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IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee" include summaries of Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

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 Coordinator 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 Iowa Code section 17A.6. 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 Coordinator and published in the Iowa Administrative Bulletin.

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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:

First quarter	July 1, 1994, to June 30, 1995	\$221.00 plus \$11.05 sales tax
Second quarter	October 1, 1994, to June 30, 1995	\$165.75 plus \$8.29 sales tax
Third quarter	January 1, 1995, to June 30, 1995	\$110.50 plus \$5.53 sales tax
Fourth quarter	April 1, 1995, to June 30, 1995	\$ 55.25 plus \$2.76 sales tax

Single copies may be purchased for \$15.00 plus \$0.75 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

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

Prices for the Iowa Administrative Code and its Supplements are as follows:

Iowa Administrative Code - \$1,002.75 plus \$50.14 sales tax

(Price includes 18 volumes of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders can be purchased for \$9.00 plus \$0.45 tax.)

Iowa Administrative Code Supplement - \$350.00 plus \$17.50 sales tax
(Subscription expires June 30, 1995)

All checks should be made payable to the Iowa State Printing Division. Send all inquiries and subscription orders to:

**Iowa State Printing Division
Grimes State Office Building
Des Moines, IA 50319
Phone: (515)281-5231**

Schedule for Rule Making 1995

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 2 '94	Dec. 21 '94	Jan. 10	Jan. 25	Jan. 27	Feb. 15	Mar. 22	June 19
Dec. 16 '94	Jan. 4	Jan. 24	Feb. 8	Feb. 10	Mar. 1	Apr. 5	July 3
Dec. 30 '94	Jan. 18	Feb. 7	Feb. 22	Feb. 24	Mar. 15	Apr. 19	July 17
Jan. 13	Feb. 1	Feb. 21	Mar. 8	Mar. 10	Mar. 29	May 3	July 31
Jan. 27	Feb. 15	Mar. 7	Mar. 22	Mar. 24	Apr. 12	May 17	Aug. 14
Feb. 10	Mar. 1	Mar. 21	Apr. 5	Apr. 7	Apr. 26	May 31	Aug. 28
Feb. 24	Mar. 15	Apr. 4	Apr. 19	Apr. 21	May 10	June 14	Sept. 11
Mar. 10	Mar. 29	Apr. 18	May 3	May 5	May 24	June 28	Sept. 25
Mar. 24	Apr. 12	May 2	May 17	May 19	June 7	July 12	Oct. 9
Apr. 7	Apr. 26	May 16	May 31	June 2	June 21	July 26	Oct. 23
Apr. 21	May 10	May 30	June 14	June 16	July 5	Aug. 9	Nov. 6
May 5	May 24	June 13	June 28	June 30	July 19	Aug. 23	Nov. 20
May 19	June 7	June 27	July 12	July 14	Aug. 2	Sept. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sept. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '96
June 30	July 19	Aug. 8	Aug. 23	Aug. 25	Sept. 13	Oct. 18	Jan. 15 '96
July 14	Aug. 2	Aug. 22	Sept. 6	Sept. 8	Sept. 27	Nov. 1	Jan. 29 '96
July 28	Aug. 16	Sept. 5	Sept. 20	Sept. 22	Oct. 11	Nov. 15	Feb. 12 '96
Aug. 11	Aug. 30	Sept. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '96
Aug. 25	Sept. 13	Oct. 3	Oct. 18	Oct. 20	Nov. 8	Dec. 13	Mar. 11 '96
Sept. 8	Sept. 27	Oct. 17	Nov. 1	Nov. 3	Nov. 22	Dec. 27	Mar. 25 '96
Sept. 22	Oct. 11	Oct. 31	Nov. 15	Nov. 17	Dec. 6	Jan. 10 '96	Apr. 8 '96
Oct. 6	Oct. 25	Nov. 14	Nov. 29	Dec. 1	Dec. 20	Jan. 24 '96	Apr. 22 '96
Oct. 20	Nov. 8	Nov. 28	Dec. 13	Dec. 15	Jan. 3 '96	Feb. 7 '96	May 6 '96
Nov. 3	Nov. 22	Dec. 12	Dec. 27	Dec. 29	Jan. 17 '96	Feb. 21 '96	May 20 '96
Nov. 17	Dec. 6	Dec. 26	Jan. 10 '96	Jan. 12 '96	Jan. 31 '96	Mar. 6 '96	June 3 '96
Dec. 1	Dec. 20	Jan. 9 '96	Jan. 24 '96	Jan. 26 '96	Feb. 14 '96	Mar. 20 '96	June 17 '96
Dec. 15	Jan. 3 '96	Jan. 23 '96	Feb. 7 '96	Feb. 9 '96	Feb. 28 '96	Apr. 3 '96	July 1 '96
Dec. 29	Jan. 17 '96	Feb. 6 '96	Feb. 21 '96	Feb. 23 '96	Mar. 13 '96	Apr. 17 '96	July 15 '96

20 days from the publication date is the **minimum** date for a public hearing or cutting off public comment.

35 days from the publication date is the **earliest** possible date for the agency to consider a noticed rule for adoption. It is the regular effective date for an adopted rule.

180 days See 17A.4(1)"b." If the agency does not adopt rules within this time frame, the Notice should be terminated.

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
17	Friday, January 27, 1995	February 15, 1995
18	Friday, February 10, 1995	March 1, 1995
19	Friday, February 24, 1995	March 15, 1995

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
 FROM: Phyllis Barry, Iowa Administrative Code Editor
 SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Iowa Administrative Code Division is using a PC system to assist in the printing of the Iowa Administrative Bulletin. In order to most effectively transfer rules from the various agencies sending their rules on a diskette, please note the following:

1. We use a Windows environment with Lotus Ami Professional 3.1 as our word processing system and can import directly from any of the following:

Ami Pro	Microsoft Word	SmartWare
Ami Pro Macro	Microsoft Word for Windows	SuperCalc
dBase	1.x, 2.0, 6.0	Symphony Document
DCA/FFT	MultiMate	Wang (IWP)
DCA/RFT	Navy DIF	Windows Write
DIF	Office Writer	Word for Windows 1.x, 2.0, 6.0
Display Write 4	Paradox	WordPerfect 4.2, 5.x, 6.0
Enable 1.x, 2.x, 4.x	Peach Text	WordStar
Excel 3.0, 4.0, 5.0	Professional Write	WordStar 2000 ver 1.0, 3.0
Exec MemoMaker	Rich Text Format	XyWrite III, Plus
Manuscript	Samna Word	XyWrite IV

2. If you do not have any of the above, a file in an ASCII format is helpful.

3. Submit only 3 1/2" or 5 1/4" high density MSDOS or compatible format diskettes. Please indicate on each diskette the agency name, file name, the format used for exporting, chapter or chapters of rules being amended.

4. **Deliver this diskette to the Administrative Code Division, 4th Floor, Lucas Building, when documents are submitted to the Governor's Administrative Rules Coordinator.**

Diskettes from agencies will be returned **unchanged** by the Administrative Code Division. Please refer to the hard-copy document which is returned to your agency by the Governor's office. This document reflects any changes in the rules—update your diskettes accordingly.

Your cooperation helps us to print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

The Administrative Rules Review Committee will hold a special meeting Monday, February 13, 1995, 7 a.m. and Tuesday, February 14, 1995, 7 a.m. in Senate Committee Room 22, State Capitol. This meeting will be in lieu of the regular, statutory date. The following rules will be reviewed:

	Bulletin
ACCOUNTANCY EXAMINING BOARD[193A]	
Professional Licensing and Regulation Division[193]	
COMMERCE DEPARTMENT[181]"umbrella"	
CPA requirements, 3.1, 3.2(1) to 3.2(5), <u>Filed</u> ARC 5360A	1/18/95
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]	
Renewable fuels and coproducts, ch 12, 85.48(10), <u>Filed Emergency After Notice</u> ARC 5362A	1/18/95
Organic food advisory committee, 47.9, <u>Filed</u> ARC 5358A	1/18/95
ATTORNEY GENERAL[61]	
Crime victim compensation, 9.25 to 9.33, <u>Notice</u> ARC 5369A	1/18/95
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]	
Bonus for successful completion of Iowa conservation corps/ young adult program, 14.7(8)"b,"	
<u>Notice</u> ARC 5352A	1/4/95
CDBG — interim financing program, 23.10, 23.12, <u>Filed Emergency</u> ARC 5330A	1/4/95
Iowa main street program, rescind chs 39 and 42, new ch 39, <u>Filed</u> ARC 5353A	1/4/95
ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]	
Professional Licensing and Regulation Division[193]	
COMMERCE DEPARTMENT[181]"umbrella"	
Examinations, fees, 1.4(4), 1.5, 1.9, <u>Notice</u> ARC 5368A	1/18/95
ENVIRONMENTAL PROTECTION COMMISSION[567]	
NATURAL RESOURCES DEPARTMENT[561]"umbrella"	
Emissions testing, nonattainment areas, 20.2, ch 31, <u>Filed</u> ARC 5367A	1/18/95
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]	
Definition of "yard sign," 4.5(5), <u>Filed</u> ARC 5355A	1/4/95
Loans or obligations forgiven or transferred; interest and imputed interest, 4.15, <u>Filed</u> ARC 5356A	1/4/95
Lobbyist quarterly reports and lobbyist client reports, 4.33, rescind 13.2, <u>Filed</u> ARC 5354A	1/4/95
GENERAL SERVICES DEPARTMENT[401]	
State employee driving guidelines, ch 11, <u>Notice</u> ARC 5361A	1/18/95
HUMAN SERVICES DEPARTMENT[441]	
Standards for services to persons with mental illness, chronic mental illness, mental retardation, developmental disabilities, or brain injury; standards for providers of services to persons with mental illness, mental retardation, and developmental disabilities, 22.1, 24.1, 24.14(5), 24.14(5)"a," 24.21(4)"b," 24.21(5)"a," 24.21(5)"a"(2), 24.21(7)"d"(1) and (3), 24.21(8), 24.21(9), 24.21(9)"a," "c," and "e," 24.65(1), 24.65(2)"d," 24.65(3), 24.65(3)"c" and "d," 24.65(7)"d," 24.65(10)"d"(2), 24.85(1), 24.85(2)"d," 24.85(3), 24.85(3)"c" and "d," 24.85(7)"d," 24.85(10)"d"(2), 24.105(6), <u>Notice</u> ARC 5329A	1/4/95
Disability services management, ch 25, <u>Notice</u> ARC 5334A, also <u>Filed Emergency</u> ARC 5335A	1/4/95
Adjustments in SSI cost-of-living, resources attributed to community spouse, community spouse's maintenance needs, personal needs allowance for residents of residential care facilities, 51.4(1), 51.7, 52.1(1), 52.1(2), 52.1(3)"a"(2), 75.5(3)"d," 75.16(2)"d"(3), <u>Notice</u> ARC 5343A, also <u>Filed Emergency</u> ARC 5344A	1/4/95
SSA RCF reimbursement rates, 52.1(3), <u>Filed</u> ARC 5348A	1/4/95
AIDS/HIV health insurance premium payment program, Medicaid — pregnant women, 75.14(7), 75.22(1)"a" and "d," 75.22(2)"a," "c," and "d," 75.22(4), 75.22(8)"e" and "f," 75.22(9)"a"(5), <u>Filed</u> ARC 5349A	1/4/95

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Prior approval of clozapine, nondiscrimination policy, exclusion of Medicaid coverage for sex reassignment surgery and surgical treatment of body dysmorphic disorder, ill and handicapped waiver, AIDS/HIV waiver, HCBS/MR waiver, termination of HCBS/MR/OBRA waiver, 77.30, 77.30(1), 77.30(2), 77.30(5)"f," 77.34(1)"a" to "c," 77.34(2), 77.34(3), 77.34(5), 77.37, 77.37(21), 77.37(21)"b"(15), 77.37(21)"d"(1), 77.37(22), 77.37(22)"f"(2), 77.37(23)"a," 77.37(25)"d," 77.37(26)"d," 77.37(29), 77.37(31)"a"(2), 77.37(32), 78.1(2)"a"(3), 78.1(4), 78.1(4)"b"(2) and (4), 78.1(4)"d"(15), 78.28(1)"g," 78.34, 78.34(1), 78.34(1)"b," 78.34(5)"c," 78.38(3), 78.38(3)"b," 78.38(5)"c," 78.41, 78.41(1)"a"(1) and (2), 78.41(1)"c," "n" and "o," 78.41(2)"i" and "j," 78.41(3)"b," 78.41(4)"a," 78.41(5), 78.41(6), 78.41(6)"a," 78.41(7)"f" and "l," 79.1(2), 79.1(15), 79.5, ch 83 division I title, 83.1, 83.2, 83.2(1)"d," "e" and "g," 83.2(2)"b," 83.3(2), 83.3(3)"a" and "c," 83.4 to 83.7, 83.8(2)"b" and "d," 83.10, 83.43(2), 83.47, ch 83 division IV title, 83.61, 83.61(1)"c"(1) and "g"(2), 83.61(2)"b," 83.62(2), 83.62(3)"a," "d," and "f," 83.64 to 83.67, 83.67(3), 83.68(1)"e," 83.68(3)"c," 83.70, <u>Filed ARC 5345A</u>	1/4/95
Licensing and regulation of child-placing agencies, payments for foster care and foster parent training, family-centered services, rehabilitative treatment services, 108.6(3), 108.7(13), 156.7(2)"c," 156.7(2)"e"(5), 156.7(2)"i"(2), (7), (9) and (10), 182.5(5)"a"(2), 182.5(5)"f"(2), (7), (9), and (10), 185.1, 185.3(2)"c," 185.5(1)"a" and "c," 185.5(6)"e," 185.5(7)"b"(3), 185.6, 185.6(3), 185.6(6), 185.6(7), 185.10(3), 185.10(4), 185.10(5), 185.10(6)"b," "h," "j," and "k," 185.10(7), 185.11(2)"a"(1) and (3), 185.11(2)"c," 185.13(1), 185.13(1)"c" to "g," <u>Notice ARC 5346A</u> , also <u>Filed Emergency ARC 5347A</u>	1/4/95
Foster care policy, 113.5(6)"h," 113.8(4), 113.10(1)"d," 156.1, 202.4(5)"b," 202.6(1), 202.8(2), 202.10(4), <u>Notice ARC 5359A</u>	1/18/95
IV-A emergency assistance program, 133.3, 133.3(6), <u>Notice ARC 5336A</u> , also <u>Filed Emergency ARC 5337A</u>	1/4/95
Purchase of service — new service, rate-setting method for injectable contraceptive unit for family planning services, 150.3(4)"a," 150.3(5)"p"(2), <u>Filed ARC 5350A</u>	1/4/95
Social services block grant and funding for local services — deletion of family-centered services; allocation formula, 153.35, 153.38, <u>Filed ARC 5328A</u>	1/4/95
School fee allowance for children in independent living, 156.8(6), <u>Filed ARC 5351A</u>	1/4/95

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Divestiture unit, ch 75, <u>Notice ARC 5338A</u>	1/4/95

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

Eligibility for remedial benefits, 11.1(3)"o," <u>Notice ARC 5332A</u> , also <u>Filed Emergency ARC 5333A</u>	1/4/95
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PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Dietetic examiners, 80.1, 80.4(3), 80.4(4), 80.5, 80.102(1), <u>Notice ARC 5341A</u>	1/4/95
Podiatry examiners, 220.1(2)"e," 220.1(9), 220.1(13), 220.4(2)"e," <u>Filed ARC 5342A</u>	1/4/95

REVENUE AND FINANCE DEPARTMENT[701]

Taxable and exempt sales, vehicles subject to registration, 18.5(2), 34.12, <u>Filed ARC 5364A</u>	1/18/95
Tax exemption for medical devices, 20.7(1)"c," 20.8, 20.9(3)"e," <u>Notice ARC 5363A</u>	1/18/95
Electronic filing of Iowa individual income tax returns, 39.13, <u>Notice ARC 5365A</u> , also <u>Filed Emergency ARC 5366A</u>	1/18/95
Withholding, composite returns, corporate tax, franchise tax, 46.1(1)"c," 48.3"4," 48.4, 52.1(3)"w," 52.1(4), 52.2(1) to 52.2(6), 52.4(2), 52.5(2), 53.1, 53.19, 54.2(1), 54.2(2)"f," 54.6(5), 58.2(3), 58.2(4), 58.4(2), 59.10, 59.12, <u>Notice ARC 5357A</u>	1/4/95

TRANSPORTATION DEPARTMENT[761]

Special registration plates, 400.38, 400.41, ch 401, <u>Notice ARC 5331A</u>	1/4/95
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ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regulatory statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR'S NOTE: Terms ending April 30, 1995.

Senator Berl E. Priebe, Co-chair
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Representative Janet Metcalf, Co-chair
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Representative Horace Daggett
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Creston, Iowa 50801

Senator John P. Kibbie
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Telephone (515)281-6331

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)"b" by allowing the opportunity for oral presentation (hearing) to be held at least twenty days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ATTORNEY GENERAL[61] Crime victim compensation, ch 9, division II IAB 1/18/95 ARC 5369A	McPherson Conference Room Old Historical Bldg. Basement Level Des Moines, Iowa	February 7, 1995 10 a.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261] Iowa conservation corps/ young adult program, 14.7(8)"b" IAB 1/4/95 ARC 5352A	Room 135 Iowa Workforce Development Center 150 Des Moines St. Des Moines, Iowa	January 24, 1995 10 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567] Pollution — air construction permit, 22.1, 22.3(6), 22.8 IAB 12/21/94 ARC 5322A	Conference Room Fourth Floor West Wallace State Office Bldg. Des Moines, Iowa	January 23, 1995 10 a.m.
GENERAL SERVICES DEPARTMENT[401] State employee driving guidelines, ch 11 IAB 1/18/95 ARC 5361A	Director's Conference Room Level A Hoover State Office Bldg. Des Moines, Iowa	February 7, 1995 9 a.m.
HISTORICAL DIVISION[223] Historical resources development program, 49.2 to 49.8 IAB 12/21/94 ARC 5324A	Jay Tone Board Room State Historical Bldg. 600 E. Locust Des Moines, Iowa	January 18, 1995 10 a.m.
PETROLEUM UST FUND BOARD, IOWA COMPREHENSIVE[591] Remedial benefits, 11.1(3)"o" IAB 1/4/95 ARC 5332A (See also ARC 5333A)	Conference Room — 6th Floor Lucas State Office Bldg. Des Moines, Iowa	January 24, 1995 10 a.m.
TRANSPORTATION DEPARTMENT[761] Registration plates, 400.38, ch 401, rescind 400.41 IAB 1/4/95 ARC 5331A	Conference Room Motor Vehicle Division Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	January 26, 1995 10 a.m. (If requested)

AGENCY IDENTIFICATION NUMBERS

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

"Umbrella" agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory "umbrellas".

Other autonomous agencies which were not included in the original reorganization legislation as "umbrella" agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA [101].

Implementation of reorganization is continuing and the following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

Public Broadcasting Division[225]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

High Technology Council[267]

Product Development Corporation[271]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPLOYMENT SERVICES DEPARTMENT[341]

Industrial Services Division[343]

Job Service Division[345]

Labor Services Division[347]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 GENERAL SERVICES DEPARTMENT[401]
 HEALTH DATA COMMISSION[411]
 HUMAN RIGHTS DEPARTMENT[421]
 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services, Division of [429]
 Persons With Disabilities Division[431]
 Spanish-Speaking People Division[433]
 Status of Blacks Division[434]
 Status of Women Division[435]
 HUMAN SERVICES DEPARTMENT[441]
 INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
 INTERNATIONAL NETWORK ON TRADE(INTERNET)[497]
 LAW ENFORCEMENT ACADEMY[501]
 LIVESTOCK HEALTH ADVISORY COUNCIL[521]
 MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
 NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
 NATIONAL AND COMMUNITY SERVICE, IOWA
 COMMISSION ON[555]
 NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board[575]
 PERSONNEL DEPARTMENT[581]
 PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
 PREVENTION OF DISABILITIES POLICY COUNCIL[597]
 PUBLIC DEFENSE DEPARTMENT[601]
 Emergency Management Division[605]
 Disaster Services Division[607]
 Military Division[611]
 PUBLIC EMPLOYMENT RELATIONS BOARD[621]
 PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
 PUBLIC SAFETY DEPARTMENT[661]
 RECORDS COMMISSION[671]
 REGENTS BOARD[681]
 Archaeologist[685]
 REVENUE AND FINANCE DEPARTMENT[701]
 Lottery Division[705]
 SECRETARY OF STATE[721]
 SESQUICENTENNIAL COMMISSION, IOWA STATEHOOD[731]
 SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
 TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority, Iowa[765]
 TREASURER OF STATE[781]
 UNIFORM STATE LAWS COMMISSION[791]
 VETERANS AFFAIRS COMMISSION[801]
 VETERINARY MEDICINE BOARD[811]
 VOTER REGISTRATION COMMISSION[821]
 WALLACE TECHNOLOGY TRANSFER FOUNDATION[851]

REORGANIZATION—NOT IMPLEMENTED

Agencies listed below are identified in the Iowa Administrative Code with WHITE TABS*. These agencies have not yet implemented government reorganization.

