IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

The ARC number which appears before each agency heading is assigned by the Administrative Rules 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 Bulletin.

PHYLLIS BARRY, Deputy Code Editor
LAVERNE SWANSON, Administrative Code Assistant

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
23	Friday, April 20, 1984	May 9, 1984
24	Friday, May 4, 1984	May 23, 1984
25	Friday, May 18, 1984	June 6, 1984

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RULEMAKING SCHEDULE

Schedule for Rulemaking
1984

FILING DEADLINE	PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 13	Feb. 1	Feb. 21	Mar. 7	May 2	July 30
Jan. 27	Feb. 15	Mar. 6	Mar. 21	May 16	Aug. 13
Feb. 10	Feb. 29	Mar. 20	Apr. 4	May 30	Aug. 27
Feb. 24	Mar. 14	Apr. 3	Apr. 18	June 13	Sep. 10
Mar. 9	Mar. 28	Apr. 17	May 2	June 27	Sep. 24
Mar. 23	Apr. 11	May 1	May 16	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	Aug. 22	Nov. 19
May 18	June 6	June 26	July 11	Sep. 5	Dec. 3
June 1	June 20	July 10	July 25	Sep. 19	Dec. 17
June 15	July 4	July 24	Aug. 8	Oct. 3	Dec. 31
June 29	July 18	Aug. 7	Aug. 22	Oct. 17	Jan. 14 '85
July 13	Aug. 1	Aug. 21	Sep. 5	Oct. 31	Jan. 28 '85
July 27	Aug. 15	Sep. 4	Sep. 19	Nov. 14	Feb. 11 '85
Aug. 10	Aug. 29	Sep. 18	Oct. 3	Nov. 28	Feb. 25 '85
Aug. 24	Sep. 12	Oct. 2	Oct. 17	Dec. 12	Mar. 11 '85
Sep. 7	Sep. 26	Oct. 16	Oct. 31	Dec. 26	Mar. 25 '85
Sep. 21	Oct. 10	Oct. 30	Nov. 14	Jan. 9 '85	Apr. 8 '85
Oct. 5	Oct. 24	Nov. 13	Nov. 28	Jan. 23 '85	Apr. 22 '85
Oct. 19	Nov. 7	Nov. 27	Dec. 12	Feb. 6 '85	May 6 '85
Nov. 2	Nov. 21	Dec. 11	Dec. 26	Feb. 20 '85	May 20 '85
Nov. 16	Dec. 5	Dec. 25	Jan. 9 '85	Mar. 6 '85	June 3 '85
Nov. 30	Dec. 19	Jan. 8 '85	Jan. 23 '85	Mar. 20 '85	June 17 '85
Dec. 14	Jan. 2 '85	Jan. 22 '85	Feb. 6 '85	Apr. 3 '85	July 1 '85
Dec. 28	Jan. 16 '85	Feb. 5 '85	Feb. 20 '85	Apr. 17 '85	July 15 '85

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.

180 days 17A.4(1)"b" says that if a noticed rule is not adopted by the agency within this time, the agency must either adopt the rule or file a notice of termination.

The Administrative Rules Review Committee will hold its regular statutory meeting Tuesday, May 8, 1984, 10:00 a.m. and Wednesday, May 9, 1984, in Committee Room 116, State Capitol. The following rules will be reviewed:

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Industrial loan companies, 1.15(5), 1.21 **ARC 4603** 4/11/84
Conversion from mutual to capital stock ownership, 6.10, 6.5 **ARC 4604** 4/11/84

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Rules of practice, final actions, 1.1(6), 1.1(6)"c" **ARC 4595** 4/11/84
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Organization and operations, 12.2(3)"c" **ARC 4577** 4/11/84

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HEALTH DEPARTMENT[470]
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Ethylene dibromide residue levels in food, 10.45 **ARC 4622** 4/25/84

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Conservation and outdoor recreation employment for senior citizens, amendments to ch 70 **ARC 4615** 4/25/84

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
AUDITOR OF STATE[130]		
Industrial loans, 1.15(5), 1.21 IAB 4/11/84 **ARC 4603**	Director of the Financial Institutions Division Auditor of State Lucas State Office Bldg. Des Moines, Iowa	May 3, 1984 9:30 a.m.
Conversion from mutual to capital stock ownership, 6.10, 6.5 IAB 4/11/84 **ARC 4604**	Supervisor of Savings and Loan Associations Auditor of State Lucas State Office Bldg. Des Moines, Iowa	May 2, 1984 9:30 a.m.
COMMERCE COMMISSION[250]		
Cogeneration and small power production, amendments to ch 15 IAB 4/25/84 **ARC 4635**	Commission Hearing Room Lucas State Office Bldg. Des Moines, Iowa	May 29, 1984 10:00 a.m.
CONSERVATION COMMISSION[290]		
Migratory game bird regulations, ch 105 IAB 2/29/84 **ARC 4490**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	July 14, 1984* 10:00 a.m.
CORRECTIONS, DEPARTMENT OF[291]		
Institutions, jail facilities, 20.3, 20.6, 20.10, 50.19 IAB 4/25/84 **ARC 4616**	South Conference Room First Floor Grimes State Office Bldg. East 14th and Grand Des Moines, Iowa	May 17, 1984 1:00 p.m.
INDUSTRIAL COMMISSIONER[500]		
Settlements and commutations, 6.2(1) IAB 4/25/84 **ARC 4614**	Industrial Commissioner's Office Third Floor 507 10th Street Des Moines, Iowa	May 15, 1984 9:00 a.m.
INSURANCE DEPARTMENT[510]		
Workers' compensation group self-insurance, ch 56 IAB 4/11/84 **ARC 4585**	Conference Room in basement Lucas State Office Bldg. Des Moines, Iowa	May 1, 1984 10:00 a.m.
Workers' compensation individual self-insurance, ch 57 IAB 4/11/84 **ARC 4584**	Conference Room in basement Lucas State Office Bldg. Des Moines, Iowa	May 1, 1984 2:00 p.m.
PLANNING AND PROGRAMMING[630]		
Iowa intergovernmental review system, ch 11 IAB 4/25/84 **ARC 4628**	Planning and Programming Conference Room 523 East 12th Street Des Moines, Iowa	May 15, 1984 10:00 a.m.
PUBLIC SAFETY DEPARTMENT[680]		
Weapons, 4.2(9) to 4.2(12), 4.4 IAB 4/11/84 **ARC 4578**	Conference Room Third Floor (West half) Wallace State Office Bldg. Des Moines, Iowa	May 2, 1984 11:00 a.m.
Fire marshal, 5.850, 5.230(5)"d" IAB 4/11/84 **ARC 4581**	Conference Room Third Floor (West half) Wallace State Office Bldg. Des Moines, Iowa	May 2, 1984 10:00 a.m.

*The 2/29/84 and 3/14/84 IAB inadvertently listed April 7, 1984.

RACING COMMISSION, STATE[693]

Organization and operation, ch 1; rulemaking, ch 2; declaratory rulings, ch 3 IAB 4/11/84 **ARC 4591**	Conference Room Second Floor Wallace State Office Bldg. Des Moines, Iowa	May 17, 1984 9:30 a.m.
Criteria for granting licenses and determining race dates, ch 6 IAB 4/11/84 **ARC 4592**	Conference Room Second Floor Wallace State Office Bldg. Des Moines, Iowa	May 17, 1984 9:30 a.m.

SOIL CONSERVATION DEPARTMENT[780]

Blaster training, examination and certification for coal mines, ch 23 IAB 4/25/84 **ARC 4631**	Conference Room Second Floor Wallace State Office Bldg. Des Moines, Iowa	July 5, 1984 1:00 p.m.

ARC 4635

COMMERCE COMMISSION[250]

NOTICE OF INTENDED ACTION

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

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

The Iowa State Commerce Commission hereby gives notice that on April 6, 1984, the Commission issued an order in Docket No. RMU-83-30, In Re: Alternate Energy Production Rules, "Order Continuing Rulemaking Proceedings." Senate File 380, 70th General Assembly (1983), now Iowa Code sections 476.41 to 476.45 (1983 Supplement), directs the Commission to adopt rules to encourage the development of alternate energy production facilities and small hydro facilities in order to conserve finite and expensive energy resources. The Commission issued its "Order Commencing Rulemaking" on October 21, 1983. Written comments were filed and a hearing conducted on December 13, 1983. Based upon a consideration of the comments filed, the Commission proposes to adopt the rules set forth below. Because these proposed rules differ substantially from the original proposed rules, the Commission will schedule a new rulemaking proceeding, with opportunity for both written and oral comments.

The proposed rules establish a minimum rate of 6.5¢ per kilowatt hour to be paid for electricity produced by alternate energy producers. This figure is based on the comments filed in the earlier proceedings and staff calculations using figures from the recently completed Louisa Generating Station. The Commission selected the Louisa station because it represents the best data currently available. Presently, it appears that most Iowa electric utilities have excess generating capacity and that the completion date of the next generating plant is several years in the future. Thus, trying to predict the data associated with the next generating plant is a difficult matter. Rather than rely on long-term projections in setting this base rate, the Commission has used the best information currently available.

In part, the following staff analysis of Louisa data is an example.

For the share of Louisa owned by Iowa-Illinois Gas and Electric Company, the annualized capacity cost is approximately $34,772,000. The Operations Review Division of the Commission has estimated that the maximum operating availability of this portion of Louisa to be 68.4 percent, resulting in approximately 1,043,000,000 kilowatt hours per year. This results in an annualized per unit capacity cost of 3.33¢ per kilowatt hour. Adding the average Iowa-Illinois energy cost of 1.24 cents per kilowatt hour, the resulting total cost of electricity from the Louisa station, at maximum availability, is 4.57¢ per kilowatt hour. At a more realistic forty-two percent capacity factor, the capacity and energy cost per kilowatt hour totals approximately 6.67¢.

Based on the comments received in the earlier proceedings, it appears that 6.5¢ is sufficient to stimulate investment in alternate energy production facilities. One party indicated that this rate would be adequate to justify a large hydroelectric power project with a capacity of 25 MW, generating approximately 125,000,000 kilowatt hours per year. The estimated total cost of this project is in the range of $50,000,000. In addition, another commenter indicated that 6.5¢ per kilowatt hour would provide sufficient return for the "average" hydropower project financed by revenue bonds. Because the 6.5¢ rate appears sufficient to stimulate investment, and is based on the best data available to the Commission at this time, the Commission proposes to set this figure as a minimum rate.

The Commission may consider adjusting the proposed rate of 6.5¢ per kilowatt hour as additional data become available concerning the next generating facility. Therefore, utilities will be directed to file tariffs reflecting the factors in S.F. 380, section 4. These tariffs will be supported by background information sufficient to enable both the Commission and any potential AEPs to evaluate the utility's tariffs.

Any interested party may initiate a complaint proceeding to challenge a utility's filed tariff. The proposed rules require that information be filed in support of each utility's tariff. It is anticipated that this information will be sufficient to enable the facility to determine whether it should file a complaint. Finally, a utility may wheel energy for a facility in lieu of purchasing it if the facility so desires, but only to another utility or to an outlying structure owned by the facility.

The earlier proposed rules would have required a consideration of the reliability or availability of the power from the alternate energy producer before a rate would be set. These criteria have been eliminated from the current proposed rules, in order to encourage investment and development. In this way, the Commission intends to gain increased experience with alternate energy production facilities. At some future date, this issue may be re-examined, if experience indicates that a consideration of these factors would be appropriate.

At this time, the Commission does not propose to provide for automatic escalation of the purchase rate. Instead, the Commission will re-examine the rate as conditions may warrant.

Item 1 of the proposed rules adds definitions of the terms "qualifying alternate energy production facility" and "qualifying small hydro facility," and amends the definition of the term "qualifying facility." Item 2 provides an "index" to the applicability of the remainder of the rules.

Items 4 to 9 distinguish those rules which apply only to rate-regulated electric utilities from those rules which apply to all electric utilities.

Items 3, 10 and 11 of the proposed rules set forth the obligations and duties of all electric utilities. Generally, these include obligations to purchase and sell power and interconnect with QFs and AEPs. Also, the utilities will be required to file tariffs, with supporting work papers, setting forth a range of contract offerings.

Any interested person may file a written statement of position containing either general comments or specific proposals pertaining to these proposed amendments no later than May 21, 1984, by filing an original and six copies of the written statement of position in a form substantially complying with Iowa Administrative Code 250—2.2(2). Such comments shall clearly indicate the author's name and address and shall contain a specific reference to this docket and the rule upon which comment is submitted. All comments shall be directed to the executive secretary.

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

A hearing for the purpose of receiving oral comments on the proposed rules will be held at 10:00 a.m., May 29, 1984, in the Commission Hearing Room, Lucas State Office Building, Des Moines, Iowa 50319.

ITEM 1. Amend rule **250—15.1(476)** by deleting the subrule numbers and listing the definitions in alphabetical sequence.

Amend the existing definition of "Qualifying facility" to read as follows:

~~15.1(1)~~ "Qualifying facility" means a cogeneration facility or a small power production facility which is a qualifying facility under 18 CFR Part 292, Subpart B, *and which is not a qualifying alternate energy production facility or a qualifying small hydro facility.*

Further amend rule 250—15.1(476) by adding two new definitions as follows:

"Qualifying alternate energy production facility" means any of the following:

1. A solar, wind turbine, waste management, resource recovery, refuse-derived fuel, or woodburning facility;

2. Land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion, or operation of the facility; or

3. Transmission or distribution facilities necessary to conduct the energy produced by the facility to the purchasing utility.

"Qualifying small hydro facility" means any of the following:

1. A hydroelectric facility at a dam;

2. Land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion or operation of the facility; or

3. Transmission or distribution facilities necessary to conduct the energy produced by the facility to the purchasing utility.

ITEM 2. Amend subrule 15.2(1) as follows:

15.2(1) Applicability. ~~This chapter applies to the regulation of sales and purchases between qualifying facilities and electric utilities which are subject to rate regulation by the commission, except for rule 250—15.10, which applies to interconnections with all electric utilities.~~

a. Rules 250—15.3(476) and 250—15.10(476) of this chapter apply to all electric utilities and to all qualifying facilities, all qualifying alternate energy production facilities, and all qualifying small hydro facilities.

b. Rules 250—15.4(476) to 250—15.9(476) of this chapter apply only to the regulation of sales and purchases between qualifying facilities and electric utilities which are subject to rate regulation by the commission.

c. Rules 250—15.11(476) to 250—15.16(476) of this chapter apply only to the regulation of sales and purchases between qualifying alternate energy production or small hydro facilities, and all electric utilities, whether or not subject to rate regulation by the commission.

ITEM 3. Rule 250—15.3(476), the first sentence, is amended to read as follows:

250—15.3(476) Information to commission. In addition to the information required to be supplied to the commission under 292 CFR 302, all ~~rate regulated~~ electric utilities shall supply to the commission copies of contracts executed for the purchase or sale, for resale, of energy or capacity.

