pediatric Nurse Practitioner and Certified Family Nurse Practitioner as provided for in Iowa Code.

Notice of Intended Action was published in IAB 5, September 1, 1982 as ARC 3170. A public hearing was held September 23, 1982 in Des Moines, Iowa. The Iowa Board of Nursing adopted these rules on a telephone conference call held February 9, 1983. Changes from the notice are as follows:

1. Numerous editorial changes have been made for clarity, brevity, and uniformity. Several areas were deleted because they duplicated rules already existing in other chapters of Nursing Board[590].

2. Content changes are as follows:

a. New 7.1(8) Fees. Justification: There had been no fee set except $25.00, which did not adequately cover the need for varying fees for varying lengths of registration nor for varying office expenses incurred due to different types of work involved (e.g., registration, copies of original documents, late fees, etc.). Therefore, a new fee section was written providing more explicitly for fees related to the work involved, as well as length of licensure.

b. Old 7.2(3)"b" deleted. Justification: Competency will be based on meeting the requirements of the certifying body of the specialty area rather than the board trying to prove individual's competence.

c. Old 7.2(8) relocated to 7.2(5) and revised. Justification: The board will only allow one temporary license, which itself can last up to almost one year, dependent on the availability of the certification examinations.

d. Old 7.3(2), 7.4(2), 7.5(2) and 7.6(2) relocated to 7.2(8) and revised. Justification: Continuing education requirements were altered so that the licensee does not have to do additional continuing education for the advanced registered nurse practitioner license because the licensee is already getting continuing education for the basic registered nurse license, and, in some cases, for the certifying body.

e. Old 7.3 and beyond deleted. Justification: The board felt that the definition section adequately defined each advanced registered nurse practitioner specialty and that these sections were redundant. Further definition will be based on board approved guidelines as noted in 7.1(1).

These rules implement Iowa Code chapters 136C and 152.

These rules will become effective on April 6, 1983.

### CHAPTER 7
### ADVANCED REGISTERED NURSE PRACTITIONERS

**590—7.1(152) Definitions.**

**7.1(1)** Advanced registered nurse practitioner (A.R.N.P.). An advanced registered nurse practitioner is a nurse with current active licensure as a registered nurse in Iowa who is prepared for advanced nursing practice by virtue of additional knowledge and skills gained through an organized postbasic program of nursing in a specialty area approved by the board. The advanced registered nurse practitioner is authorized by rule to practice advanced nursing or physician delegated functions on an interdisciplinary health team. The practice of advanced nursing shall be in accordance with board approved guidelines.

**7.1(2)** Basic nursing education. Basic nursing education as used in this chapter is a nursing program that prepares a person for initial licensure to practice nursing as a registered nurse.

**7.1(3)** Board. Board as used in this chapter means Iowa board of nursing.

**7.1(4)** Certified family nurse practitioner. Certified family nurse practitioner is an advanced registered nurse practitioner educated in the disciplines of nursing and family health who possesses evidence of certification by the American Nurses' Association or a successor agency as approved by the board. The certified family nurse practitioner is authorized by rule to practice advanced nursing assessment, intervention and management of

physical and psychosocial health along the wellness-illness continuum of the individual/family from birth to death. The certified family nurse practitioner may practice in a variety of settings and when appropriate, provide for consultation, collaboration, or referral to physicians or other disciplines.

**7.1(5)** Certified nurse-midwife. Certified nurse-midwife is an advanced registered nurse practitioner educated in the disciplines of nursing and midwifery who possesses evidence of certification by the American College of Nurse-Midwives or a successor agency as approved by the board. The certified nurse-midwife is authorized by rule to manage the care of essentially normal newborns and women, antepartally, intrapartally, postpartally or gynecologically, occurring within a health care system which provides for medical consultation, collaborative management, or referral.

**7.1(6)** Certified pediatric nurse practitioner. Certified pediatric nurse practitioner is an advanced registered nurse practitioner educated in the disciplines of nursing and pediatrics who possesses evidence of certification by the American Nurses' Association (A.N.A.) or the National Board of Pediatric Nurse Practitioners and Associates or a successor agency as approved by the board. The certified pediatric nurse practitioner is authorized by rule to practice advanced nursing assessment, intervention and management of the physical and psychosocial health status of children and their families along the wellness-illness continuum in a variety of settings which provide for consultation, collaborative management, or referral to pediatricians, physicians or other disciplines.

**7.1(7)** Certified registered nurse anesthetist. Certified registered nurse anesthetist is an advanced registered nurse practitioner educated in the disciplines of nursing and anesthesia who possesses evidence of certification by the Council on Certification of Nurse Anesthetists or Recertification of Nurse Anesthetists or a successor agency as approved by the board.

**7.1(8)** Fees. Fees mean those fees collected which are based upon the cost of sustaining the board. The fees set by the board are as follows:

a. For a license or renewal to practice as an advanced registered nurse practitioner, $12.00 per year or any period thereof.

b. For a certified statement that an advanced registered nurse practitioner is licensed in this state, $30.00.

c. For a duplicate license/original certificate to practice as an advanced registered nurse practitioner, $15.00.

d. For advanced registered nurse practitioner late renewal fee, $10.00.

e. For advanced registered nurse practitioner delinquent license fee, $50.00 plus all renewal fees to date due.

f. For a check returned for any reason, $20.00.

**7.1(9)** Mental health registered nurse practitioner. (Reserved for future use.)

**7.1(10)** School registered nurse practitioner. (Reserved for future use.)

**590—7.2(152) General requirements for the advanced registered nurse practitioner.**

**7.2(1)** Specialty areas of nursing practice for the advanced registered nurse practitioner. The board derives its authority to define the educational and clinical experience that is necessary to practice at an advanced registered nurse practitioner level under the provisions of Iowa Code section 152.1, subsection (2), paragraph "d". The specialty areas of nursing practice for the advanced registered nurse practitioner which shall be considered as legally authorized by the board are as follows:

a. Nurse anesthetist.

b. Nurse-midwife.

c. Pediatric nurse practitioner.

d. Family nurse practitioner.

e. Other specialties as may be determined by the board.

**7.2(2)** Titles and abbreviations. A registered nurse who has completed all requirements to practice as an advanced registered nurse practitioner and who is registered with the board to practice shall use the title advanced registered nurse practitioner (A.R.N.P.). Utilization of the title which denotes the specialty area is at the discretion of the advanced registered nurse practitioner.

a. No person shall practice or advertise as or use the title of advanced registered nurse practitioner for any of the defined specialty areas unless the name, title and specialty area appears on the official record of the board and on the current license.

b. No person shall use the abbreviation A.R.N.P. for any of the defined specialty areas or any other words, letters, signs or figures to indicate that the person is an advanced registered nurse practitioner unless the name, title and specialty area appears on the official record of the board and on the current license.

c. Any person found to be practicing under the title of advanced registered nurse practitioner or using the abbreviation A.R.N.P. without being registered as defined in this subrule shall be subject to disciplinary action.

**7.2(3)** General education and clinical requirements.

a. The general educational and clinical requirements necessary for recognition by the board as a specialty area of nursing practice are as follows:

(1) Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills as approved by the board; or

(2) Satisfactory completion of an organized postbasic program of study and appropriate clinical experience as approved by the board.

b. Additional requirements. Nothing in this rule shall be construed to mean that additional general educational or clinical requirements cannot be defined in a specialty area.

**7.2(4)** Application process. A registered nurse who wishes to practice as an advanced registered nurse practitioner shall submit the following to the office of the board:

a. An advanced registered nurse practitioner application form which may be obtained from the office of the board.

b. A registration fee as established by the board.

c. An official copy of all credentials necessary to document that all requirements have been met in one of the specialty areas of nursing practice as listed in subrule 7.2(1). A registered nurse may make application to practice in more than one specialty area of nursing practice.