Iowa Advance Funding Authority[515]

Records Commission[710]

* It is recommended that all white tabs be moved to a separate binder rather than interspersed with the colored tabs, which implemented state government reorganization.

NOTICE --- AVAILABILITY OF PUBLIC FUNDS

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due date</u>	<u>Contract Period</u>
Public Health	Childhood Lead Poisoning Prevention Program	*	Local health departments or private non-profit agencies with current child health contracts with the Iowa Department of Public Health.	Provide environmental and medical case management of children identified as lead-poisoned.	2-15-95	3-1-95 to 9-30-95

Request application packet from: Rita Gergely, Bureau of Environmental Health
 Division of Health Protection
 Iowa Department of Public Health
 Lucas Building
 Des Moines, Iowa 50319-0075
 Telephone Number: (515) 242-6340

*The service area must have children identified as lead-poisoned or be expected to have children identified as lead-poisoned in the near future for whom Iowa Department of Public Health (IDPH) staff currently does or would be expected to provide environmental and medical case management.

NOTICE -- AVAILABILITY OF PUBLIC FUNDS

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Community Scholarship Program	Rural Communities	Community Organizations in Designated Health Provider Shortage Areas or communities under 10,000 designated as medically underserved	Scholarship for students who are residents of the community, for educational expenses in primary care practitioner college or program	03/20/95	extends until the service commitment has been completed

Request application packet from:

Kathy Williams, Bureau of Health Delivery Systems
Iowa Department of Public Health
321 East 12th Street
Lucas State Office Building
Des Moines, Iowa 50319-0075
Telephone: 515/281-7224

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Loan Repayment Program	Rural Communities in Designated Health Provider Shortage Areas	Primary care health professionals licensed in Iowa and eligible under Section 338A or 338B of the Public Health Service Act as amended November 16, 1990, by Public Law 101 - 597	Loan repayment for eligible primary care practitioners	03/20/95	extends until the service commitment has been completed

Request application packet from:

Kathy Williams, Bureau of Health Delivery Systems
Iowa Department of Public Health
321 East 12th Street
Lucas State Office Building
Des Moines, Iowa 50319-0075
Telephone: 515/281-7224

ARC 5369A

ATTORNEY GENERAL[61]

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 912.2A(2), the Crime Victim Assistance Board hereby gives Notice of Intended Action to rescind Chapter 9, Division II, "Crime Victim Compensation," and adopt a new Chapter 9, Division II, "Crime Victim Compensation," Iowa Administrative Code.

The proposed rules outline the administration of the Crime Victim Compensation Program in the Crime Victim Assistance Division of the Department of Justice. The purpose of the proposed rules is to clarify, in rule form, the policies and procedures for the Crime Victim Compensation Program including procedures for application, eligibility determination, computation of compensation, reductions and disqualifications, and appeal of compensation decisions.

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

Any interested person may make written suggestions or comments on the proposed rules on or before February 7, 1995. Such written material should be directed to the Crime Victim Assistance Division, Department of Justice, Old Historical Building, Des Moines, Iowa 50319, fax (515)281-8199. Persons who wish to convey their views orally should contact the Crime Victim Assistance Division at (515)281-5044 or at the division offices on the basement level of the Old Historical Building.

Also, there will be a public hearing on February 7, 1995, at 10 a.m. in the McPherson Conference Room of the Crime Victim Assistance Division on the basement level of the Old Historical Building at which time persons may present their views either orally or in writing. 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 rules.

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 Iowa Code section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

These proposed rules are intended to implement Iowa Code chapter 912.

The following rules are proposed.

DIVISION II
CRIME VICTIM COMPENSATION

61—9.25(912) Administration of the crime victim compensation program. The crime victim assistance division of the department of justice shall administer the crime victim compensation program as provided in Iowa Code chapter 912. All questions, comments, requests for

information, or applications for compensation shall be directed to the crime victim assistance division. Requests should be addressed to: Crime Victim Assistance Division, Old Historical Building, Des Moines, Iowa 50319, telephone (515)281-5044 or 1-800-373-5044.

61—9.26(912) Definitions. For rules of the department of justice crime victim assistance division, crime victim compensation program, the following definitions apply:

"Applicant" includes the following individuals who file an application with the crime victim compensation program:

1. A victim of a crime as defined in Iowa Code section 912.1(5).

2. A person responsible for the maintenance of a victim.

3. A resident of Iowa who is the victim of an act that would be compensable had it occurred within the state of Iowa and the act occurred in a foreign country that does not have a victim compensation program as defined in the federal law.

4. In the event of a victim's death, the spouse, children, parents, siblings, or persons cohabiting with or related by blood or affinity to the victim. An estate is not an eligible applicant for crime victim compensation. An estate shall, however, be reimbursed for funeral and burial expenses if the estate paid the costs on behalf of an eligible applicant pursuant to Iowa Code section 912.6(7) who shall benefit from the proceeds of the estate.

5. A legal representative authorized to act on behalf of any of the persons listed above.

"Board" means the crime victim assistance board of the department of justice.

"Compensation" means moneys awarded by the division as authorized in Iowa Code chapter 912.

"Counseling" means problem solving and support concerning emotional issues that result from a compensable crime. Counseling is a confidential service provided in person on an individual basis or in a group. Counseling has as a primary purpose to enhance, protect and restore a person's sense of well-being and social functioning. Counseling does not include victim advocacy services such as crisis telephone counseling, attendance at medical procedures, law enforcement interviews or criminal justice proceedings.

"Director" means director of the crime victim assistance division established in the department of justice.

"Division" means the crime victim assistance division of the department of justice.

"Income or wages" means net income or net wages.

"Medical care" is defined as services provided by a person licensed by the state under Iowa Code chapter 147, 148E, 152B, or 152C, or services provided under the supervision or order of a licensed physician or surgeon, dentist, or chiropractor. Medical care also includes services rendered in accordance with a method of healing sanctioned by a federally recognized sovereign nation or tribe.

"Pecuniary loss" means the amount of medical or medical-related expenses and shall include, but not be limited to, eyeglasses, hearing aids, dentures, prosthetic devices including those which were taken, lost, or destroyed during the crime, home health care, medications, counseling, pregnancy-related services, equipment rental or purchase, property alteration, transportation for emergencies and medical care provided outside the victim's county of residence, or payment of health insurance

ATTORNEY GENERAL[61](cont'd)

premiums covered by an employer previous to the victim's disability from crime. Pecuniary loss shall also include the loss of income that the victim has incurred as a direct result of the injury to the extent the victim has not been and shall not be indemnified from any other source.

"Personal injury" or "injury" shall mean bodily harm or mental suffering and shall include a victim's pregnancy or miscarriage resulting from a crime.

"Program" means the crime victim compensation program of the department of justice.

"Reasonable charges" means charges ordinarily charged by the provider of the service to the general public for services of a similar nature.

61—9.27(912) Duties of the division. The duties of the division shall include, but not be limited to, the duties provided for in Iowa Code sections 13.31 and 912.3, as well as to:

1. Prepare appropriate forms for the filing of compensation applications.
2. Conduct an administrative review of claims where a request for reconsideration is filed by an applicant with the director.
3. Receive moneys bequeathed, awarded, or donated to the crime victim assistance division by a public or private organization or individual.

61—9.28(912) Application for compensation. An applicant may file an application for compensation by telephone or in writing within two years of the occurrence or discovery of a crime.

9.28(1) Postmarked application. An application postmarked within the prescribed time period shall be considered timely filed.

9.28(2) Multiple erroneous claims. Where two or more applications are filed by or on behalf of an individual applicant during a calendar month and the applications appear on initial review to be erroneous claims based on innocent misrepresentation or circumstances of a similar nature, the claims shall be treated as a single application.

Verification shall be investigated for each crime recorded in a multiple erroneous application file. If any of the crimes recorded in a combined application are verified as compensable crimes, the applications for compensation for those crimes shall be separated from the combined file and assigned distinct application numbers.

The department will notify the applicant whenever two or more applications have been combined as one application.

9.28(3) Cooperation with law enforcement. Reasonable cooperation by the victim may include, but is not limited to, the following:

- a. Providing law enforcement with a true and accurate report of the crime.
- b. Participating in the investigation of the crime to assist law enforcement in the identification of a suspect as requested.
- c. Participating in prosecution procedures including deposition and trial testimony as requested.

In determining whether a victim reasonably cooperated with law enforcement, the division may consider the victim's age, physical condition and psychological state, and any compelling health or safety reasons that would jeopardize the well-being of the victim.

9.28(4) Sexual abuse victim. A victim of sexual abuse shall be deemed to have reasonably cooperated with law

enforcement if the victim undergoes a sexual abuse evidentiary examination.

9.28(5) Domestic abuse victim. A victim of domestic abuse shall be deemed to have reasonably cooperated with law enforcement if a report of the crime was made to law enforcement.

9.28(6) Law enforcement reports. For the purpose of the program, a report of a crime made to any of the following shall be considered a report to the local police department or county sheriff's office as provided in Iowa Code section 912.4(2):

- a. Sheriffs and their regular deputies.
- b. Marshals and police officers of cities.
- c. Peace officers of the department of public safety.
- d. Special security officers employed by board of regents institution as identified in Iowa Code section 262.13.
- e. Peace officers as authorized by Iowa Code section 350.5 or 456A.13.
- f. Employees of the department of transportation who are designated "peace officers" by resolution of the department under Iowa Code section 321.477.
- g. Correctional officers, including parole and probation officers.
- h. County attorneys.
- i. An employee of the department of human services having jurisdiction to investigate the incident.

9.28(7) Report to law enforcement. A victim is considered to have made a report to law enforcement in accordance with Iowa Code section 912.4(2) when the victim has provided a true and accurate report of the incident, which shall include to the best of the victim's knowledge:

- a. The nature of the crime,
- b. The location of the crime,
- c. The name, whereabouts and description of the suspect, if known, and
- d. The names of witnesses.

9.28(8) Law enforcement record. A law enforcement trip record shall satisfy the requirement that the crime be reported to law enforcement.

9.28(9) Good cause. In determining whether a victim has satisfied the requirement to report a crime to law enforcement, the division may consider the victim's age, physical condition and psychological state, and any compelling health or safety reasons that would jeopardize the well-being of the victim. The department may waive the 72-hour time period required for the filing of a report if good cause is shown.

9.28(10) Child victim. If the victim is a child as defined in Iowa Code section 232.2, a report to law enforcement is considered to have been made within the 72-hour reporting requirement, provided it is made within 72 hours of the discovery of the crime by the parent or guardian.

9.28(11) Dependent adult victim. If the victim is a dependent adult as defined in Iowa Code section 235B.2(4), a report to law enforcement is considered to have been made within the 72-hour reporting requirement when it is made within 72 hours of the discovery of the crime by the caretaker.

9.28(12) Sexual abuse victim. For a victim of sexual abuse, the requirement to report to law enforcement is considered to have been met if a sexual abuse evidentiary examination was completed within 72 hours of a crime and the victim files a subsequent law enforcement report.

ATTORNEY GENERAL[61](cont'd)

61—9.29(912) Computation of compensation. The division shall determine the amount of compensation to be awarded to an eligible applicant. Compensation shall be made up to the limits established pursuant to Iowa Code chapter 912 at the time the application is filed.

9.29(1) Counseling fees. For the purposes of establishing reasonable charges for counseling provided by a victim counselor, as defined in Iowa Code section 236A.1, where fees for services to the general public for services of a similar nature have not previously been established, the following guidelines shall apply:

a. Counseling provided by victim counselors whose position is funded, in whole or in part, or whose position is used as match requirement for federal Victims of Crime Act funds, shall not be eligible for compensation payment.

b. Counseling services provided to an eligible victim by a victim counselor shall be compensated as follows:

- (1) Individual counseling at an hourly rate of \$25.
- (2) Group counseling at an hourly rate of \$10.

c. Compensation paid, combined with other funding sources for the service, shall not be in excess of the total cost of providing the counseling hour.

9.29(2) Counseling with the perpetrator. Compensation for counseling shall be payable only for counseling sessions in which the perpetrator takes part where the purpose of the session is for the perpetrator to apologize to the victim and where victim is allowed to confront the perpetrator as to the effects of the compensable crime.

9.29(3) Family counseling. Compensation for family counseling shall be payable only for sessions where the focus of the session is to assist the victim in recovery from a compensable crime.

9.29(4) Lost wages or income. Eligible victims shall receive compensation for lost wages or income when unable to work as the result of a crime. A victim seeking lost wages or income for a period of more than two weeks of regular employment must provide the department with a disability statement from a licensed medical or osteopathic physician or surgeon.

Lost wages or income due to crime are determined as follows:

a. Lost wages are computed as the net rate of pay times the number of scheduled hours of work missed. To establish net rate of pay, gross wages are reduced by state, federal and FICA withholding tax or as follows:

(1) If the victim earns less than \$25,000 annually, gross wages are reduced by 15 percent to establish the net rate of pay.

(2) If the victim earns more than \$25,000 annually, gross wages are reduced by 20 percent to establish the net rate of pay.

b. Income that is variable shall be computed based on the average income earned during a minimum 28-day period within the three months preceding the crime.

c. Lost wages or income shall not be reduced by vacation pay.

d. If the victim is terminated from employment as a result of crime-related injuries, the victim shall receive compensation for lost wages or income until medically released to work.

e. If the victim receives an offer of employment but is unable to begin employment because of injury due to the crime, the victim shall be reimbursed for lost wages or income until medically released to work.

9.29(5) Residential homicide scene cleanup. Cleaning a residential homicide scene means to remove, or attempt

to remove, from the crime scene blood, dirt, stains, or other debris caused by the crime or the processing of the crime scene. The division shall compensate an eligible applicant for the reasonable out-of-pocket cost of cleaning supplies, equipment rental, labor, and the replacement value of property held for evidentiary purposes.

9.29(6) Loss of support. Compensation for loss of support shall be awarded for the dependents of a homicide victim or a victim disabled for a period of 60 days or more when the applicant documents that the dependent relied on the victim wholly or partially for physical care or financial support.

a. Loss of support shall be awarded for the remaining period of dependency, up to the limits established in Iowa Code section 912.6(5), in an amount equal to the lost wages or income the victim was earning at the time of death or disability. The amount of compensation shall be subject to reduction by the amount of collateral sources designated as support pursuant to Iowa Code section 912.7(1).

b. Loss of support shall be awarded at the current hourly rate of the Iowa minimum wage for dependent care, provided by a person other than the victim, if the victim was providing physical care to the dependent at the time of the crime.

9.29(7) Clothing and bedding. Compensation shall be made for clothing and bedding held as evidence by law enforcement and not returned to the victim. Compensation shall not be made for the clothing of a deceased victim which is held as evidence.

9.29(8) Payer of last resort. Compensation shall not be paid for services where the provision for those services is mandated by law or administrative rule to be the responsibility of another government unit, private agency or program.

61—9.30(912) Reductions and disqualifications. The division shall reduce and disqualify compensation as follows:

9.30(1) Consent, provocation, and incitement. In assessing consent, provocation or incitement on the part of the victim, pursuant to Iowa Code section 912.7(2)"a," the division may consider, but is not limited to, the following factors:

- a. Whether charges are filed against the suspect;
- b. Whether the victim attempted to withdraw from the incident;
- c. Comparable or reasonable force on the part of the suspect in response to an action of the victim;
- d. The amount of time from the beginning of the interaction between the victim and the suspect and the criminal act committed by the suspect;
- e. The age of the victim; and
- f. Comparable size or strength of the victim and suspect.

9.30(2) Consent. In assessing consent pursuant to Iowa Code section 912.7(2)"a," the division may consider the victim's age, physical condition and psychological state, and any compelling health or safety reasons that would jeopardize the well-being of the victim. Where the victim was the passenger of a drunk driver, the division may also consider whether the victim could have reasonably known the intoxication level of the driver, the driver's behavior or judgment appeared impaired, the victim encouraged or discouraged the driver from driving, or the victim's judgment was impaired.

ATTORNEY GENERAL[61](cont'd)

9.30(3) Provocation and incitement. In assessing provocation or incitement pursuant to Iowa Code section 912.7(2)"a" the division may consider law enforcement documentation that indicates:

a. Retaliatory action. The crime was committed as retaliation for a prior physical assault or injury committed by the victim against the perpetrator, and the victim could have reasonably foreseen the likelihood of retaliation.

b. Mutual combat. The crime will be considered to be an incident of mutual combat if the victim:

(1) Initiated a physical altercation;

(2) Made a credible threat of bodily harm against the person, took action to indicate the intent to carry out the threat and a physical altercation immediately followed; or

(3) Accepted a verbal challenge to engage in a physical altercation, took action to indicate acceptance of the challenge and a physical altercation immediately followed. Incitement and provocation are not present in an incident of mutual combat when a significant escalation of the fight, such as the introduction of a deadly weapon, is made by a person other than the victim, or where a third party becomes involved resulting in more serious injury than the victim could have reasonably expected.

c. Gang action. The crime was a direct result of gang activity including gang initiation, or was inflicted as retaliation for prior gang activity in which the victim participated in a criminal street gang as defined in Iowa Code section 723A.1.

61—9.31(912) Eligibility.

9.31(1) Determination of eligibility. A denial of eligibility shall be based on written documentation that an application does not satisfy the requirements of Iowa Code chapter 912. An applicant shall be deemed eligible for compensation if the division has not obtained written documentation supporting a denial within six months of the date of the application. Notwithstanding the foregoing, the division may extend the determination of eligibility beyond six months if a court date or grand jury hearing is pending and is reasonably expected to result in information necessary to render an eligibility decision.

9.31(2) Reopening applications. Pursuant to Iowa Code section 912.3(2) the department may reopen and re-investigate an application if the department determines that the decision was incorrect or incomplete.

9.31(3) Maximum compensation available. Compensation to the dependent of a victim shall be reduced or disqualified to the extent that an applicant has already been awarded the maximum compensation allowable through Iowa Code chapter 912 and these rules.

61—9.32(912) Emergency award of compensation. Emergency awards of compensation shall be awarded as follows:

9.32(1) Emergency award decision. A decision denying an emergency award shall not be appealable.

9.32(2) Offset. Any emergency award shall be deducted from the final compensation made to the claimant. If the final award amount is less than the amount of the emergency award, the applicant must repay the excess to the division.

61—9.33(912) Appeal of compensation decisions. An applicant shall be informed in writing of the basis for the denial of eligibility or the amount of an award. An applicant may appeal a compensation decision as follows:

1. Appeal to director. An applicant aggrieved by a denial decision or the amount of compensation awarded by the program may appeal to the director.

2. Appeal to board. An applicant may appeal the director's decision to the board.

3. Appeal to district court. An applicant who disagrees with the decision of the board has the right to appeal to the district court within 30 days of receipt of the board's decision.

9.33(1) Director appeal period. An applicant shall submit a written request reconsideration with the director within 30 days of the date the notice of the crime victim compensation program decision is mailed or otherwise issued by the division. Any request for reconsideration postmarked within the prescribed time period shall be considered timely filed by the division. Barring any unusual circumstances, within 30 days of the receipt of the request for reconsideration, the director shall issue a decision.

9.33(2) Board appeal period. An applicant may file a request for consideration of the director's decision with the board. This written request for consideration shall be submitted for consideration by the board within 30 days of the date the notice of the director's decision is mailed or otherwise issued by the director. Any request for review postmarked within the prescribed time period shall be considered timely filed by the division. Barring any unusual circumstances, within 60 days of the receipt of the request, the board, or a committee designated by the chair of not less than five members of the board, shall issue a decision.

These rules are intended to implement Iowa Code chapter 912.

ARC 5368A

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

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 542B.6, the Engineering and Land Surveying Examining Board hereby gives Notice of Intended Action to amend Chapter 1, "Administration," Iowa Administrative Code.

The proposed amendments will allow the board to administer examinations through an examination service. The application deadline date is changed, and the fee structure is modified to allow applicants to pay a separate application fee to the board and an examination fee directly to the service. As well, the fee for a second copy of the certificate is increased.

Any interested person may make written or oral suggestions or comments on the proposed amendments on or before February 7, 1995. Comments should be ad-

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

dressed to Patricia Peters, 1918 S.E. Hulsizer, Ankeny, Iowa 50021, by telephone to (515)281-7360 or by fax (515)281-7372.

These amendments are intended to implement Iowa Code sections 542B.13, 542B.15, 542B.20 and 542B.30.