ITEM 4. Amend rule 250—15.4(476) by inserting the following after the catchwords:

250—15.4(476) *Rate-regulated* ~~E~~electric utility obligations under this chapter. *For purposes of this rule, "electric utility" means a rate-regulated electric utility.*

ITEM 5. Amend rule 250—15.5(476) by inserting the following after the catchwords:

250—15.5(476) Rates for purchases *from qualifying facilities by rate-regulated electric utilities.* *For purposes of this rule, "electric utility" or "utility" means a rate-regulated electric utility.*

ITEM 6. Amend rule 250—15.6(476) by inserting the following after the catchwords:

250—15.6(476) Rates for sales *to qualifying facilities by rate-regulated utilities.* *For purposes of this rule, "utility" means a rate-regulated electric utility.*

ITEM 7. Amend rule 250—15.7(476) by inserting the following after the catchwords:

250—15.7(476) Additional services to be provided to qualifying facilities *by rate-regulated electric utilities.* *For purposes of this rule, "electric utility" or "utility" means a rate-regulated electric utility.*

ITEM 8. Amend rule 250—15.8(476) by inserting the following after the catchwords:

250—15.8(476) Interconnection costs. *For purposes of this rule, "utility" means a rate-regulated electric utility.*

ITEM 9. Amend rule 250—15.9(476), first paragraph, as follows:

250—15.9(476) System emergencies. *For purposes of this rule, "electric utility" means a rate-regulated electric utility.* A qualifying facility shall be required to provide energy or capacity to an electric utility during a system emergency only to the extent:

ITEM 10. Amend rule 250—15.10(476) as follows:

250—15.10(476) Standards for interconnection, safety, and operating reliability. *For purposes of this rule, "electric utility" or "utility" means both rate-regulated and nonrate-regulated electric utilities.*

15.10(1) Acceptable standards. Qualifying facilities, *qualifying alternate energy production facilities, and qualifying small hydro facilities* shall *all* meet the applicable provisions in the publications listed below in order to be eligible for interconnection to an electric utility system:

a. General Requirements for Synchronous Machines, ANSI C50.10-1977.

b. Requirements for Salient Pole Synchronous Generators and Condensers, ANSI C50.12-1965.

c. Requirements for Cylindrical-Rotor Synchronous Generators, ANSI C50.13-1977.

d. Requirements for Combustion Gas Turbine Driven Cylindrical-Rotor Synchronous Generators, ANSI C50.14-1977.

e. Iowa Electrical Safety Code, as defined in IAC [250], chapter 25.

f. National Electrical Code, NFPA No. 70-1977.

For those ~~qualifying~~ facilities which are of ~~the~~ *such* design as to not be subject to the standards noted in "a," "b," "c," and "d," above, data on the manufacturer, type of device, and output current wave form (at full load) and output voltage wave form (at no load and at full load) shall

be submitted to the commission for review and approval prior to interconnection. This approval may be given by ~~a~~ *such* member of the commission staff as the commission may designate, and the decision of the staff member so designated may be appealed to the commission. The appeal shall be treated as a contested case proceeding.

15.10(2) Modifications required. The standards set forth in ANSI C50.10 are modified as follows:

Rule 8.1 "Maximum allowable deviation factor," is modified to read: "The deviation factor of the open-circuit terminal voltage wave and the current wave at all loads shall not exceed 0.1. Deviation factor shall be as defined in ANSI C42.100-1972."

15.10(3) Interconnection facilities. Interconnections between qualifying facilities *(or qualifying alternate energy production facilities, or qualifying small hydro facilities)* and electric utility systems shall be equipped with devices, as set forth below, to protect either system from abnormalities or component failures that may occur within the ~~qualifying~~ facility or the electric utility system. Inclusion of the following protective systems shall be considered as a minimum standard of accepted good practice unless otherwise ordered by the commission:

a. The interconnection must be provided with a switch that provides a visible break or opening. The switch must be capable of being padlocked in the open position.

b. The interconnection shall include overcurrent devices on the ~~qualifying~~ facility to automatically disconnect the ~~qualifying~~ facility at all currents that exceed the full-load current rating of the ~~qualifying~~ facility.

c. ~~Qualifying f~~*F*acilities with a design capacity of 100 kilowatts or less must be equipped with automatic disconnection upon loss of electric utility-supplied voltage.

d. Those ~~qualifying~~ facilities that produce a terminal voltage prior to the closure of the interconnection shall be provided with synchronism-check devices to prevent closure of the interconnection under conditions other than a reasonable degree of synchronization between the voltages on each side of the interconnection switch.

15.10(4) Access. Both the operator of the qualifying facility *(or qualifying alternate energy production facility, or qualifying small hydro facility)* and the utility shall have access to the interconnection switch at all times.

15.10(5) Inspections. The operator of the qualifying facility *(or qualifying alternate energy production facility, or qualifying small hydro facility)* shall adopt a program of inspection of the generator and its appurtenances and the interconnection facilities in order to determine necessity for replacement and repair. Representatives of the utility or members of the commission staff shall have access at all reasonable hours to the interconnection equipment specified in subrule 15.10(3) for inspection and testing.

15.10(6) Emergency disconnection. In the event that an electric utility or its customers experience problems of a type that could be caused by the presence of alternating currents or voltages with a frequency higher than 60 Hertz, the utility shall be permitted to open and lock the interconnection switch pending a complete investigation of the problem. Where the utility believes the condition creates a hazard to the public or to property, the disconnection may be made without prior notice. However, the utility shall notify the operator of the qualifying facility *(or qualifying alternate energy production facility, or qualifying small hydro facility)* by written notice and, where possible, verbal notice as soon as practicable after the disconnection; and shall notify the electric engineering section of the commission by the next working day. If the ~~qualifying~~ facility and the utility are unable to agree on conditions for reconnection of the facility, a contested case proceeding to determine the conditions for reconnection may be commenced by the ~~qualifying~~ facility, the utility, or the commission staff, upon filing of a petition.

~~These rules are intended to implement sections 476.1 and 476.8 The Code, section 210 of the Public Utility Regulatory Policies Act of 1978, and 18 CFR Part 292.~~

Item 11. Insert new rules 250—15.11(476) to 250—15.16(476).

250—15.11(476) Obligations of all electric utilities under this chapter. For purposes of this rule, "electric utility" means both rate-regulated and nonrate-regulated electric utilities.

15.11(1) Obligation to purchase from qualifying alternate energy production and small hydro facilities. Each electric utility shall purchase, pursuant to contract, in accordance with these rules, any electricity which is made available from a qualifying alternate energy production and small hydro facility:

a. Directly to the electric utility; or

b. Indirectly to the electric utility in accordance with subrule 15.11(4).

15.11(2) Obligation to sell to qualifying alternate energy production and small hydro facilities. Each electric utility shall sell to any qualifying alternate energy production or small hydro facility, under long-term contract, in accordance with these rules and the other requirements of law, any energy and capacity requested by the facility.

15.11(3) Obligation to interconnect. Any electric utility shall make such interconnections with any qualifying alternate energy production or small hydro facility as may be necessary to accomplish purchases or sales under these rules. The obligation to pay for any interconnection costs shall be determined in accordance with rule 250—15.15(476).

15.11(4) Transmission to other electric utilities or locations. If a qualifying alternate energy production or small hydro facility agrees, an electric utility which would otherwise be obligated to purchase electricity from such facility may transmit the electricity to any other electric utility, or to a separate location owned or occupied by the owners of the facility. Any electric utility to which such electricity is transmitted shall purchase such electricity under this subpart as if the facility were supplying electricity directly to such electric utility. The rate for purchase by the electric utility to which such electricity is transmitted shall be adjusted to reflect line losses and shall not include any charges for transmission.

15.11(5) Parallel operation. Each electric utility shall offer to operate in parallel (with a single meter monitoring only the net amount of electricity sold or purchased) with a qualifying alternate energy production or small hydro facility, provided that the facility complies with any applicable standards established in accordance with these rules.

In the alternative, by choice of the facility, the electric utility and facility shall operate in a simultaneous purchase and sale arrangement whereby all electricity produced by the qualifying facility is sold to the utility at the

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

fixed or negotiated buy-back rate, and all electricity used by the qualifying facility is sold to the facility at the tariffed rate.

15.11(6) Purchases pursuant to a legally enforceable obligation. Each qualifying alternate energy production or small hydro facility shall provide electricity pursuant to a legally enforceable obligation for the delivery of electricity over a specified long term.

15.11(7) Metering for testing and monitoring. The commission may require utilities interconnected with qualifying alternate energy production or small hydro facilities to provide metering and other equipment necessary for the collection, testing, and monitoring of information concerning the time and conditions under which energy and capacity are available from the facilities. The costs of such metering shall be treated by the utility in the same manner as any other research expenditure.

250—15.12(476) Rates for purchases from qualifying alternate energy and small hydro facilities. For purposes of this rule, "electric utility" means both rate-regulated and nonrate-regulated electric utilities.

15.12(1) Each electric utility shall purchase electricity from a qualifying alternate energy production or small hydro facility at the rates set forth in the tariffs filed pursuant to subrule 15.12(2).

15.12(2) Tariff filings. Each electric utility shall file tariffs with the commission containing the information set forth below. These tariffs will be subject to commission approval.

a. Each electric utility shall file a schedule of "Contract Terms Offered" setting forth the buy-back rates which the electric utility proposes to pay pursuant to contracts of two-, five-, ten-, and twenty-five-year terms. The contract terms shall be based upon the capital and energy cost information filed below, but in no case shall the buy-back rate be less than the rate set forth in paragraph "b."

The contract shall specify, at a minimum, the following: The nature of the purchases from the qualifying alternate energy production or small hydro facility, the applicable or negotiated purchase rates, the amount and manner of payment of interconnection costs, the means of measurement of the electricity to be purchased, methods of payment, and the term of the contract.

b. For an electric utility which purchases all or substantially all of its electricity requirements, the tariffs shall establish purchase rates equal to the current cost to the electric utility for purchased electricity. All other electric utilities shall establish purchase rates of not less than 6.5 cents per kilowatt-hour.

c. For all electric utilities, other than those which purchase all or substantially all of their electricity requirements, the tariffs shall be supported by the following information, which shall be filed with the commission:

(1) Generation cost information for existing plant, for each separate unit, including:

1. Plant-unit identification;
2. Percent of each plant's capacity owned;
3. The kind of unit (steam, internal combustion, gas turbine, nuclear, conventional hydroelectric, pumped storage, or other);
4. Estimated retirement date;
5. Primary and secondary fuel types;
6. Full load capacity;
7. Fixed operating and maintenance costs (in dollars per kilowatt per year);
8. Cost of fuel per kilowatt-hour of net generation at full load (in cents per kilowatt-hour);
9. Nonfuel variable operating and maintenance costs per kilowatt-hour (in cents per kilowatt-hour);
10. Capital costs, on an original cost basis, for land and land rights, structures and improvements, and equipment (in cents per kilowatt-hour);
11. The kilowatt-hour data used for these calculations.

(2) For each generating unit which is planned to go into operation within the next ten years, the following information, including:

1. Plant unit identification;
2. Plant percentage ownership;
3. Kind of unit (i.e., steam, internal combustion, gas turbine, nuclear, conventional hydroelectric, pumped storage, or other);
4. Planned date of commercial operation;
5. Estimated unit life;
6. Primary and secondary fuel type;
7. Expected full load capacity (in kilowatts);
8. Annual estimated expenditures up to planned date of commercial operation;
9. Estimated fixed operating and maintenance expenses (in dollars per kilowatt per year);
10. Estimated cost of fuel per kilowatt-hour, in cents per kilowatt-hour;
11. Estimated nonfuel variable and operating and maintenance costs per kilowatt-hour, in cents per kilowatt-hour;
12. Expected average annual net generation;
13. Estimated capital costs, including land and land rights, structures and improvements, and equipment (in cents per kilowatt-hour);
14. The kilowatt-hour data used for these calculations;
15. Transmission cost information, including:

The estimated expenditures for additions to transmission plant by principal voltage levels for each of the next five years;

Payments received and an estimate of payments to be received from other utilities for use of the additional transmission capacity;

The transmission operating and maintenance expenses for each new unit; and

Levelized annual carrying charge information, including: Estimates of the current annual carrying charge rate for generation, transmission, and distribution facilities based on annual revenue requirement calculations for a hypothetical $1,000 investment. These calculations shall be made in accordance with the following rules:

1. Publicly owned systems and rural electric cooperatives shall present carrying charge rates calculated with reference to the cost factors relevant to their system planning.
2. Work sheets showing how calculations specified in this section were made shall be filed.
3. The rate of return component shall be based on the utility's expected capital structure and fully embedded cost of debt, preferred and common equity and customer contributed capital.

d. Each qualifying alternate energy production or small hydro facility shall be entitled to select a contract term of two, five, ten, or twenty-five years, but not to exceed the normal depreciation life of the facility.

250—15.13(476) Rates for sales. Rates for sales to qualifying alternate energy production and small hydro facilities shall be just, reasonable and in the public interest, and shall not discriminate against the facility in comparison to rates for sales to other customers with similar load or other cost-related characteristics served

by the utility. The rates for sales of back-up or maintenance power shall not be based upon an assumption (unless supported by data) that forced outages or other reductions in electric output by all qualifying alternate energy production and small hydro facilities will occur simultaneously or during the system peak, or both, and shall take into account the extent to which scheduled outages of the qualifying alternate energy production or small hydro facility can be usefully co-ordinated with scheduled outages of the utility's facilities.

250—15.14(476) Additional services to be provided to qualifying alternate energy production and small hydro facilities. Upon request of a qualifying alternate energy production or small hydro facility, each electric utility shall provide supplementary power, back-up power, maintenance power, or interruptible power on a nondiscriminatory and long-term contract basis. Rates for such service shall meet the requirements of rule 15.13(476) and shall be in accordance with the terms of the utility's tariff.

The commission may waive this requirement, pursuant to rule 250—1.3(17A,474), only after notice in the area served by the utility and an opportunity for public comment. Such waiver may be granted if compliance with this rule will: (1) Impair the electric utility's ability to render adequate service to its customers, or (2) place an undue burden on the electric utility.

250—15.15(476) Interconnection costs. For purposes of this rule, "utility" means both rate-regulated and nonrate-regulated electric utilities.

15.15(1) Each qualifying alternate energy production or small hydro facility shall be obligated to pay any interconnection costs, as defined in this chapter. These costs shall be assessed on a nondiscriminatory basis with respect to other customers with similar load characteristics.

15.15(2) Utilities shall be reimbursed by the facility for interconnection costs at the time such costs are incurred. Upon petition by any party involved and for good cause shown, the commission may allow for reimbursement of costs over a reasonable period of time and upon such conditions as the commission may determine; provided, however, that no other customers of the utility shall bear any of the costs of interconnection.

250—15.16(476) System emergencies. For purposes of this rule, "electric utility" means both rate-regulated and nonrate-regulated electric utilities. A qualifying alternate energy production or small hydro facility shall be required to provide energy or capacity to an electric utility during a system emergency only to the extent:

15.16(1) Provided by agreement between such facility and electric utility; or

15.16(2) Ordered under section 202(c) of the federal power Act. During any system emergency, an electric utility may immediately discontinue: (a) Purchases from a qualifying alternate energy production or small hydro facility if such purchases would contribute to such emergency; and (b) sales to such a facility, provided that such discontinuance is on a nondiscriminatory basis.