**7.2(5)** Initial registration. The executive director or a designee shall have the authority to determine if all requirements have been met for registration as an advanced registered nurse practitioner. If it has been determined that all requirements have been met:

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a. Official licensure records of the registered nurse shall denote registration as an advanced registered nurse practitioner as well as the specialty area(s) of nursing practice.

b. The registered nurse shall be issued, whichever applicable, one of the following:

(1) Temporary registration card when the nurse presents evidence of eligibility for the next certification examination. The temporary registration is valid until the results of the first examination are received. The expiration date of the temporary registration card shall be determined by the executive director or designee based upon the examination requirements.

(2) A license and a certificate to practice as an advanced registered nurse practitioner which clearly denotes the name, title, specialty area(s) of nursing practice and expiration date of registration. The expiration date shall be based on the period of certification granted by the relevant national certification board, agency, etc. If the certification period by the relevant national certification board, agency, etc. is unlimited, or if there is no certification board, the expiration date shall be based on the same period of license to practice as a registered nurse.

**7.2(6)** Denial of registration. If it has been determined that all requirements have not been met, the registered nurse shall be notified in writing of the reason(s) for the decision. The applicant shall have the right of appeal to the Iowa Board of Nursing within thirty days of denial of the executive director or designee.

**7.2(7)** Application process for renewal of registration. Renewal of registration for the advanced registered nurse practitioner shall be for either the same period of license to practice as a registered nurse or the period of recertification granted by the relevant national certification board, agency, etc. The executive director or a designee shall have the authority to determine if all requirements have been met for reregistration as an advanced registered nurse practitioner. A registered nurse who wishes to continue practice as an advanced registered nurse practitioner shall submit the following at least thirty days prior to the license expiration to the office of the Iowa Board of Nursing:

a. Completed renewal registration form.

b. Registration fee as established by the board.

**7.2(8)** Continuing education requirements. Continuing education shall be met as required for certification by the relevant national certification board, agency, etc.

**7.2(9)** Denial of renewal registration. If it has been determined that all requirements have not been met, the applicant shall be notified in writing of the reason(s) for the decision. Failure to obtain the renewal will result in termination of registration and of the right to practice in the advanced registered nurse practitioner specialty area(s). The applicant shall have the right of appeal to the Iowa Board of Nursing within thirty days of denial of the executive director or designee.

**7.2(10)** License to practice as an advanced registered nurse practitioner revoked, suspended, etc. The board may restrict, suspend or revoke a license to practice as an advanced registered nurse practitioner on any of the grounds stated in Iowa Code sections 147.55, 152.10 or chapter 258A. In addition:

a. The board may refer a complaint against an advanced registered nurse practitioner to a peer review committee for investigation and review in accordance with Iowa Code section 258A.6(2).

b. The peer review committee shall be comprised of three advanced registered nurse practitioners in the same specialty area of nursing practice.

c. The board may appoint a physician from a related area of medical specialty to serve as a consultant to the peer review committee.

**7.2(11)** Certain functions authorized. The advanced registered nurse practitioner is authorized by rule to perform those functions that are consistent with advanced professional education and board approved guidelines.

These rules implement Iowa Code chapters 136C and 152.

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## ARC 3572

# PUBLIC INSTRUCTION DEPARTMENT[670]

Pursuant to authority of Iowa Code section 257.10(11), the Iowa Department of Public Instruction adopts rules relative to approvals for elementary and secondary teachers.

The Iowa State Board of Public Instruction adopted amendments to chapter 16, "Approvals," in their final form on Tuesday, November 9, 1982. A public hearing was held on July 7, 1982 in the Grimes State Office Building; written comments were also received. On the basis of the oral and written comments several changes were made in the rules.

The department's notice of intention to adopt the amendments to chapter 16, "Approvals," was published in the Iowa Administrative Bulletin on June 9, 1982 under Notice of Intended Action as ARC 2959.

Changes from the notice are as follows:

Rules 670—16.4(257) and 670—16.5(257) were changed to require the preparation in reading only for those who teach reading fifty percent or more of the school day. Also, the requirement is differentiated for teachers certificated prior to the effective date of September 1986 and those certificated after that date.

These rules are intended to implement Iowa Code section 257.10(11).

These rules become effective April 6, 1983.

ITEM 1. Rule **670—16.4(257)** is amended by striking the second and third paragraphs, and inserting in lieu thereof the following:

In order to teach reading outside of the self-contained classroom in kindergarten and grades one through eight for fifty percent or more of the school day, the applicant shall have completed twenty semester hours in the area of reading; however, persons certificated on or before September 1, 1986 shall be exempt from presenting eight semester hours in reading-related courses, but shall present twelve semester hours specifically in reading courses. Persons in this circumstance shall have until September 1, 1990 to complete twelve semester hours in reading courses.

Persons certificated after September 1, 1986 shall have to complete the twenty semester hours in the area of reading.

This approval must be listed on the certificate.

This rule is intended to implement Iowa Code section 257.10(11).

ITEM 2. Rule **670—16.5(257)** is amended by striking the second and third paragraphs, and inserting in lieu thereof the following:

In order to teach reading in grades seven and eight for fifty percent or more of the school day, the applicant shall have completed twenty semester hours in the area of reading; however, persons certificated on or before September 1, 1986 shall be exempt from presenting eight semester hours in reading-related courses, but shall present twelve semester hours specifically in reading courses. Persons in this circumstance shall have until September 1, 1990 to complete the twelve semester hours in reading courses.

Persons certificated after September 1, 1986 shall have to complete the twenty semester hours in the area of reading.

This approval must be listed on the certificate.

This rule is intended to implement Iowa Code section 257.10(11).

[Filed 2/3/83, effective 4/6/83]
[Published 3/2/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/2/83.

## ARC 3588

# REVENUE DEPARTMENT[730]

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

Notice of Intended Action was published in IAB, Volume V, Number 14, on January 5, 1983, as ARC 3476.

Presently rule 730—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 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.

These rules are identical to those published under Notice of Intended Action. The amendments will become effective April 6, 1983 after filing with the rules coordinator and publication in the Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code sections 17A.1(2) and 17A.2(2).

The following amendments are adopted.

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 inserting 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.

[Filed 2/10/83, effective 4/6/83]

[Published 3/2/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/2/83.

## ARC 3589

# REVENUE DEPARTMENT[730]

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

Notice of Intended Action was published in the IAB, Volume V, Number 14, on January 5, 1983, as ARC 3477.

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.

These rules are identical to those published under Notice of Intended Action. The amendments will become effective April 6, 1983, after filing with the rules coordinator and publication in the Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code sections 411.42(3), 422.45(20), 422.52 and 1982 Iowa Acts, chapter 1022, section 4.

The following amendments are adopted.

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.

[Filed 2/10/83, effective 4/6/83]
[Published 3/2/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/2/83.

## ARC 3575

# TRANSPORTATION, DEPARTMENT OF[820]

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of Iowa Code section 307.10, the Transportation Commission, on February 1, 1983, adopted amendments to 820—[07,F] chapter 1 entitled "Interstate Registration and Operation of Vehicles".

A Notice of Intended Action for these rule amendments was published in the December 22, 1982 Iowa Administrative Bulletin as ARC 3453.

Items 1, 2, 3 and 5 correct references to form numbers.

Item 4 amends the rule on temporary prorate permits by adding a cancellation penalty for carriers who do not comply with the conditions of the permit.

Item 6 rescinds a rule which is merely repetitious of the Iowa Code.

These rule amendments are identical to the ones published under notice.

These rule amendments are intended to implement Iowa Code chapter 326.

These rule amendments are to be published as adopted in the March 2, 1983 Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective April 6, 1983.