ITEM 1. Amend subrule 1.4(4), introductory paragraph, as follows:

1.4(4) Examination. The board prepares and grades the Iowa State Specific Examination administered to land surveyor applicants and, in special cases, the examination for registration in engineering. All other examinations are uniform examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES). *The board may negotiate an agreement with an examination service to administer the examinations to applicants approved by the board, in which case applicants shall pay examination fees directly to the service.*

ITEM 2. Amend 193C—1.5(542B) as follows:

193C—1.5(542B) Cutoff dates for applications to take examinations. Applicants who desire to take a Fundamentals Examination, the Professional Engineering Examination or the Professional Land Surveying Examination given by the board must complete and deliver their application to the secretary of the board on or before ~~February 1~~ *January 10* of each year in order to take the examination given in the spring of the year. In order to take a ~~Fundamentals~~ *an* examination in the fall of the year, applications must be completed and delivered to the secretary on or before ~~September 8~~ *July 1* of each year. ~~In order to take a Professional Examination in the fall of the year, applications must be completed and delivered to the secretary on or before August 15 of each year.~~ The board may, in its discretion in cases of extreme hardship, allow exception to this rule.

ITEM 3. Amend 193C—1.9(542B) as follows:

193C—1.9(542B) Board fees and services charges.

1.9(1) Biennial registration renewal fees.

1. Active registration renewal \$60
2. Inactive registration renewal \$30
3. New registrant registration fee—same as above; registration will be prorated at six-month intervals.

1.9(2) Examination Application fees.

1. Fundamentals of engineering, including certificate ~~\$40.00~~ 25
2. Fundamentals of land surveying, including certificate ~~\$47.50~~ 25
3. Principles and practice of engineering (PE) ~~\$90.00~~ 35
4. Principles and practice of land surveying (LS) ~~\$90.00~~ 35
5. ~~Repeat of national portion of principles and practice of land surveying~~ ~~\$60.00~~
6. ~~Repeat of Iowa State Specific portion of principles and practice of land surveying~~ ~~\$40.00~~
7. ~~Fee for applicants who were scheduled and did not appear for examination for the next offering of examination provided application is still current~~ ~~\$25.00~~

1.9(3) Examination fees. *Examination fees shall be paid directly to the examination service at the rate established by contract between the board and the examination service.*

~~1.9(3)~~ **1.9(4) Comity application fees.**

1. Registration as a professional engineer \$100
2. Registration as a land surveyor (including the one-hour Iowa examination) \$100

~~1.9(4)~~ **1.9(5) Certificate charges.**

1. Professional engineer or land surveyor certificate \$10
2. Second copy of certificate \$5 20

~~1.9(5)~~ **1.9(6) Annual report of board.**

1. Active registrant Included in registration fee
2. Inactive registrant \$4
3. Others \$5

~~1.9(6)~~ **1.9(7) Other service charges.**

1. Check returned for insufficient funds \$10
 2. Reinstatement of registration—\$10 per year for each lapsed year (maximum fee of \$50) plus registration fee for the remainder of biennium prorated at one-year intervals.
 3. Verification of registration for comity application to another state or territory if Iowa registration has lapsed \$10
 4. Rescoring of examination \$55
- This rule is intended to implement Iowa Code sections 542B.13, 542B.15, 542B.20 and 542B.30.

ARC 5361A

GENERAL SERVICES DEPARTMENT[401]

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 18.115, the Department of General Services hereby gives Notice of Intended Action to adopt a new Chapter 11, "State Employee Driving Guidelines," Iowa Administrative Code.

Implementation of these rules will allow the Department of General Services the ability and authority to review the driving records of persons who operate motor vehicles to conduct official state business. It will also allow the Department to establish corrective driving procedures.

Consideration will be given to all written suggestions or comments on the proposed rules on or before February 27, 1995. Such written materials should be sent to the Director's Office, Department of General Services, Hoover State Office Building, Des Moines, Iowa 50319, fax (515)242-5974.

Also, there will be a public hearing on February 7, 1995, at 9 a.m. in the Director's Conference Room, Department of General Services, Hoover State Office Build-

GENERAL SERVICES DEPARTMENT[401](cont'd)

ing, Level A, Des Moines, Iowa, at which time persons may present their views.

These rules are intended to implement Iowa Code section 18.115.

The following rules are proposed.

Adopt the following **new** chapter:

CHAPTER 11
STATE EMPLOYEE DRIVING GUIDELINES

401—11.1(18) Purpose. The department of general services is responsible for monitoring the driver's license of people who drive a vehicle to conduct official state business. It will also require driver training and provide corrective actions for state drivers.

401—11.2(18) Definitions.

"At-fault accident" means one in which the state driver is determined to be 50 percent or more responsible for the accident.

"Defensive driving course" means an eight-hour course with instruction provided by the Iowa state patrol.

"Driver improvement course" means an eight-hour course with instruction provided by a local area college.

"Pool car" means a vehicle assigned to the state of Iowa, department of general services, division of fleet and mail pool.

"Preventable accident," for purposes of this chapter, means one that could have been prevented or damage minimized by proper evasive action.

"Private vehicle" means any vehicle not registered to the state of Iowa, department of general services.

"State driver" means any person who drives a vehicle to conduct official state business other than a law enforcement officer.

"State vehicle" means any vehicle registered to the state of Iowa, department of general services.

401—11.3(18) Type of accident. The determination as to whether an accident is without fault, at fault or preventable shall be made by the department of general services, risk manager. In making this determination the risk manager will consider all relevant information including information provided by the state driver and others involved in the accident, information provided by witnesses to the accident and information contained in any investigating officer's reports.

401—11.4(18) Valid driver's license required. A state driver shall not drive a state or private vehicle on state business if the state driver does not currently possess a valid driver's license.

401—11.5(18) Required reporting. A state driver must report any potential liability, collision or comprehensive loss which occurs while conducting state business to the risk manager of the department of general services. The failure to report may result in payment of any loss from the funds of the state driver's employing agency.

401—11.6(18) Mandatory training. Each state driver who is assigned a state vehicle or who drives a private vehicle on state business at least 5,000 miles per year shall attend a defensive driving or driver improvement course every three years. Each state driver who drives a pool car shall also participate in vehicle safety classes as offered and required by the division of customer service, administration and purchasing.

401—11.7(18) Access to driving records. The division of customer service, administration and purchasing has the authority to monitor the Iowa department of transportation driving record of employees who drive a state vehicle or a private vehicle to conduct state business.

401—11.8(18) Corrective actions.

11.8(1) If a state driver is involved in any one of the following occurrences, the state driver will receive written counseling concerning the state driver's responsibilities and will be required to attend a defensive driving course. The defensive driving course must be attended within three months of one of the following occurrences:

a. The state driver is involved in one at-fault or preventable accident while operating a state vehicle.

b. The state driver receives three moving traffic violations in a three-year period while operating a state vehicle or a private vehicle.

11.8(2) If a state driver is involved in any one of the following occurrences, the state driver will be suspended from driving a state vehicle for a period not to exceed one year and will be required to attend a driver improvement course. The driver improvement course must be attended within three months of one of the following occurrences. While the state driver is suspended from driving a state vehicle, the state driver will remain eligible to receive mileage reimbursement from the state of Iowa. In addition, a state driver involved in one of the following occurrences shall provide proof of insurance which meets the minimum standards required by the state of Iowa, department of transportation.

a. The state driver is involved in three at-fault or preventable accidents in a five-year period while operating a state vehicle.

b. The state driver is involved in five moving traffic violations within a three-year period while operating a state vehicle or a private vehicle.

c. The state driver is convicted of a first offense driving while intoxicated charge while operating a private vehicle.

d. The state driver fails to notify the division of customer service, administration and purchasing of an operating while intoxicated conviction received while operating a state vehicle or a private vehicle.

11.8(3) If a state driver is involved in any one of the following occurrences, the state driver will be suspended from driving a state vehicle for a period exceeding one year up to a permanent suspension and will be required to attend a driver improvement course. The driver improvement course must be attended within three months of one of the following occurrences. While the state driver is suspended from driving a state vehicle for a period of greater than one year, the state driver will not be eligible to receive mileage reimbursement from the state of Iowa. In addition, a state driver involved in one of the following occurrences shall provide proof of insurance which meets the minimum standards required by the state of Iowa, department of transportation.

a. The state driver is involved in four at-fault or preventable accidents during a five-year period while operating a state vehicle.

b. The state driver receives six or more moving traffic violations while operating a state or private vehicle within a three-year period.

c. A state driver is convicted of a second operating while intoxicated offense within a five-year period while operating a private vehicle.

GENERAL SERVICES DEPARTMENT[401](cont'd)

11.8(4) If a state driver is convicted of operating a state vehicle while intoxicated, the state driver will be permanently suspended from driving a state vehicle. This suspension may not be reconsidered. If a state driver is permanently suspended from driving a state vehicle, the state driver is not eligible to receive mileage reimbursement from the state of Iowa.

401—11.9(18) Reconsideration of suspension. If a state driver is suspended from driving a state vehicle, the driver may request a reconsideration of the suspension. A written request for reconsideration must be submitted to the suspended driver's immediate supervisor. The immediate supervisor must provide a written report, supporting or denying the employee's request to the director of the department of general services. The director will act on this request and notify the state driver's supervisor of the action taken within 60 days from receipt of the supervisor's request for reconsideration.

401—11.10(18) Probationary drivers. If driving privileges are reinstated following a request for reconsideration, reinstated state driver will be placed in a probationary state vehicle driving status for a period of three months. If a state driver in probationary status has a preventable or at-fault accident while operating a state or private vehicle on state business or receives a moving traffic violation while operating a state or private vehicle on state business, the probationary status will be revoked and the state driver's original suspension period will be reinstated. Following revocation of probationary status, the state driver may not request further reconsideration of the suspension. A driver in probationary status is eligible to receive mileage reimbursement from the state.

These rules are intended to implement Iowa Code section 18.115.

ARC 5359A**HUMAN SERVICES
DEPARTMENT[441]****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 234.6 and 237.3, the Department of Human Services proposes to amend Chapter 113, "Licensing and Regulation of Foster Family Homes," Chapter 156, "Payments for Foster Care and Foster Parent Training," and Chapter 202, "Foster Care Services," appearing in the Iowa Administrative Code.

These amendments implement the following changes in foster care policy:

1. All foster parents are required to follow universal precautions to reduce exposure to bloodborne pathogens and other infectious materials and to receive training in the same prior to licensing. Families licensed prior to the

effective date of these amendments shall be given one year to meet the training requirement.

2. The Department is required to give foster parents and group care facilities information needed to provide care and protection to children who are at high risk for or have been diagnosed as HIV-infected. Foster parents and group care givers need all the health information available for the child in order to protect and monitor the child for opportunistic infections which could be life-threatening for a child with an impaired immune system. There has been a perception that this information is being withheld from foster parents, and these amendments will provide assurance that all available information is to be shared at the time of placement.

At the same time they are given this information, foster parents and group care facilities are to be informed of the special confidentiality requirements imposed because of an HIV diagnosis.

3. Children who are diagnosed with or who test positive for an HIV infection are added to the list of special needs children who qualify to receive a higher family foster care payment.

4. A reference to requiring approval of the regional out-of-state placement committee for out-of-state placements more than 125 miles from the child's home is changed to require all out-of-state placements be approved by the regional administrator or designee. This reference was overlooked when the regional committees were rescinded in July of 1994.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before February 8, 1995.

These amendments are intended to implement Iowa Code sections 234.6(6)"b," 237.3, and 237.5A.

The following amendments are proposed.

ITEM 1. Amend subrule 113.5(6) by adding the following new paragraph "h":

h. Foster parents shall follow universal precautions to reduce exposure to bloodborne pathogens and other infectious materials when providing care to all children placed in their physical custody.

ITEM 2. Amend rule 441—113.8(237) by adding the following new subrule 113.8(4):

113.8(4) Required training in universal precautions. Each individual foster parent shall complete one hour of training related to the use and practice of universal precautions prior to licensure. Training shall be completed through the approved individual self-study course, "Universal Precautions in Foster and Adoptive Family Homes." Families licensed prior to June 1, 1995, shall complete this training requirement by June 1, 1996.

ITEM 3. Amend subrule 113.10(1), paragraph "d," as follows:

d. Information about immunizations received by children under their care, physical limitations, medical recommendations, *including specific information about the child's opportunistic infections and HIV care needs*, and any allergies.

ITEM 4. Amend rule 441—156.1(234,252C), definition of "Special needs child," by adding the following new numbered paragraph "8":

HUMAN SERVICES DEPARTMENT[441](cont'd)

8. The child has been diagnosed as HIV-infected or has had an HIV-positive test result by a qualified medical professional.

ITEM 5. Amend subrule 202.4(5), paragraph "b," as follows:

b. The child's individual problems, *medical needs*, and plans for future care.

ITEM 6. Amend subrule 202.6(1) as follows:

202.6(1) At the time of placement, the worker shall provide the facility with specific information regarding the child including the case permanency plan, the results of a physical examination, the child's medical needs *including special needs of HIV*, behavioral patterns, and educational arrangements, the placement contract or agreement, and medical authorizations, clinical assessment and consultation team (CACT) authorizations, and other releases as needed.

ITEM 7. Rescind subrule 202.8(2) and insert the following new subrule in lieu thereof:

202.8(2) Placements shall be made in an out-of-state group care facility only with the approval of the regional administrator or designee.

ITEM 8. Amend subrule 202.10(4) as follows:

202.10(4) Making available all known pertinent information needed for the care of the child *including HIV status and special confidentiality requirements*.

ARC 5363A

REVENUE AND FINANCE DEPARTMENT[701]

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 and Finance hereby gives Notice of Intended Action to amend Chapter 20, "Foods for Human Consumption, Prescription Drugs, Insulin, Hypodermic Syringes, Diabetic Testing Materials, Prosthetic, Orthotic or Orthopedic Devices," Iowa Administrative Code.

As a result of recent legislation, sales of a number of medical devices which were previously taxable are now exempt from tax. Applicable rules are amended to reflect this. Applicable rules are also amended to explain that this new exemption is retroactive to July 1, 1993, and that claims for refund, filed as a result of the retroactivity, are limited to \$5,000. Finally, a rule containing obsolete terminology is amended to incorporate wording corresponding to existing statutory language.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than February 7, 1995, to the Policy Section, Compliance Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on these proposed amendments on or before February 17, 1995. Such written comments should be directed to the Policy Section, Compliance Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to orally convey their views should contact Mr. Mel Hickman, Policy Section, Compliance Division, Iowa Department of Revenue and Finance, at (515)281-4250, or at Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by February 10, 1995.

The amendments are intended to implement Iowa Code section 422.45(13) as amended by 1994 Iowa Acts, chapter 1016.

The following amendments are proposed.

ITEM 1. Amend subrule 20.7(1), paragraph "c," as follows:

c. For sales *or rentals* occurring on and after July 1, 1993, a "prescription drug" and "~~prescription~~ *medical device*" are defined as follows:

(1) A "~~prescription~~ *medical device*" means equipment or supplies, including orthopedic or orthotic devices, intended to be prescribed by a practitioner for human use to an ultimate user.

(2) A "prescription drug" is a drug intended to be dispensed for human consumption to an ultimate user pursuant to a prescription or medication order from a practitioner.

(3) An "ultimate user" is any individual who has lawfully obtained and possesses a prescription drug or *medical device* for the individual's own use or for the use of a member of the individual's household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed or prescribed. The phrase does not include any entity created by law, such as a corporation or partnership.

On and after July 1, 1993, the sale *or rental* of a ~~prescription~~ *medical device* or a prescription drug is exempt from tax only if the device or drug is intended to be prescribed or dispensed to an ultimate user. A drug or device is intended to be prescribed or dispensed to an ultimate user only if the drug or device is obtained by or supplied or administered to an ultimate user for placement on or in the ultimate user's body.

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

EXAMPLE A: Hospital X purchases a new type of device which scans the inside of the human body to uncover diseased organs. The device can be used only on the order of a practitioner. The device is prescribed, but since, by its very nature, the device cannot be dispensed to an ultimate user, its sale is not exempt from tax.

EXAMPLE B: A patient enters Hospital Y and pursuant to a practitioner's prescription, a pacemaker is inserted in the patient's body. The pacemaker is dispensed to an ultimate user and its sale is exempt from tax.

EXAMPLE C: A physician prescribes a tranquilizer for a patient who is chronically nervous. The patient uses the prescription to purchase the tranquilizer at a pharmacy. The purchase is exempt from tax.

For purposes of this subrule, any medical device or drug prescribed in writing by a licensed physician, surgeon, osteopath, osteopathic physician or surgeon, or other person authorized by law to an ultimate user for human use or consumption, shall be deemed a prescription device or drug and exempt from tax if a prescription is required or permitted under Iowa state or federal law.

EXAMPLE A: A common painkiller is sold over the counter in doses of 200 milligrams per tablet. In doses of 600 milligrams per tablet, federal law requires a prescription before the drug can be dispensed. Sales of 600 milligram tablets by prescription are exempt from tax.

EXAMPLE B: A federal law permits but does not require the painkiller mentioned in Example A to be prescribed by a practitioner in dosages of 200 milligrams per tablet. A practitioner might prescribe the painkiller in the over-the-counter dosage, for example, to impress upon a patient the importance of taking the drug. Sales of 200 milligram tablets by prescription are exempt from tax.

See rules 20.8(422,423), 20.9(422,423) and 20.10(422,423) for examples of medical devices sold without a prescription but exempt from tax.

ITEM 2. Rescind rule 701—20.8(422,423) and insert the following new rule in lieu thereof:

701—20.8(422,423) Exempt sales of nonprescription medical devices, other than prosthetic devices. A prescription is not required for sales of the medical devices mentioned in subrule 20.8(1) to be exempt from tax if those devices are purchased for human use or consumption.

20.8(1) Definitions.

"Anesthesia trays" includes, without limit, paracervical anesthesia trays, saddle block anesthesia trays, spinal anesthesia trays, and continuous epidural anesthesia trays.

"Biopsy" means the removal and examination of tissue from a living body, performed to establish a precise diagnosis.

"Biopsy needles" includes, without limit, needles used to perform liver, kidney, other soft tissue, bone, and bone marrow biopsies. Menghini technique aspirating needles, rosenthal-type needles, and "J" Jamshidi needles are all examples of biopsy needles.

"Cannula" means a tube inserted into a body duct or cavity to drain fluid, insert medication including oxygen, or to open an air passage. Examples are lariat nasal cannulas and ableson cricothyrotomy cannulas.

"Catheter" means a tubular, flexible, surgical instrument used to withdraw fluids from or introduce fluids into a body cavity, or for making examinations. Examples are: robinson/nelaton catheters, all types of foley catheters (e.g., pediatric and irrigating), three-way catheters,

suction catheters, I.V. catheters, angiocath catheters and male and female catheters.

"Catheter trays." Universal foley catheter trays, economy foley trays, urethral catheterization trays and catheter trays with domed covers are nonexclusive examples of these trays.

"Diabetic testing materials" means all materials used in testing for sugar or acetone in the urine, including, but not limited to, Clinitest, Tes-tape, and Clinistix; also, all materials used in monitoring the glucose level in the blood, including, but not limited to, bloodletting supplies and test strips.

"Drug infusion device" means a device designed for the slow introduction of a drug solution into the human body. The term includes devices which infuse by means of pumps or gravity flow (drip infusion).

"Fistula" means an abnormal passage usually between the internal organs or between an internal organ and the surface of the body.

"Hypodermic syringe" means an instrument for applying or administering liquid into any vessel or cavity beneath the skin. This includes the needle portion of the syringe if it accompanies the syringe at the time of purchase, and it also includes replacement needles.

"Insulin" means a preparation of the active principle of the pancreas, used therapeutically in diabetes and sometimes in other conditions.

"Interocular lens" means a lens located inside the eye.

"Kit" means a combination of medical equipment and supplies used to perform one particular medical procedure which is packaged and sold as a single item.

"Medical device," for the purposes of this rule, means medical equipment or supplies intended to be dispensed for human use with or without a prescription to an ultimate user.

"Myelogram" means a radiographic picture of the spinal cord. A "radiographic" picture is one taken using radiation other than visible light.

"Nebulizer" means a mechanical device which converts a liquid to a spray or fog.

"Oxygen equipment" means all equipment used to deliver medicinal oxygen including, but not limited to, face masks, humidifiers, cannula, tubing, mouthpieces, tracheotomy masks or collars, regulators, oxygen concentrators and oxygen accessory racks or stands.

"Set." See "Kit" above.

"Tray." See "Kit" above.