These rules are intended to implement Iowa Code sections 476.1, 476.8, 476.41 to 476.45, section 210 of the Public Utility Regulatory Policies Act of 1978, and 18 CFR Part 292.

ARC 4636

COMMERCE COMMISSION[250]

NOTICE OF INTENDED ACTION

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

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

The Iowa State Commerce Commission gives notice, in accordance with Iowa Code section 17A.4, that on April 2, 1984, the Commission issued an order in Docket No. RMU-84-5, In Re: Amendment of subrule 22.3(2), paragraph "d," "Order Initiating Rulemaking." On February 24, 1984, the Commission adopted certain amendments to Chapter 22 relating to intrastate access charges. Item 11 of the adopted rules amended subrule 22.3(2), paragraph "d." The adopted amendment should have deleted the phrase "between frequently called points and rates" from the subrule. However, due to a clerical error, the phrase in question was underlined rather than struck. The Commission is initiating this rulemaking proceeding to correct this oversight.

Any person interested in this matter may file a written statement of position not later than May 16, 1984, by filing an original and six copies substantially complying with the form prescribed in Iowa Administrative Code 250—2.2(2). All communications shall clearly indicate the author's name and address, as well as a specific reference to this docket. All communications shall be directed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319.

This amendment is proposed pursuant to Iowa Code section 476.2.

Amend subrule **22.3(2)**, paragraph "d" as follows:

d. The directory shall contain such instructions concerning placing local and long-distance calls, calls to repair and information services, and location of telephone company business offices as may be appropriate to the area served by the directory. A statement shall be included that the company will verify the condition of a line if requested by a customer and whether any charge will apply. Rates ~~between frequently called points and rates~~ for basic transmission service for residential and business customers available from the utility shall also be included.

ARC 4616

CORRECTIONS, DEPARTMENT OF[291]

NOTICE OF INTENDED ACTION

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

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

Pursuant to Iowa Code section 217A.5, the Department of Corrections hereby gives Notice of Intended Action to amend Chapter 20, "Institutions," and Chapter 50, "Jail Facilities," appearing in the Iowa Administrative Code.

Amend Chapter 20 as follows:

Change the title; add definition of "medical practitioner;"

Add provision for noncontact visitation hours;

Amend restrictions on visitors' wearing apparel;

Revise the list of those professionals qualified to conduct searches of visitors;

Expand on who can mail publications to inmates;

Add to and amend categorization of crimes.

Amend Chapter 50 to clarify that there will be no charge on initial local phone calls.

Any interested persons may make oral or written suggestions or comments on these proposed rules not later than 4:30 p.m., May 17, 1984. Written materials shall be directed to the Director, Department of Corrections, Jewett Building, 10th and Grand, Des Moines, Iowa 50309. A meeting will be held for the purpose of oral presentation at 1:00 p.m., May 17, 1984, in the South Conference Room, First Floor, Grimes State Office Building, East 14th and Grand, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the director's office (515) 281-4811. The proposed rules are subject to revisions after the department considers all written and oral presentations.

ITEM 1. Amend **Chapter 20** title to read "Institutions Administration."

ITEM 2. Amend rule **291—20.2(218)** by inserting alphabetically the following definition:

"Medical practitioner" means medical doctor, osteopathic physician or physician's assistant.

ITEM 3. Subrule 20.3(6) is amended as follows:

20.3(6) Visits with no physical contact between the inmate and visitor may be granted when visits are beneficial for the inmate, visitor and institution, and the order of security of the institution may be threatened *if a contact visit is granted. Inmates may be placed on noncontact visits pursuant to existing disciplinary rules and procedures. Noncontact hours will be provided on a scheduled basis. The hours and days will be posted by the warden or superintendent and notice will be posted at least one week prior to any change. Visitors on the noncontact list at the time of a change will be notified as to the change in hours and days by regular mail at their last known address.*

ITEM 4. Subrule 20.3(8) is amended as follows:

20.3(8) Visitors shall be properly attired as would be expected in a public meeting place. Adult and teen-age visitors shall wear shoes and may not wear miniskirts, shorts, muscle shirts, see-through clothing, halter tops, clothing with obscene or lewd slogans, pictures, or words, and similar apparel. *Visitors may be required to remove for the duration of the visit outerwear such as, but not limited to, coats, hats, gloves, and sunglasses. A medical need for sunglasses must be verified by prescription.*

ITEM 5. Subrule **20.3(9)**, paragraph "b," subparagraphs (2) and (3), is amended as follows:

(2) The search is conducted by a person of the same sex as the visitor, unless conducted by a ~~physician,~~ *medical practitioner or licensed registered nurse.* A second correctional employee of the same sex as the visitor shall also be present during the search. In addition, the visitor may request a third person of the same sex as the visitor to be present during the search.

(3) A visual search or probing of any body cavity shall be performed under sanitary conditions. A physical probe of a body cavity other than the mouth, ear, or nose shall be performed only by a ~~licensed physician~~ *medical practitioner. In the absence of a medical practitioner a licensed registered nurse will conduct the search and report the findings to the on-call medical practitioner.*

ITEM 6. Subrule 20.6(1) is amended as follows:

20.6(1) Publications includes periodicals, newspapers, books, and other printed matter. Approved publications shall be sent directly from ~~the publisher~~ *a reputable publishing firm or book store which does mail order business. Any exceptions must be authorized by the warden or superintendent.* No publisher shall be denied ~~approved~~ *approval* solely on the basis of its appeal to a particular ethnic, racial, religious, or political group.

ITEM 7. Subrule **20.10(7)**, paragraph "b," is amended to read as follows:

Crimes	Class	Code Section
Arson in third degree	Ag Misd	712.4
Burglary in second degree	"C"	713.~~3~~*5*
Attempted burglary in second degree	*"D"*	*713.6*
Possession of burglar's tools	"C"	713.~~4~~*7*

Subrule 20.10(7), paragraph "c," is amended to read as follows:

Assault with intent to commit sexual abuse	"C"/ "D"/ AG	~~Acts of 69th G.A., Ch 204, sec. 6~~ *709.11*
Indecent contact with a child	*Ag Misd*	*709.12*
Burglary first degree	"B"	713.~~2~~*3*
Attempted burglary *first degree*	"C"	~~Acts of 69th G.A., Ch 204, sec. 8~~ *713.4*

CORRECTIONS, DEPARTMENT OF[291] *(cont'd)*

ITEM 8. Subrule 50.19(2) is amended as follows:

50.19(2) Telephone calls upon request. Inmates shall be permitted *telephone* access to their family or an attorney, or both, without unnecessary delay after arrest, *at no charge if the call is made within the local calling area,* as required by Iowa Code section 804.20. (I)

ARC 4618

HUMAN SERVICES DEPARTMENT[498]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 73, "Federal Surplus Food Program," appearing in the Iowa Administrative Code.

This amendment changes the method of determining when income from interest and dividends is considered available in determining eligibility for the program. The current rule counts interest and dividend income in the month it is received. This amendment states that income received from interest and dividends shall be averaged over a twelve-month period. If the change is not made, it will continue to keep some persons ineligible for the donated commodities during the month the interest or dividend income is received.

Consideration will be given to written data, views, and arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before May 16, 1984.

This rule is intended to implement Iowa Code section 234.12.

Subrule **73.4(3)**, paragraph "b," is amended to read as follows:

b. Determination of income. Earned or unearned income shall be the gross monthly income. Biweekly income is to be multiplied by 2.15 to determine monthly income. Adjusted gross self-employment income is to be averaged over a twelve-month period. Income received from interest and dividends shall be ~~counted in the month received~~ *averaged over a twelve-month period.* The amount of income which stops or starts during the month shall be estimated on the basis of the best information available.

ARC 4620

HUMAN SERVICES DEPARTMENT[498]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 130, "General Provisions," appearing in the Iowa Administrative Code.

This amendment removes the word "valid" when talking about a court order. The intent of the rule could be misinterpreted since every court order is valid.

Consideration will be given to written data, views, or arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before May 16, 1984.

This rule is intended to implement Iowa Code section 234.6.

Subrule 130.3(1) and paragraph "f" of the subrule are amended to read as follows:

130.3(1) Eligibility factors for services available through the department are individual need for a service and family income except when services are provided without regard to income or when services are directed in a ~~valid~~ court order.

f. In certain cases the department ~~shall~~ *will* provide services directed in a ~~valid~~ court order. In these cases the court may determine the need for service and may direct that services are provided without regard to income.

ARC 4619

HUMAN SERVICES DEPARTMENT[498]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 234.6 and chapter 237A, the Department of Human Services proposes to amend Chapter 154, "Child Care Center Financial Assistance, appearing in the Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[498] *(cont'd)*

This change removes the requirement that child care centers furnish proof of nonprofit incorporation. Since financial assistance may be given to both profit and nonprofit facilities, subrule 154.3(1) is no longer necessary.

This rule also provides for signature of the application by the owner or operator of the center as well as the chairperson of the board. A profit center may not have a board.

Consideration will be given to written data, views, or arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before May 16, 1984.

This rule is intended to implement Iowa Code section 237A.14.

ITEM 1. Subrule **154.3(1)** is rescinded and reserved.

ITEM 2. Subrule 154.3(4) is amended to read as follows:

154.3(4) The application shall be signed by the chairperson of the board *or the owner or operator* of the center.

ARC 4614

INDUSTRIAL COMMISSIONER[500]

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 86.8, the Industrial Commissioner hereby gives Notice of Intended Action to amend Chapter 6, "Settlements and Commutations", Iowa Administrative Code.

Iowa Code sections 85.45 and 85.47, which govern commutation proceedings, require an admission or adjudication of liability before the commutation can be granted by the agency. 1982 Iowa Acts, chapter 1161, section 23, deleted the memorandum of agreement. The proposed amendment is not a change in policy but merely deletes reference to the memorandum of agreement and replaces it with an agreement for settlement.

Any interested person may make written or suggested comments on this proposed rule prior to May 15, 1984. Such written materials should be directed to the Iowa Industrial Commissioner, 507 10th Street, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Industrial Commissioner at 515/281-5934. There will be a public hearing on May 15, 1984 at 9:00 a.m. in the Industrial Commissioner's office on the third floor at 507 10th Street, Des Moines, Iowa.

This rule is intended to implement Iowa Code sections 85.45 and 85.47.

Subrule 6.2(1) is amended to read as follows:

6.2(1) A first report of injury and ~~memorandum of agreement~~ *agreement for settlement regarding compensation* must be filed.

This rule is intended to implement Iowa Code sections 85.45 and 85.47.

ARC 4628

PLANNING AND PROGRAMMING[630]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 7A.3(8), the Office for Planning and Programming (OPP) hereby gives Notice of Intended Action to rescind Chapter 11, "Iowa Intergovernmental Review System," and adopt the following chapter in lieu thereof.

The President signed Executive Order 12372 on July 14, 1982 (47 Federal Register 30959, July 16, 1982). This order allows states, in consultation with local governments, to develop their own process or refine existing processes for state and local elected officials to review and co-ordinate proposed federal financial assistance and direct federal development. Formerly, this process was referred to as the "A-95 Process," (OMB Circular A-95). The Office for Planning and Programming is the A-95 clearinghouse at the state level and the areawide planning organizations perform the A-95 clearinghouse functions at the local level. This presidential order abolished the old A-95 process, effective September 30, 1983, and gave the state increased discretion in establishing a review system that best serves the needs of the public.

The purpose of the rules that became effective June 15, 1983 was to revise the then existing federal financial and direct development review procedures to establish the Iowa Intergovernmental Review System in accordance with Executive Order 12372. Chapter 11, Iowa Administrative Code was approved as filed and became effective June 15, 1983. Subsequent to this action the federal agencies' regulations relating to E.O. 12372 were changed to reflect the numerous comments from many states objecting to the draft regulations published in January 1983. These changes, coupled with operating experience under the Iowa Intergovernmental Review System, necessitate the adoption of a revised chapter.

The chapter was revised to include two additional sections which became necessary to comply with federal regulations requiring the establishment of a "single point of contact" if the state adopts an intergovernmental review system under E.O. 12372. The designated single point of contact acts as the information and co-ordination center for grant applicants, areawide clearinghouses and federal agencies to contact for guidance on the state's review system. It has the added responsibility to forward clearinghouse "state process recommendations" (which require a federal agency to accept and act accordingly, negotiate the matter, or explain why such action is not possible). These two sections set forth the duties, responsibilities and administrative procedures for operation of the single point of contact. A definition of a "state process recommendation" was also added to supplement these sections.

A section requiring areawide clearinghouse review of subgrants to local entities from some block grant administered by state agencies was added at the request of the areawide councils of governments. The councils of

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

government also requested one section be revised to permit them to require additional information they need concerning a proposed project being reviewed to be sent to them. A subsection was also added to permit the state clearinghouse to obtain a local grant application for review when the state may have an interest in it. Otherwise, the chapter remains substantially the same.

Any interested persons may submit written data, views or arguments on the proposed rules to the Division of Local Government Affairs, Office for Planning and Programming, Capitol Annex, 523 East 12th Street, Des Moines, Iowa 50319, no later than 10:00 a.m., Tuesday, May 15, 1984. Public hearing on the proposed amendments will be held at 10:00 a.m., Tuesday, May 15, 1984 in the OPP conference room, 523 East 12th Street, Des Moines, Iowa 50319.

Any person wishing to speak should notify the Office for Planning and Programming of their name, organization, if applicable, and the subject of their intended comments at the above address or by telephone (515) 281-3982 by the close of business Monday, May 14, 1984.

These rules are intended to implement Iowa Code section 7A.3.

Chapter 11, appearing in the Iowa Administrative Code, is rescinded and a new Chapter 11 is adopted in lieu thereof.

CHAPTER 11
IOWA INTERGOVERNMENTAL REVIEW SYSTEM

630—11.1(7A) Purpose. These rules are intended to implement Iowa Code sections 7A.3(8), 7A.4, 7A.5 and 7A.6 and are designed to establish an intergovernmental review system to be followed by federal agencies pursuant to federal Executive Order 12372 and by federal grant applicants. The intergovernmental review system shall be referred to as the Iowa intergovernmental review system. The purpose of the intergovernmental review system is to allow state and local government co-ordination and review of proposed federal financial assistance and federal direct development in order to avoid duplication and conflicts.

It is contemplated the intergovernmental review process will proceed along a well defined process as set forth in these rules. This general summary is expanded upon by the other rules herein. Below is a generalized summary of the process that shall be followed by the state and areawide clearinghouses with respect to review of applications for federal funds.

Step 1: A potential applicant for federal funds is informed by the federal agency that it must notify both state and regional clearinghouses about the project for which it intends to apply for assistance.

Step 2: Applicant notifies clearinghouses; including a summary description of the project.

Step 3: The state clearinghouse notifies state agencies which may be affected by the proposed project; regional and metropolitan clearinghouses do the same for local government agencies. Clearinghouses may also waive the right to review a project.

Step 4: State and local agencies notify clearinghouses of interest, if any, in conferring with applicant about the project.