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of Iowa Code section 307.10, rules 820—[07,F] chapter 1 entitled "Interstate Registration and Operation of Vehicles" are hereby amended.

ITEM 1. Paragraph **1.3(1)**"a" is amended as follows:

a. The proper forms for registration, either original, Forms 442016 ~~and 442013~~ (in the case of a vehicle to be added at the beginning of the year), or supplemental Forms 442015 ~~and 442013~~ (in the case of a vehicle to be added during the year), shall be completed by the carrier and sent to the office of operating authority at the address ~~specified~~ in *subrule* 1.3(6). ~~(a~~See *subrule* 1.3(4) for application instructions.~~)~~

ITEM 2. Paragraph **1.3(5)**"a" is amended as follows:

a. The original application for prorate registration is made on Forms 442013~~4~~, ~~442015~~ and 442016. ~~(a~~*A*dditions or deletions to a prorate fleet, after the original application is filed, are made on Forms ~~442013 and~~ 442015.~~)~~

ITEM 3. Subparagraph **1.3(5)**"a"(2) is amended as follows:

(2) The carrier shall then delete ~~the units~~ from the renewal form *the units* that it does not wish to license for the coming year. Application for registration of additional vehicles for the coming year cannot be made on the renewal application, but must be submitted on Forms 442013~~4~~ and 442016.

ITEM 4. Rule 820—[07,F]1.6(326) is amended as follows:

**820—[07,F]1.6(326) Iowa temporary prorate permits.** To facilitate the movement of vehicles in interstate or intrastate commerce by the Iowa-based carrier ~~who~~ *that* has registered its vehicles on a prorated basis, ~~Iowa~~ *the department* may issue the "Iowa Temporary Prorate Permit," which may be completed by the carrier at the time the vehicle is added to the fleet, whether by lease or by purchase. The "~~Iowa~~ *t*Temporary *p*Prorate *p*Permit" is purchased in advance for a fee prescribed by the office of operating authority not to exceed two dollars. The permit must be completed in triplicate: One copy to be retained by the carrier, one copy to be carried in the cab of the vehicle and ~~the third~~ *one* copy to be mailed to ~~this office at~~ the address ~~specified~~ in *subrule* 1.3(6). Temporary prorate permits are valid for forty-five days from the date the permit is completed and are not renewable. The carrier shall immediately prepare a supplemental application, Forms ~~442013 and~~ 442015, to qualify the vehicle in question and shall return the office copy of the temporary prorate permit with the supplement within five days of the date the permit is completed by the carrier. *Any carrier that has not complied with the conditions for issuance of the "Iowa Temporary Prorate Permit" shall be subject to cancellation of temporary prorate permit privileges for a twelve-month period.*

This rule is intended to implement *Iowa Code* section 326.37~~, The Code~~.

ITEM 5. Rule 820—[07,F]1.9(326) is amended as follows:

**820—[07,F]1.9(326) Voluntary cancellation of prorate registration application.** A carrier may cancel an application for prorate registration, either original (Forms ~~442013,~~ 442014 and 442016) or supplemental (Forms ~~442013 and~~ 442015), by ~~notifying this~~ *written notice to the* office *of operating authority* at the address ~~specified~~ in *subrule* 1.3(6) ~~in writing~~ within fifteen days of the date of receipt of the application by ~~this~~ *that* office. The letter shall state the reason for cancellation and shall be signed by the carrier or its representative. The Iowa resident carrier shall be required to include in the written notification, the current licensing status and owner of the vehicle(*s*) ~~or vehicles~~ for which request for voluntary cancellation is being made. If ~~such~~ notification is not received, all registration fees shall be paid in full.

This rule is intended to implement *Iowa Code* section 326.6~~, The Code~~.

ITEM 6. Rescind rule **820—[07,F]1.15(326)** and reserve the number for future use.

[Filed 2/7/83, effective 4/6/83]
[Published 3/2/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/2/83.

## ARC 3576

# TRANSPORTATION, DEPARTMENT OF[820]

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of Iowa Code section 307.10, the Transportation Commission, on February 1, 1983, adopted amendments to 820—[07,F] chapter 3 entitled "Truck Operators and Contract Carriers".

A Notice of Intended Action for this rule amendment was published in the December 22, 1982 Iowa Administrative Bulletin as ARC 3454.

This amendment deletes the letter "P" from the required vehicle identification marking.

This rule amendment is identical to the one published under Notice except for the notation "(Permit Number)" under the dotted line, which was inadvertently omitted from the proposed rule.

This rule amendment is intended to implement Iowa Code chapter 327.

This rule amendment is to be published as adopted in the March 2, 1983 Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective April 6, 1983.

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of Iowa Code section 307.10, the rules 820—[07,F] chapter 3, entitled "Truck Operators and Contract Carriers" are hereby amended.

Paragraph **3.3(1)**"c" is amended to read as follows:

c. Ia. D.O.T. ~~P~~ .....
(Permit Number)

[Filed 2/7/83, effective 4/6/83]
[Published 3/2/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/2/83.

## ARC 3577

# TRANSPORTATION, DEPARTMENT OF[820]

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of Iowa Code section 307.10, the Transportation Commission, on February 1, 1983, adopted amendments to 820—[07,F] chapter 7 entitled "Interstate Motor Vehicle Fuel Permits and Transport Carrier Registration".

A Notice of Intended Action for these rule amendments was published in the December 22, 1982 Iowa Administrative Bulletin as ARC 3455.

Item 1 adopts the provisions of the International Fuel Tax Agreement which was authorized by 1982 Iowa Acts, chapter 1071, and has been adopted by the department. The agreement simplifies fuel tax reporting and collection for the trucking industry. (NOTE: A copy of the agreement is on file with the administrative rules coordinator. Copies are also available from the department.)

Item 2 implements 1982 Iowa Acts, chapter 1045, which authorized the department to reissue a fuel tax permit canceled for cause and to impose a ninety-day waiting period prior to reissuance. This amendment specifies the instances in which the waiting period will be imposed.

Item 3 amends the implementation clause.

Item 4 explains that the postmark of the U.S. Postal Service is the one used to determine timely filing of fuel tax reports.

Item 5 is an address correction.

Item 6 implements 1982 Iowa Acts, chapter 1180, which allows fuel tax permittees to pay ninety percent of the taxes due and avoid a penalty, although the remainder due will accrue interest as provided by law.

These rule amendments are identical to the ones published under notice.

These rule amendments are intended to implement Iowa Code chapter 324.

These rule amendments are to be published as adopted in the March 2, 1983 Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective April 6, 1983.

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of Iowa Code section 307.10, rules 820—[07,F] chapter 7 entitled "Interstate Motor Vehicle Fuel Permits and Transport Carrier Registration" are hereby amended.

ITEM 1. Strike all of rule 820—[07,F]7.2(324) and insert in lieu thereof the following:

**820—[07,F]7.2(324) Organizational data.** The office of operating authority of the department's motor vehicle division is authorized, pursuant to Iowa Code chapter 324, division III, to:

**7.2(1)** Issue permanent or single trip interstate fuel permits.

**7.2(2)** Compute and collect interstate motor fuel taxes on fuel purchased outside Iowa and used within Iowa.

**7.2(3)** Issue refunds for fuel taxes paid on motor fuel and special fuel purchased in Iowa and not used in this state.

**7.2(4)** Administer agreements with other jurisdictions for the collection and refund of interstate motor fuel tax. In accordance with this, the department has adopted the international fuel tax agreement and all of its provisions are hereby incorporated in this chapter of rules. A copy of the agreement may be obtained by writing to the department at the address given in paragraph 7.3(4)"a".

This rule is intended to implement Iowa Code section 324.51, and 1982 Iowa Acts, chapter 1071.