20.8(2) Sales of the following medical devices are exempt from tax. If a medical device is of such a type that it can be rented as well as sold, the rental of that device is exempt as of the date that the sale of that device is exempt, except as set out in "b" below.

a. Insulin, hypodermic syringes, and diabetic testing materials.

b. As of July 1, 1992, sales of oxygen equipment; as of July 1, 1993, the rental of oxygen equipment.

c. Effective July 1, 1994, and retroactive to July 1, 1993, sales of hypodermic needles, anesthesia trays, biopsy trays and needles, cannula systems, catheter trays, invasive catheters, dialyzers, drug infusion devices, fistula sets, hemodialysis devices, insulin infusion devices, interocular lenses, irrigation solutions, intravenous administering sets, solutions and stopcocks, myelogram trays, nebulizers, small vein infusion kits, spinal puncture trays, transfusion sets and venous blood sets are no longer taxable. For the period of July 1, 1993, through June 30, 1994, tax must be collected initially on sales of the medi-

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

cal devices listed in this paragraph "c." A consumer or user who has paid the tax can then file a refund claim for the tax paid. Claims for refund of tax, interest, or penalty paid for the period of July 1, 1993, to June 30, 1994, must be limited to \$5,000 in the aggregate and will not be allowed unless filed prior to June 30, 1995. If the amount of claims for the period totals more than \$5,000, the department will prorate the \$5,000 among all the claims.

20.8(3) Component parts. Sales of any component parts of the trays, systems, devices, sets, or kits listed above are taxable unless the sale of a component part, standing alone, is otherwise exempt under these rules. For instance, the sale of a biopsy needle or an invasive catheter would be exempt from tax whether or not it was purchased for use as a component part in a biopsy tray or catheter tray, so long as the needle or catheter will be dispensed for human use to an ultimate user. Conversely, sales of disposable latex gloves, rayon balls, forceps, and specimen bottles are exempt when those items are sold as part of a catheter tray, but are not exempt when those items are sold individually.

20.8(4) Sales of the medical devices mentioned in this rule may be exempt for periods other than those set out in this rule. For instance, a medical device might be prescribed by a practitioner or its sale or rental might be "covered" by Medicare or Medicaid. See subrule 20.7(1) and rule 20.10(422,423) for more information.

This rule is intended to implement Iowa Code section 422.45.

ITEM 3. Amend subrule 20.9(3), paragraph "e," as follows:

e. "Medical equipment and supplies." —~~the~~ *The* scope of the term medical equipment and supplies is broader than the terms prescription drugs or medical devices. While all exempt prescription drugs are medical supplies and all exempt medical devices are medical equipment, not all medical equipment and supplies are exempt medical devices or prescription drugs. The following is a non-exclusive list of items which are medical equipment or supplies, but are not prescription drugs or medical devices, exempt from tax under subrules 20.7(1), 20.9(1), 20.9(2) and rule 20.8(422,423). Sales of the below-listed items would generally be taxable. However, for the period between July 1, 1992, and June 30, 1993, sales of the listed items would be exempt from tax if covered by Title XVIII or XIX of the federal Social Security Act. See rule 20.10(422,423).

Adhesive bandages	Bedside tables
*Anesthesia trays	Bedside trays
Aneurysm clips	Bedwetting prevention devices
Arterial bloodsets	Belt vibrators
Aspirators	*Biopsy needles
Athletic supporters	*Biopsy trays
Atomizers	*Blood administering sets
Autolit	Blood cell washing equipment
Back cushions	Blood pack holders
Bathing aids	Blood pack trays
Bathing caps	Blood pack units
Bedpans	Blood pressure meters
Bedside rails	Blood processing supplies

Blood tubing	Heat lamps
Blood warmers	Heat pads
Breast pumps	*Hemodialysis devices
Breathing machines	Hemolators
*Cannula systems	Hospital beds
Cardiac electrodes	Hot water bottles
Cardiopulmonary equipment	Ice bags
*Catheter trays	Ident-a-bands
Chair lifts	Incontinent garments
Clamps	Incubators
Clip-on ashtrays	Infrared lamps
Commode chairs	Inhalators
Connectors	*Insulin infusion devices
Contact lens cases	Iron lungs
Contact lens solution	Irrigation apparatus
Convoluted pads	*Irrigation solutions
Corrective pessaries	*I.V. administering sets
Cotton balls	I.V. connectors
Dialysis chairs	*I.V. solutions
Dialysis supplies	*I.V. tubing
*Dialyzers	*Kidney dialysis machines
Dietetic scales	Laminar flow equipment
Disposable diapers	Latex gloves
Disposable gloves	Leukopheresis pumps
Disposable underpads	Lymphedema pumps
Donor chairs	Manometer trays
Dressings	Massagers
*Drug infusion devices (other than hypodermic syringes)	Maternity belts
Dry aid kits for ears	Medigrade tubing
EKG paper	Modulung oxygenators
Earmolds	Moist heat pads
Electrodes (other than tens units)	*Myelogram trays
Emesis basins	Myringotomy tubes
Enema units	*Nebulizers
First-aid kits	*Needles (<i>hypodermic</i>)
*Fistula sets	Overbed tables
Foam slant pillows	Pacemaker equipment
Gauze bandages	Page-turning devices
Gauze packings	Pap smear kits
Gavage containers	Paraffin baths
Geriatric chairs	Physicians instruments
Grooming aids	Pigskin
Hand sealers	Plasma extractors
Hearing aid carriers	Plasmapheresis units
Hearing aid repair kits	Plastic heat sealers
Heart stimulators	Prescribed device repair kits
	Respirators

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

Resuscitators	Surgical equipment
Sauna baths	Suspensories
Security pouches	Sutures
Servipak dialysis supplies	Thermometers
Shelf trays	Toilet aids
Shower chairs	Tourniquets
Side rails	Transfer boards
Sitz bath kit	*Transfusion sets
*Small-vein infusion kits	Tube sealers
Specimen containers	Underpads
*Spinal puncture trays	Urinals
Sponges (surgical)	Vacutainers
Stairway elevators	Vacuum units
Steri-peel	Vaporizers
Stools	*Venous blood sets
*Stopcocks (<i>intravenous</i>)	Vibrators
Suction equipment	Whirlpools
Sunlamps	X-ray film
Surgical bandages	

* Sales of these medical devices are exempt as of July 1, 1993. However, see subrule 20.8(2) for an explanation of the unusual circumstances of the first year for which this exemption is in effect.

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REVENUE AND FINANCE
DEPARTMENT[701]

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 and Finance hereby gives Notice of Intended Action to amend Chapter 39, "Filing Return and Payment of Tax," Iowa Administrative Code.

The amendment describes electronic filing of Iowa individual income tax returns which will be available for the first time for 1994 returns which are due to be filed in 1995. The electronic Iowa return consists of electronically transmitted data and certain paper documents. One advantage of electronically filed returns over paper returns is that there are fewer errors on the electronic returns than on paper returns. Electronic filing requires less paper than the other returns. Taxpayers' refunds may be issued within three weeks from the date of transmission.

In the case of paper returns, taxpayers' refunds are usually issued within four to eight weeks of the date the returns are received by the Department of Revenue and Finance. Taxpayers who have their returns filed electronically may have their income tax refund deposited directly into their checking or savings account at a financial institution. This direct deposit feature is not available to taxpayers who file paper Iowa returns.

Subrule 39.13(1) describes the functions of all the tax professionals who are involved in filing Iowa returns electronically.

Subrule 39.13(2) provides information about Form IA 8453 (Iowa Individual Income Tax Declaration Form For Electronic Filing). Form IA 8453 is the paper portion of the taxpayer's electronic Iowa return. W-2 forms and out-of-state returns are to be filed with Form IA 8453. The taxpayer's signature and the signatures of the electronic filers involved in filing the returns are to be entered on Form IA 8453 as well as the numbers for the taxpayer's financial institution, if a direct deposit of a taxpayer's refund has been requested.

Subrule 39.13(3) details the direct deposit to a taxpayer's account in a financial institution feature that is available to taxpayers filing Iowa returns that have overpayments of tax on their returns. The subrule outlines the responsibilities of electronic filers in cases where taxpayers have requested a direct deposit of an income tax refund.

Subrule 39.13(4) provides guidance on what income tax return information electronic filers must give to taxpayers who file Iowa returns with the electronic filers.

Subrule 39.13(5) provides specific details about the filing of 1994 Iowa returns electronically. The subrule sets out requirements that taxpayers must meet to file electronically. The subrule also sets out those items (credits, taxes, and schedules) on the taxpayer's return that would disqualify the taxpayer from filing the 1994 Iowa return electronically.

Subrule 39.13(6) describes the monitoring process that will be used by the Department to ensure compliance by electronic filers of the requirements in rule 39.13(422).

Subrule 39.13(7) describes the procedure for suspension of an electronic filer from participation in the Iowa electronic filing program. The subrule provides that if an electronic filer is either denied participation or is suspended from participation in the federal electronic filing program, the electronic filer is automatically suspended from the Iowa electronic filing program since the federal and Iowa returns are filed at the same time by the same electronic filer.

Subrule 39.13(7) also includes reasons or items which may result in the suspension of an electronic filer from the Iowa electronic filing program.

Subrule 39.13(8) describes the administrative procedure that must be followed in the case of denial of an electronic filer from participation in the Iowa electronic filing program. The subrule describes an identical administrative procedure for suspension of an electronic filer from the Iowa electronic filing program.

The provisions for monitoring electronic filers' filing of Iowa returns are intended to ensure that errors and omissions in the filing are corrected as quickly as possible so that taxpayers' returns are processed by the Department and taxpayers' refunds from the returns are issued to the taxpayers. The provisions for suspension of electronic filers from participation in the Iowa electronic filing pro-

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

gram and the provisions for denial of electronic filers from participation in the Iowa electronic filing program are intended to prevent electronic filers from filing possible fraudulent Iowa electronic returns.

Note that many of these provisions are similar to federal provisions for participation in the federal electronic filing program which are included in Revenue Procedure 94-63 which was released on October 6, 1994.

The proposed rules will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

The Department has determined that this proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.31(4). The Department will issue a regulatory flexibility analysis as provided in Iowa Code sections 17A.31 to 17A.33 if a written request is filed by delivery or by mailing postmarked no later than February 7, 1995, to the Policy Section, Compliance Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Governor, a political subdivision, at least 25 persons who qualify as a small business under Iowa Code sections 17A.31 to 17A.33, or an organization of small businesses representing at least 25 persons which is registered with this agency under Iowa Code sections 17A.31 to 17A.33.

Any interested person may make written suggestions or comments on this proposed amendment on or before February 17, 1995. Such written comments should be directed to the Policy Section, Compliance Division, Iowa Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to orally convey their views should contact the Policy Section, Compliance Division, Iowa Department of Revenue and Finance, at (515)281-4250, or at the Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by February 10, 1995.

The amendment is intended to implement Iowa Code sections 422.13, 422.21 and 422.68.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 5366A**. The content of that submission is incorporated by reference.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the Committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Banking Richard Buenneke, and Auditor of State Richard D. Johnson have established today the following rates of interest for public obligations and special assessments. The usury rate for January is 10.00%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED for 74A.3 and 74A.7: A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective January 7, 1995, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7 -31 days	Minimum 4.60%
32 -89 days	Minimum 4.90%
90 -179 days	Minimum 5.80%
180 -364 days	Minimum 5.90%
One year	Minimum 6.20%
Two years or more	Minimum 7.20%

These are minimum rates only. The one year and less are six-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 5362A

AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 159.5 and 159A.8, the Department of Agriculture and Land Stewardship hereby rescinds Chapter 12, "Renewable Fuels and Coproducts," and adopts a new Chapter 12 with the same title and amends Chapter 85, "Weights and Measures," Iowa Administrative Code.

The new chapter implements revisions to the renewable fuels program's rules and adopts procedures required for applicants to receive funds for planning and technical assistance and sets the level of assistance available. In addition, the amendments modify requirements for the labeling of motor vehicle fuel pumps dispensing fuel containing renewable fuels.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 28, 1994, as ARC 5112A. Based on written comments received and additional public input received during the comment period, revisions were made to the proposed rules. Language was added to include assistance to develop a business plan as well as technical assistance and feasibility studies for parties interested in developing or expanding the renewable fuels and coproduct industry in Iowa; to increase the financial level of assistance to \$25,000 for developing a viable business plan; and to extend to July 1, 1995, the date new decal usage is required to allow motor fuel dealers sufficient time to comply.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of the rules, 35 days after publication, should be waived and the rules be made effective on December 30, 1994, on filing with the Administrative Rules Coordinator. These rules confer a benefit on the public by allowing qualified applicants to submit applications for funding in a timely manner. This implementation schedule benefits the public by reducing any unnecessary delay in the initiation of project activities.

At the same time the Notice of Intended Action was submitted, identical rules were Adopted and Filed Emergency as ARC 5109A. The emergency rules are rescinded upon the effective date of these adopted rules.

These amendments are intended to implement Iowa Code section 159A.8.

These amendments became effective December 30, 1994.

The following amendments are adopted.

ITEM 1. Rescind 21—Chapter 12 and adopt the following new chapter:

CHAPTER 12
RENEWABLE FUELS AND COPRODUCTS

21—12.1(159A) Purpose. The purpose of these rules is to further the economic development of Iowa and to encourage production of the renewable fuel and coproduct industry of Iowa by providing specific funding for technical assistance to any person who is located in Iowa or desiring to locate in Iowa.

21—12.2(159A) Definitions.

"Coordinator" means the administrative head of the office of renewable fuels and coproducts appointed by the secretary of agriculture as provided in Iowa Code section 159A.3.

"Coproduct" means a product other than a renewable fuel which at least in part is derived from the processing of agricultural commodities, and which may include corn gluten feed, distillers grain or solubles, or can be used as livestock feed or a feed supplement.

"Department" or "IDALS" means the Iowa department of agriculture and land stewardship.

"Fund" means the renewable fuels and coproducts fund established pursuant to Iowa Code section 159A.7.

"Innovative" means a new or different agricultural product or a method of processing agricultural products which is an improvement over traditional methods in a new, different, or unusual way.

"Office" means the office of renewable fuels and coproducts created pursuant to Iowa Code section 159A.3 within the Iowa department of agriculture and land stewardship.

"Person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

"Renewable fuel" means an energy source at least in part derived from an organic compound, capable of powering machinery, including an engine or power plant. A renewable fuel includes, but is not limited to, ethanol-blended or soy diesel fuel.

"Rural economic value-added mentoring program" or "REVAMP" means a program which provides assistance to develop or refine business plans for value-added businesses.

"Value-added product" means a product which, through a series of activities or processes, can be sold at a higher price than its original purchase price.

21—12.3(159A) General provisions. Financial support for planning, technical assistance, and feasibility studies for persons interested in developing renewable fuel or coproduct industries in the state of Iowa.

12.3(1) A person applying for assistance must satisfy the following requirements:

a. Applicant must be interested in developing a value-added industry located in Iowa by:

(1) Producing a product from an agricultural commodity which was not previously produced from an agricultural commodity; or

(2) Using a new process to produce a product derived from an agricultural process which is not commonly used to produce that product; or

(3) Establishing or expanding a renewable fuel production facility.

b. Applicant must submit a Planning and Technical Assistance Application, a Memorandum of Understanding, and cooperate in development or refinement of a business plan.

12.3(2) Assistance is available as follows:

a. The office will provide up to \$1,000 for a contracted consulting agency to perform an initial consultation and assessment of a business's proposed project.

b. Upon the recommendation of a consulting agency and upon concurrence of the department, additional moneys up to \$24,000 may be made available for feasibility studies, planning, and technical assistance for each

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

project's business plan. Consultants under contract with the office shall be reimbursed directly by the office.

c. Any and all additional costs shall be paid entirely by the applicant.

12.3(3) Applications shall be processed by the coordinator on a first-come, first-served basis, based upon the receipt of documents by the office. Application materials may be obtained from Office of Renewable Fuels and Coproducts, Department of Agriculture and Land Stewardship, Wallace State Office Building, East Ninth and Grand Avenue, Des Moines, Iowa 50319, (515)281-6936. Any person may resubmit an application with revisions as long as fees paid by the office remain under the maximum amount per project.

21—12.4(159A) Renewable fuels motor vehicle fuels decals. All motor vehicle fuel kept, offered or exposed for sale or sold at retail containing over 1 percent of a renewable fuel shall be identified with a decal located on front of the motor vehicle fuel pump and placed between 30" and 50" above the driveway level or in an alternative location approved by the department. The appearance of the decal shall conform to the following standards adopted by the renewable fuels and coproducts advisory committee:

12.4(1) The only two sizes of decals approved are the following:

- a. A design of 1.25" by 4".
- b. A design of 2" by 6".

12.4(2) All labels shall have the word "with" in letters a minimum of .1875" high, and the name of the renewable fuel in letters a minimum of .5" high.

12.4(3) The use of color, design and wording shall be approved by the renewable fuels and coproducts advisory committee. The coordinator may receive input from any party, including the weights and measures bureau of the department, in recommending the color, design, and wording. The advisory committee shall approve the color, design, and wording of the decal to promote the use of renewable fuels.

12.4(4) All black and white fuel pump stickers shall be replaced by approved colorful fuel pump decals effective July 1, 1995.

These rules are intended to implement Iowa Code section 159A.8.

ITEM 2. Rescind subrule 85.48(10) and adopt the following **new** subrule:

85.48(10) Weights and measures motor vehicle fuels decals. All motor vehicle fuel kept, offered or exposed for sale or sold at retail containing over 1 percent of a renewable fuel shall be identified with a decal located on front of the motor vehicle fuel pump and placed between 30" and 50" above the driveway level or in an alternative location approved by the department. The appearance of the decal shall conform to the following standards adopted by the renewable fuels and coproducts advisory committee:

a. The only two sizes of decals approved are the following:

- (1) A design of 1.25" by 4".
- (2) A design of 2" by 6".

b. All labels shall have the word "with" in letters a minimum of .1875" high, and the name of the renewable fuel in letters a minimum of .5" high.

c. The use of color, design and wording shall be approved by the renewable fuels and coproducts advisory

committee. The coordinator may receive input from any party including the weights and measures bureau of the department in recommending the color, design, and wording. The advisory committee shall approve the color, design, and wording to promote the use of renewable fuels.

d. All black and white fuel pump stickers shall be replaced by approved colorful fuel pump decals effective July 1, 1995.

[Filed Emergency After Notice 12/30/94, effective 12/30/94]
[Published 1/18/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/18/95.

ARC 5366A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 39, "Filing Return and Payment of Tax," Iowa Administrative Code.

The amendment describes electronic filing of Iowa individual income tax returns which will be available for the first time for 1994 returns which are due to be filed in 1995. The electronic Iowa return consists of electronically transmitted data and certain paper documents. One advantage of electronically filed returns over paper returns is that there are fewer errors on the electronic returns than on paper returns. Electronic filing requires less paper than the other returns. Taxpayers' refunds may be issued within three weeks from the date of transmission. In the case of paper returns, taxpayers' refunds are usually issued within four to eight weeks of the date the returns are received by the Department of Revenue and Finance. Taxpayers who have their returns filed electronically may have their income tax refund deposited directly into their checking or savings account at a financial institution. This direct deposit feature is not available to taxpayers who file paper Iowa returns.

Subrule 39.13(1) describes the functions of all the tax professionals who are involved in filing Iowa returns electronically.

Subrule 39.13(2) provides information about Form IA 8453 (Iowa Individual Income Tax Declaration Form For Electronic Filing). Form IA 8453 is the paper portion of the taxpayer's electronic Iowa return. W-2 forms and out-of-state returns are to be filed with Form IA 8453. The taxpayer's signature and the signatures of the electronic filers involved in filing the returns are to be entered on Form IA 8453 as well as the numbers for the taxpayer's financial institution, if a direct deposit of a taxpayer's refund has been requested.

Subrule 39.13(3) details the direct deposit to a taxpayer's account in a financial institution feature that is available to taxpayers filing Iowa returns that have overpayments of tax on their returns. The subrule outlines the responsibilities of electronic filers in cases where taxpayers have requested a direct deposit of an income tax refund.

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

Subrule 39.13(4) provides guidance on what income tax return information electronic filers must give to taxpayers who file Iowa returns with the electronic filers.

Subrule 39.13(5) provides specific details about the filing of 1994 Iowa returns electronically. The subrule sets out requirements that taxpayers must meet to file electronically. The subrule also sets out those items (credits, taxes and schedules) on the taxpayer's return that would disqualify the taxpayer from filing the 1994 Iowa return electronically.

Subrule 39.13(6) describes the monitoring process that will be used by the Department to ensure compliance by electronic filers of the requirements in rule 39.13(422).

Subrule 39.13(7) describes the procedure for suspension of an electronic filer from participation in the Iowa electronic filing program. The subrule provides that if an electronic filer is either denied participation or is suspended from participation in the federal electronic filing program, the electronic filer is automatically suspended from the Iowa electronic filing program since the federal and Iowa returns are filed at the same time by the same electronic filer.

Subrule 39.13(7) also includes reasons or items which may result in the suspension of an electronic filer from the Iowa electronic filing program.

Subrule 39.13(8) describes the administrative procedure that must be followed in the case of denial of an electronic filer from participation in the Iowa electronic filing program. The subrule describes an identical administrative procedure for suspension of an electronic filer from the Iowa electronic filing program.