Step 5: Clearinghouses notify applicant of their interest or the interest of state and local agencies in holding a conference to explore the project in greater detail. This must be done within thirty days of Step 2. If there is no interest on the part of the clearinghouses or state and local agencies in holding a conference, the applicant's obligations under the system are satisfied at this stage. Applicant then proceeds in accord with Step 10.

Step 6: A conference is held between the applicant and the appropriate agencies to explore the project in greater detail to identify and resolve possible conflicts.

Step 7: If conflicts are not resolved, the clearinghouses must notify the applicant that there will be comments sent to the federal agency either by the clearinghouse or in the form of a state process recommendation accompanying the application submitted in Step 8.

Step 8: Applicant submits application (or adequate project description) to clearinghouses, which have an additional thirty days for comment.

Step 9: The clearinghouse submits their comments, as well as those of state and local agencies, to the federal grantor agency, to the single point of contact and to applicant within the thirty-day period prescribed in Step 8. The single point of contact may also send comments to federal grantor agency.

Step 10: Applicant submits application to federal agency, with all clearinghouse comments also attached. If there are no comments, applicant submits a statement that requirement for review and comment has been followed.

Step 11: Federal agency considers application and comments and informs the single point of contact of actions taken.

Similar processes are incorporated into these rules for review of federal direct development proposals and state plans required by federal agencies.

630—11.2(7A) Definitions.

11.2(1) "Areawide clearinghouse" is any entity which has been designated as an areawide clearinghouse by the director.

11.2(2) "Clearinghouse" refers to both the state and areawide clearinghouses.

11.2(3) "Governing authority" is the council, commission or executive with authority to make rules concerning a clearinghouse's activities.

11.2(4) "Local agency" means any department, office, commission or board of a county or city government or any entity exclusive of state agencies, making application for federal financial assistance.

11.2(5) "Project" includes federally assisted projects and programs, direct federal development, federally controlled programs within the state, environmental assessments and environmental impact statements required by law to be developed in consultation with state or local environmental agencies, and state plans required by federal agencies.

11.2(6) "State agency" includes any departments, boards, commissions, or agencies of state government except legislative and judicial departments and agencies.

11.2(7) "State clearinghouse" is the clearinghouse within the office for planning and programming established for the purpose of administering the intergovernmental review system.

11.2(8) "Intergovernmental review system" is defined as the system consisting of areawide clearinghouses and the state clearinghouse.

11.2(9) "Director" means the director of the office for planning and programming.

11.2(10) "Federal financial assistance" means any federal grant, loan or loan guarantee.

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

11.2(11) "Iowa intergovernmental review system" means the clearinghouses operating under these rules.

11.2(12) "Official comments" means written comments of any clearinghouse which are supported by reasoned conclusions and properly executed.

11.2(13) "Single point contact" means the state clearinghouse.

11.2(14) "State process recommendation" is the recommendation concerning a renewed project submitted by the single point of contact and federal action or an explanation of why the recommendation was not adopted.

630—11.3(7A) Activities of the state clearinghouse. The state clearinghouse shall administer the intergovernmental review system at the state level to facilitate reviews of project proposal within the state. The areas subject to state clearinghouse review are:

1. Applications for federal grants-in-aid, loans or loan guarantees from state agencies subject to the requirements of Iowa Code section 7A.4 that require state agencies to file copies of grant applications with the office for planning and programming.
2. State plans or proposed use statements as referred to in Iowa Code section 7A.4 to meet federal requirements for grants-in-aid, loans or loan guarantees to be administered by the state.
3. Draft and final environmental impact statements or environmental assessments required by federal law or regulations to be developed in co-operation with state environmental agencies.
4. Direct federal development.
5. Proposals and applications originated by units of local government or private organizations when they may impact on the state or an agency thereof, or when the state is requested to prepare a state process recommendation.

11.3(1) Appendix A to this chapter lists projects and programs that require clearinghouse review. Appendix A may be changed or updated from time to time. The most recent Appendix A is on file for public inspection at Office for Planning and Programming, 523 E. 12th, Des Moines, Iowa, and is incorporated by this reference as Appendix A to these rules.

11.3(2) Programs not considered appropriate for state or areawide review are programs of the following types:

a. Direct financial assistance to individuals or families for housing, welfare, health care services, education, training, economic improvement, and other direct assistance for individual and family enhancement.

b. Incentive payments or insurance for private sector activities not involving real property development or land use and development.

c. Agricultural crop supports or payments.

d. Assistance to organizations and institutions for the provision of education or training not designed to meet the needs of specific individual states or localities.

e. Research, not involving capital construction, which is national in scope or is not designed to meet the needs or to address problems of a particular state, area, or locality (except in the case of demonstration or pilot research programs where projects may have an impact on the community or area in which they are being conducted).

f. Assistance to educational, medical, or similar service institutions or agencies for internal staff development or management improvement purposes.

g. Assistance to educational institutions for activities that are part of a school's regular academic program and are not related to local programs of health, welfare, employment, or other social services.

h. Assistance for construction involving only routine maintenance, repair, or minor construction which does not change the use or the scale or intensity of use of the structure or facility.

11.3(3) The state clearinghouse will consider federal agency or state agency requests for exemption of certain classes of projects or activities under programs otherwise subject to state or areawide review which:

a. Meet any of the above characteristics of programs inappropriate for coverage;

b. Are of small scale or size or are highly localized as to impact; or

c. Display other characteristics which might make review impractical.

11.3(4) The state clearinghouse may enter into a written memorandum of understanding with federal or state agencies concerning the scope of review of projects where special conditions exist.

11.3(5) The state clearinghouse may periodically distribute a list of all projects received for review. Distribution may be to state agencies and areawide clearinghouses. As appropriate the state clearinghouse may invite state agency or areawide clearinghouse comments on specific projects.

630—11.4(7A) Areawide clearinghouses. The state clearinghouse, at its discretion, may allow any properly designated areawide clearinghouse to review the following activities on behalf of local units of government and other affected entities located within the designated jurisdiction of the areawide clearinghouse:

1. Applications for federal grants-in-aid, loans or loan guarantees originated by local government or private agencies within its designated jurisdictions;
2. Draft and final environmental impact statements or environmental assessments directly affecting local units of government within its designated jurisdiction;
3. Notifications of direct federal development or controlled projects within the areawide clearinghouses' designated jurisdictions;
4. As explained in subrule 11.3(1), the most recent Appendix A contains a listing of all items referred to in items 1 to 3 above.

11.4(1) An areawide clearinghouse may enter into written memoranda of understanding with federal, state or local agencies concerning the scope of reviews of projects where special conditions exist.

11.4(2) Every thirty days each areawide clearinghouse shall send to the state clearinghouse a list of projects received and a list of projects reviewed and action taken (waiver, full review, conference, etc.) within the previous thirty-day period.

11.4(3) It is the responsibility of an areawide clearinghouse to provide, upon request, to local governments and organizations within its jurisdiction or to the state clearinghouse, a copy of any proposal being reviewed.

630—11.5(7A, 28E, 473A) Designation. Upon receipt of written request for designation and receipt of a resolution of the governing body assenting to perform intergovernmental reviews in accord with these rules, the director may officially designate any areawide planning commission, council of governments, or metropolitan planning agency as an areawide clearinghouse.

In the event that any planning commission, council of governments or similar organization fails to request designation as an areawide clearinghouse then the director may, upon the receipt of a proper written request and governing body resolution, designate another entity as

the local clearinghouse, or if the director finds it appropriate, the director may direct the state clearinghouse to perform the review of items set out in rules 11.4(7A), items 1 to 4 and 11.8(7A).

11.5(1) No clearinghouse shall charge applicants fees for the clearinghouse's review. Applicants are under no obligation to pay a fee for a review. The only obligation of the applicant is to give the clearinghouse the opportunity to review the application. No clearinghouse is required to carry out any review. If the clearinghouse does not take advantage of the review opportunity within the allotted time, the applicant is free to submit the application to the federal agency along with proof of submission to the clearinghouse for review in the manner described in subrule 11.6(11).

11.5(2) If the director determines that any clearinghouse is performing reviews in an unreasonable, arbitrary, or capricious manner, or is abusing its discretion, or is acting in excess of its authority, or in violation of these rules, or is acting upon unlawful procedure then the director may suspend or revoke the clearinghouse's designation and give notice of any suspension or revocation to all parties affected.

630—11.6(7A) Review procedures—federal financial assistance. General procedures for both state and areawide clearinghouses. An entity (state or local) applying for federal financial assistance shall notify the appropriate clearinghouses at the earliest possible date but not later than thirty days before filing with the federal grantor agency by submitting two copies of the following items to the clearinghouse.

1. Four copies of a completed Clearinghouse Form 13 (CH-13) or federal Standard Form 424 (SF 424) and a brief narrative describing the project and explaining the need for it. A letter containing the information requested on the forms may be substituted. Clearinghouse Form 13 is available from the state clearinghouse.
2. Four copies of a map locating construction projects where pertinent.
3. Reference to an environmental impact statement or environmental assessment shall accompany the notification of intent to apply for federal assistance when such statement or assessment is required by the federal grantor agency, or state statute or rule.
4. At any time during the review period upon request of the clearinghouse, the applicant shall submit a copy of the full application or additional information to the requesting clearinghouse.

11.6(1) An applicant for federal assistance shall attach to the application a copy of the clearinghouse's written clearance and any comments and forward the same together with the grant application to the federal grantor agency. The state or an areawide clearinghouse may forward the comments to the federal grantor agency if it so chooses.

11.6(2) A federal grantor agency receiving an application subject to the Iowa intergovernmental review system which does not contain evidence that opportunity for review has been given shall not process the application and shall inform the applicant of the review requirement.

11.6(3) The clearinghouse with which a review is originally filed shall assign a state application identifier number (SAI).

11.6(4) The period permitted the state and areawide clearinghouses for processing reviews shall be thirty days. Except that if an objection to the proposed project arises, or if there is a need to review the full application, the clearinghouse may extend the review period for an additional thirty days in order to resolve the problem except that no such extension will be allowed for noncompetitive continuation grants, federal mortgage guarantee programs or urban development action grants.

11.6(5) Notices of intent to apply for grants from state agencies administering federal block grants are subject to review by areawide clearinghouses if the block grant is listed in Appendix A. The grant review period will begin on the application deadline.

11.6(6) The review period begins on the date the applicant mails by first class mail or personally delivers to the clearinghouse a completed form CH-13 or SF424 or their equivalent. Clearinghouse comments or waiver of review shall be deposited for first-class delivery at a U.S. post office depository or personally delivered to applicant, and single point of contact, if appropriate, not later than ten days before the end of the review period. The applicant shall include the comments or waiver with the application it submits to the federal agency.

11.6(7) If, in the course of review, an issue is detected that can be resolved without the necessity of submitting negative clearinghouse comments then a conference shall be held within ten days in order to resolve the issue. The conference shall be presided over by the clearinghouse. Notice of the time, place and purpose of the conference shall be given to all affected parties.

11.6(8) All clearinghouse comments are official comments if in writing and supported by reasoned conclusions. Official comments shall be confined to matters relevant to the impact of the project. Areawide clearinghouse official comments shall be signed by the chairperson or the chairperson's designee of the organization designated as the areawide clearinghouse. Official comments of the state clearinghouse shall be transmitted under signature of the director or the director's designee. The governing body of any local unit of government affected by a clearinghouse review may submit its own comments to the federal agency. At least ten days prior to the end of the period of review the clearinghouse shall send the applicant, which submitted the project for review, notice that the review has been completed or waived and any official comments shall be included with said notice.

Areawide clearinghouses shall transmit all official comments to the state clearinghouse at the same time said comments are transmitted to the applicant. The state clearinghouse shall act as the state single point of contact and will transmit all state process recommendations to the appropriate federal agency.

11.6(9) The comments containing a state process recommendation may be prepared by either the state or an areawide clearinghouse. If prepared by an areawide clearinghouse, state process recommendations shall be submitted to the single point of contact (state clearinghouse) at least ten days prior to the end of the the review period. The single point of contact will submit them together with any other comments representing differing viewpoints to the federal agency accompanied by a transmittal letter identifying the comments, and stating if the state clearinghouse agrees, disagrees or takes no position on the issue(s) involved.

The state may rule that the situation commented upon does not merit a state process recommendation. In such instances, the state clearinghouse may forward the com-

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

ments to the federal agency without identifying them as a state process recommendation, return them to the areawide clearinghouse, send them to the applicant or take no action.

11.6(10) A federal agency receiving any state process recommendation from the state single point of contact must accept the recommendations, reach a mutually agreeable solution with the parties preparing the recommendation, or provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution. If there is nonaccommodation, the state single point of contact will transmit any federal correspondence relating to an areawide clearinghouse review to that areawide clearinghouse.

11.6(11) Applicants are only required to present clearinghouses an opportunity to review a project. In the event a clearinghouse fails to perform a review within the review period of subrule 11.6(3), the applicant may submit to the federal agency proof of submission of form CH-13 or SF424 or their equivalent. Proof of submission shall be the signed and attested assurance of the applicant stating a completed CH-13 or SF424 or their equivalent was submitted to the clearinghouse in the manner prescribed by rule 11.6(7A).

11.6(12) If a project is required to be reviewed by both an areawide clearinghouse and the state clearinghouse, it may be submitted to both clearinghouses simultaneously.

630—11.7(7A) Housing programs. For housing programs of the Department of Housing and Urban Development (HUD), and the Farmers Home Administration of the Department of Agriculture (USDA/FHA) the following procedures will be followed, except as provided in subparagraph (d) below:

1. The appropriate HUD or USDA/FHA office will transmit to the areawide clearinghouses a copy of the initial application for project approval.
2. Clearinghouses shall have thirty days from receipt to review the applications, and to forward to the HUD or USDA/FHA office any comments which they may have, including observations concerning the consistency of the proposed project with the provision of housing opportunities for all segments of the community and identification of major environmental concerns, including impact on energy resource supply and demand. Processing of applications in the HUD or USDA/FHA office may proceed concurrently with the clearinghouse review.
3. This procedure shall include only applications specified in Appendix A.
4. As an alternative to the above procedure, the developer may submit his application directly to the appropriate clearinghouses prior to submitting it to the federal agency. In such cases, the application, when submitted to the federal agency, will be accompanied by the comments of the clearinghouses or its waiver.

630—11.8(7A) Direct development. Prior to the commencement of the federal direct development activities described in Appendix A, Part IV, federal agencies shall notify the appropriate clearinghouse by submitting to the clearinghouse a completed form CH-13a or its equivalent for review in accord with the process set out in rule 11.6(7A).

630—11.9(7A) Board of regents. Review of grant applications for federal funds listed in Appendix A Part I, II and III developed by institutions under the jurisdiction of the state board of regents shall be exempt from the provisions of sections 7A.4 and 7A.5 and rule 11.6(7A) insofar as grant-in-aid applications are concerned, and said institutions shall be required to submit to the state clearinghouse only a copy of the grant application cover page and budget sheet or form CH-13 or SF424 or their equivalent at the time of submission to the federal agency.