ITEM 2. Subrule 7.3(6) is amended to read as follows:

**7.3(6)** Cancellation *and reissuance.*

*a.* If ~~a~~ *all* vehicles which ~~is~~ *are* operated under a permanent permit ~~is~~ *are* consistently operated only within the state or only outside ~~of~~ the state, the permittee shall request that the permit be canceled *for nonuse.*

*b. A permanent fuel permit which has been canceled for cause in accordance with Iowa Code section 324.68 may be reissued. As a condition of reissuance, a ninety-day waiting period shall be required if:*

*(1) The permittee owed taxes, penalty or interest at the time of cancellation.*

*(2) The permittee filed one or more late quarterly reports.*

*(3) The permittee failed to maintain with the department an accurate, current mailing address for the purpose of receiving and completing quarterly reports.*

ITEM 3. Amend the implementation clause for rule **820—[07,F]7.3(324)** as follows:

This rule is intended to implement *Iowa Code* sections 324.52, 324.53, 324.54, ~~and~~ 324.58, ~~The Code~~ *and 324.68 as amended by 1982 Iowa Acts, chapter 1045.*

ITEM 4. Paragraph **7.4(6)**"a" is amended to read as follows:

a. The interstate fuel tax report required under *Iowa Code* section 324.54~~, The Code,~~ shall be deemed timely filed if postpaid, properly addressed, and postmarked *by the United States postal service* on or before midnight of the filing deadline. If the filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the filing deadline.

ITEM 5. Paragraph **7.4(6)**"b" is amended as follows:

b. All reports and remittances shall be addressed to: Iowa Department of Transportation, P.O. Box ~~1792~~ *10345*, Des Moines, Iowa 50306.

ITEM 6. Strike all of subrule 7.4(8) and insert in lieu thereof the following:

**7.4(8)** Penalties.

a. When a person fails to file a report by the due date or fails to remit at least ninety percent of the taxes by the due date, a penalty of five percent of the taxes due shall be added for each month or part of a month that the failure continues, up to a maximum of twenty-five percent.

b. If the quarterly report shows no taxes owed or a refund due, the penalty for filing a late report is ten dollars.

[Filed 2/7/83, effective 4/6/83]
[Published 3/2/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/2/83.

# EFFECTIVE DATE DELAY

**[Pursuant to §17A.4(5)]**

| AGENCY | RULE | EFFECTIVE DATE DELAYED |
|---|---|---|
| Beer and Liquor Control Department[150] | Subrule 9.11(4) and rule 9.16 [IAB 1/5/83, **ARC 3473**] | Seventy days from effective date of 2/9/83. |
| Merit Employment Department[570] | Subrules 1.1(13), 1.1(31), 1.1(32), 1.1(35), 1.1(54), 2.2(4), rules 3.4, 3.7, 4.3, 4.4, 4.5, 4.7, 4.9, 4.10, 5.11, 5.12, subrules 6.6(2), 6.6(3), rules 7.6, 7.9, 7.12, 8.3, 8.7, 9.1, 9.3, 9.4, 9.5, ch 10, subrule 11.1(1), rule 12.4, and subrules 14.2(12), 17.1(2) [IAB 12/22/82, **ARC 3458**] | Seventy-day delay of effective date lifted at the February 8, 1983, meeting of the administrative rules review committee. |

SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

January, 1983

BEER AND LIQUOR

Liquor Licenses: Gambling. Chapter 123, §§ 99B.6, 99B.12, 725.12, (1981). Discounting the purchase price of drinks in a licensed establishment with the amount of the discount determined by chance is illegal gambling. (McGrane to Anderson, Dickinson County Attorney, 1/17/83) #83-1-3(L)

COUNTIES AND COUNTY OFFICERS

Clerk of Court. Fees for mailing child support checks: Iowa Code §§ 331.702(86), 598.22 (1981). A county may not assess the cost of postage incurred by the county in mailing out support checks pursuant to Iowa Code § 598.22. (Weeg to Richter, Pottawattamie County Attorney, 1/18/83) #83-1-4(L)

County Public Hospitals. Iowa Code Ch. 347 (1981); Iowa Code §§ 252.22, 252.27, 347.14, 347.16(2) and 347.16(3) (1981). The county may, pursuant to home rule authority, decide whether the expenses incurred for treating indigent patients at a county hospital pursuant to Iowa Code § 347.16(2) (1981) should be paid from the county hospital's budget, from the county poor fund or from both. The county hospital board of trustees may exercise their discretion pursuant to Iowa Code § 347.14(14) (1981) to determine whether, and upon what terms, the county hospital will provide services to nonresidents. (Weeg to Kenyon, Union County Attorney, 1/25/83) #83-1-5(L)

ELECTIONS

Election Board; Electioneering. Iowa Code Ch. 49; §§ 49.12, 49.13, 49.15, 49.16, 49.107, 49.108. A member of a candidate's committee is not statutorily prohbited from serving on an election board. A candidate transporting voters to the polls does not constitute electioneering. (Pottorff to Norland, Worth County Attorney, 1/25/83) #83-1-6(L)

MUNICIPALITIES

Subdivision Plats; Home Rule. Iowa Code §§ 409.14, 409.4-409.7, 414.12, 306.21, 558.65 (1981). A city under twenty-five thousand population which seeks to regulate subdivision platting in the two-mile area outside city limits under § 409.14 should pass an ordinance which specifically adopts the restrictions of that section. Subdivision ordinances may contain exceptions or provide for variances if they are consistent with or more stringent than those in state law. (Ovrom to Stanek, Director, Office for Planning & Programming, 1/27/83) #83-1-7(L)

PODIATRISTS

Scope of Practice. Iowa Code §§ 149.1(2), .5 (1981). A licensed podiatrist is authorized to amputate a human toe. (Brammer to Smalley, State Representative, 1/17/83) #83-1-2(L)

SCHOOLS

Offsetting Tax; Establishment Clause. U.S. Constitution, First Amendment; Iowa Code §§ 247.26, 282.1, 282.2, 282.6, 442.4(1). The benefit provided to qualifying taxpayers by Iowa Code § 282.2 is available to offset tuition charged to nonresident pupils who receive shared-time instruction pursuant to a relationship between a public and an approved nonpublic school. (Fleming to Priebe, 1/27/83) #83-1-8(L)

TAXATION

Determination of Property Classifications. Iowa Code § 427A.1(3) (1981). Equipment attached to leased buildings or structures should be taxed as real property unless it is of the kind of property ordinarily removed when the owner of the equipment moves to another location. (Schuling to Avenson, State Representative, 1/10/83) #83-1-1(L)

STATUTES CONSTRUED

| Code, 1981 | Opinion | Code, 1981 | Opinion |
|---|---|---|---|
| 49.12 | 83-1-6(L) | 409.14 | 83-1-7(L) |
| 49.13 | 83-1-6(L) | 414.12 | 83-1-7(L) |
| 49.15 | 83-1-6(L) | 427A.1(3) | 83-1-1(L) |
| 49.16 | 83-1-6(L) | 442.4(1) | 83-1-8(L) |
| 49.107 | 83-1-6(L) | 558.65 | 83-1-7(L) |
| 49.108 | 83-1-6(L) | 598.22 | 83-1-4(L) |
| 99B.6 | 83-1-3(L) | 725.12 | 83-1-3(L) |
| 99B.12 | 83-1-3(L) | | |
| 149.1(2) | 83-1-2(L) | | |
| 149.5 | 83-1-2(L) | | |
| 252.22 | 83-1-5(L) | | |
| 252.27 | 83-1-5(L) | | |
| 257.26 | 83-1-8(L) | | |
| 282.1 | 83-1-8(L) | | |
| 282.2 | 83-1-8(L) | | |
| 282.6 | 83-1-8(L) | | |
| 306.21 | 83-1-7(L) | | |
| 331.702 | 83-1-4(L) | | |
| 347.14 | 83-1-5(L) | | |
| 347.16(2) | 83-1-5(L) | | |
| 347.16(3) | 83-1-5(L) | | |
| 409.4 | 83-1-7(L) | | |
| 409.5 | 83-1-7(L) | | |
| 409.6 | 83-1-7(L) | | |
| 409.7 | 83-1-7(L) | | |

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA
FILED - February 16, 1983

NOTE: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA 50319, for a fee of 40 cents per page.