The provisions for monitoring electronic filers' filing of Iowa returns are intended to ensure that errors and omissions in the filing are corrected as quickly as possible so that taxpayers' returns are processed by the Department and taxpayers' refunds from the returns are issued to the taxpayers. The provisions for suspension of electronic filers from participation in the Iowa electronic filing program and the provisions for denial of electronic filers from participation in the Iowa electronic filing program are intended to prevent electronic filers from filing possible fraudulent Iowa electronic returns.

Note that many of these provisions are similar to federal provisions for participation in the federal electronic filing program which are included in Revenue Procedure 94-63 which was released on October 6, 1994.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to public interest because of the immediate electronic filing implementation date.

In compliance with Iowa Code section 17A.5(2)"b"(2), the Department finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment be made effective upon filing with the Administrative Rules Coordinator on December 30, 1994, as it confers a benefit to taxpayers who may want to file their 1994 Iowa returns electronically.

This amendment is also published herein under Notice of Intended Action as **ARC 5365A** to allow for public comment.

The amendment is intended to implement Iowa Code sections 422.13, 422.21, and 422.68.

The following amendment is adopted.

Amend 701—Chapter 39 by adding the following new rule:

701—39.13(422) Electronic filing of Iowa individual income tax returns. Effective for the 1994 calendar year and tax years beginning after December 31, 1994, individuals who meet qualifications set out by the department for the particular tax year may elect to file their Iowa income tax returns electronically. An electronically filed IA 1040, long form return, consists of electronically transmitted data and certain paper documents. The paper documents are to be sent to the department with Form IA 8453 (Iowa Individual Income Tax Declaration For Electronic Filing).

A taxpayer's electronic Iowa return will include the same information as if the taxpayer had filed a paper Iowa return.

There is no statutory requirement which provides that individuals must file their Iowa income tax returns electronically. Therefore, Iowa taxpayers always have the option to file their Iowa income tax returns on the paper forms available from the department.

All aspects of filing Iowa returns electronically are described in the following subrules:

39.13(1) Participants in electronic filing of Iowa individual income tax returns. "Electronic filers" are individuals or companies who are eligible to participate in the electronic filing of Iowa individual income tax returns. Generally, if an individual or company is eligible to participate as an "electronic filer" for purposes of filing federal income tax returns electronically, the individual or company is also eligible as an "electronic filer" for filing Iowa returns electronically. However, an individual or company who is eligible as an "electronic filer" for federal purposes may be denied participation in the Iowa electronic filing program if the individual or company is not registered to do business in the state, has outstanding tax liabilities with the state, or fails to follow guidelines for filing returns in the electronic filing program for Iowa returns. The major types of "electronic filers" are described below with any special requirements for participation as an electronic filer of Iowa returns:

a. An electronic return originator (ERO) is either (1) an electronic return preparer who prepares returns, including Form IA 8453, for individuals who intend to have their Iowa returns electronically filed; or (2) an "electronic return collector" who accepts completed tax returns, including Form IA 8453, from taxpayers who intend to have their Iowa returns electronically filed.

b. A transmitter sends completed returns directly to the Internal Revenue Service, Service Center, using software that has been approved by the IRS and the department. A transmitter may accept Iowa returns from approved electronic filers for direct transmission to the Service Center.

c. A software developer creates or produces the tax preparation and transmission software that allows the data from the return to be transmitted to the Service Center via computers. Software developers are required to submit a letter of intent and a copy of IRS Form 8633 (Application to Participate in the Electronic Filing Program) in order to be considered for participation in the Iowa electronic filing program for that year for returns filed starting in January of the next year.

Specifications for the software developers are explained in IRS Publication 1346 and Iowa Publication 16-107, "Electronic Return File Specifications and Record Layouts." The developers also will be provided with test data

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

and instructions so they can test their programs for processing electronic returns with the Iowa department of revenue and finance.

The software developers will be required to pass transmission tests before their software programs will be approved for electronic filing of Iowa income tax returns.

Note that the various categories of "electronic filers" are not mutually exclusive. There may be cases where a particular "electronic filer" performs all functions involved in the electronic filing of Iowa returns.

39.13(2) Form IA 8453 (Iowa Individual Income Tax Declaration For Electronic Filing). Form IA 8453 (Iowa Individual Income Tax Declaration For Electronic Filing) must be mailed, faxed, or delivered to the department for each individual income tax return that is electronically filed with the department within one work day of the day acknowledgment of acceptance of the federal/state return was received from the Service Center. The mailing address and the fax number are listed at the end of this subrule. All information on the IA 8453 must match the same information on the electronic record for the return. The Declaration Control Number (DCN), the 14-digit number assigned to the taxpayer by the ERO (Electronic Return Originator), must be the same number as was used on the taxpayer's federal return. The mailing label from the Iowa department of revenue and finance with the taxpayer's name, address, and social security number should be affixed to the IA 8453 if the label is available. The label information should be verified and corrected. If the label is not available, the identifying information (name, address, and social security number) should be printed or typed on the IA 8453.

a. Part I—tax return information. The tax return information for net income, total Iowa tax, Iowa income tax withheld and amount to be refunded (if any) should be entered in whole dollar amounts. Refund amounts may differ slightly due to the effects of rounding.

b. Part II—direct deposit of refund. The information in part II should be completed only in cases where taxpayers want their Iowa income tax refunds deposited into their savings or checking accounts at financial institutions. To be eligible for direct deposit, taxpayers must provide proof of account ownership, such as a check, form, report, or other statement generated by the financial institution that has the taxpayer's name, the nine-digit Routing Transit Number (RTN), and the depositor account number preprinted on the statement or form. The account designated to receive the direct deposit must be in the taxpayer's name. If the taxpayer's filing status on the return is married filing jointly or separately on the combined return form, the account can be in either or both spouses' names. If the filing status is married filing separately, the account can be in the taxpayer's name or a joint account in both spouses' names. If the filing status is married filing separate returns, a direct deposit cannot be made if the account is only in the name of the other spouse.

c. Part III—taxpayer's declaration. The taxpayer must sign the taxpayer declaration. Both spouses must sign the declaration if a joint return or a separate on the combined return is being filed. The signature allows the department to disclose to the ERO or transmitter any reasons for delay in processing the return or refund.

The signature of one spouse also provides irrevocable approval of a direct deposit to the checking or savings account of the other spouse when a joint return or combined return is filed by the taxpayers.

If the ERO makes any changes to the electronic return after the taxpayer(s) has signed the IA 8453 form, but before the electronic return is transmitted, and the net income on the IA 8453 is different from the amount on the return by more than \$25 or the total Iowa tax on line 2 of Form IA 8453 differs from the amount on the electronic return by more than \$7, a new form must be completed and signed by the taxpayer(s).

d. Part IV—declaration of electronic return originator (ERO) and paid preparer. The ERO must sign Form IA 8453. If the ERO is not the paid preparer for the tax return, the paid preparer must also sign the IA 8453 in the space for paid preparer near the bottom of the form.

e. Attachments to Form IA 8453. The following are the documents that should be attached to Form IA 8453:

(1) Forms W-2, W-2G and 1099R to support amounts of Iowa income tax withheld that were claimed on the electronic portion of the return.

The direct deposit of the taxpayer's overpayment or the refund of the taxpayer's overpayment cannot be allowed until the W-2s and 1099Rs supporting the Iowa income tax withheld are provided to the department.

(2) Copies of returns of states other than Iowa for returns where out-of-state tax credits were claimed on line 66 of the IA 1040. The out-of-state tax credits claimed on electronically filed returns cannot be allowed in processing of the returns until the returns of the other state(s) supporting the credits are provided with Form IA 8453. Forms IA 8453 can be mailed to: Electronic Filing, Iowa Department of Revenue and Finance, P.O. Box 10469, Des Moines, Iowa 50306-0469. The forms can be faxed to the department at (515)281-6408.

39.13(3) Direct deposit of taxpayers' refunds from electronically filed Iowa returns. A feature of the Iowa electronic filing program is that taxpayers can designate direct deposit of state income tax refunds on their returns. The department does not guarantee a specific date by which a refund will be directly deposited in the taxpayer's account at a financial institution. Because of confidentiality statutes, the department cannot provide information to an electronic filer about possible delay or possible denial of a direct deposit without proper written authorization of the taxpayer. The department is not responsible for the misapplication of a direct deposit of a taxpayer's income tax refund that is caused by error, negligence, or malfeasance on the part of the taxpayer, electronic filer, financial institution or any of the agents of any of the above-named individuals or entities.

The following are some of the responsibilities of an electronic filer to the taxpayer in an instance where the taxpayer has requested direct deposit of an income tax refund:

a. Ensure that the taxpayer is aware of all general information about a direct deposit.

b. Accept any direct deposit election to any eligible financial institution designated by the taxpayer.

c. Ensure that the taxpayer is eligible for direct deposit.

d. Verify that the direct deposit information provided by the taxpayer for Form IA 8453 is correctly entered on the form and transmitted with the electronic portion of the form.

e. Advise the taxpayer that once an electronic return has been accepted for processing by the department the direct deposit election cannot be rescinded, the Routing Transit Number (RTN) of the financial institution cannot

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

be changed, and the taxpayer's account number cannot be changed.

f. Advise the taxpayer of the procedures to be followed if there is a need to contact the department about a direct deposit request.

g. Not mislead a taxpayer about why a direct deposit election was denied.

39.13(4) Information electronic filer must provide to the taxpayer. The electronic filer must provide the taxpayer whose return was electronically filed the following information:

a. A paper copy of the electronic data that was transmitted to the department from the taxpayer's Iowa return. This information can be supplied on replicas of the federal and state forms that make up the individual's return or can be included on unofficial forms. If unofficial forms are used, data entries must include references to line numbers on the forms.

b. A copy of Form IA 8453 and copies of the W-2s, 1099Rs and other attachments that were submitted with Form IA 8453.

c. The taxpayer is to retain a complete copy of the return, including supporting forms and schedules.

d. If an amended return needs to be filed, it must be filed on a paper return form and cannot be filed electronically.

e. If a taxpayer inquires about the status of a refund, the ERO must advise the taxpayer to use the department's automated 24-hour line.

f. The taxpayer's address on the electronically filed return will be considered to be the taxpayer's "last known address" for all purposes of the department. That is, this address will be used to contact the taxpayer about possible problems on the taxpayer's return or for issuance of a notice of deficiency for unpaid tax.

39.13(5) Electronic filing of 1994 returns and tax items that disqualify electronic filing of 1994 returns. For 1994, individuals who want to file their Iowa income tax returns electronically must have these returns filed at the same time their federal returns are filed electronically. Pursuant to an agreement between the department and the Internal Revenue Service, data from a taxpayer's 1994 Iowa return is to be transmitted to the Internal Revenue Service Center in Austin, Texas, at the same time data from the taxpayer's federal return is transmitted to the Service Center. The data for the state return is stored in the Service Center until department personnel retrieve the data for processing of that return. 1994 Iowa returns may be filed electronically only from January 13, 1995, through May 1, 1995, although 1994 federal returns may be filed electronically until August 16, 1995.

a. The following are the major requirements that must be met in order for an individual to file the 1994 Iowa income tax return electronically unless the taxpayer also has one or more disqualifying items listed under paragraph "c" in this subrule:

(1) Returns must be for the 1994 calendar year. Thus, fiscal-year filers and individuals that have a short tax year in 1994 cannot file electronically. Individuals who were part-year residents of Iowa in 1994 can file electronically if they are calendar-year filers.

(2) Returns must be original returns for 1994. Thus, if an original Iowa return has been filed, an amendment of that return must be filed on a paper return form.

(3) Returns must be filed for refund or for no tax due. Therefore, if the taxpayer has an amount shown due on line 75 of IA 1040, a paper return must be filed.

(4) Returns must be filed using the format of the IA 1040 for 1994. Taxpayers who are eligible to file on the IA 1040A (short form return for 1994) can file electronically, but must use the IA 1040 form arrangement.

b. The following are the major Iowa income tax forms, schedules and worksheets that can be used on 1994 Iowa returns filed electronically:

(1) IA-Schedule A - itemized deductions.

(2) IA-Schedule B - interest and dividends.

(3) IA 41-104 - itemized deduction worksheet.

(4) IA 100 - Iowa capital gains schedule.

(5) IA 126 - Iowa nonresident and part-year resident credit schedule.

(6) IA 130 - out-of-state tax credit computation schedule.

The following are some of the major federal schedules and forms that can be included in the Iowa electronic return for 1994:

1. Schedule C - business income or loss

2. Schedule D - capital gains or losses

3. Form 4797 - sales of business property

4. Schedule E - supplemental income and loss

5. Schedule F - profit or loss from farming

6. Form 3903 - moving expenses

7. Form 2106 - employee business expenses

8. Form 2441 - child and dependent care credit

9. Form 2119 - sale of your home

10. Form 4684 - casualties and thefts

11. Form 4835 - farm rental income and expenses

c. Taxpayers are disqualified from filing electronically for 1994 if the return includes any of the following conditions, taxes, credits or deductions:

(1) Taxpayer was deceased sometime in 1994 or individual who was deceased in 1994 is included on joint or combined return with the surviving spouse.

(2) Returns with lump sum tax (line 47, IA 1040).

(3) Returns with minimum tax (line 48 and Form IA 6251).

(4) Returns with disability income exclusion (line 21, IA 1040 and Form IA 2440).

(5) New jobs credit (line 57 and Form IA 133).

(6) Minimum tax carryforward credit (line 57 and Form IA 8801).

(7) Seed capital credit (line 57, IA 1040).

(8) Motor vehicle fuel tax credit (line 67 and Form IA 4136).

(9) Research activities credit (line 68 and Form IA 128).

(10) Penalty for underpayment of estimated tax (line 76 and Form IA 2210 and Form IA 2210F).

In addition, a married person who is filing a separate federal return cannot file an Iowa return electronically, if the Iowa return is a joint return (filing status 2) or a married filing separately on the combined return (filing status 3). If a married taxpayer has filed a joint federal return, the taxpayer cannot file the Iowa return electronically if filing status 4 is used (married filing separate returns).

39.13(6) Monitoring of electronic filers. The department will monitor the filing of Iowa returns by electronic filers to ensure compliance with all rules for electronic filing under rule 39.13(422). Some of the specific aspects of monitoring of the filing of Iowa returns by electronic filers follow:

a. The department will monitor the timely receipt of Form IA 8453 for all electronic returns filed with the department as well as the legibility of these forms. The de-

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

partment will also monitor the timely receipt of W-2s and other states' returns with the IA 8453 forms and the legibility of these forms.

b. The department will monitor the quality of an electronic filer's transmission of taxpayers' Iowa income tax returns throughout the period for filing returns. The department will also monitor the electronic returns filed and tabulate rejections of returns, errors on returns, and other defects that apply to each electronic filer.

c. The department will monitor complaints about an electronic filer to the extent the complaints pertain to the electronic filing of Iowa income tax returns.

d. In its monitoring of electronic filers, the department will advise the filers about the deficiencies described in paragraphs "a," "b," and "c" of this subrule. The department will advise the electronic filers of possible actions to correct the deficiencies and provide other types of assistance to ensure the filing of accurate and complete Iowa returns.

See subrule 39.13(7) about suspension of electronic filers from the Iowa electronic filing program.

39.13(7) Suspension of an electronic filer from participation in the Iowa electronic filing program. The department can immediately suspend, without notice, an electronic filer from the Iowa electronic filing program. However, in most cases, a suspension in the Iowa electronic filing program is effective as of the date of the letter informing the electronic filer of the suspension. Before suspending an electronic filer, the department may issue a warning letter which describes specific corrective action because of deviations from this rule.

Because a taxpayer's Iowa return is filed at the same time as the taxpayer's federal return and both returns are filed via the same electronic filer, if an electronic filer is either denied participation in the federal electronic filing program or is suspended from the federal program, the electronic filer is automatically prohibited from participation in the Iowa electronic filing program. An electronic filer who was either denied participation or was suspended from participation in the federal electronic filing program but later is allowed participation in the federal program is also eligible for participation in the Iowa electronic filing program.

An electronic filer who is eligible to participate in the federal electronic filing program may be suspended from the Iowa electronic filing program if the electronic filer has any of the following. This list is not all-inclusive.

a. Deterioration in the format of transmissions of individual Iowa returns;

b. Unacceptable cumulative error or rejection rate or failing to correct errors in transmission of Iowa returns;

c. Untimely received, illegible, incomplete, missing, or unapproved substitute Forms IA 8453;

d. Stockpiling returns at any time while participating in the Iowa electronic filing program;

NOTE: "Stockpiling" means collecting returns from taxpayers or from another electronic filer prior to official

acceptance into the Iowa electronic filing program, or after official acceptance into the program, waiting more than three calendar days to transmit a return to the department after receiving the information necessary for an electronic transmission of a return.

e. Failure on the part of the transmitter to retrieve an acknowledgment file within two working days of transmission by the department;

f. Failure on the part of the transmitter to initiate the communication of acknowledgment files to taxpayers within two work days of transmission by the department;

g. Significant complaints about the electronic filer;

h. Failure on the part of the electronic filer to cooperate with the department's efforts to monitor electronic filers, investigate electronic filing abuse, and investigate the possible filing of fraudulent returns;

i. Submitting the electronic portion of a return with information which is not identical to information on Form IA 8453;

j. Transmitting the Iowa return with software that was not approved for use in the Iowa electronic return filing program.

See subrule 39.13(8) for information on administrative procedures relating to suspension of electronic filers from participation in the Iowa electronic filing program.

39.13(8) Administrative procedure for denial of an electronic filer's participation in the Iowa electronic filing program or for suspension of an electronic filer from the Iowa electronic filing program. In a situation where an electronic filer has requested participation in the Iowa electronic filing program, but there is a reason to deny the electronic filer's participation, the department will send the electronic filer a letter to advise that the electronic filer will be denied entry into the program. In another situation where an electronic filer is a participant in the Iowa electronic filing program but the electronic filer is to be suspended from the program for a problem or problems described in subrule 39.13(7), the department will send the electronic filer a letter to notify the filer about the electronic filer's suspension from the program.

In cases where the electronic filer either disagrees with the denial of participation letter or the suspension from participation letter, the electronic filer must file a written protest to the department within 60 days of the date of the denial letter or the suspension letter. The written protest must be filed pursuant to rule 701—7.8(17A). During the administrative review process, the electronic filer's denial of participation or suspension from participation in the Iowa electronic filing program will remain in effect.

This rule is intended to implement Iowa Code sections 422.21 and 422.68.

[Filed Emergency 12/30/94, effective 12/30/94]
[Published 1/18/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/18/95.

ARC 5360A

ACCOUNTANCY EXAMINING
BOARD[193A]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542C.3, the Iowa Accountancy Examining Board hereby amends Chapter 3, "Certificate of Certified Public Accountant," Iowa Administrative Code.

These amendments implement provisions of Iowa Code section 542C.5 enacted July 1, 1992, which will become effective January 1, 2001, and increase the educational requirements to become a certified public accountant. The proposed amendments will further clarify specific educational requirements.

A Notice of Intended Action proposing these amendments was published in the Iowa Administrative Bulletin on October 12, 1994, as **ARC 5164A**. A public hearing on these proposed amendments was held November 1, 1994. The following change is being made to text published in the Notice of Intended Action.

Add the following sentence to the closing paragraph in subrule 3.2(1): "Candidates applying on or after January 1, 2001, may sit for the examination provided they meet the above outlined requirements, but will not be issued a certificate until they meet the requirements of subrule 3.2(2)."

The Iowa Accountancy Examining Board adopted these amendments at their regular meeting on December 16, 1994.

These amendments will become effective February 22, 1995.

These amendments are intended to implement Iowa Code section 542C.5.

The following amendments are adopted.

ITEM 1. Amend rule 193A—3.1(542C) as follows:

193A—3.1(542C) Colleges or universities recognized by the board. Iowa Code sections 542C.5 and 542C.20, in providing for educational qualifications for a certificate as a certified public accountant or a permit to practice public accounting, refer to colleges or universities "recognized by the board." For such purpose, the board recognizes the state-supported educational institutions that have been granted collegiate status by this state, *the American Assembly of Collegiate Schools of Business*, and the regional accrediting bodies listed in the current publication of Accredited Institutions of Post Secondary Education which listing is made a part of these rules by reference.

This rule is intended to implement Iowa Code section 542C.5.

ITEM 2. Amend subrule 3.2(1), introductory paragraph, first sentence, as follows:

3.2(1) On or before December 31, 2000, Iowa Code sections 542C.5 and 542C.20, in providing for educational requirements for a certificate as a certified public accountant, refer to "substantially the equivalent of an accounting concentration, including related courses in other areas of business administration."