630—11.10(7A) Internal process. The state clearinghouse or areawide clearinghouse may develop its own internal review process within the scope of these rules and may waive its rights of review.

630—11.11(7A, 68A) Information. The state clearinghouse will maintain liaison with the local metropolitan and areawide clearinghouses in Iowa, provide them with information received from the federal government, and co-operate as needed when matters of mutual interest are being reviewed. The review material and notifications of grant-in-aid notices are public information and will be made available to agencies or persons upon request by contacting the Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319, telephone (515) 281-3970.

ARC 4631

SOIL CONSERVATION DEPARTMENT[780]

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 467A.4(1), the State Soil Conservation Committee gives Notice of Intended Action to establish rules as Chapter 23, "Blaster Training, Examination, and Certification for Coal Mines."

Development of these rules and corresponding blaster certification program is required as part of Iowa's permanent regulatory program for surface coal mining and reclamation operations. These rules are being proposed subsequent to recent promulgation of federal regulations on the same subject.

Blaster certification is a component of the state's permanent regulatory program and is called for in Iowa Code section 83.6(2). These requirements are in addition to normal statutory requirements concerning the use of explosives in the state. The primary emphasis of these rules is to protect the public and private interests off the mine site as opposed to on-site worker safety.

Any interested person may submit written suggestions or comments on the rules proposed in this Notice of Intended Action. Comments conveyed by mail should be forwarded to the Director, Iowa Department of Soil Conservation, Wallace State Office Building, Des Moines, Iowa 50319, and must be received by the department no later than 4:30 p.m., Tuesday, July 3, 1984.

SOIL CONSERVATION DEPARTMENT[780] *(cont'd)*

A public hearing will be held on Thursday, July 5, 1984, at 1:00 p.m., during the regular monthly meeting of the State Soil Conservation Committee. The meeting and hearing will be held in the Second Floor Conference Room of the Wallace State Office Building, East 9th and Grand Avenue, Des Moines, Iowa. Comments presented at the hearing may be offered either orally or in writing.

Rules set forth in this notice are intended to implement Iowa Code chapter 83.

The following new chapter is proposed:

CHAPTER 23
BLASTER TRAINING,
EXAMINATION AND CERTIFICATION
FOR COAL MINES

23.1 to **23.9** Reserved.

780—23.10(83) Scope. This chapter establishes the requirements and the procedures applicable to the development of regulatory programs for training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface or underground coal mining operations.

23.11 to **23.19** Reserved.

780—23.20(83) Definition. As used in this part, "blaster" means a person directly responsible for the use of explosives in surface or underground coal mining operations who is certified under this part.

23.21 to **23.29** Reserved.

780—23.30(83) Responsibility. The department of soil conservation is responsible for promulgating rules governing the training, examination, certification and enforcement of a blaster certification and enforcement of a blaster certification program for surface and underground coal mining operations.

23.31 to **23.39** Reserved.

780—23.40(83) Training, examination and certification.

23.40(1) Training.

a. The department of soil conservation shall establish procedures which require that:

(1) Persons seeking to become certified as blasters receive training including, but not limited to, the technical aspects of blasting operations and state and federal laws governing the storage, transportation, and use of explosives; and

(2) Persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives receive direction and on-the-job training from a blaster.

b. The regulatory authority shall ensure that courses are available to train persons responsible for the use of explosives in surface coal mining operations. The courses shall provide training and discuss practical applications of:

(1) Explosives including:

Selection of the type of explosive to be used;

Determination of the properties of explosives which will produce desired results at an acceptable level of risk; and

Handling, transportation, and storage;

(2) Blast designs, including:

Geologic and topographic considerations;

Design of a blast hole, with critical dimensions;

Pattern design, field layout, and timing of blast holes; and

Field applications;

(3) Loading blastholes, including primary and boostering;

(4) Initiation systems and blasting machines;

(5) Blasting vibrations, airblast, and flyrock, including:

Monitoring techniques and

Methods to control adverse effects;

(6) Secondary blasting applications;

(7) Current federal and state rules applicable to the use of explosives;

(8) Blast records;

(9) Schedules;

(10) Preblasting surveys, including:

Availability,

Coverage, and

Use of in-blast design;

(11) Blast-plan requirements;

(12) Certification and training;

(13) Signs, warning signals, and site control;

(14) Unpredictable hazards, including:

Lightning,

Stray currents,

Radio waves, and

Misfires.

23.40(2) Examination.

a. The department of soil conservation shall ensure that candidates for blaster certification are examined by reviewing and verifying the

(1) Competence of persons directly responsible for the use of explosives in surface coal mining operations through a written examination in technical aspects of blasting and state and federal laws governing the storage, use, and transportation of explosives; and

(2) Practical field experience of the candidates as necessary to qualify a person to accept the responsibility for blasting operations in surface coal mining operations. Such experience shall demonstrate that the candidate possesses practical knowledge of blasting techniques, understands the hazards involved in the use of explosives, and otherwise has exhibited a pattern of conduct consistent with the acceptance of responsibility for blasting operations.

b. Applicants for blaster certification shall be examined, at a minimum, in the topics set forth in 23.40(1).

23.40(3) Certification.

a. Issuance of certification. The regulatory authority shall certify for a fixed period those candidates examined and found to be competent and to have the necessary experience to accept responsibility for blasting operations in surface coal mining operations.

b. Suspension and revocation.

(1) The department of soil conservation, when practicable, following written notice and opportunity for a hearing, may and, upon a finding of willful conduct, shall suspend or revoke the certification of a blaster during the term of the certification or take other necessary action for any of the following reasons:

Noncompliance with any order of the regulatory authority.

Unlawful use in the work place of or current addiction to alcohol, narcotics, or other dangerous drugs.

Violation of any provision of the state or federal explosives laws or regulations.

Providing false information or a misrepresentation to obtain certification.

(2) If advance notice and opportunity for hearing cannot be provided, an opportunity for a hearing shall be provided as soon as practical following the suspension, revocation, or other adverse action.

(3) Upon notice of a revocation, the blaster shall immediately surrender to the department of soil conservation the revoked certificate.

c. Recertification. The department of soil conservation may require the periodic re-examination, training, as other demonstration of continued blaster competency.

d. Protection of certification. Certified blasters shall take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence shall be reported immediately to the certifying authority.

e. Conditions. The department of soil conservation shall specify conditions for maintaining certification which shall include the following:

(1) A blaster shall immediately exhibit his or her certificate to any authorized representative of the department of soil conservation or the office upon request.

(2) Blasters' certifications shall not be assigned or transferred.

(3) Blasters shall not delegate their responsibility to any individual who is not a certified blaster.

23.41 to **23.99** Reserved.

NOTICE - USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

June 1, 1982 - June 30, 1982	15.75%
July 1, 1982 - July 31, 1982	15.50%
August 1, 1982 - August 31, 1982	16.25%
September 1, 1982 - September 30, 1982	16.00%
October 1, 1982 - October 31, 1982	15.00%
November 1, 1982 - November 30, 1982	14.25%
December 1, 1982 - December 31, 1982	13.00%
January 1, 1983 - January 31, 1983	12.50%
February 1, 1983 - February 28, 1983	12.50%
March 1, 1983 - March 31, 1983	12.50%
April 1, 1983 - April 30, 1983	12.75%
May 1, 1983 - May 31, 1983	12.50%
June 1, 1983 - June 30, 1983	12.50%
July 1, 1983 - July 31, 1983	12.50%
August 1, 1983 - August 31, 1983	12.75%
September 1, 1983 - September 30, 1983	13.50%
October 1, 1983 - October 31, 1983	13.75%
November 1, 1983 - November 30, 1983	13.75%
December 1, 1983 - December 31, 1983	13.50%
January 1, 1984 - January 31, 1984	13.75%
February 1, 1984 - February 29, 1984	13.75%
March 1, 1984 - March 31, 1984	13.75%
April 1, 1984 - April 30, 1984	13.75%
May 1, 1984 - May 31, 1984	14.25%

ARC 4608

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services rescinds rules appearing in the IAC relating to mobile/congregate meals (770—chapter 150) and housing services (770—chapter 152).

These chapters are being deleted because these services are no longer offered by the department. Housing services have not been offered for five years and mobile/congregate meals have not been offered for four years. These services are not listed as being available in the annual social services block grant pre-expenditure report, and should therefore not appear in the department's rules.

The Department of Human Services finds that notice and public participation are unnecessary. This is a technical amendment to eliminate rules for services the department no longer provides. Therefore, this rule is filed pursuant to Iowa Code section 17A.4(2).

The Department of Human Services finds that this rule confers a benefit on the public by eliminating the possibility people will be confused about what services the department provides. The services in the rules should be the same as in the annual pre-expenditure report. Therefore, this rule is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted this rule March 26, 1984. This rule is intended to implement Iowa Code section 234.6. This rule shall become effective immediately upon filing [April 2, 1984].

Rescind **770—chapters 150** and **152**.

[Filed emergency 4/2/84, effective 4/2/84]
[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4630

SOIL CONSERVATION DEPARTMENT[780]

Pursuant to the authority of Iowa Code section 467A.4(1), the State Soil Conservation Committee adopts this rule to amend Chapter 4, "Surface Coal Mining and Reclamation Operations."

This rule is adopted by the department to clarify existing standards on prime farmland relative to coal mining. This rule eliminates any exemption to these requirements, ten-acre or otherwise, that may still appear in Chapter 4 rules.

The state's application for a ten-acre exemption that accompanied Iowa's permanent program submittal in 1980 was denied. The rule being deleted in this action was not removed at that time in changes made as a result of the denial.

Pursuant to Iowa Code section 17A.4(2), the department is emergency adopting these rules without public participation. Such public participation is impracticable because federal law dictates removal of the ten-acre exemption.

The department is also, in accordance with Iowa Code section 17A.5(2)"b"(2), seeking emergency implementation of these rules because a benefit is bestowed on the public by making state regulations consistent with federal requirements while simultaneously avoiding unnecessary costs of additional rulemaking action.

The full text of Chapter 4 rules is not published in the Iowa Administrative Code due to the length and the cost of publication, pending completion of forthcoming revisions brought about by federal regulatory reform. The complete text of the Chapter 4 rules is available for inspection at the Iowa Department of Soil Conservation, Second Floor, Wallace State Office Building, East 9th and Grand Avenue, Des Moines, Iowa 50319, (515) 281-6142.

The State Soil Conservation Committee adopted this rule at its regular meeting on January 16, 1984.

This rule implements Iowa Code chapter 83.

This rule becomes effective April 26, 1984.

The following rule is adopted:

Subrule **4.322(14)**, paragraph "d," subparagraph (2) is amended to read as follows:

(2) When a soil survey for lands within the proposed mine plan area contains soil map units which have not been designated as prime farmland ~~or those designated prime farmland which are not greater than ten (10) acres areal extent~~ after review by the U.S. Soil Conservation Service, the applicant shall submit a request for negative determination for nondesignated land with the permit application establishing compliance with paragraph "b" of this subrule.

[Filed emergency 4/6/84, effective 4/26/84]
[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4622

AGRICULTURE DEPARTMENT[30]

Pursuant to the authority of Iowa Code sections 159.5(11), 189.2(2), 206.19 and 206.21, the Iowa Department of Agriculture hereby adopts amendments to Chapter 10, "Pesticides," appearing in the Iowa Administrative Code. This rule establishes standards for Ethylene dibromide in food manufactured, distributed and sold in the state of Iowa.

Notice of Intended Action was published in the Iowa Administrative Bulletin, February 29, 1984, as **ARC 4499** and as emergency adopted and implemented rule, as ARC 4498.

A public hearing was held on March 20, 1984. As a consequence of suggestions of the Administrative Rules Review Committee, the proposed rules have been modified. Subrule 10.45(1) has been revised from that published under notice. The subrule, as revised, would provide that all raw grain, and not just grain intended for human consumption, is subject to Ethylene dibromide standards.

This rule is intended to implement Iowa Code sections 189.17, 206.21 and 190.2.

This rule will become effective May 30, 1984. Rule 10.45(206), subrules 10.45(1) to 10.45(3), promulgated as emergency adopted and implemented as ARC 4498, published February 29, 1984, are rescinded effective May 30, 1984.

ITEM 1. Rules **10.38** through and including **10.44** are reserved for future use.

ITEM 2. Amend Chapter 10, "Pesticides" by adding the following new rule:

30—10.45(206) Ethylene dibromide (EDB) residue levels in food. The following is the maximum allowable residue levels of Ethylene dibromide (EDB) for each of the three primary tiers of grain products:

10.45(1) For raw grain, the level should not exceed 900 parts per billion.

10.45(2) Intermediate level products—flour, various mixes for preparing baked goods, soft cereals and other products that would normally require cooking or baking before eating—the level should not exceed 150 parts per billion.

10.45(3) For ready-to-eat products—cold cereals, snack foods, bread and all baked goods—the level should not exceed 30 parts per billion.

This rule is intended to implement Iowa Code sections 189.17, 206.21 and 190.2.

[Filed 4/6/84, effective 5/30/84]

[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4623

ARTS COUNCIL[100]

Pursuant to the authority of Iowa Code sections 304A.4 and 304A.6, the Arts Council hereby adopts amendments to Chapter 2, "Policies and Procedures," Iowa Administrative Code.

The Arts Council adopted this rule on April 4, 1984.

Notice of Intended Action was published in IAB, February 29, 1984, as **ARC 4496**.

The rule introduces awards in two categories (poetry and short fiction), specifies cash prizes, stipulates that the contest is open to Iowa writers of all ages, introduces an application deadline, and basic rules for the submission of entries. The rule also invites individuals, organizations and businesses to participate in an awards program to recognize outstanding contributions to the arts in Iowa on an annual basis. The rule contains elements of eligibility, nomination procedures and achievement award categories.

The adopted rule is identical to the Notice of Intended Action, with the exception of three minor changes in 2.3(14)"d"(1), 2.3(14)"d"(8), and 2.3(19)"d." One change clarifies the Arts Council's intended use of winning entries (for promotional purposes only), and the other two changes specify deadline dates, replacing the more ambiguous language of the Notice of Intended Action ("posted annually", and "established annually").

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

This rule will become effective on May 30, 1984.

ITEM 1. Amend rule 2.3(304A) by inserting the following subrule:

2.3(14) Iowa arts council literary awards. Literary awards are an annual competition to recognize the talented writers within the state of Iowa.

a. Categories of awards. Literary awards will be made in two categories which are as follows:

(1) Poetry. Entries must be a single poem or group of poems related to a single theme. Minimum one hundred lines, maximum three hundred fifty lines. None of the poems may have been previously published.

(2) Short fiction. Entries must be a single short story, group of short stories, or excerpt from a novel. Minimum ten pages, maximum fifty pages. None of the fiction may have been previously published.

b. Awards. There will be two cash awards given in each category: First prize is a one thousand dollar cash award and second prize is a five hundred dollar cash award. In the case that no work is deemed worthy, no award will be given.

c. Eligibility. The contest is open to Iowa writers of all ages.

d. Requirements for making entries. The following requirements are made for all entries to the literary awards:

(1) All entries must be postmarked or hand delivered by the time of a deadline which will be the last state working day in July. Mailed manuscripts should be sent to: Literary Awards, Iowa Arts Council, State Capitol Complex, Des Moines, Iowa 50319, hand delivered entries should be taken to the Iowa Arts Council Offices, 1223 East Court Avenue, Des Moines; office hours correspond with the usual state office hours.