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No. 66364. MULKINS v. BOARD OF SUPERVISORS.
Appeal from the Iowa District Court for Page County, Paul H. Sulhoff, Judge. Affirmed. Considered by LeGrand, P.J., and Uhlenhopp, Harris, McCormick, and McGiverin, JJ. Opinion by LeGrand, J. (11 pages $4.40)

Landowners appeal district court's order concerning a county's duty to rebuild a bridge and to pay for damages pursuant to section 455.118 of the Iowa Code. The trial court ordered defendant to rebuild the bridge which formerly connected two parcels of plaintiffs' farm; instead of complying with the decree, however, the board promptly took steps to vacate the secondary road of which the bridge was a part. OPINION HOLDS: I. Plaintiffs are incorrect in their contention that, once a statutory duty to rebuild the bridge was established, the county could not thereafter vacate the road to avoid compliance with the decree; plaintiffs did not acquire a vested right in this public highway or this public bridge; the vacation of the road was proper. II. The trial court vacated the decree on grounds of newly discovered evidence (the vacation of the road); except in extraordinary cases, "newly discovered evidence" is evidence existing at the time of trial but not produced at trial for excusable reasons; however, this is one of those cases in which an exception to this general rule should be recognized; performance of the mandamus decree would be a totally useless and futile act; courts should not demand enforcement of a decree when subsequent events have made the course vain and worthless; limiting our finding to the particular circumstances of this case, we hold the trial court did not err in vacating the mandamus decree. III. There was no evidentiary basis upon which the trial court could allow damages for the extra distance travelled because of the washed out bridge; because plaintiff Roscoe Mulkins admitted at trial that the sale price he paid was not affected by the lack of access, he suffered no damage either; we therefore affirm the judgment disallowing money damages.

No. 67710. HINES v. ILLINOIS CENTRAL GULF RAILROAD.
Appeal from the Iowa District Court for Butler County, Ray E. Clough, Judge. AFFIRMED. Considered by LeGrand, P.J., and McCormick, McGiverin, Larson, and Schultz, JJ. Opinion by Schultz, J. (16 pages $6.40)

Defendant railroad has appealed with permission from a ruling on a motion to adjudicate law points. OPINION HOLDS: Iowa Code section 307.26(5)(b), which provides in part that "[a] railroad crossing shall not be found to be particularly hazardous for any purpose unless the [DOT] has determined it to be particularly hazardous", does not provide an exclusive and binding means of determining whether the crossing is extra-hazardous in tort actions arising from crossing accidents; when examined in the context of the entire section, we find the quoted language was not intended to determine civil liability in tort suits but rather was intended merely to provide the DOT with final authority over determinations of hazardousness by other agencies, departments, or political subdivisions.

No. 67629. FARM & CITY INSURANCE CO. v. POTTER.
Appeal from the Iowa District Court for Polk County, Theodore H. Miller, Judge. Affirmed. Considered by Reynoldson, C.J., and LeGrand, Uhlenhopp, Harris, and McCormick, JJ. Opinion by LeGrand, J. (11 pages $4.40)

Plaintiff appeals from declaratory judgment establishing coverage under a policy of insurance issued by plaintiff to Allan D. Potter and Christine D. Potter. Plaintiff contends that neither of two collisions involving an automobile driven by Christine Potter was "caused by accident" within the meaning of the insurance policy because they resulted from Christine's voluntary and deliberate act in cutting the auto's brake lines. OPINION HOLDS: Although Christine voluntarily set in motion the sequence of events causing the collisions by cutting the brake lines of the auto, in both cases the preponderance of the evidence supports the conclusion that she did not intend either event which occurred; of course driving the car without brakes was negligence and perhaps it was recklessness; however, as Comfort v. Continental Casualty Company, 239 Iowa 1206, 1210, 34 N.W.2d 588, 590 (1948), holds, the fact that her previous voluntary and deliberate acts set in motion the events which eventually resulted in the collisions does not preclude these events from being accidents.

No. 67227. SMITH V. PARTNERSHIP OF KORF, DIEHL, CLAYTON, AND CLEVERLEY.

Appeal from Jasper District Court, Richard A. Strickler, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, McCormick, and Carter, JJ. Opinion by Harris, J. (6 pages $2.40)

Defendants appeal from the trial court's refusal to order a judgment of dismissal pursuant to Iowa R. Civ. P. 215.1 and from the trial court's reinstatment of the case after a later dismissal pursuant to that rule. OPINION HOLDS: I. We adhere to our holding in Greene v. Tri-County Community School District, 315 N.W.2d 779, 782 (Iowa 1982), and affirm the trial court's ruling that the first "try or dismiss" notice, mailed on rather than before August 15, was ineffective. II. Under the record here, we cannot find the trial court abused its discretion in reinstating the case; the trial court believed that the dismissal was a mistake and an oversight on the part of the clerk and that the pending appeal was a reasonable cause for the plaintiff's failure to obtain an order exempting the suit from the operation of the rule; in considering discretionary reinstatement, there is no requirement that a finding of a pending appeal be made and entered of record prior to the automatic dismissal date.

No. 68293. STATE V. FINK.

Appeal from Black Hawk District Court, Gordon Richards, Magistrate. Reversed. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, McCormick, and Carter, JJ. Opinion by Harris, J. (3 pages $1.20)

The State appeals from the dismissal of a charge of public intoxication as defined in Iowa Code § 123.46. Defendant moved to dismiss the charge because he was not taken to a detoxification center. OPINION HOLDS: The trial court's interpretation of Iowa Code § 125.34(1) was erroneous; the section plainly provides two requirements, both of which must be met before a police officer is required to take a person to a detoxification center; (1) the person must appear "to be intoxicated or incapacitated by a chemical substance in a public place," and (2) the intoxicated person must appear to be "in need of help;" the first of the two requirements existed here but the second did not; the trial court erred in dismissing the charge.

No. 67522. CITY OF CEDAR FALLS v. FLETT.
Appeal from the Iowa District Court for Black Hawk County, Carroll E. Engelkes, Judge. Affirmed. Considered by Reynoldson, C.J., and Harris, Larson, Schultz, and Carter, JJ. Opinion by Schultz, J. (15 pages $6.00)

On discretionary review, defendant challenges his twenty-three misdemeanor convictions under a City of Cedar Falls ordinance concerning the storage of junk vehicles. OPINION HOLDS: I. The ordinance does not impermissibly delegate judicial powers to the executive department; the city could rationally find that unlicensed vehicles in outside storage, with the defects enumerated in the ordinance, could threaten the public health and safety; the defects specified in the ordinance are rationally related to protection of the public health and safety; nor are the provisions of the statute unconstitutionally vague. II. The search warrant was valid; we find no violation of defendant's fourth amendment rights. III. We find no violation of defendant's fifth amendment right to be free from double jeopardy. IV. Possession is at least tangible circumstantial evidence of ownership of the vehicle; enough circumstantial evidence was presented to prove ownership of the vehicles beyond a reasonable doubt; thus the finding by the trial court that defendant was the owner of these vehicles is not to be overturned.