ITEM 3. Renumber existing subrules **3.2(2)** to **3.2(4)** as **3.2(3)** to **3.2(5)** and insert a new subrule 3.2(2) as follows:

3.2(2) On or after January 1, 2001, candidates will be deemed to have met the educational requirement if, as part of the 150 semester hours of education, they have met one of the following four conditions. With each of the conditions listed below, the minimum accounting hours do not include elementary accounting (principles of accounting), business law, internships or life experience.

a. Earned a graduate degree with a concentration in accounting from a program that is accredited in accounting by an accrediting agency recognized by the board.

b. Earned a graduate degree in business from a program that is accredited in business by an accrediting agency recognized by the board and completed at least 24 semester hours in accounting including courses covering the subjects of financial accounting, auditing, taxation, and management accounting.

c. Earned a baccalaureate degree in business or accounting from a program that is accredited in business by an accrediting agency recognized by the board and completed at least 24 semester hours in accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting.

d. Earned a baccalaureate or higher degree and completed the following hours from an accredited institution recognized by the board:

(1) At least 24 semester hours in accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting, and

(2) At least 24 additional semester hours in business-related courses, not including internships or life experience.

Quarter hours will be accepted in lieu of semester hours at a 3:2 ratio; that is, three quarter hours is equivalent to two semester hours.

[Filed 12/30/94, effective 2/22/95]
[Published 1/18/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/18/95.

ARC 5358A

AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 7E.3(3), 159.5(11), 189.2(2), and 190B.7, the Iowa Department of Agriculture and Land Stewardship hereby amends Chapter 47, "Organic Food Production," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 26, 1994, as **ARC 5190A**. A public hearing was held on November 17, 1994. The Iowa Department of Agriculture and Land Stewardship adopted this rule on November 30, 1994.

The revision to Chapter 47 adds a new rule 21—47.9(190B) specifying the creation of an Organic Advisory Committee to advise the Secretary of Agriculture on issues related to the organic industry.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

There are no changes as a result of the public hearing and this rule is identical to that published under Notice of Intended Action.

This rule is intended to implement Iowa Code section 190B.7.

This rule shall become effective February 22, 1995.

The following rule is adopted.

Amend 21—Chapter 47 by adopting the following **new** rule:

21—47.9(190B) Organic advisory committee.

47.9(1) Membership. The advisory committee shall have nine members to be appointed by the secretary of agriculture. Membership shall consist of the following:

a. One representative of the Iowa department of agriculture and land stewardship.

b. One representative of Iowa state university extension service who is a specialist in organic or sustainable agriculture.

c. Three producers of organic products including grains, fruits, vegetables, livestock or textiles.

d. Three handlers of organic products including processors, distributors or retailers.

e. One consumer representing the general interests of the organic industry in Iowa.

47.9(2) Function. The committee shall provide advice to the secretary of agriculture regarding organic production regulations, both state and federal, and other matters of concern to the organic industry as determined by the committee.

47.9(3) Administrative procedures. The committee shall establish administrative procedures and shall elect officers to terms established by the committee. All members of the committee shall serve at the pleasure of the secretary.

47.9(4) Compensation. Members of the advisory committee shall be reimbursed for actual and necessary expenses incurred by them in the discharge of their official duties.

47.9(5) Advisors. The organic advisory committee may solicit input from advisors without restriction as determined by the committee.

47.9(6) Staff. Staff assistance is provided through the department of agriculture and land stewardship as designated by the secretary of agriculture.

47.9(7) Open records. All public records of the committee are available for public inspection during business hours. Requests to obtain records may be made by mail, telephone or in person to the secretary's office, department of agriculture and land stewardship. Records requiring more than five copies may be obtained upon payment of the actual cost for copying.

This rule is intended to implement Iowa Code section 190B.7.

[Filed 12/21/94, effective 2/22/95]

[Published 1/18/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/18/95.

ARC 5367A

**ENVIRONMENTAL PROTECTION
COMMISSION[567]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission adopts amendments to Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice," and adds new Chapter 31, "Nonattainment Areas," Iowa Administrative Code.

These amendments add two definitions to Chapter 20, "EPA conditional method" and "EPA reference method." These definitions pertain to emissions testing. These amendments also add a new Chapter 31 which is intended to establish at one location in the Iowa Administrative Code the requirements for areas which are exceeding one or more of the National Ambient Air Quality Standards. Included in new Chapter 31 is the adoption by reference of federal regulations which require that federal actions conform to the appropriate state implementation plans for the nonattainment area in order to attain the Clean Air Act's air quality goals. Federal action includes engaging in, supporting in any way or providing financial assistance for, licensing or permitting, or approving any activity which will occur in a nonattainment area.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 12, 1994, as **ARC 5169A**. A public hearing was held on November 14, 1994.

Only one comment was received during the comment period. The commentator was concerned about health and safety issues relating to one of the "EPA conditional methods." The Iowa Department of Natural Resources does not have authority to modify EPA test methods. Furthermore, the adoption of the definition of EPA conditional method does not require testing firms to use a specific testing or analytical method. It merely incorporates the definition in Iowa Administrative Code consistent with the federal definition.

These amendments are not expected to impact small businesses.

These amendments are intended to implement Iowa Code section 455B.133.

These amendments will become effective February 22, 1995.

The following amendments are adopted.

ITEM 1. Amend rule **567—20.2(455B,17A)** by adding the following **new** definitions:

"EPA conditional method" means any method of sampling and analyzing for air pollutants that has been validated by the administrator but that has not been published as an EPA reference method.

"EPA reference method" means any method of sampling and analyzing for an air pollutant as described in 40 CFR 51, Appendix M, as amended through July 20, 1993; 40 CFR 52, Appendices D and E, as amended through July 20, 1993; 40 CFR 60, Appendix A, as amended through May 17, 1993; 40 CFR 61, Appendix B, as amended through June 25, 1993; 40 CFR 63, Appendix A, as amended through October 27, 1993; and 40 CFR 75, Appendices A, B, and H, as amended through July 20, 1993.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 2. Add a **new 567—Chapter 31** as follows:

CHAPTER 31
NONATTAINMENT AREAS

567—31.1(455B) Permit requirements relating to non-attainment areas. Special construction permit requirements in nonattainment areas are contained in rules 567—22.5(455B) and 22.6(455B).

567—31.2(455B) Conformity of general federal actions to the Iowa State implementation plan or federal implementation plan. The federal regulations relating to determining conformity of general federal actions to state or federal implementation plans, 40 CFR 93, subpart B, as adopted November 30, 1993, are adopted by reference except 40 CFR 93.151.

31.2(1) Section 93.160(f) is modified to read:

(f) Written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitment must be fulfilled.

31.2(2) Section 93.160(g) is modified to read:

(g) After February 22, 1995, and EPA's approval of the corresponding state implementation plan change, any agreements, including mitigation measures, necessary for a conformity determination will be both state and federally enforceable. Enforceability through the Iowa state implementation plan will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination.

These rules are intended to implement Iowa Code section 455B.133.

[Filed 12/30/94, effective 2/22/95]

[Published 1/18/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/18/95.

ARC 5364A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage," and Chapter 34, "Vehicles Subject to Registration," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume XVII, Number 11, on November 23, 1994, page 835, as **ARC 5261A**.

The amendments state that sales in which title passes to a buyer who is a private person are not sales to government even though a government may pay all or part of the purchase price of the property or reimburse the purchaser for the cost of buying the property.

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

These amendments will become effective February 22, 1995, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code sections 422.45(5), 423.6(1) and 423.7.

The following amendments are adopted.

ITEM 1. Amend subrule 18.5(2) as follows:

18.5(2) The gross receipts from sales to the United States government, state of Iowa, or federal bureaus, de-

partments, or instrumentalities are not taxable. *A sale to government occurs only if a government, pursuant to a contract for sale, takes title or ownership to tangible personal property as a buyer from a seller. No sale to government occurs if a government pays some portion of the cost of sale of an item of tangible personal property but title to and ownership of the property are transferred to another person as a result of the sale. See AVCO Manufacturing Corporation v. Connelly, 145 Conn. 161, 140 A.2d 479 (1958) and Akron Home Medical Services, Inc. v. Lindley, 25 Ohio St.3d 107, 495 N.E.2d 417 (1986).*

EXAMPLE A: Patient A purchases a hospital bed from a drugstore. A percentage of patient A's bill is paid by federal funds from Medicaid. Patient A has purchased a hospital bed, not the federal government, and Iowa tax is due as a result of this sale.

EXAMPLE B: A is a federal government employee. A stays at a hotel while on government business and eats meals there. A pays for the hotel room (treated as the sale of tangible personal property under Iowa sales tax law) and the meals with a credit card. The credit card was issued in A's name, and the cost of the room and meals is billed to A, who pays it. The federal government later reimburses A the entire cost of the room and meals. A has purchased the room and meals, and Iowa sales tax should be charged accordingly.

EXAMPLE C: B is a federal government employee who eats at a restaurant while on government business. B uses a credit card to pay for the meal. The credit card is issued in B's name, but the cost of the meal is billed to the U.S. government which pays that cost. In this situation, the government is the purchaser of the meal on B's behalf, and the sale is exempt from tax.

See rule 34.12(423) for an example of the application of this subrule to the motor vehicle use tax.

ITEM 2. Amend 701—Chapter 34 by adding a **new** rule as follows:

701—34.12(423) Government payments for a motor vehicle which do not involve government purchases of the same. If a dealer or other seller transfers title to a vehicle under a contract of sale to a buyer, payment by a government of all or part of the purchase price of the vehicle is not a sale of that vehicle to the government making the payment, and the entire purchase price of the vehicle is subject to use tax.

EXAMPLE: A disabled veteran is purchasing a van. The veteran makes an application with the Veterans Administration (V.A.) to help purchase the van for \$30,695. The application is approved and the V.A. prepares a check for \$12,456. The check is paid to the order of the seller of the van. It is also the usual custom for a veteran to apply for a grant to pay some or all of the remainder of the price. If this grant is approved, a check is issued in the name of the veteran. The veteran then either assigns the check to the dealer or deposits the check and writes a personal check to the dealer for the remaining amount due. Under these circumstances, the van is sold to the veteran and not the U.S. government. The purchase price upon which tax is computed is \$30,695.

This rule is intended to implement Iowa Code section 423.7.

[Filed 12/30/94, effective 2/22/95]

[Published 1/18/95]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/18/95.



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

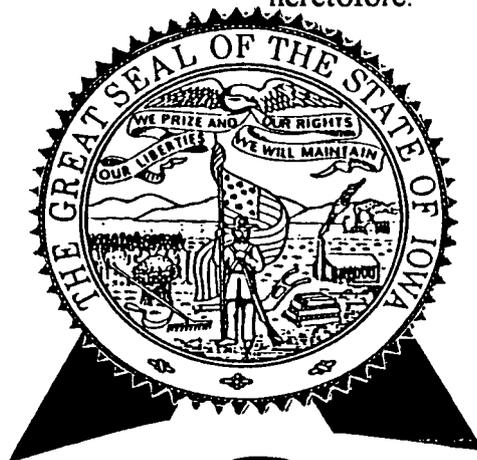
EXECUTIVE ORDER NUMBER 54

- WHEREAS, natural and technological disasters are an ever present and continuing threat to the people of the State of Iowa; and
- WHEREAS, these disasters can cause substantial losses to the citizens of the state, in both lives and property; and
- WHEREAS, through effective, planned response by state and local governments, the destructive nature of these disasters can be mitigated; and
- WHEREAS, an effective statewide Hazard Mitigation Program must be centrally orchestrated, involve all levels of government; and
- WHEREAS, government officials must continually strive to promote Hazard Mitigation, and develop new cost reducing initiatives.
- WHEREAS, Executive Order Number 39 was enacted on September 12, 1990 creating the Iowa Hazard Mitigation Team.
- NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested in me, by the laws and Constitution of the State of Iowa, and in accordance with the provisions of Chapter 29C, Code of Iowa, do hereby order that:
- I. Executive Order Number 39 be rescinded and replaced with Executive Order Number 54.
 - II. There shall be created an Iowa Hazard Mitigation Team whose membership shall include representatives from the following State agencies and permanent members who shall participate in all Hazard Mitigation Team activities.

- A. Department of Public Defense, Emergency Management Division, who will act as chair for the Hazard Mitigation Team and will coordinate activities of the Team;
 - B. Department of General Services;
 - C. Department of Natural Resources;
 - D. Department of Public Health
 - E. Department of Agriculture and Land Stewardship;
 - F. Department of Justice;
 - G. Department of Commerce;
 - H. Department of Management;
 - I. Department of Revenue and Finance;
 - J. Department of Transportation;
 - K. Department of Economic Development;
 - L. Department of Education;
 - M. Department of Public Safety;
 - N. Department of Employment Services;
 - O. Department of Cultural Affairs;
 - P. President of IEMDA;
 - Q. Representative of Iowa League of Municipalities;
 - R. Representative of ISAC;
- III. I do hereby declare that other state agencies will participate on the Hazard Mitigation Team on an as needed basis, as requested by the chair; and
- IV. I do hereby authorize the head of each agency to delegate the participation on the Hazard Mitigation Team assigned to him/her; and
- V. I do hereby authorize the Hazard Mitigation Team to request participation by local governments, federal government, and private industry, as needed; and
- VI. I do hereby decree the following as specific responsibilities of the Hazard Mitigation Team:
- A. Determine the capabilities of each state agency to address various hazards, including what legal authority each agency has and what programs and funding sources are available to address mitigation activities;
 - B. Provide assistance to the Emergency Management Division to develop, implement, and update the State Multi-Hazard Mitigation Plan;

- C. Coordinate activities of state agencies to reduce the impact of hazard potentials within the state;
- D. Recommend methods to improve mitigation, activities of state agencies, local governments, federal government, and private industry;
- E. Develop the means to communicate each state agency's capability to address hazards, to persons, agencies, or governments who might utilize that information, and

FINALLY; I do hereby also decree that the Hazard Mitigation Team can assume additional responsibilities in the area of Hazard Mitigation not specified heretofore.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 23rd day of December in the year of our Lord one thousand nine hundred and ninety-four.

Terry E. Branstad
GOVERNOR

Claine Baxter
SECRETARY OF STATE



State of Iowa
Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

PROCLAMATION

WHEREAS, the Office of State Representative from the 51st Representative District in Linn County consisting of the following areas:

- A. The City of Marion.
- B. Those portions of the City of Cedar Rapids and Bertram and Marion townships bounded by a line commencing at the point the south corporate limit of the City of Marion intersects state Highway 13, then proceeding south along state Highway 13 until it intersects the north boundary of Bertram township, then proceeding first east and then in a clockwise manner along the boundary of Bertram township until it intersects the south corporate limit of the City of Cedar Rapids, then proceeding first east and then in a counterclockwise manner along the corporate limits of the City of Cedar Rapids until it intersects the Chicago and Northwestern Transportation Company Railroad track at the west boundary of Bertram township, then proceeding west along the north branch of the Chicago and Northwestern Transportation Company Railroad track until it intersects Cole Street southeast, then proceeding north along Cole Street southeast until it intersects Fir Avenue southeast, then proceeding westerly along Fir Avenue southeast until it intersects Cole Street southeast, then proceeding north along Cole Street southeast until it intersects Otis Road southeast, then proceeding northeasterly along Otis Road southeast until it intersects Memorial Drive southeast, then proceeding northerly along Memorial Drive southeast until it intersects Fourteenth Avenue southeast, then proceeding easterly along Fourteenth Avenue southeast until it intersects Thirty-third Street southeast, then proceeding north along Thirty-third Street

southeast until it intersects Henderson Avenue southeast, then proceeding east along Henderson Avenue southeast until it intersects Thirty-fourth Street southeast, then proceeding north along Thirty-fourth Street southeast until it intersects Dalewood Avenue southeast, then proceeding east along Dalewood Avenue southeast until it intersects Fortieth Street southeast, then proceeding south along Fortieth Street southeast until it intersects Mount Vernon Road southeast, then proceeding easterly along Mount Vernon Road southeast until it intersects the east corporate limit of the City of Cedar Rapids, then proceeding first east and then in a counterclockwise manner along the corporate limits of the City of Cedar Rapids until it intersects Boyson Road northeast, then proceeding west along Boyson Road northeast until it intersects Brentwood Drive northeast, then proceeding first south and then in a clockwise manner along Brentwood Drive northeast until it intersects Windsor Drive northeast, then proceeding first northerly and then westerly along Windsor Drive northeast until it intersects "C" Avenue northeast, then proceeding north along "C" Avenue northeast until it intersects the north corporate limit of the City of Cedar Rapids to the east of "C" Avenue northeast, then proceeding first east and then in a clockwise manner along the corporate limits of the City of Cedar Rapids until it intersects the north corporate limit of the City of Marion, then proceeding first east and then in a clockwise manner along the corporate limits of the City of Marion to the point of origin.

has become vacant by the reason of the resignation of Representative Mary Lundby.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested in me by law do hereby proclaim and direct that a special election to fill said vacancy shall be held within said District on

TUESDAY, THE 10th DAY OF JANUARY 1995, A.D.

WHEREFORE, all electors within said 51st Representative District will take due notice and the County Commissioner of Elections of said county will take official notice as provided in Chapter 39, Code of Iowa, 1993.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 21st day of December in the year of our Lord one thousand nine hundred ninety-four.



Terry E. Branstad
GOVERNOR

ATTEST:

Elaine Baxter
SECRETARY OF STATE

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA*FILED DECEMBER 21, 1994**

NOTE: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA, 50319, for a fee of 40 cents per page.

No. 93-922. CLAUS v. WHYLE.

Appeal from the Iowa District Court for Webster County, Louie F. Beisser, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by McGiverin, C.J., and Larson, Carter, Neuman, and Snell, JJ. Opinion by McGiverin, C.J. (22 pages \$8.80)

This appeal involves issues regarding whether an adult daughter and her husband can recover damages against her parents for sexual abuse and loss of consortium, without being barred by the relevant statutes of limitations and the loss of consortium requirement that the injuries to the daughter have occurred during the marriage. **OPINION HOLDS:** I. We conclude that substantial evidence supports the trial court's finding that the father sexually abused his daughter on November 7, 1987. II. Like the trial court, we conclude that Iowa Code section 614.8A (1991) permitted the daughter to bring this action against her father for damages for her injuries caused by the sexual abuse she suffered on that date. III. We conclude substantial evidence supported the trial court's award of \$53,202 actual damages to Beverly Jo. We reject Richard's argument that the trial court based its award on more than one act of sexual abuse. We also reject Beverly's Jo's assertion that the award is inadequate. We also conclude that the court's award of punitive damages to Beverly Jo complied with the requirements of Iowa Code chapter 668A and the other relevant factors. IV. The district court did not err in dismissing the daughter's action against her mother. V. The daughter's other claims either were barred by the applicable statute of limitations or were not preserved for appellate review. VI. We disagree with the trial court's determination that the discovery rule applies to the husband's loss of consortium claim and, therefore, conclude that her husband did not have a cause of action against the father for loss of spousal consortium. The case is remanded for entry of judgment consistent with this opinion. Costs shall be taxed one-half to appellant Richard Whyte and one-half to appellees.

No. 93-1595. STATE v. DAVIS.

Appeal from the Iowa District Court for Black Hawk County, J. G. Johnson, District Associate Judge. **AFFIRMED.** Considered en banc. Opinion by McGiverin, C.J.
(11 pages \$4.40)

On April 9, 1993 defendant Robert F. Davis was arrested for operating a motor vehicle while intoxicated (OWI), first offense. He was given a Miranda warning, handcuffed, searched, placed in a patrol car, and taken to the county jail. Defendant was transferred to a hospital, and a blood specimen was withdrawn from him. Upon return to the jail, the officer completed a written citation and complaint for OWI against defendant. Defendant was turned over to the jailer and was "booked." The arresting deputy later consulted with a superior officer who decided that defendant should be released without more paper work being filed, pending the results of the blood test. The officers released defendant without posting bond. Defendant was then told he would be contacted after the blood test results came back. Defendant had been in custody and detained for approximately two hours during these police procedures. The local newspaper reported that defendant had been arrested on a complaint for OWI, first offense. The blood test result was dated April 13. The retrieved citation and complaint charging defendant with OWI were finally filed with the clerk of district court on May 6. The trial information was not filed until June 15. Defendant moved under Iowa rule of criminal procedure 27(2)(a) to have the trial information dismissed because it was not filed within forty-five days after his arrest on April 9. The district court sustained defendant's motion and dismissed the case. The State appealed. The State contends the forty-five day speedy indictment period of rule 27(2)(a) did not begin to run at the time of Davis' arrest because he was released and a complaint was not filed against him at that time. The State argues the forty-five day period started when the complaint was filed on May 6, rendering the June 15 trial information timely filed. The State relies on State v. Van Beek, 443 N.W.2d 704 (Iowa 1989), and a proposed extension of its holding, to justify a reversal of the trial court's ruling. **OPINION HOLDS:** We overrule Van Beek, which held that rule 27(2)(a) is inapplicable in situations in which a defendant, who although arrested and briefly detained, is unconditionally released without formal charges being filed against the defendant in district court. Our ruling applies to this case, and prospectively to cases pending at the time this decision is filed and in which the issue resolved herein was raised. We hold the forty-five day period under rule 27(2)(a) runs from the date defendant is arrested, unless the state shows good cause for the late filing of the trial information or defendant waives the right to have it timely filed. Therefore, we affirm the district court ruling.