(2) Only one entry may be submitted in each category by each contestant.

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(3) Each manuscript submitted must be accompanied by a letter from the author containing the following: Legal name, address, day telephone number; title of manuscript and category in which it is entered; a statement that the manuscript is original; and a statement that the manuscript has not been published.

(4) The name of the author must not appear on the manuscript.

(5) Contestants who wish to have their entry returned should include a self-addressed, stamped envelope with the entry. The arts council will not be responsible for manuscripts lost or damaged. The author should retain a copy of the work submitted to ensure against loss.

(6) Manuscripts must be typewritten in black and double-spaced on eight and one-half by eleven-inch paper. Illegible manuscripts may be refused eligibility.

(7) The Iowa arts council has sole and final authority in making awards.

(8) Authors of winning entries retain all copyright and related rights to their material. The Iowa arts council reserves the right to limited, noncommercial use of winning entries for promotional purposes only.

ITEM 2. Add a new subrule 2.3(19) which reads as follows:

2.3(19) Outstanding achievement awards. Achievement awards are made for significant achievement and contributions to the arts during a previous fiscal year period. Iowa individuals, organizations, and businesses are eligible to participate in this program designed to honor those who work hard to make the arts a vital force in the lives of Iowans.

a. Categories. There are two categories for nominations for outstanding achievement awards. The nominator must specify only one category for each nomination. Categories are:

(1) Outstanding achievement as an individual or organization. Four awards will be presented in this category.

(2) Outstanding business or corporate support for the arts. One award will be presented in this category.

b. Eligibility. Any person who resided in Iowa during the award time period is eligible to be nominated or to act as a nominator for the Iowa arts council outstanding achievement awards. Nominees should be individuals, organizations, businesses or corporations which have made significant achievements to the arts on a state, regional, national or international level during the fiscal year beginning July 1 and ending June 30. No Iowa arts council member, staff member, or member of their immediate family is eligible for nomination.

c. Nomination procedure. Nominations must be made on an official Iowa arts council Outstanding Achievement Award Nomination Form A-1. Only one nomination may be made per form. Additional forms are available from the Iowa arts council.

d. Timeline. The achievement period will correspond with the state of Iowa's previous fiscal year. A nomination deadline will be the third Monday in July, followed by advisory panel review, and then announcement and presentation of awards.

[Filed 4/6/84, effective 5/30/84]
[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4624

ARTS COUNCIL[100]

Pursuant to the authority of Iowa Code sections 304A.4 and 304A.6, the Arts Council hereby adopts amendments to Chapter 3, "Forms," Iowa Administrative Code.

The Arts Council adopted this rule on April 4, 1984.

Notice of Intended Action was published in IAB February 29, 1984, as **ARC 4497**.

The rule states that all nominations for the outstanding achievement awards program (a new program) must be made on an official nomination form numbered A-1. The form contains specific information about the nominee, nomination categories, the nominator, endorsements for the nomination, a nomination summary, and a nomination narrative.

The adopted rule is identical to the Notice of Intended Action.

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

This rule will become effective on May 30, 1984.

Amend chapter 3 by adding the following new rule:

100—3.12(304A) Outstanding achievement awards form. The following are forms used in carrying out the outstanding achievement awards program for significant achievement or contributions to the arts during the state of Iowa's fiscal year.

3.12(1) Outstanding achievement awards entry Form A-1 requires information about the nominee, the nomination categories, the nominator, endorsement references who may be contacted to verify the scope and extent of the nominee's achievements or contributions, a one-sentence nomination summary, and a nomination narrative of not more than five hundred words which will describe the achievements and contributions of the nominee.

3.12(2) Reserved.

[Filed 4/6/84, effective 5/30/84]
[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4637

COMMERCE COMMISSION[250]

The Iowa State Commerce Commission gives notice, pursuant to Iowa Code section 17A.4(1), that on April 5, 1984, the Commission issued an order in Docket No. RMU-83-31, In Re: Notice of Rate or Charge Increase, "Order Adopting Rules." The adopted rules revise the rate notification rules in Iowa Administrative Code 250—rule 7.4(476) in accordance with 1983 Iowa Acts, chapter 127, section 19, subsection 5, and section 20, subsection 7.

The "Notice of Intended Action" was published in the Iowa Administrative Bulletin on January 18, 1984, as **ARC 4417**. Written statements of position were received on or before February 7, 1984. An oral presentation was held on February 13, 1984.

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Many of the commenters suggested that the Commission allow minor variations in the standard notice so that prior approval would not be needed for word variations, such as a substitution for "Dear Customer" or the use of "nearest" rather than "local" business office. Having considered the comments, the Commission has noted in Iowa Administrative Code 250—7.4(1)"d"(1) that prior approval will only be necessary if the notice is not in substantial compliance with the standard notice.

Although the adopted rules are basically the same as the noticed rules, the following changes were made after considering the comments. The phrase "effective with usage commencing on" has been changed to read "with a proposed effective date of," in an effort to simplify the language. In listing the average monthly increase per customer, the utility will only be required to list primary customer classes rather than all customer classes as was required by the proposed rules. The "average" monthly increase, however, will be calculated as the median average, and this additional requirement can be found in Iowa Administrative Code 250—7.4(1)"c"(3) as adopted.

One commenter asked whether the interstate toll was to be included in a telephone utility's annual revenue number, or whether only jurisdictional revenues were to be included. The Commission finds that in light of the AT&T divestiture and the separation of interstate and intrastate operations, it would be reasonable and consistent to include only jurisdictional revenues in the notice.

A question was raised in the oral presentation as to the notice procedure that would be required if the utility did not file the interim request at the same time as the permanent request. Because this circumstance rarely occurs, the Commission would require that a second notice be sent if an interim increase is filed after the permanent increase. This would comply with Iowa Code section 476.6(5), which requires that a utility give written notice of a proposed increase. An interim request is a proposed increase even though it is only temporary.

In its comments, the Office of Consumer Advocate suggested the Commission require that the notice of increase be sent as a bill insert. In the oral presentation, most of the utilities objected to this proposal. The Commission will not adopt the proposal, but rather leave it as an option available to the utilities.

It should also be noted that the utilities will not have to refile tariff sheets to comply with these adopted rules.

These rules are intended to implement 1983 Iowa Acts, chapter 127, section 19, subsection 5, and section 20, subsection 7. The amendments will become effective May 30, 1984, pursuant to Iowa Code section 17A.5.

ITEM 1. Amend paragraph **7.4(1)**"b" as follows:

b. Notification of customers. ~~Any~~ *All* public utility~~y~~*ies, except those exempted from rate regulation by* ~~as defined in~~ Iowa Code section 476.1, which proposes to increase rates or charges, shall mail or deliver~~;~~ *a written notice pursuant to paragraph "c" or "d" to all customers in all affected rate classifications. The written notice shall be mailed or delivered before the application for increase is filed, but* not more than sixty-two days prior to the *filing* ~~time the application for increase is filed with the commission, and approved written notice of the rate or charge increase to all customers in all affected rate classifications~~. Any public utility exempt from rate regulation by Iowa Code section 476.1, which proposes to increase rates or charges, shall mail or deliver, not less than thirty days prior to the proposed effective date, a written notice *pursuant to paragraph "c" or "d"* of the rate or charge increase to all customers in all affected rate classifications.

Provided, however, that if a telephone utility is proposing to increase rates for only interexchange services, excluding EAS and intrastate access services, the utility shall cause *the notice of proposed increase* to be published, in at least one newspaper of general circulation in each county where such increased rates are proposed to be effective~~; notice of the proposed increase~~. The notice shall be published at least twice in such newspaper no more than sixty-two days prior to the time the application for the increase is filed with the commission.

ITEM 2. Amend subparagraph **7.4(1)**"c"(1) to read as follows:

c. Standardized notice.

(1) Rate-regulated utilities. Any rate-regulated utility company may use the following forms for notification of its customers without seeking prior commission approval. *If the utility is asking for a general and interim increase, it should use Form A below. If the utility is asking for only a general increase, it should use Form B below.*

Form A

Dear Customer:

(Company Name) (We) are asking the Iowa State Commerce Commission for an increase in (type of service) utility (rates) (and) (charges) with a proposed effective date of (date).

The proposed increase in annual revenues will be approximately $(number), or (number)%.

Although the effect of the proposed increase on your bill may vary depending upon the type and extent of usage, the (average monthly increase per customer for the primary customer classes) (and) (actual increase in nonrecurring charges per customer) (is) (are):

(Charges) (Customer Class)	Current (Charge) (Monthly Rate)		Proposed Increase	=	Proposed (Charge) (Monthly Rate)	Percentage Increase
		+				

This proposed increase in (rates) (and) (charges) may be docketed by the Commission, which suspends the effective date of the proposed (rates) (and) (charges). If the proposed (rates) (and) (charges) are suspended, we are asking the Commission for temporary authority to place into effect the following interim increase (collected subject to refund), to be effective (date). The Commission may set interim (rates) (and) (charges) other than these:

Proposed Interim Rate Increase

(Charges) (Customer Class)	Current (Charge) (Monthly Rate)		Proposed Increase	=	Proposed (Charge) (Monthly Rate)	Percentage Increase
		+				

After a thorough investigation, the Commission will order final (rates) (and) (charges) which may be different from those proposed, and determine when the (rates) (and) (charges) will become effective. If the final (rates) (and) (charges) are lower than the interim (rates) (and) (charges), the difference between the final and interim (rates) (and) (charges) will be refunded with interest.

You have the right to file a written objection to this proposed increase with the Commission and to request a public hearing. The address of the Commission is: Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319. The Commission should be

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provided with any facts that would assist it in determining the justness and reasonableness of this requested increase. This information will be made available to the Consumer Advocate, who represents the public interest in rate cases before the Commission.

A written explanation of all current and proposed rate schedules is available without charge from your local business office. If you have any questions, please contact your local business office.

Form B

Dear Customer:

(Company Name) *(We) are asking* ~~is petitioning~~ the Iowa State Commerce Commission for an increase in ~~its~~ (type of service) utility (rates) (and) (charges) ~~effective~~ with *a proposed effective date of* ~~usage commencing on~~ (date).

The *proposed* increase in annual revenues ~~resulting from this proposed increase~~ will be approximately $(number), or (number)%.

Although the effect of the proposed increase on your bill ~~will~~ *may* vary depending upon the type and extent of usage, the (average monthly increase per customer for the primary customer classes) (and) (actual increase in nonrecurring charges per customer) (is) (are) ~~as follows~~:

(Charges) (Customer Class)	*Current (Charge) (Monthly Rate)*	+	*Proposed* ~~(Amount of~~ Increase~~)~~ ~~(Monthly Increase)~~	=	*Proposed (Charge) (Monthly Rate)*	~~(~~Percentage Increase~~)~~ ~~(Percentage Increase)~~

This *proposed* increase in (rates) (and) (charges) may be ~~suspended~~ *docketed* by the Ceommission, ~~and all or part of the increase may be permitted to become effective at a later date, subject to refund with interest of any amounts ultimately determined by the commission to be excessive~~ *which suspends the effective date of the proposed (rates) (and) (charges). After a thorough investigation, the Commission will order final (rates) (and) (charges) which may be different from those we requested. These final (rates) (and) (charges) will become effective at a date set by the Commission.*

~~However, after a hearing in this matter, the commission may order a lesser or greater increase, or a decrease in rates to any or all customer classes.~~

You have the right to file a written objection to this proposed increase with the ~~Iowa state commerce~~ Ceommission and to request a public hearing. The address of the *Commission is* Iowa State Commerce Commission, ~~is the~~ Lucas State Office Building, Des Moines, Iowa 50319. The Ceommission should be provided *with* any facts that would assist it in determining the justness and reasonableness of this requested increase. This information will be ~~provided~~ *available* to the Ceonsumer Aadvocate, ~~which~~ *who* represents the public interest in *rate cases* ~~litigation~~ before the ~~Iowa state commerce~~ Ceommission.

A written explanation of all existing and proposed rate schedules is available without charge from *your* ~~the~~ local business office ~~of the utility~~. If you have any questions, please contact your local business office.

~~Any utility offering specialized systems involving detailed rate schedules may include in its notification to customers, without seeking prior commission approval, a paragraph specifically noting the system or systems for which any increase is proposed, and advising customers of such services to contact the utility's local business office for a detailed explanation of the increase.~~

ITEM 3. Amend subparagraph **7.4(1)**"c"(2) to read as follows:

(2) ~~Nonrate regulated utilities~~ *Utilities not subject to rate regulation.* A ~~nonrate regulated~~ utility *not subject to rate regulation* may use the following form for notification of its customers without seeking prior commission approval.

Dear Customer:

On (Date), (responsible party) approved an increase in (rates) (and) (charges) affecting prices for (type of service) that you receive. The ~~proposed~~ increase will apply to your usage beginning on (Date).

The increase in annual revenues ~~resulting from this proposed increase~~ will be approximately $(number), or (number)%.

Although the effect of the ~~proposed~~ increase on your bill *may* ~~will~~ vary depending upon the type and extent of usage, the (average monthly increase per customer for the primary customer classes) (and) (actual increase in nonrecurring charges per customer) (is) (are) ~~as follows~~:

(Charges) (Customer Class)	*Current (Charge) (Monthly Rate)*	+	~~(Amount of~~ Increase~~)~~ ~~(Monthly Increase)~~	=	*(Charge) (Monthly Rate)*	~~(~~Percentage Increase~~)~~ ~~(Percentage Increase)~~

A written explanation of all *current* ~~existing and proposed~~ rate schedules is available without charge from *our* ~~the~~ local business office ~~of the utility~~. If you have any questions, please contact our business office.

~~Any utility offering specialized systems involving detailed rate schedules may include in its notification to customers, without seeking prior commission approval, a paragraph specifically noting the system or systems for which any increase is proposed, and advising customers of such services to contact the utility's local business office for a detailed explanation of the increase.~~

ITEM 4. Amend subparagraph **7.4(1)**"c"(3) to read as follows:

(3) General requirements for a form notice. The standard notice provided under this subsection shall be of a type size and of a quality which is easily legible. ~~The final~~ *A copy of the* notice with dates, cost figures and cost percentages shall be filed with the commission at the time of ~~the~~ customer notification.

Any utility offering services or systems involving detailed rate schedules must include in its notification to customers a paragraph specifically noting the services or systems for which any increase is proposed and advising customers to contact the utility's local business office for further explanation of the increase.

Any "average" used in the standard form shall be a median average.

ITEM 5. Amend subparagraph **7.4(1)**"d"(1) to read as follows:

d. Other customer notification forms.

(1) Prior approval. Any public utility, as defined in *Iowa Code* section 476.1, ~~The Code,~~ which proposes to increase rates or charges and *is not in substantial compliance with* ~~which does not use~~ the form prescribed in 7.4(1)"c" above, shall submit to the commission not less than thirty days before providing notification to its customers in accordance with 7.4(1)"b," three copies of such proposed notice for approval. The commission, for

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good cause shown, may permit a shorter period for approval of the proposed notice.