No. 65547. BROWN TOWNSHIP MUTUAL INSURANCE ASSOCIATION v. KRESS.
Appeal from Iowa District Court for Linn County, Louis W. Schultz, Judge. Affirmed. Considered by Reynoldson, C.J., and LeGrand, Uhlenhopp, Harris, and McCormick, JJ. Opinion by Uhlenhopp, J. (18 pages $7.20)

Insurer and insured appeal from judgment defining rights and liabilities under a fire policy covering property which the insurer was not statutorily authorized to insure. OPINION HOLDS: I. There is substantial evidence to support the trial court finding that the insurer knew the nature of insured's machine shop business; the insurer is therefore estopped to assert that because as a county mutual insurance association it is not authorized to write commercial insurance the policy is void. II. Defendant Kress was majority stockholder of defendant KMI and controlled it, and was guarantor of an SBA loan to the corporation; the trial court correctly found an insurable interest in Kress as an individual; there was no unapproved assignment of the policy to KMI which would void it. III. Insurer has failed to establish a breach of the coinsurance clause. IV. We do not recognize a tort action in the present circumstances; in the absence of special circumstances, consequential damages are not available for breach of an insurance contract; we find no error in the amount of trial court's award to Kress. V. Because the trial court was correct in denying claims for consequential damages, no error occurred in not allowing evidence of them. VI. The trial court correctly calculated interest according to the applicable statutes.

No. 67168. STATE v. NELSON.

Appeal from the Iowa District Court for Black Hawk County, Robert E. Mahan, Judge. Affirmed. Considered by LeGrand, P.J., and McCormick, McGiverin, Larson, and Schultz, JJ. Opinion by Schultz, J. (10 pages $4.00)

Defendant appeals from his conviction of false imprisonment in violation of Iowa Code section 710.7 (1981). OPINION HOLDS: I. An objection in trial court based on hearsay does not preserve an issue of denial of defendant's constitutional right of confrontation; error was not preserved. II. An instruction on the justification defense of defense of property was not necessary under the facts of this case; the defense is unavailable to a defendant who has at an earlier time been deprived of possession of his property by a wrongful taking committed out of his presence, and who them attempts by the use of force to recover the property, although the property is elsewhere. III. Defendant's claim he was denied effective assistance of trial counsel is reserved for postconviction proceedings.

No. 68184. COLONIAL BAKING CO. v. DOWIE.

Appeal from the Iowa District Court for Polk County, J.P. Denato and Van Wifvat, Judges. Reversed and remanded for entry of judgment on the motion for summary judgment. Considered by LeGrand, P.J., and McCormick, McGiverin, Larson, and Schultz, JJ. Opinion by Schultz, J. (12 pages $4.80)

Defendant Frederick J. Dowie appeals from a judgment entered against him and his codefendant; plaintiff cross-appeals from a ruling on its motion for summary judgment and from the final judgment as to the amount of damages. Plaintiff Colonial sued for the amount defendants allegedly owed it for 325,000 hot dog buns. Payment was stopped on a check imprinted with the name of the defendant corporation and signed by defendant Frederick J. Dowie. OPINION HOLDS: I. Plaintiff Colonial's cross-appeal against Dowie was timely filed because it was filed within five days after Dowie had taken his appeal; Colonial has abandoned the portion of its cross-appeal directed against the defendant corporation; we dismiss the cross-appeal against the corporation only. II. Section 554.3403(2) of the Iowa Code provides liability against the drawer of a check if there is no evidence that the check was signed in a representative capacity; the fact that a corporate name is imprinted on the check is not alone sufficient evidence that the drawer, who signs his own name to the instrument, has otherwise established that he is not personally liable; the drawer has the affirmative duty to plead the defense that he is not personally liable on the instrument; the trial court erred when it denied Colonial's motion for summary judgment and failed to enter judgment for the amount of the check.

NO. 67094. POLK COUNTY V. IOWA STATE APPEAL BOARD.
Appeal from the Iowa District Court for Polk County, Van Wifvat, Judge. Reversed in part, and affirmed in part. Considered by LeGrand, P.J., and McCormick, McGiverin, Larson and Schultz, JJ. Opinion by McGiverin, J.
(25 pages $10.00)

Polk County and its allied intervenors appeal from district court ruling denying judicial review under Iowa Code chapter 17A (1981), and dismissing their petition for judicial review of the adverse decision by State Appeal Board on its review of the Polk County budget. OPINION HOLDS: I. Although the outcome of this appeal concerning the 1981-82 Polk County budget can have no practical effect on that budget we consider the merits of several of the issues raised in petitioners' appeal since this appeal raises recurring issues of considerable public interest which call for resolution. II. A county has no interest in defeating a statute duly enacted by the legislature; as a result the constitutionality of Iowa Code sections 24.26-.32 and the Board's actions under them and the provisions of chapter 17A do not give rise to situations in which Polk County becomes an aggrieved or adversely affected "person" within the meaning of Iowa Code section 17A.19(1); consequently Polk County lacks standing to raise the constitutional issues; counties may challenge the nature and extent of the authority or procedures of a state agency under relevant or enabling legislation; under section 17A.19(1), the county should not have had standing to seek review of a matter entrusted by statute to the State Appeal Board's discretion; only one of the petitioners-intervenors has standing on all of the issues he raises. III. The legislature's delegation of such authority to the Board to review local budgets under Iowa Code sections 24.26-.32 is not unlawful under article III, section 1, of the Iowa Constitution. IV. The intervenor's contention that the decision of the Board is an unlawful delegation of power to pass a special law is without merit. V. Intervenor's constitutional contention that the Board's failure to adopt rules as required by Iowa Code section 17A.3 invalidates its decision because such failure deprived him of due process of law has now been rendered moot by the Board. VI. Since nowhere in chapter 24 are the judicial review provisions of the Iowa Administrative Code specifically extempted from application to decisions by the State Appeal Board, its decisions are subject to judicial review pursuant to Iowa Code section 17A.19. VII. The hearing required by Iowa Code chapter 24 for the Board's review of local budgets is not a contested case and thus the procedural requirements of Iowa Code sections 17A.10-.17 and .19 do not apply. VIII. A general protest petition, such as the one filed here, is sufficient to trigger review by the Board. IX. Polk County and the intervenor failed to preserve error on the issue of whether the Board lacked jurisdiction to direct the use or expenditure of federal revenue sharing funds; the issue,

NO. 67094. POLK COUNTY V. IOWA STATE APPEAL BOARD (con'd) therefore, cannot be considered on this appeal. X. The issue of whether the Board misconstrued the statutes and exceeded its authority in ordering that bailiffs be paid out of the general fund instead of the court expense fund has been settled by legislature; although we disagree with certain conclusions of the district court as stated above, the result of the court in upholding the decision of the Board is affirmed.

NO. 67848. MONTZ V. HILL-MONT LAND CO.
Appeal from the Iowa District Court for Keokuk County, Robert Bates, Judge. Reversed and remanded. Considered by LeGrand, P.J., and McCormick, McGiverin, Larson and Schultz, JJ. Opinion by McGiverin, J. (5 pages $2.00)

Defendants appeal with permission from an interlocutory ruling on an application for adjudication of law points under Iowa R. Civ. P. 105. The trial court ruled that as a matter of law, plaintiffs' predecessors in title conveyed to defendants' predecessors an interest in land for a railroad right of way which was an easement rather than a determinable fee. OPINION HOLDS: From the face of the pleadings we can glean allegations but few uncontroverted facts, and the parties did not stipulate to the necessary facts; an application for separate adjudication of law points is inappropriate when material facts are disputed; evidence of the grantors' intent and the effect the conveyance was to have is material; the present case was not an appropriate one for a rule 105 disposition.