No. 93-1854. **IN RE MARRIAGE OF GRIFFIN.**

Appeal from the Iowa District Court for Wapello County, Dan F. Morrison, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Neuman, and Snell, JJ. Per curiam. (6 pages \$2.40)

Anne Griffin challenges the order modifying John Griffin's child support obligation. Anne argues the district court erred in failing to include John's summer employment earnings in his net income when calculating child support under the guidelines. John claims his past summer income was atypical and should not be included in his net income. **OPINION HOLDS:** We believe it would be speculative to include John's summer income in his net income for child support purposes. We believe the district court correctly calculated John's net income without including his summer income. We affirm the decision of the district court.

No. 93-1433. **WALTERS v. GROSSHEIM.**

Appeal from the Iowa District Court for Jones County, Lynne E. Brady, Judge. **AFFIRMED AS MODIFIED.** Considered by Harris, P.J., and Carter, Neuman, Andreasen, and Ternus, JJ. Opinion by Neuman, J. Dissent by Harris, J. (10 pages \$4.00)

This case concerns an Iowa Department of Corrections' policy that authorizes an automatic deduction for restitution from funds credited to an inmate's account from relatives or other "outside sources." Ernest Walters, a prison inmate, challenged the policy as violative of procedural due process. The district court agreed, concluding that Walters was entitled to a hearing before funds other than prison wages were applied toward his restitution plan. The State appeals. **OPINION HOLDS:** I. We hold that a departmental or institutional policy that purports to take an inmate's private resources cannot be implemented without first granting the inmate an opportunity to protect his or her interest from unreasonable deprivation. II. We do not believe a post-deprivation hearing on an inmate's objections is sufficient to satisfy due process. III. Although the district court suggested the need for a "hearing" before each withdrawal, we reject that idea as unduly burdensome and impractical in the prison setting. To comport with due process, prison officials must merely (1) notify prisoners of the proposed amendment to their restitution plans including--where appropriate-- assessments against "outside sources," (2) permit time for objection to the proposed amendment, and (3) consider the objections in formulating an individualized plan for the future. With that modification, we affirm the judgment of the district court. **DISSENT ASSERTS:** The challenged system here strikes me as eminently reasonable and adequate. I would reverse.

No. 92-1881. STATE v. GALBREATH.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Linn County, Lynne E. Brady, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT REVERSED.** Considered by Harris, P.J., and Carter, Neuman, Andreasen, and Ternus, JJ. Opinion by Neuman, J. (8 pages \$3.20)

Defendant Galbreath entered into a written contract with the Xayasouks to replace the roof on their home. Pursuant to the contract, the Xayasouks paid Galbreath a down payment of \$1435. The contract was signed on a Friday; work was to commence the following Monday. Monday brought inclement weather and Galbreath did not start on the job. He did, however, park a large truck containing roofing materials outside their home. When another day went by without any progress, the Xayasouks called Galbreath to terminate the contract and demand a return of their down payment. Galbreath thereafter removed the truck, performed no roofing work, and returned no money. The State charged Galbreath with second-degree theft by misappropriation, as an habitual offender, in violation of Iowa Code sections 714.1(2) and 902.8 (1991). Galbreath pleaded guilty to the theft charge in exchange for dismissal of the claim that he should be sentenced as an habitual offender. Prior to sentencing, Galbreath obtained new counsel who moved in arrest of judgment asserting that section 714.1(2) is inapplicable to the facts of this case as a matter of law. Counsel moved in the alternative that Galbreath should be permitted to withdraw his plea because it was entered without knowledge--or advice by the court--that the facts presented a contractual dispute, not a theft. The court denied both motions and entered judgment against Galbreath upon his plea of guilty. Galbreath appealed. The court of appeals reversed, reasoning that the facts outlined at the plea colloquy supported no more than a breach of contract. We granted the State's application for further review. **OPINION HOLDS:** I. We hold that the term "property of another" as it is used in section 714.1(2) means property in which the owner retains an interest, whether by trust or some other legal relationship. Thus, in the context of an ordinary construction contract, cash advanced as a down payment will not qualify as "property of another" because title and possession are transferred from the owner to the contractor--not in trust--but outright. II. The court's inquiry of the defendant must be sufficient to demonstrate the defendant's understanding of the law in relation to the facts. Here Galbreath was permitted to plead guilty to a charge for which there existed no factual basis; therefore, the judgment based on his plea of guilty must be vacated. We remand for dismissal of the charge without prejudice to the State's right to re-indict Galbreath under a Code section supportable by the available evidence.

No. 93-1030. **KELLY v. STATE.**

Appeal from the Iowa District Court for Pottawattamie County, Keith E. Burgett, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Larson, Lavorato, Andreasen, and Ternus, JJ. Opinion by Harris, J.

(8 pages \$3.20)

Public employees, nonunion members, brought this suit to challenge disparate pay increases, complaining because the increases in their pay were less than those obtained through arbitration and litigation by similar employees who were union members. The trial court ruled that the unequal pay increase violated equal protection provisions of the United States and Iowa Constitutions, Iowa Code sections 20.10(2)(a) and 20.10(2)(c) (1993) (public employment relations Act), and Iowa Code chapter 731 (right to work law). The judicial department appealed. **OPINION HOLDS:** I. We apply a rational basis in considering plaintiffs' equal protection challenge. We find the two groups here are not similarly situated. The State could have rationally determined not to expend equal pay increases to nonunion employees for economic reasons. Accordingly, we conclude plaintiffs have not carried their burden of showing no rational basis for the different pay raises. II. We also reject plaintiffs' claim that Iowa's right to work law was violated. There is nothing to hint that the nonunion members must choose between union membership or leaving their jobs. III. Finally we cannot agree that the disparity violates section 20.10. Even assuming the pay bill conflicts with the public employment relations Act, the salary bill prevails because it was both more specific and later enacted. IV. Rejection of AFSCME's petition to intervene was correct because the litigation did not affect AFSCME's legally cognizable rights. We reverse and remand for entry of judgment.

No. 94-1237. **COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT v. OTTESEN.**

On review of the report of the Grievance Commission. **LICENSE REVOKED.** Considered by Harris, P.J., and Larson, Lavorato, Andreasen, and Ternus, JJ. Opinion by Harris, J.

(3 pages \$1.20)

James L. Ottesen of Davenport, Iowa, took client trust funds and converted them to his own use. This attorney disciplinary case presents only the question of an appropriate sanction. **OPINION HOLDS:** There is no place in our profession for lawyers who convert funds entrusted to them. It is almost axiomatic that we revoke licenses of lawyers who do so. We find no reason to depart from the policy demanding revocation.

No. 93-1002. **CROOKS v. BORLAUG.**

Appeal from the Iowa District Court for Chickasaw County, Margaret L. Lingreen, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Andreasen, and Ternus, JJ. Per curiam. (8 pages \$3.20)

At issue is whether there is substantial evidence in the record to support the amount of damages the jury awarded to the plaintiff, Richard Crooks, following an automobile accident with the defendant, Cindy Borlaug. The jury awarded Crooks \$5000 in damages but declined to award punitive damages. The jury specifically found that both Borlaug and Crooks were fifty percent at fault. The district court denied Crooks' motion for new trial on the issue of damages. Crooks has appealed. **OPINION HOLDS:** I. The evidence in the record is conflicting on whether Crooks' injuries were caused by the accident. The jury's finding that Crooks' headaches, neck pain and shoulder pain were not a result of the accident is supported by substantial evidence. Under these circumstances, the damage award was not grossly inadequate. II. Although the jury found that Borlaug's conduct in driving while intoxicated was wanton and willful, the jury was within its power to determine no punitive damages should be awarded. The district court's order denying Crooks' motion for new trial is therefore affirmed.

No. 93-1809. **KNIGHT v. KNIGHT.**

Appeal from the Iowa District Court for Johnson County, August F. Honsell, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Andreasen, and Ternus, JJ. Opinion by Harris, J. (7 pages \$2.80)

The defendant in this proceeding under the domestic abuse Act challenges the sufficiency of the notice against him on due process grounds. He complains he was found in violation of a protective order on the basis of a different incident from the one mentioned in the petition he was called to defend. **OPINION HOLDS:** I. We think the domestic abuse petition gave the defendant sufficient notice to satisfy due process. The petition enumerated at least eight alleged instances of domestic abuse belonging to the same "kind or class" of behavior and distinguished by the same "fundamental or essential characteristics" as the incident upon which the protective order was based. II. We emphatically reject defendant's contention that this case is analogous to parental termination cases where due process requirements are more strict. III. We also believe the petition satisfied due process when evaluated under the criteria of Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

No. 93-546. MILLER v. LAURIDSEN FOODS, INC.

On review from Iowa Court of Appeals. Appeal from the Iowa District Court for Kossuth County, Joseph O. Straub, Judge. **DECISION OF COURT OF APPEALS VACATED; RULING OF DISTRICT COURT REVERSED AND CASE REMANDED TO THE INDUSTRIAL COMMISSIONER FOR RECEIPT OF ADDITIONAL EVIDENCE AND RECONSIDERATION.** Considered en banc. Opinion by Andreasen, J. Dissent by Snell, J. (17 pages \$6.80)

In June, 1981, the petitioner, Joyce Miller, began to work for Lauridsen Foods, Inc. as a meat trimmer. In the summer of 1987, three surgeries were performed on her for work related carpal tunnel syndrome. Miller returned to work in the fall of 1987 with restrictions and in February 1988 the restrictions were removed. She was hospitalized for depression in June of 1988. After her release from the hospital, she did not return to work for Lauridsen Foods. Miller filed three separate workers' compensation claims against her employer and its insurance carriers in June of 1988. In one case she claimed the working conditions at Lauridsen Foods brought on a mental condition. In the two other cases Miller claimed that in 1985 or 1986 she suffered cumulative trauma, overuse syndrome, causing injury to her upper extremities, shoulder and neck. In April 1989 the deputy commissioner ordered Miller's three cases be consolidated. The first case was dismissed by Miller in 1990. Later, Miller's witness list for trial included certain lay witnesses. The deputy industrial commissioner, under a consolidation theory of merger, granted Lauridsen Foods' and its carriers' motion to exclude the lay witnesses as a sanction because Miller had failed to disclose them earlier by supplementing her interrogatory response in the dismissed case. On appeal, the arbitration decision of the deputy commissioner was adopted by the industrial commissioner after making certain modifications. On judicial review, the district court concluded the discretionary ruling of the deputy commissioner excluding the lay witnesses was not an abuse of discretion. The court of appeals agreed the sanction was appropriate. We granted Miller's application for further review. **OPINION HOLDS:** I. Although cases may be consolidated for trial, the cases generally preserve their separate identity. The deputy commissioner's authority to impose sanctions for failure to comply with discovery in the first case was removed by the dismissal of that action. Miller had the right to dismiss the claim and avoid sanctions that might otherwise have been imposed. It was error for the court to exclude the lay witnesses as a sanction for failure to comply with discovery. II. Lay testimony could buttress the medical testimony and would be relevant and material in determining the cause and extent of Miller's injuries and condition. It was error for the commissioner to exclude lay witnesses as a sanction and

No. 93-546. MILLER v. LAURIDSEN FOODS, INC. (continued)

such error was not harmless. We reverse the commissioner's decision and return this case to the commissioner for the purpose of receiving additional evidence by the designated lay witnesses. The commissioner shall then reconsider Miller's claims based upon all of the evidence including the testimony of the lay witnesses. The commissioner should also reconsider the assessment of costs, penalties, and interest. **DISSENT ASSERTS:** My review shows that the court of appeals and the district court carefully considered the issue regarding the exclusion of Miller's lay witnesses and correctly affirmed the exercise of discretion by the deputy industrial commissioner as the law was applied to the factual situation surrounding the consolidation of these cases. Moreover, additional lay evidence would have provided little or no help to the deputy commissioner. This is because the deciding issue was not what activities she could or could not do but rather what caused her disability and what was the nexus to her employment. The decision of the court of appeals and the judgment of the district court should be affirmed.

No. 94-18. WHITSEL v. STATE.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Andreasen, and Ternus, JJ. Opinion by Andreasen, J. (12 pages \$4.80)

This is an appeal from a summary dismissal of Jesse Whitsel's application for postconviction relief. The primary issue is whether the availability of deoxyribonucleic acid (DNA) testing constitutes "newly discovered evidence" entitling appellant to circumvent the three-year limitation period for filing an application for postconviction relief. Whitsel also contends the limitation period should not bar his claim of ineffective assistance of counsel. **OPINION HOLDS:** I. Regardless of whether DNA testing was available and could have been raised within the applicable time period, Whitsel has not demonstrated that DNA testing would likely change the results of his case. We hold Whitsel's application for postconviction relief based on newly discovered evidence is barred by Iowa Code section 822.3. II. The court did not err in denying Whitsel's discovery motion. The record reflects that the evidence Whitsel wished to have tested no longer is available for testing. III. Whitsel's claim of ineffective assistance of counsel fails. Whitsel has not shown prejudice because sufficient evidence on the confinement and removal elements of kidnapping supported the jury verdict and we have previously rejected a similar double jeopardy challenge to the kidnapping statute.

No. 93-1073. ESTATE OF WULF.

Appeal from the Iowa District Court for Scott County, James E. Kelley, Judge. **AFFIRMED IN PART AND MODIFIED IN PART.** Considered by Harris, P.J., and Larson, Carter, Snell, and Andreasen, JJ. Opinion by Snell, J.; special concurrence by Carter, J. (13 pages \$5.20)

Lucille Wulf unsuccessfully appealed to this court from a district court order concerning her challenge to the final report of the executors of Raymond Wulf's estate. Following the appeal the executors filed a "Second Amended Final Report" which asserted the appeal had resulted in the incurrence of extraordinary attorneys' fees. The trial court ruled that the requested fees were fair and reasonable and ordered that the costs be assessed solely against Lucille's share in the estate since she lost the appeal. Lucille appeals. **OPINION HOLDS:** I. Lucille argues assessment of extraordinary attorney's fees against the estate was improper because her challenge to the second amended report involved a personal dispute between her and an executor/beneficiary, Simpson. The record suggests Simpson acted reasonably and with the good faith intention of carrying out his obligations as an executor. The trial court did not abuse its discretion in charging the fees to the estate. II. Lucille contends, and we agree, she should not bear the burden of the entire expense of the prior appeal when there is no evidence of bad faith in bringing the challenge to the will. We therefore hold that the extraordinary attorney fees are properly charged to the estate, and are assessed one-third to Lucille's share and two-thirds to Simpson's share. III. The attorney fees incurred by the executor for this appeal are fixed at \$1860 to be paid from estate assets, one-third from Lucille's share, two-thirds from Simpson's share. Costs shall be paid one-third from Lucille's share and two-thirds from Simpson's share. **SPECIAL CONCURRENCE ASSERTS:** I write separately to suggest the need for a clearer standard in deciding the propriety of litigation fees incurred by a personal representative in estate matters. If the personal representative has acted properly at the outset in engaging in litigation the general estate assets should ordinarily bear the fair and reasonable cost of the attorney fees based on the nature of the services performed. The fact that the payment of attorney fees from general assets ultimately favors one class of estate distributees over another class is not by itself a legitimate basis for adjusting the fee downward even when the disfavored class of distributees were the prevailing parties in the litigation. If a personal representative has engaged in a breach of fiduciary duty by pursuing litigation, the remedy of the objecting parties should ordinarily be a direct surcharge against the personal representative.

NO. 93-1048. BAHNDORF v. LEMMONS.

Appeal from the Iowa District Court for Linn County, Lynne E. Brady, Judge. **AFFIRMED ON ALL APPEALS.** Considered en banc. Opinion by Larson, J.

(12 pages \$4.80)

Bahndorfs formed a partnership with Lemmons to operate a Budget Inn Motel. Bahndorfs later filed a petition for appointment of a receiver and requested that the district court supervise the dissolution of the partnership. The court eventually appointed Epping, the bookkeeper, as receiver. Lemmons filed a motion to remove Epping as receiver after the partnership failed to make its monthly payment to the owner of the motel. Lemmons complained that this default was the result of Epping's mismanagement of the motel. The district court declared the partnership in default on its agreement with the owner and ordered Epping to surrender possession of the motel. The district court approved Epping's final report and discharged him. The court also approved Epping's payment from receivership assets of both his legal expenses and his own fees. The court ordered that any money remaining in the receivership be paid to the Department of Revenue. Lemmons, Bahndorfs, and the Department of Revenue all appeal. **OPINION HOLDS:** I. The partners contend that Epping mismanaged the motel and improperly paid his own fees without prior authority. Epping's fees had been approved by the partners at the beginning of his receivership, and the court ultimately approved them in approving Epping's final report. Epping could not prevent a default without a contribution by the partners or infusion of loan capital. The partners refused to make such a contribution. When a default was imminent, Epping did all he could to avoid it. Epping was not guilty of any mismanagement, and his final report should be approved. II. Lemmons and Bahndorfs contend that Epping should have paid the collected motel and sales taxes before he paid other partnership bills. The Department of Revenue joins in this argument on appeal. Epping at all times acted under the court's direction, and the court did not require payment of the taxes. Moreover, the taxes were not due until Epping was no longer acting as receiver. Taxes and all other expenses are the owners' responsibility, not the responsibility of the court-appointed receiver who owned no part of the business. Finally, we find no merit in the Department's other arguments that the court erred in finding Epping had no legal or equitable interest in the business and that the court had no subject matter jurisdiction to enter an order that deprived the Department of a claim against Epping.

No. 94-475. JAHNKE v. JAHNKE.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by Harris, P.J., and Larson, Lavorato, Andreasen, and Ternus, JJ. Opinion by Ternus, J. (13 pages \$5.20)

A few weeks after their marriage Jeffrey Jahnke adopted Kathy Jahnke's son, Robert. At that time, Jeffrey was receiving disability payments from the Social Security Administration. As Jeffrey's son, Robert received dependent social security disability benefits. The Jahnkes' marriage was later dissolved. Jeffrey subsequently requested that his adoption of Robert be vacated based on fraud. Before the court could rule on Jeffrey's request, he died. Not aware that Jeffrey had died, the district court entered an order vacating Jeffrey's adoption of Robert. In the same order the court required that all social security benefits received in the past or future on Robert's behalf be placed in a trust account. The court also ordered that the attorney fees and court costs incurred by Jeffrey and Kathy as well as the fees owed to the attorney appointed to represent Robert be paid from this account. Kathy appeals arguing that the court could not vacate the adoption of Robert after Jeffrey's death. She also contends that the court had no authority to direct that Robert's federal social security benefits be held in trust or that these benefits be used to pay her and Jeffrey's legal fees and court costs. **OPINION HOLDS:** I. The court did not have the power to retroactively sever the parent-child relationship because Jeffrey's death abated the proceeding. As the adoption was an action personal to Jeffrey, abatement was not prevented by Iowa's survival statute that provides all causes of action survive the death of the person entitled to the action. We reverse the district court's order vacating Jeffrey's adoption of Robert. II. The use of Robert's disability benefits to pay the court costs and attorney fees incurred by Jeffrey and Kathy in their marital and adoption disputes would be inconsistent with federal regulations concerning use of the benefits. We reverse the district court's order that the funds on deposit with the clerk of court be used for this purpose. We affirm the district court's decision that Robert's social security benefits be used to pay the fees and expenses of the attorney representing him in these proceedings. III. The trial court had jurisdiction to enter an appropriate order to ensure that the remaining past benefits and all future benefits be spent in a manner contemplated by federal and state law. The creation of a trust for the safekeeping of Robert's social security disability benefits is appropriate, however, we modify the district court's order to require only that portion of Robert's future social security payments not needed for his current support be placed in the trust account. We remand this case to the district court for a hearing to determine that amount. We further modify the district court's order to provide that the court may order disbursement of any funds deposited in the trust account upon proper application and demonstration that such funds are needed for Robert's current maintenance.

No. 93-1606. KIBBEE v. STATE FARM FIRE AND CASUALTY CO.

Appeal from the Iowa District Court for Johnson County, William L. Thomas, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Andreasen, and Ternus, JJ. Opinion by Ternus, J. (8 pages \$3.20)

The question in the present case is whether a liability policy affords coverage for damages recovered under a theory of intentional infliction of emotional distress. In a prior lawsuit Kibbee recovered substantial damages from the Crams. The jury awarded these damages under theories of fraudulent misrepresentation and intentional infliction of emotional distress. The Crams were insured under consecutive insurance policies issued by State Farm. State Farm denied that it had coverage. The Crams and Kibbee then agreed to a settlement which included an assignment of the Crams' claims against State Farm to Kibbee. Kibbee filed this action against State Farm claiming that State Farm was contractually obligated to pay the judgment under its insurance contract with the Crams. The district court held that there was no coverage. **OPINION HOLDS:** We hold that the tort of intentional infliction of emotional distress is not included in the definition of personal injury. It is not necessary to consider whether the intentional act exclusion conflicts with the policy's coverage of other intentional torts. The district court correctly ruled that State Farm's policy did not cover the judgment obtained by Kibbee. We therefore affirm.