ITEM 6. Amend subparagraph **7.4(1)**"d"(3) to read as follows:

(3) Required content of notification. The notice submitted *for approval pursuant to* ~~in accordance with~~ 7.4(1)"d"(1) shall include, ~~where applicable, and clearly explain the following items:~~ *at a minimum, all of the information contained in the standard notice of 7.4(1)"c."*

~~1. The average percent of increase of annual revenue, whether the percentage is uniformly applicable to all classes of customers; and, if not, the applicable percentage increase for the primary classes of customers and the average monthly increase per customer for the primary classes of customers;~~

~~2. The total increase in annual revenue that the proposed change in rates or charges is anticipated to provide to the utility;~~

~~3. The date on which the proposed increased rate or charge is to become effective. All service provided prior to the effective date must be at the previously established price. Prorating may be used when computing a customer's bills whenever the effective date falls within the billing interval, or billing at the higher rate may be deferred until the first monthly billing interval which fully follows the effective date;~~

~~4. In case of the rate regulated utilities, a statement that the customer has the right to file a written comment on the proposed rate increase with the Iowa State Commerce Commission, State Capitol, Des Moines, Iowa 50319, and that the commission may, after a hearing, increase or decrease any proposed rate or charge by an amount found to be just and reasonable. The notice shall state that an explanation of existing and proposed rate schedules is available free of charge from the local business office of the utility. In the event that the notification to the customers exceeds one page in length, the notification of the right to file an objection and request a public hearing shall appear on the first page;~~

~~5. Nonrate regulated utilities shall include the date on which the responsible party approved the increase.~~

ITEM 7. Amend subparagraph **7.4(1)**"d"(4) to read as follows:

(4) Notice of deficiencies. Within thirty days of the proposed notice's filing, the utility shall be notified of either the approval of the notice or of any deficiencies in the proposed notice. In the event deficiencies are found to exist in the proposed notice, the commission will describe the corrective measures necessary to bring the notice into compliance with *Iowa Code* chapter 476~~, The Code,~~ and commission rules. A notice found to be deficient under this rule shall not constitute adequate notice under *Iowa Code* section 476.6~~, The Code~~.

ITEM 8. Amend subparagraph **7.4(1)**"f"(1) to read as follows:

f. Delivery of notification.

(1) The notice, as ~~required by 7.4(1)"b" and~~ *it appears in 7.4(1)"c" or* as approved by the commission in accordance with ~~7.4(1)"c" or~~ 7.4(1)"d," shall be mailed or delivered to all affected customers ~~by nonrate regulated utilities not less than thirty days prior to the proposed effective date~~ *pursuant to the timing requirements of 7.4(1)"b."* ~~Rate regulated utilities shall mail or deliver to all affected customers, not more than sixty-two days prior to the date the application is filed with the commission, the notice as required by 7.4(1)"b" and as approved by the commission in accordance with 7.4(1)"c" or 7.4(1)"d".~~

ITEM 9. Amend subrule 7.4(4) to read as follows:

7.4(4) Tariffs ~~or sheets~~ to be filed ~~on thirty days' notice~~. A *rate-regulated* public utility ~~subject to rate regulation~~ shall not make effective any new or changed rate, charge, schedule, or regulation *until it has been approved by the commission and the commission has determined an effective date, except as provided in Iowa Code section 476.6, subsections 11 and 13.* ~~except by filing it with the commission at least thirty days prior to its effective date. The commission, for good cause shown, may allow changes in rates, charges, schedules or regulations to become effective on less than thirty days' notice.~~ *The utility may submit a proposed effective date with its tariff filing.*

ITEM 10. Amend paragraph **19.2(3)**"c" to read as follows:

c. All sheets except the title page shall have, in addition to the above-stated requirements the following further information:

(1) Name of utility under which shall be set forth the words "Filed with ISCC." If the utility is not a corporation, and a trade name is used, the name of the individual or partners must precede the trade name.

~~(This requirement does not apply to tariffs or amendments filed with the commission prior to April 1, 1982.)~~

(2) Issuing official and issue date.

(3) Effective date *(to be left blank by rate-regulated utilities).*

ITEM 11. Amend paragraph **19.2(3)**"d" to read as follows:

d. All sheets except the title page shall have the following form:

(Company Name) (Part identification)
Gas Tariff (This sheet identification)
Filed with ISCC (Canceled sheet identification, if any)

(Content of tariff)

Issued: (Date) Effective: ~~(Date)~~
Issued by: (Name, title) *(Proposed Effective Date:)*

The issued date is the date the tariff or the amended sheet content was adopted by the utility.

The effective date *will* ~~is to~~ be ~~designated by the utility and shall be not less than thirty days after the tariff or amendment is sent to the commission.~~ *left blank by rate-regulated utilities and shall be determined by the commission. The utility may propose an effective date.*

~~(This requirement does not apply to tariffs or amendments filed with the commission prior to April 1, 1982.)~~

ITEM 12. Amend paragraph **20.2(3)**"c" to read as follows:

c. All sheets except the title page shall have, in addition to the above-stated requirements, the following further information:

(1) Name of utility under which shall be set forth the words "Filed with ISCC." If the utility is not a corporation, and a trade name is used, the name of the individual or partners must precede the trade name.

~~(This requirement does not apply to tariffs or amendments filed with the commission prior to July 1, 1981.)~~

(2) Issuing official~~, title~~ and issue date.

(3) Effective date *(to be left blank by rate-regulated utilities).*

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ITEM 13. Amend paragraph **20.2(3)**"d" to read as follows:

d. All sheets except the title page shall have the following form:

(Company Name) (Part identification)
Electric Tariff (This sheet identification)
Filed with ISCC (Canceled sheet identification, if any)

(Content of tariff)

Issued: (Date) Effective: ~~(Date)~~
Issued by: (Name, title) *(Proposed Effective Date:)*

The issued date is the date the tariff or the amended sheet content was adopted by the utility.

The effective date *will* ~~is to~~ be ~~designated by the utility and shall be not less than thirty days after the tariff or amendment is sent to the commission~~ *left blank by rate-regulated utilities and shall be determined by the commission. The utility may propose an effective date.*

~~(This requirement does not apply to tariffs or amendments filed with the commission prior to July 1, 1981.)~~

ITEM 14. Amend paragraph **21.2(4)**"c" to read as follows:

c. All sheets except the title page shall have, in addition to the above-stated requirements, the following further information:

(1) Name of utility tariff under which shall be set forth the words "Filed with the ISCC." (See exhibit A) If the utility is not a corporation, and a trade name is used, the name of the individual or partners must precede the trade name.

(2) Issuing official and issue date.

(3) Effective date *(to be left blank by rate-regulated utilities).*

ITEM 15. Amend paragraph **22.2(4)**"d" to read as follows:

d. All sheets except the title page shall have, in addition to the above-stated requirements, the following further information:

(1) (Name of public utility) Telephone Tariff under which shall be set forth the words "Filed with I.S.C.C." If the utility is not a corporation, and a trade name is used, the name of the individual or partners must precede the trade name.

(2) Issuing official and issue date.

(3) Effective date *(to be left blank by rate-regulated utilities).*

[Filed 4/9/84, effective 5/30/84]
[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4615

CONSERVATION COMMISSION[290]

Pursuant to the authority of Iowa Code section 107.24, the State Conservation Commission at their regular meeting on April 4, 1984, adopted the following amendments to Chapter 70, "Conservation and Outdoor Recreation Employment for Senior Citizens," Iowa Administrative Code.

Notice of Intended Action was published in IAB on February 29, 1984, as **ARC 4485**.

These rules give the procedures for employment of persons sixty years of age or older in conservation and outdoor recreation related positions with the state conservation commission and county conservation boards.

No changes were made from the Notice of Intended Action.

These rules are intended to implement Iowa Code sections 601H.1 to 601H.4 and shall become effective June 1, 1984.

ITEM 1. Rule 290—70.1(601H) is amended to read as follows:

290—70.1(601H) Purpose and intent. The purpose of the conservation and outdoor recreation employment for senior citizens program, hereinafter referred to as CORESC, is the employment of ~~lower income~~ persons, sixty years of age or older, in conservation and outdoor recreation related positions with the state conservation commission or county conservation boards. The funds appropriated for this program shall be used for wage payments *(not to exceed the minimum wage established by federal law)*, including the employer's share of ~~any fringe benefit programs~~ *social security payments*, to persons employed under this program; *and* for any physical examinations that may be required of persons applying for employment; ~~and for any necessary travel expenses for a senior citizen employed under CORESC for the purpose of co-ordinating and evaluating the program.~~

ITEM 2. Rule 290—70.2(601H) becomes rule 290—70.3(601H) and a new rule 290—70.2(601H) is added which will read as follows:

290—70.2(601H) Fund distribution. Funds appropriated from the state general fund for the CORESC program shall be divided between the commission and the county conservation boards according to the state budget as approved by the general assembly.

ITEM 3. Subrule 70.3(4), (formerly subrule 70.2(4)), is amended to read as follows:

70.3(4) A person employed shall be paid *at least* the minimum wage as established by federal law.

ITEM 4. Subrule 70.3(5), (formerly subrule 70.2(5)), is amended to read as follows:

70.3(5) A person shall be employed for the purpose of doing a job in a ~~horticultural~~ *conservation or outdoor recreation* related field that is both meaningful and respectable.

ITEM 5. Rule **290—70.3(601H)** becomes rule **290—70.4(601H).**

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

ITEM 6. Subrule 70.4(2), (formerly subrule 70.3(2)), is amended to read as follows:

70.4(2) The submission shall include the number of participants and the total number of ~~man~~ *labor*-hours required for the proposed project.

ITEM 7. Subrule 70.4(5), (formerly subrule 70.3(5)), is deleted in its entirety and the following subrule is substituted in lieu thereof:

70.4(5) County conservation boards must spend an additional amount from board funds on a project which is at least equal to the amount expended on those items for which they may be reimbursed from the CORESC program which are: Wage payments to program participants (not to exceed the minimum wage established by federal law) including a board's share of social security payments made thereon and for any physical examinations that may be required of persons applying for employment. Additional items which may be included in a project to constitute a board's share of project costs are wage payments to participants in excess of the current minimum wage as established by federal law including a board's share of social security payments made thereon, direct supervisory costs, materials, and supplies used on a CORESC project and equipment use on a CORESC project. These matching expenditures shall be listed on the application.

ITEM 8. Rule 290—70.4(601H) becomes rule 290—70.5(601H) and is amended to read as follows:

290—70.5(601H) Project submission and approval. All proposed CORESC projects shall be submitted on forms provided by the state conservation commission. Each submission by a unit of the state conservation commission shall be signed by the appropriate division chief. Each submission by a county conservation board shall be signed by the board chairman or the board's executive officer. Submissions must be received at the State Conservation Commission, Wallace State Office Building, Des Moines, Iowa 50319, no later than May ~~31~~ *15* of the preceding fiscal year to be considered.

A review committee, composed of one person each from the divisions of fish and wildlife and lands and waters, appointed by the division chief, the county conservation board co-ordinator and a person appointed by the director of the commission on *the* aging, shall consider the project submissions. The review committee shall recommend for approval by the director, state conservation commission, those project submissions which best fulfill the intent of the program. *Those submissions that will provide continued employment for senior citizens already employed on existing projects will be given preference. The number of senior citizen participants requested on some submissions may be reduced by the review committee in order to achieve this goal.* Project submissions which specifically provide facilities or enhance outdoor opportunities for the handicapped or the elderly shall be given special consideration.

Funds will be allocated for each project as it is approved to the full amount appropriated for the program. If additional funds become available by reason of modifications or cancellations of approved projects, then projects held for lack of funds may be approved. Project submissions received after May ~~31~~ *15* of the preceding fiscal year will be considered only if available funds are not allocated for approved projects received before that date.

ITEM 9. Rule 290—70.5(601H) becomes rule 290—70.6(601H) and the first paragraph is amended to read as follows:

290—70.6(601H) Recruitment of program participants. Upon approval of a project, the director shall notify the commission on *the* aging and the Iowa ~~employment security commission~~ *department of job service.* These agencies, in turn, may notify any regional or local agency that might be in a position to refer prospective program participants to the project supervisor. Such referral agencies shall screen prospective participants for compliance with the lower income provisions set forth in ~~70.2(3)~~ *70.3(2)* to the best of their ability, but no formal test shall be required.

ITEM 10. Rule **290—70.6(601H)** becomes rule **290—70.7(601H).**

ITEM 11. Rule 290—70.7(601H) becomes rule 290—70.8(601H) and is amended to read as follows:

290—70.8(601H) Claims by program participants. Claims by program participants for ~~unemployment compensation and~~ workmen's compensation shall be paid by the state and by the county conservation boards in the same manner that similar claims are paid for other state and county conservation board employees. These costs shall not be used as matching expenditures for program funds by county conservation boards.

ITEM 12. Rule 290—70.9(601H) is amended to read as follows:

290—70.9(601H) Program evaluation and accounting. The project supervisor shall keep an accurate record of the accomplishments of program participants, the cost of materials and supplies used for the project, the amount of supervisory ~~man~~ *labor*-hours provided by the regular staff, and the comments and reactions of the program participants.

Upon completion of each project, or when requested by the state conservation commission, the county conservation boards shall provide an exact accounting ~~to the state conservation commission~~ *on project billing forms provided by the state conservation commission* of the actual program participant ~~man~~ *labor*-hours; *and* a detailed account of the matching expenditures from county conservation board funds;. *They shall also provide* a narrative of the accomplishments and problems relative to the project; and the comments, reactions, and recommendations of the program participants.

County conservation boards shall be reimbursed fifty percent of all eligible costs incurred on a CORESC project up to the amount of the approved grant. However, a reimbursement shall not exceed the amount expended by a county conservation board for wage payments to program participants (not to exceed the minimum wage established by federal law) including a county conservation board's share of social security payments made thereon, and for any physical examinations required of persons applying for employment.

The state conservation commission shall have the right to request any additional fiscal documents as may be necessary to support the final accounting. Reimbursement will be made to the county conservation boards upon satisfactory compliance with these requirements.

[Filed 4/5/84, effective 6/1/84]
[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4607

FAIR BOARD[430]

Pursuant to the authority of Iowa Code section 173.14(8) and chapter 17A, the Iowa State Fair Board adopts a rule to 430—Chapter 4 of the Iowa Administrative Code.

The rule is to change dismantling of concessions and exhibits to time stated in contract.

The rule adopted is the same as stated in Notice of Intended Action, published February 15, 1984 in Iowa Administrative Bulletin, Volume VI, Number 17 as **ARC 4456**.

The Iowa State Fair Board approved this change at their regular meeting on March 28, 1984.

This rule will become effective May 30, 1984.

Rescind rule 4.17(173) and insert in lieu thereof the following:

430—4.17(173) Dismantling. Exhibits or concessions will be dismantled or removed from the space at the time stated in the contract.