NO. 67607. CORNELL V. WUNSCHEL.
Appeal from the Iowa District Court for Clinton County, J. Hobart Darbyshire, Judge. Affirmed and remanded. Considered by LeGrand, P.J., and McCormick, McGiverin, Larson and Schultz, JJ. Opinion by McGiverin, J. (6 pages $2.40)

By interlocutory appeal, defendants challenge district court's refusal to grant a change of venue in action involving a lease purchase agreement concerning real estate. OPINION HOLDS: I. Since the action requires a determination of plaintiff's interest in real estate, Iowa Code section 616.1 (1981) mandating such actions be brought in the county where the real estate is located supercedes any provisions which give preference to venue in the county of defendants' residence. II. Prior to the commencement of litigation the parties to an action affecting title to real estate cannot validly contract to place venue in a county other than the county where the real estate is located; they cannot rely on contractual provisions to circumvent the legislative mandate of section 616.1; the parties agreement to the contrary, here, was invalid; we affirm the order of the district court which maintained this action in Clinton County, the county where the real estate was located; this case is remanded for further appropriate proceedings.

NO. 67592. COACHMEN INDUSTRIES, INC. V. SECURITY TRUST & SAVINGS BANK.

Appeal from the Iowa District Court for Page County, Leo Connolly, Judge. Reversed and remanded on the appeal; affirmed on the cross-appeal. Considered by LeGrand, P.J., and McCormick, McGiverin, Larson, and Schultz, JJ. Opinion by McCormick, J. (9 pages $3.60)

Plaintiff appeals and defendant cross-appeals from judgment in an action involving competing claims of creditors of a bankrupt recreational vehicle dealer. OPINION HOLDS: I. That the Uniform Commercial Code does not affect "any right of setoff," Iowa Code section 554.9104(i) (1981), does not mean that a right of setoff automatically has priority over security interests; a right of setoff takes priority over a perfected security interest only in certain circumstances after insolvency; because the setoff occurred before insolvency in this case, plaintiff's purchase money security interest in the proceeds of sale takes priority; plaintiff's purchase money security interest was prior in right to defendant's general security interest under the circumstances in this case, even though defendant's security interest was perfected earlier; the proceeds are identifiable in their entirety within the meaning of the statute because the account balance always exceeded the amount of the proceeds during the period involved. II. There was no misrepresentation of a material fact by plaintiff nor evidence to show defendant suffered any prejudice or detriment; the trial court erred in finding that the defense of estoppel was established. III. Plaintiff is entitled to interest at five percent from the date the money became due, and interest at ten percent from the date of commencement of each of its claims.

NO. 67828. RYAN V. IOWA DISTRICT COURT.

Certiorari to the Iowa District Court for Winneshiek County, Joseph C. Keefe and C. W. Antes, Judges. Writ sustained. Considered by LeGrand, P.J., and McCormick, McGiverin, Larson, and Schultz, JJ. Opinion by McCormick, J. (4 pages $1.60)

Plaintiff Ryan challenges an order of the district court purporting to bind him to a replevin judgment in an action to which he was not a party. The district court granted General Motors Acceptance Corporation's request for replevin of plaintiff's Chevrolet automobile as part of an action against Hilsabeck Chevrolet, Inc., a dealership. OPINION HOLDS: I. A stay was in effect until the court's December ruling on plaintiff's motion for new trial; the trial court thus had jurisdiction of the case when the December order was filed; even if Ryan was not a party and lacked authority to move for new trial, the December order purported to adjudiate his rights, so he had standing to obtain certiorari review of the order; because the certiorari action was brought within thirty days of the December order, it was timely, and we have jurisdiction. II. Plaintiff Ryan was not a party in the replevin action; he is thus not bound by the resulting judgment.

NO. 68739. O'NEAL V. O'NEAL.
Appeal from Dubuque District Court, L. John Degnan, Judge. Reversed and remanded. Considered by LeGrand, P.J., and McCormick, McGiverin, Larson and Schultz, JJ. Opinion by McCormick, J. (8 pages $3.20)

Defendant mother appeals from trial court's deference to an Arizona decree awarding custody of the parties' minor child to plaintiff father, its consequent refusal of jurisdiction in the continuing child custody dispute, and its sustaining of plaintiff father's petition for writ of habeas corpus regarding the child. OPINION HOLDS: I. Applying the standard in Iowa Code section 598A.13, we find Arizona did not assume jurisdiction under statutory provisions substantially in accordance with chapter 598A, nor did the factual circumstances meet the jurisdictional standards of that chapter; the record shows that Iowa would have had jurisdiction under the "significant connections" provisions of section 598A.3(1)(b) when plaintiff father commenced the Arizona action; therefore, the Iowa trial court should not have recognized and given effect to the Arizona custody decree. II. Given the parents' and the child's past connections to this state, we hold that Iowa has jurisdiction of the custody issue at the present time under section 598A.3(1)(b); although trial court alternatively declined to exercise jurisdiction in accordance with the "clean hands" doctrine of section 598A.8 because of the mother's misconduct in taking the child from the father's custody in April 1982, this is a discretionary ground for denying jurisdiction; it should not be used if doing so would jeopardize the welfare of the child, which is the case here; trial court had jurisdiction of the custody dispute and should have exercised it.

NO. 66563. SPONSLER V. CLARKE ELECTRIC COOPERATIVE, INC.
Appeal from Lucas District Court, James W. Brown, Judge. Affirmed. Considered by LeGrand, P.J., and McCormick, McGiverin, Larson and Schultz, JJ. Opinion by McCormick, J. (5 pages $2.00)

Plaintiff appeals from judgment on a jury verdict for defendant in this negligence action. The case arose from an accident which occurred while plaintiff was working for Wayne County on a bridge repair job. Plaintiff was underneath a crane when his supervisor raised the boom into an electric transmission line, causing plaintiff to receive severe electrical burns. Defendant urged a defense that the sole proximate cause of the accident was negligence of Wayne County or its employee, plaintiff's supervisor. OPINION HOLDS: I. Plaintiff asks this court to abolish the doctrine of sole proximate cause as an affirmative defense; because the sole proximate cause defense is not subsumed in the plaintiff's burden to prove proximate causation, we adhere to our cases holding that a defendant is entitled to have the jury instructed on it when substantial evidence supports it. II.

Plaintiff asserts that the trial court unduly emphasized the defense in its jury instructions; considering the instructions as a whole, we find the defense was not unduly emphasized.

No. 67496. PRUSS v. IOWA DEPARTMENT OF REVENUE.
Appeal from Iowa District Court for Linn County, August F. Honsell, Judge. Affirmed and remanded. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, McCormick, and Carter, JJ. Opinion by Uhlenhopp, J. (13 pages $5.20)

The revenue department appeals from decision by district court on judicial review reversing the revenue director's denial of a refund for carry-back losses to petitioners on the ground that the claim was untimely under section 422.73 of the Iowa Code of 1975. OPINION HOLDS: I. In cases which otherwise qualify for judicial review: (1) actions of the director of revenue (a) coming under chapter 422, section 425.31, and section 450.59 may and (b) within other statutes must, first be appealed to the state board, and judicial review may then be had of decisions of the board; and (2) direct judicial review may alternatively be had of actions of the director of revenue coming within chapter 422, section 425.31, and section 450.59; the present case involves action of the director under chapter 422, and taxpayers properly exercised their alternative to have direct judicial review. II. Prior to the 1978 amendment, section 422.73 was only a mistake statute not including a time limitation on a refund or credit from carry-back losses. III. The carry-back legislation carries with it the right of refund or credit; in this case a refund is in order. IV. If there is a real danger the inapplicability of section 422.73 to carry-back claims will expose the state to old claims ad infinitum the General Assembly can address it by appropriate legislation; we return the case to the director for allowance of the refund with interest.