No. 93-213. PERKINS V. WAL-MART STORES, INC.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Black Hawk County, Roger F. Peterson, Judge. **COURT OF APPEALS DECISION VACATED; DISTRICT COURT ORDER REVERSED; REMANDED.** Considered by Harris, P.J., and Larson, Lavorato, Andreasen, and Ternus, JJ. Opinion by Lavorato, J. (8 pages \$3.20)

Judy Perkins and Pat Muchmore went shopping at Wal-Mart shortly before closing time. As the pair was making their way down a store aisle, Judy's feet suddenly slipped out from under her and she fell face first on the floor. No one saw Judy fall. When Judy got up, she had sand or dirt particles on her hands. Pat saw the accumulation of dust and dirt on Judy's black outfit. Doug, Judy's husband, did too when Judy arrived home right after the accident. Judy filed a negligence action against Wal-Mart. Doug joined with a loss of spousal consortium claim. The district court granted Wal-Mart's motion for summary judgment and denied Judy and Doug's motion for reconsideration. Judy and

No. 93-213. PERKINS V. WAL-MART STORES, INC. (continued).

Doug appeal. **OPINION HOLDS:** Judy and Doug are entitled to every legitimate inference reasonably deducible from the summary judgment record. From these, a reasonable mind could conclude that debris on Wal-Mart's floor caused Judy to fall. Judy's testimony as to how she fell, how startled she was that she had fallen, and the condition of her hands and clothing immediately after the fall are consistent with this conclusion. Other circumstantial evidence, such as Wal-Mart's violation of its sweeping policy and the debris' tendency to blend in with the floor coloring, also supports the conclusion the debris caused Judy's fall. The district court erred in granting summary judgment. We therefore vacate the court of appeals decision, reverse the district court order and remand for further proceedings.

No. 94-11. STATE v. PETERS.

Appeal from the Iowa District Court for Ida County, Robert C. Clem, James L. McDonald, and Philip S. Dandos, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Andreasen, and Ternus, JJ. Opinion by Lavorato, J. (12 pages \$4.80)

The principal issue in this appeal is whether the State can charge one who is operating a snowmobile while intoxicated with a violation of Iowa Code section 321J.2 (1991) (prohibiting operating motor vehicle while intoxicated) even though a separate statute, Iowa Code section 321G.13(3), prohibits such conduct. **OPINION HOLDS:** I. We conclude that the legislature did not intend section 321G.13(3) to be the exclusive remedy for punishing snowmobile operators who drive while intoxicated. Because we conclude section 321J.2 and section 321G.13(3) are not in conflict, the prosecutor had the discretion to choose which charge to file. We therefore affirm Peters' conviction for OWI, second offense. II. The sentencing hearing record reveals that the court did not rely on any inaccuracies in the PSI in sentencing Peters. The court did rely on Peters' prior conviction record contained in the PSI, which was well within its discretion. We therefore affirm Peters' sentence.

No. 93-1132. E.N.T. ASSOCIATES v. COLLENTINE.

Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Andreasen, and Ternus, JJ. Per curiam. (7 pages \$2.80)

Marvin Collentine suffered a herniated disc while employed as an otolaryngologist with E.N.T. Associates. The injury left Collentine with chronic pain in his legs that initially required him to curtail his surgery practice. Collentine continued to specialize in the treatment of allergies. Collentine sought workers' compensation benefits and was ultimately awarded benefits on the basis of a finding that he had suffered a twenty percent industrial disability to the body as a whole. Collentine subsequently determined he could not perform his surgery practice with the pain he suffered from his injuries and quit that practice. This change in his practice reduced his salary. Collentine petitioned for a review-reopening hearing alleging that he was entitled to additional disability benefits because of a reduction in his earning capacity caused by his injury. Collentine did not introduce any new medical expert testimony regarding a change of condition but claimed that he decided to abandon his surgery practice because he determined he could not competently perform surgeries with the pain he was suffering from the injury. The industrial commissioner affirmed a deputy industrial commissioner's decision that Collentine suffered an additional forty percent loss of earning capacity over the original arbitration award. E.N.T. Associates sought judicial review asserting that the industrial commissioner's decision awarding additional benefits was not supported by substantial evidence. The district court affirmed the industrial commissioner's decision. E.N.T. Associates filed this appeal. **OPINION HOLDS:** Collentine was not required to submit additional expert medical testimony to corroborate his opinion that he could no longer safely perform surgery. The record supports the agency's conclusion that Collentine quit performing surgery based on his feelings of duty to protect his patients' safety and not merely to retire and enjoy disability benefits. There is substantial evidence to support the industrial commissioner's determination that Collentine was entitled to additional benefits and we affirm the judgment of the district court.

NO. 93-1812. SCHAEFER v. CERRO GORDO COUNTY ABSTRACT CO.

Appeal from the Iowa District Court for Cerro Gordo County, Bryan M. McKinley, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Neuman, and Snell, JJ. Opinion by Larson, J. (6 pages \$2.40)

The plaintiffs purchased farmland from Arthur Firgard. Firgard agreed in writing to notify the plaintiffs of any proposed sale of an adjoining tract and agreed to give them the first opportunity to purchase it. The plaintiffs recorded this "option" (actually a right of first refusal or right of preemption). After Firgard died, his estate sold the acreage at a public auction. The defendant prepared an abstract, but it did not show the plaintiffs' recorded "option." After the estate's sale to the auction buyer was completed, the plaintiffs made no claim against the estate for its failure to give notice under the recorded agreement during the four-month claims period. Instead, the plaintiffs sued the abstract company on theories of negligence, interference with a prospective business advantage, and interference with a contract. The defendant filed a motion for summary judgment, which the court sustained. The plaintiffs appealed. **OPINION HOLDS:** I. Although the plaintiffs did not order the abstract, their lack of privity with the defendant does not preclude them from recovery. In order to recover against the abstractor on a negligence claim, however, plaintiffs must have reasonably relied on the abstract. The plaintiffs in this case did not rely on the abstract; they did not purchase the land or extend credit for it. They contend only that the abstract did not protect their interest in the land. The abstract company simply owed no duty to the plaintiffs. II. On their claim for interference with a contract, there was no evidence on which a fact finder could base a finding of the requisite elements of knowledge and intent. III. With respect to the claim for intentional interference with a prospective business advantage, the record could not support such a claim of actual knowledge of the prospective business advantage. The plaintiffs therefore failed to generate an issue of fact on which this claim could prevail. We agree with the district court that no disputed issue of material fact was raised as to any of the claims, and summary judgment was therefore appropriate.

NO. 93-958. GRIGLIONE v. MARTIN.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Henry County, D.B. Hendrickson, Judge. **DECISION OF COURT OF APPEALS AND DISTRICT COURT JUDGMENT AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Neuman, and Snell, JJ. Opinion by Carter, J. (12 pages \$4.80)

Plaintiff, Susan Griglione, as personal representative of her husband, Rodney, appeals from an adverse judgment in an action against a police officer, Steven Martin, and the City of Mt. Pleasant. Plaintiff's civil damage action contained counts alleging that the City was vicariously liable on negligence and assault and battery counts against Martin. It also contained claims against the City and Martin based on 42 U.S.C. § 1983. The district court sustained the City's motion for summary judgment as to the § 1983 count against it. The other counts against Martin and the City were tried to a jury, which found for the defendants on all claims. On appeal, Griglione contends that the district court erred in failing to instruct the jury that an officer's violation of a police department operating procedure is negligence per se. She also urges that it was error for the court to grant summary judgment for the City on her § 1983 claim. The court of appeals affirmed the judgment of the district court. We granted further review. **OPINION HOLDS:** I. The district court did not err in instructing the jury that a violation of the adopted standard operating procedures for the use of deadly force is evidence of negligence. We reject Griglione's contention that the jury should have been instructed that a violation of the police operating procedures would constitute negligence per se. II. Griglione is correct in her contention that the City's summary judgment motion was not sufficiently supported to establish the nonexistence of a material factual dispute concerning the adequacy of officer Martin's training. However, we are unable to agree that the judgment should be reversed. The jury has already determined that officer Martin did not act to violate the civil rights of plaintiff's decedent. We do not believe that this essential element of plaintiff's case remains an open question. Consequently, she is precluded from establishing a point essential to her right of recovery under § 1983.

NO. 93-1814. STATE v. WILLIAMS.

NO. 93-1670. STATE v. COLEMAN.

Appeals from the Iowa District Court for Johnson County, Lynne E. Brady, Judge. **AFFIRMED ON BOTH APPEALS.** Considered by McGiverin, C.J., and Larson, Carter, Neuman, and Snell, JJ. Opinion by Carter, J. (12 pages \$4.80)

These are separate appeals by two defendants tried jointly on a single trial information charging them with murder in the first degree. They were convicted of lesser included offenses. We deem it expedient to decide both appeals in a single opinion. Defendant Coleman seeks reversal on the basis that (1) the district court abused its discretion in failing to sever the trial of the charges against him from the trial of the charges against defendant Williams, and (2) he was unduly prejudiced by an improper argument made by the prosecutor in summation. Defendant Williams seeks reversal on the basis that (1) the elements of voluntary manslaughter were not supported by substantial evidence, (2) his conviction of voluntary manslaughter as an aider and abettor was contrary to the trial court's instructions, and (3) he was unduly prejudiced by an improper argument made by the prosecutor in summation. **OPINION HOLDS:** I. We find that defendant Coleman's argument for granting separate trials is without merit. The challenged statements would have been admissible if Coleman had been tried alone. II. The weapon with which the prosecutor made a demonstration in summation was not the one that Coleman had allegedly fired. The prosecutor's confusion over the two guns admitted as trial evidence was unfortunate. Moreover, we strongly condemn the pointing of a firearm in the direction of any person for purposes of demonstration. Nonetheless, this incident does not warrant a reversal of Coleman's conviction. III. Williams' conviction of voluntary manslaughter was supported by the evidence, was permissible under the trial court's instructions, and was not the product of inconsistent verdicts. IV. Part of Williams' improper summation complaint relates to the same demonstration with the gun of which Coleman complained. We reject Williams' claim for the same reasons. As a whole, we find nothing in the prosecutor's summation that would have warranted the granting of a mistrial.

No. 93-1471. STATE v. STATE POLICE OFFICERS COUNCIL.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge. **AFFIRMED.** Considered by Harris, P.J., and Larson, Lavorato, Andreasen, and Ternus, JJ. Opinion by Andreasen, J. (9 pages \$3.60)

This case involves a dispute over the arbitrability of a public employee organization's grievance. The employee organization also seeks to recover its attorney fees. In a declaratory judgment action, the district court ordered the State to proceed to arbitration, but refused to award attorney fees. The State appeals the order to arbitrate and the State Police Officers Council (SPOC) cross-appeals the denial of attorney fees. **OPINION HOLDS:** I. The State argues the grievance challenges supervisors' bumping rights. The State mischaracterizes the grievance. SPOC challenges the displacement of current members of the bargaining unit. Because current members of the bargaining unit are clearly covered by the agreement, questions relating to their seniority and the procedures for their layoff are part of what the State agreed to arbitrate. II. We do not believe the State has acted in bad faith. Therefore, we affirm the trial court's denial of SPOC's request for attorney fees.

No. 94-13. STATE v. UTHE.

Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge. **APPEAL DISMISSED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Per curiam. (3 pages \$1.20)

This appeal relates solely to the fixing of an appeal bond by the district court. The State has filed a motion to dismiss this case because it is moot. **OPINION HOLDS:** The only issue affecting defendant is the amount of bond during the pendency of the appeal. Defendant's convictions have already been heard on the merits and decided adversely to him. We hold the action is moot because it no longer presents a justiciable controversy. Therefore, the State's motion is granted; this appeal is dismissed.

No. 93-768. POULIN v. STATE.

Appeal from the Iowa District Court for Clay County, Charles H. Barlow, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Larson, Lavorato, Andreasen, and Ternus, JJ. Opinion by Andreasen, J. (6 pages \$2.40)

This is an appeal from the summary dismissal of a postconviction relief application. We must decide if the trial court is required to schedule a hearing and give notice of the hearing to the applicant before granting a motion to dismiss filed by the applicant's court-appointed counsel. **OPINION HOLDS:** Here, the trial court did not have authority to grant counsel's motion to dismiss because Poulin was denied the opportunity to resist. If the parties or the court wish to proceed by summary disposition, the motion should be set by the court for hearing or nonoral submission and notice given to Poulin. The court shall render its ruling applying the principles of summary judgment. Otherwise, the application for postconviction relief should be heard as provided by section 822.7.

No. 93-769. POULIN v. STATE.

Appeal from the Iowa District Court for Clay County, Charles H. Barlow, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Larson, Lavorato, Andreasen, and Ternus, JJ. Per curiam. (2 pages \$.80)

Poulin appeals from summary dismissal of a postconviction relief application. The trial court granted a motion to dismiss filed by the applicant's court-appointed attorney without hearing or notice to the applicant. **OPINION HOLDS:** For the reasons stated in the companion case, Poulin v. State, ___ N.W.2d ___ (Iowa 1994), we reverse and remand.

No. 93-981. STATE v. WIESE.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Montgomery County, Glen McGee, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Larson, Carter, Neuman, and Snell, JJ. Opinion by Snell, J. (12 pages \$4.80)

James Edward Wiese appeals his conviction for possession of a schedule I controlled substance with intent to deliver and possession of marijuana without the required drug tax stamp. The sole issue in this case is whether the district court erred in denying Wiese's motion to suppress all evidence and statements officials obtained as the result of a police stop of his vehicle. The court of appeals affirmed the district court's decision holding that the officer in question acted with reasonable cause in stopping Wiese's vehicle. We granted further review. **OPINION HOLDS:** Deputy Rulla has not demonstrated that he was acting on anything other than general suspicion when he stopped Wiese's vehicle. The State failed to demonstrate that the level of crime in the area reasonably justified a suspicion that Wiese was engaged in or preparing to commit a crime. The mere observation of a car being operated at a slow rate of speed would not warrant a person of reasonable caution to believe that criminal activity was occurring or about to occur. The State has not demonstrated that the slow rate of speed together with the level of crime in the area constituted reasonable cause for Rulla to stop Wiese's vehicle. The district court erred in denying Wiese's motion to suppress. We vacate the court of appeals' decision and reverse the district court judgment. We also remand for entry of judgment voiding defendant's convictions and dismissing the charges upon which he was convicted.

No. 93-1101. GREFE & SIDNEY v. WATTERS.

Appeal from the Iowa District Court for Polk County, Gene Needles and William H. Joy, Judges. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Neuman, and Snell, JJ. Opinion by McGiverin, C.J.

(17 pages \$6.80)

This case involves issues arising from a petition by a law firm, Grefe & Sidney, against its client, Lucille Watters, for fees and expenses, and a counterclaim by Watters against the firm and her attorney, Henry Harmon, for alleged legal malpractice. The district court granted Grefe & Sidney's motion for summary judgment on its claim for fees and expenses. Watters' counterclaim proceeded to a jury trial, resulting in a verdict and judgment for Grefe & Sidney and Harmon. Watters appeals. The ultimate question is whether the verdict and judgment for Grefe & Sidney on the counterclaim can render harmless the prior but allegedly erroneous grant of summary judgment on Grefe & Sidney's petition. **OPINION HOLDS:** I. We conclude no reversible error occurred in the trial of Watters' legal malpractice counterclaim. We find most of Watters' claims of error were not preserved for appellate review. Watters' contention that certain instructions unduly emphasized Grefe & Sidney's theory of the case is without merit. II. Watters' resistance to Grefe & Sidney's summary judgment motion was based upon her assertion that Harmon rendered legal malpractice, causing his services to be of no value. We conclude that even if the district court erred in sustaining the motion for summary judgment, such error was rendered harmless or moot by the subsequent affirmed judgment in the counterclaim trial declaring the firm and Harmon free from negligence in their provision of legal services. We affirm.

SUMMARY OF THE OPINIONS OF THE ATTORNEY GENERAL*BONNIE J. CAMPBELL**

November and December, 1994

ELECTIONS; VOTER REGISTRATION

Disclosure of social security numbers. 1994 Iowa Acts, chapter 1169, §§ 12, 38, 39, 40; Iowa Code §§ 4.10, 48.5(2), 48.6(10) (1993). Inclusion of voter social security numbers on voter information lists provided pursuant to section 48A.38 neither violates 42 U.S.C. § 405(c)(2)(viii)(I) nor unconstitutionally infringes upon an individual's right to vote. (Scase to Bullard, State Registrar of Voters, 11-29-94) #94-11-1

FIRE DISTRICTS; CITIES

Power of benefited fire district to levy tax independent of contract with city. Iowa Code § 357B.3 (1993). If a fire district has elected to impose the maximum tax levy under section 357B.3(1), it may levy an additional tax under section 357B.3(2) only if the first levy proves insufficient for funding fire protection. If, however, a district has elected to contract with a city to provide fire protection, it may not supplement the funds received under that contract by independently levying a tax pursuant to section 357B.3(2). (Kempkes to Connors, State Representative, 12-21-94) #94-12-4(L)

JUVENILE LAW; CONFIDENTIALITY

Release of mental health information. Iowa Code §§ 228.6, 228.9, 232.97, 232.101, 232.102, 232.147(3)(6), 235A.2(a)(1) (1993); 441 IAC 182.5(5)(a)(3), (c)(5), (f)(7), 182.9(2)(d) and 1285.10(4), (5), (6)(h) and 8(d). With the exception of "psychological test materials" which are subject to the requirements of Iowa Code section 228.9, Department of Human Services rules found at 441 IAC 182.5(5)(a)(3), (c)(5), (f)(7), 182.9(2)(d) and 185.10(4), (5), (6)(h) and 8(d) which require the release of treatment information by a service provider to a child's attorney, do not conflict with other statutes and administrative rules on confidentiality but merely facilitate the exchange of information otherwise available to the child's attorney or guardian ad litem. (Wickman to Halvorson, State Representative, 11-29-94) #94-11-2(L)

STATE OFFICERS AND DEPARTMENTS; SCHOOLS AND SCHOOL DISTRICTS

Powers of area education agencies. Iowa Code §§ 273.2, 273.3, 274.1, 297.2, 297.6, 297.22 (1993). Area education agencies may not buy property from sources other than school districts. (Kempkes to Ramirez, Director, Department of Education, 12-21-94) #94-12-3(L)

STATE OFFICERS AND EMPLOYEES; ETHICS; LOBBYING

Two-year ban. Iowa Const. art. 1, §§ 7, 20; Iowa Code §§ 68B.2(13), 68B.5A (Supp. 1993). Within two years of terminating service, former legislators may (1) communicate on behalf of a bank with individual legislators and officers or employees of state agencies, unless the former legislators act directly to encourage the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order; (2) help a corporation obtain a permit or grant by communicating with state officers or employees; and (3) volunteer assistance to help a community obtain a grant from a state program. (Kempkes to Kersten, State Senator, 12-15-94) #94-12-1

TAXATION

Real Estate Transfer Tax Where Mortgage Debt Is Not Assumed. Iowa Code § 428A.1 (1993). An existing mortgage upon real estate purportedly transferred as a gift is "consideration," as that term is used in section 428A.1, even if the mortgage is not assumed by the transferee. Accordingly, the transfer tax is imposed on transfers involving such consideration. (McCown to Richards, Story County Attorney, 12-15-94) #94-12-2(L)

IOWA CONSTITUTION**OPINION**

art. 1, §§ 7, 20

94-12-1

1993 IOWA CODE**OPINION**

4.10

94-11-1

48.5(2)

94-11-1

48.6(10)

94-11-1

228.6

94-11-2(L)

228.9

94-11-2(L)

232.97

94-11-2(L)

232.101

94-11-2(L)

232.102

94-11-2(L)

232.147(3)(6)

94-11-2(L)

235A.2(a)(1)

94-11-2(L)

273.2

94-12-3(L)

273.3

94-12-3(L)

274.1

94-12-3(L)

297.2

94-12-3(L)

297.6

94-12-3(L)

297.22

94-12-3(L)

357B.3

94-12-4(L)

428A.1

94-12-2(L)

1993 IOWA CODE SUPPLEMENT**OPINION**

68B.2(13)

94-12-1

68B.5A

94-12-1

1994 IOWA ACTS**OPINION**

ch. 1169, §§ 12, 38, 39, 40

94-11-1

IOWA ADMINISTRATIVE CODE**OPINION**

441--182.5(5)

94-11-2(L)

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