No. 67947. STATE v. COOK.
Appeal from Iowa District Court for Woodbury County, James P. Kelly, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, McCormick and Carter, JJ. Opinion by Uhlenhopp, J. (14 pages $5.60)

The defendant appeals his convictions of murder, robbery, burglary and theft. OPINION HOLDS: I. Defendant was not "in custody" when police officers visited with him at a residence and the next morning when the police officers took him to the station and questioned him prior to giving him a Miranda warning and his subsequent confession which resulted in his arrest; the officers' request for his shoes did not itself require a Miranda warning because it involved physical evidence and not a communication from defendant's mind; we thus find neither a direct Miranda violation, a violation by way of police conduct designed to elicit an incriminating response, or a confession that was come at by exploitation of the prior illegal questioning; by the same token the subsequent search warrant was valid. II. His statements were not made incident to an illegal arrest; he was legally arrested after his confession. III. Defendant's Miranda waiver was voluntary. IV. Defendant's statements to the officers were voluntary in fact. V. We have no record of a request to make an offer of proof and a denial; we do not presume error concerning that offer. VI. The record as made on the defendant's hearsay objection is insufficient to demonstrate ground for reversal.

No. 67654. STATE ex rel. WARREN v. MAHAN.

Appeal from the Iowa District Court for Washington County, Phillip R. Collett, Judge. Affirmed and remanded. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, McCormick, and Carter, JJ. Opinion by Carter, J.

(4 pages $1.60)

On interlocutory appeal in a proceeding to determine paternity and impose child support under the Uniform Support of Dependents Law, the appellant contends the trial court erred in holding that a dependent child's unmarried mother is not a proper petitioner. Appellee and cross-appellant contends that the petitioner designated had no right of recovery in her own behalf and that the action should therefore be dismissed. OPINION HOLDS: I. In a proceeding to determine paternity and impose a child support obligation under the Uniform Support of Dependents Law, Iowa Code chapter 252A, a mother who is not married to the putative father is not a proper petitioner because she is not a "dependent" entitled to support under the act; in this case the petition should have named the child rather than the mother as petitioner. II. However, the improper naming of the mother as petitioner did not require the dismissal of the petition; the trial court acted correctly in permitting the petition to be amended to name the child as petitioner.

No. 67224. MEIS v. OSMUNDSON.

Certiorari to the Iowa District Court for Linn County, Robert Osmundson, Judge. Writ sustained in part; annulled in part. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, McCormick, and Carter, JJ. Per curiam.

(4 pages $1.60)

In this original certiorari action, plaintiff challenges the district court's exercise of jurisdiction over her for purposes of finding her in contempt, and, in addition, seeks to recover attorney fees for a separate contempt proceeding in the district court. OPINION HOLDS: I. When there was no attempt to secure personal service of the rule to show cause pursuant to one of the alternatives available under Iowa Rules of Civil Procedure 56.1(a)-(m) service upon the attorney who represented plaintiff in dissolution proceedings did not confer jurisdiction upon district court to proceed with the contempt matter; plaintiff's separate application to have her former husband found in contempt, and appearance with respect thereto, did not waive her special appearance with respect to the charge against her. II. Iowa Code section 598.24 does not require an award of attorney fees in all instances where a finding of contempt is based upon a willful failure to pay child support and under the circumstances the district court did not act illegally in failing to make such an award.

No. 67526. SMB INVESTMENTS v. IOWA-ILLINOIS GAS AND ELECTRIC CO.

Appeal from Iowa District Court for Muscatine County, Lowell D. Phelps, Judge. Affirmed. Considered en banc. Opinion by Larson, J. Dissent by Schultz, J.

(20 pages $8.00)

The plaintiff appeals a district court ruling denying a motion for judgment on the pleadings and ruling adversely on a motion to adjudicate law points in an action challenging notice of condemnation of a power line easement. OPINION HOLDS: I. The notice of condemnation adequately specified the nature of the legal interest in the real estate which the defendant public utility sought to condemn. II. The notice of condemnation was not required to specify the location of a route of ingress and egress to the defendant's proposed power line. DISSENT ASSERTS: I believe the notice of condemnation was statutorily required to specify the location of the route of ingress and egress to the proposed power line.

No. 67650. HINDERS v. CITY OF AMES.

Appeal from the Iowa District Court for Story County, Carl K. Baker, Judge. Affirmed on both appeals. Considered by LeGrand, P.J., and McCormick, McGiverin, Larson, and Schultz, JJ. Opinion by Larson, J. (6 pages $2.40)

City and council members appeal from summary judgment that plaintiff's request for a voter referendum regarding discontinuance of operation of the city's electric utility constituted a valid "proposal" within the meaning of Iowa Code section 388.2 (1981)(procedure for submission of proposal to establish or dispose of city utility), and from writ of mandamus ordering the proposal submitted to the voters. Plaintiff cross-appeals from trial court's ruling that an affirmative vote on the proposal would allow, but not require, the city council to dispose of the utility. OPINION HOLDS: I. Because plaintiff's proposal is clear and accurately informs the voters of what they are called upon to decide, namely, whether the city utility should be discontinued and its assets sold, we conclude that plaintiff substantially complied with the reqirements of Iowa Code section 388.2, and that the district court's ruling was correct. II. Because the preliminary vote on the issue has not been held, plaintiff's claim regarding trial court's statement about the effect of a vote is premature; while the court's statement must therefore be considered surplusage, it was not error to include it in the order.

No. 67061. STATE v. STREETS.

Appeal from the Iowa District Court for Scott County, James R. Havercamp, Judge. Affirmed. Considered by LeGrand, P.J., and McCormick, McGiverin, Larson, and Schultz, JJ. Opinion by Larson, J. (5 pages $2.00)

Defendant appeals from his conviction of first-degree murder, kidnapping, and second-degree theft. OPINION HOLDS: I. Denial of defendant's motion to sever did not result in prejudice sufficient to constitute denial of a fair trial. II. Seizure of evidence at the time of defendant's arrest was admissible as incident to a valid arrest for a traffic offense. III. An amendment to the trial information three days prior to trial was not impermissible under Iowa Rules of Criminal Procedure 4(8)(a).

No. 67064. STATE v. SCHERTZ.

Appeal from the Iowa District Court for Scott County, James R. Havercamp, Judge. Affirmed. Considered by LeGrand, P.J., and McCormick, McGiverin, Larson, and Schultz, JJ. Opinion by Larson, J. (5 pages $2.00)

Defendant appeals from his conviction of first-degree murder, kidnapping, and second-degree theft. OPINION HOLDS: I. There was sufficient evidence of torture to sustain the kidnapping conviction. II. The trial court did not err in allowing the State to amend the kidnapping charge three days before trial to include an alternative allegation that the victim was intentionally subjected to torture. III. Defendant's allegation that he was denied effective assistance of counsel must be presented, if at all, in postconviction proceedings.

No. 67879. IN RE ESTATE OF HAWK (HUDSON v. LAIN).

Appeal from Iowa District Court for Appanoose County, James D. Jenkins, Judge. Reversed. Considered by LeGrand, P.J., and McCormick, McGiverin, Larson, and Schultz, JJ. Opinion by Larson, J. (6 pages $2.40)

Defendant Lorena Lain appeals from the declaratory judgment that she is not the child of decedent and thus cannot inherit from him. OPINION HOLDS: I. While we do not hold the blood tests here are conclusive, we believe that the tests, together with the other evidence, particularly the testimony of Lorena's mother, have rebutted the presumption of legitimacy; we conclude Lorena was not the daughter of the man her mother was married to when Lorena was born. II. Upon examination of the whole record, we conclude that a preponderance of the evidence supports Lorena's claim that decedent was her father; the common law marriage of decedent and Lorena's mother legitimatized Lorena under Iowa Code section 595.18 (illegitimate children become legitimate by the subsequent marriage of their parents).

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