[Filed 3/30/84, effective 5/30/84]
[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4617

HEALTH DEPARTMENT[470]

Pursuant to the authority of Iowa Code sections 135.11(12) and 144.3, the Iowa State Department of Health hereby adopts the following amendment to Chapter 96, "Vital Records," Iowa Administrative Code.

This rule was adopted by the Iowa State Board of Health at the regularly scheduled meeting of March 14, 1984.

Notice of Intended Action was published in IAB volume VI, number 13, December 21, 1983 as **ARC 4330**.

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

This rule will become effective on July 11, 1984.

This rule is intended to implement Iowa Code section 144.45.

Rule **96.4(144)** is amended by adding as unnumbered paragraph 3 the following:

When an individual is in possession of a previously issued certified copy of a vital record and the original record is subsequently changed or amended, the individual may request a certified copy of the changed record without the fee for issuance charged if the uncorrected certified copy is relinquished to the department.

[Filed 4/6/84, effective 7/11/84]
[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4627

HEALTH DEPARTMENT[470]

BOARD OF PHYSICAL AND OCCUPATIONAL THERAPY EXAMINERS

Pursuant to the authority of Iowa Code sections 147.29 and 147.76, the Board of Physical and Occupational Therapy Examiners hereby amends chapters 137 and 138 of the Iowa Administrative Code. The rules were adopted April 3, 1984.

Notice of Intended Action regarding the proposed action was published in the Iowa Administrative Bulletin January 4, 1984 as **ARC 4361**.

The rules require applicants to submit to the Board an official transcript of academic courses.

The rules are the same as published under Notice of Intended Action.

The rules are intended to implement Iowa Code section 147.29.

The rules shall become effective May 31, 1984.

ITEM 1. Rule 470—137.2(147) is amended by adding the following new subrule:

137.2(8) Each applicant shall submit to the board an official transcript of academic courses.

ITEM 2. Rule 470—138.201(148B) is amended by adding the following new subrule:

138.201(6) Each applicant shall submit to the board an official transcript of academic courses.

[Filed 4/6/84, effective 5/31/84]
[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4609

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 234.6, rules of the Department of Human Services appearing in the IAC relating to the food stamp program (chapter 65) are hereby amended. The Council on Human Services adopted these rules March 26, 1984.

Notice of Intended Action regarding these rules was published October 12, 1983 as **ARC 4143** and December 7, 1983, as **ARC 4299**. The rules were also adopted and implemented under emergency provisions October 12, 1983, as **ARC 4142**.

On July 5, 1983 the department received notice that federal regulations released June 21, 1983 must be in effect by October 19, 1983. These regulations require that the department limit household's options of using either a standard utility allowance or actual utility expenses at time of certification and once each twelve months thereafter when an annual standard is used. The current state procedure allows the households to determine monthly which allowance to use, either the standard component utility allowance or actual expenses.

HUMAN SERVICES DEPARTMENT[498] *(cont'd)*

The department felt obligated to re-evaluate the use of the annual component standards based on household size because of this reduction in the household's options.

The methodology and options previously in use included both a component standard and a breakdown by household size. Both of these factors contributed to shelter cost errors being the second highest cause of case errors for the quality control review period of October 1982 through March 1983. They were also contributing factors on a significant number of cases where another cause was the primary error. Most of these were client errors.

The options elected by the department were based on statewide information available from the Iowa Commerce Commission and the Iowa Energy Policy Council using heating, cooling, cooking and electricity expenses for the entire state. The information provided by these agencies was based on statistically valid surveys of Iowa utility users receiving service from all the utility companies that serve the state. The department also made a survey of other states' practices.

Survey Information

State	Single/Component Standard Allowance	Breakdown By Household Size	Amount of Standard (or range)
MO	Single	No	$115
KS	Single	No	$125
IL	Single	No	$150
*NE	Single	Yes	$90Min.- $141Max.
**SD	Single	No	$189
IN	Single	Yes	$82Min.- $145Max.
OH	Single	No	$156

* Nebraska is currently in process of reviewing standard and options.
** South Dakota - Amount is not comparable due to geographic factors and most areas do not have access to natural gas.

The options available to the agency with using a standard allowance include:

Choosing an annual or seasonal standard. The department elected an annual standard so households with heating and/or cooling expenses can elect the standard annually without the hardship of seasonal choice and benefit adjustment. The geographic nature of the state does not contain the natural structures that cause substantial variations in utility expenses. Therefore, no variations are necessary for this reason.

Choosing a single or component standard. The department elected to use a single standard allowance so households will have an easier way of determining if it is more advantageous for them to choose the standard or verify annual actual expenses. A component standard requires households to compare annual individual utility expense to a different standard amount for each expense. Such a comparison process can be difficult for even the most trained and educated individual.

Choosing to require households that share utility expenses with others in their residence to provide actual expense if the household cannot determine their prorated share of the utility expense. The department elected to require the household to provide actual expenses if they are not responsible for a specific prorated share of the utility expenses of the residence.

The methodology used to establish the standard allowance previously included a range in the standard due to household size. From the information provided by the Iowa Commerce Commission and the Iowa Energy Policy Council, household size is not a determinate factor in the amount of utility expense for a household. The survey also indicates agencies in other states have arrived at the same conclusion.

The department elected to eliminate household size in determining the standard allowance. The department used the information available to update the standard allowance and reflect for all households as accurately as possible, the annual average cost of major utility expenses statewide. By simplifying the standard allowance, both the client and workers can understand and correctly report or act on changes in utility expenses. The annual standard allowance for all households is $145.00, based on the following data.

Single Standard Utility Allowance

The following calculations are based on 1982 adjusted cost per unit updated to include a 10% variance and expected 1983 increase of 20% for heating and 15% for electric.

Heating
(including some cooking) 66.00 Annual usage 120 MCFS

$$= 660 + 20\% (660)$$
$$= \frac{792}{12}$$

Air-conditioning and Electric
(including some cooking) 51.65 Annual usage 7500

KW hrs. $= 539+15\% (539)$
$$= \frac{619.85}{12}$$

Water/Sewer	11.81 ($35.45 per quarter/3)
Garbage/Trash	4.91 ($14.75 per quarter/3)
Telephone component	11.00
	145.37

The single standard utility allowance for households with heating and/or cooling costs is $145.00 per month.

This rule is identical to that placed under notice.

This rule is intended to implement Iowa Code section 234.12.

This rule shall be effective June 1, 1984.

ITEM 1. Rule 498—65.8(234) is rescinded and the following inserted in lieu thereof:

498—65.8(234) Utility allowance.

65.8(1) Standard allowance. The standard allowance is a single standard utility of $145.00.

65.8(2) Heating expense. Heating expense is the cost of fuel for the primary heating service normally used by the household.

65.8(3) Telephone standard. When a household is receiving telephone service for which it is required to pay and the household is not entitled to the single standard allowance, a standard allowance of $11.00 shall be allowed.

ITEM 2. Rule **498—65.14(234)** is deleted and reserved.

[Filed 4/2/84, effective 6/1/84]

[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4610

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code sections 217.6 and 234.6, rules of the Department of Human Services appearing in the IAC relating to general provisions for social services (chapter 130) are hereby amended. The Council on Human Services adopted this rule March 26, 1984.

Notice of Intended Action regarding this rule was published in the IAB February 1, 1984, as **ARC 4434**.

This amendment removes, from this chapter, policy and procedures relating to notifying clients of adverse actions. Policies on notification are found in 498—chapter 7 and the current rule is unnecessary duplication.

This rule is identical to that published under notice.

This rule is intended to implement Iowa Code section 234.6.

This rule shall become effective June 1, 1984.

Subrule **130.5(4)** is rescinded and reserved.

[Filed 4/2/84, effective 6/1/84]
[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4611

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 217.6 and chapter 600, rules of the Department of Human Services appearing in the IAC relating to adoption services (chapter 200) are hereby amended.

The Council on Human Services adopted these rules March 26, 1984. Notice of Intended Action regarding these rules was published in IAB February 15, 1984, as **ARC 4457**.

These rules change the provision that foster parents be given first consideration in adopting a child in their care by removing the word "first." This has been interpreted to mean the only consideration and there are many other factors which must be considered when placing a child for adoption. The best interests for each child must determine the most appropriate plan for that child. Although the relationship established between a child and the foster parents is and will continue to be important in planning for the child, other factors must also be considered. Such things as placing a child with siblings, the ability of the foster parents to care for a child until adulthood and the possibility of the biological family interfering with the placement could indicate that another placement is better for the child. The placement decision must weigh the attachment of the child and foster parents with the other factors to determine the best possible permanent placement for the child.

These rules also remove language that implied that adoptive families are always two-parent families.

These rules were changed to add the biological parent(s) or the biological parent's(s') representative to the list of persons making requests for information from adoption records. The numbers of these rules were changed to correspond to the new chapter number.

These rules are intended to implement Iowa Code sections 600.1 and 600.16.

These rules shall become effective June 1, 1984.

ITEM 1. Rule 498—200.2(600) is rescinded and the following inserted in lieu thereof:

498—200.2(600) Foster parent(s). A foster parent(s) shall be given consideration for selection as the adoptive placement for a child in the foster parent's(s') care who is legally free for adoption if:

200.2(1) The child is hard to place, or

200.2(2) The child has been in the foster parent's(s') care one year or longer.

This rule is intended to implement Iowa Code section 600.1.

ITEM 2. Subrules 200.13(1) and 200.13(2) are amended to read as follows:

200.13(1) Requests for information from adoption records of the department shall be made in writing to the bureau of ~~children's~~ *adult, children and family* services or to local offices. The request shall contain as much of the following information as the individual can provide:

a. Names of the adopted person and adoptive parent*(s)*.

b. Date and place of adoption.

c. Birth date of the adopted person.

d. Name of the adopted person prior to adoption.

e. Whether the adopted person was a resident of the Annie Wittenmyer home (Iowa soldier's and sailor's home).

200.13(2) Requests for information from adoption records shall be signed by the person making the request, and shall indicate whether the individual making the request is:

a. The adopted person, who is now an adult, or

b. The adoptive parent *(s)*, or

c. A legal representative of either the adopted person or the adoptive parent*(s)*~~.~~*, or*

d. The biological parent(s) or the biological parent's(s') legal representative.

[Filed 4/2/84, effective 6/1/84]
[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4612

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code sections 217.6 and 234.6, rules of the Department of Human Services appearing in the IAC relating to foster care services (chapter 202) are hereby amended. The Council on Human Services adopted these rules March 26, 1984.

Notice of Intended Action regarding these rules was published in the IAB February 1, 1984, as **ARC 4435**.

These rules are being changed to place additional emphasis on reuniting families and to reflect provisions in the juvenile justice law, Iowa Code chapter 232. Rules are being expanded to include more reasons for placement of a child in other than the district where the child lives. Both out-of-district and out-of-state placements could be made when they are needed to help reunite the child and the natural parents and an out-of-state placement could be made when an adoptive family is eligible for foster care until the adoption is final.

Previous subrule 202.8(2) specified conditions for the department to assume responsibility when a court orders an out-of-state placement. Since the court now only prescribes the type of placement and the law specifies when the department has responsibility, this subrule has been eliminated.

The numbers of these rules were changed to correspond to the new chapter number. The word "natural" was removed from 202.7(1) and 202.8(1)"d." The word "when" was placed in 202.7(1) for clarification.

The noticed rules were changed to reinstitute central office approval of placements in out-of-state group facilities.

These rules are intended to implement Iowa Code section 234.6(6)"b."

These rules shall become effective June 1, 1984.

ITEM 1. Subrule 202.7(1) is amended to read as follows:

202.7(1) When the department makes a placement of a child in the foster care system out of the district in which the child resides, such placement shall occur only when there is no appropriate placement within the district, *when the placement is necessary to facilitate reunification of the child with the parents,* or when an out-of-district agency is closer to the community where the child resides than an in-district agency offering the same services.

ITEM 2. Rule 498—202.8(234) is rescinded and the following inserted in lieu thereof:

498—202.8(234) Out-of-state placements.

202.8(1) The department shall make an out-of-state foster family care placement only with the approval of the district administrator. Approval shall be granted only when the placement will not interfere with the goals of the child's case plan and when one of the following conditions exists:

a. The foster family with whom the child is placed is moving out of state.

b. An out-of-state family having previous knowledge of the child desires to provide foster care to the child.

c. An out-of-state family is approved to adopt the child under subsidy and is eligible to receive maintenance payments until the adoption is final.

d. An out-of-state placement is necessary to facilitate reunification of the child with the parents.

202.8(2) The department shall make a placement in an out-of-state group facility only with the approval of the district administrator and the director of the division of social services or designee. Approval shall be granted only when the placement will not interfere with the goals of the child's case plan and when one of the following conditions exists:

a. An out-of-state placement is necessary to facilitate reunification of the child with the parents.

b. The out-of-state facility is closer to the community where the child resides than in-state facilities offering the same services.

c. The out-of-state facility offers a more specialized program than can be obtained in state.

202.8(3) All out-of-state placements shall be made pursuant to interstate compact procedures.

This rule is intended to implement Iowa Code section 234.6(6)"b."

[Filed 4/2/84, effective 6/1/84]
[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4613

INSURANCE DEPARTMENT[510]

Pursuant to the authority of Iowa Code section 505.8, the Iowa Department of Insurance hereby adopts an amendment to 510—Chapter 5, "Regulation of Insurers—General Provisions," Iowa Administrative Code.

Notice of Intended Action was published in IAB February 29, 1984, as **ARC 4476**.

Presently, an insurance company, after receipt of an examination report on its financial condition conducted by the department, has ten days in which to file a request for a hearing upon that report. Due to mail delays and the frequent complexity of examination reports, ten days does not give a company adequate time in which to decide whether to request a hearing. Accordingly, this rule expands the period of time in which to request a hearing upon an examination report to twenty days.

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

This rule will become effective May 30, 1984.

Amend 510—5.1(507) to read as follows:

510—5.1(507) Examination reports. Upon the completion of an examination a copy of the report will be furnished the company, asssociation or society examined, whereupon the company, association or society will have ~~ten~~ *twenty* days in which to determine whether or not it will demand a hearing before the commissioner of insurance. If a hearing is desired, then and in that event the company, association or society shall, within said ~~ten~~ *twenty* days file with the commissioner of insurance a written application, attaching thereto the specific grounds

upon which a hearing is desired. Within a reasonable time after the receipt of said application, the commissioner will fix a date for the hearing and notify the company, association or society thereof. Upon the completion of the hearing, or as soon as convenient thereafter, the commissioner shall render ~~his~~ *the commissioner's* decision, either orally or in writing at ~~his~~ *the commissioner's* discretion and file said report as part of the records of ~~his~~ *the* department.

This rule is intended to implement Iowa Code sections 505.8 and 507.2.

[Filed 4/4/84, effective 5/30/84]
[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4629

PLANNING AND PROGRAMMING[630]

Pursuant to the authority of Iowa Code section 7A.47, the Office for Planning and Programming (OPP) hereby adopts the revised Chapter 25 "Iowa Community Development Loan Program" (ICDL).

Notice of Intended Action was published in the IAB on February 29, 1984 as **ARC 4502**. This chapter sets forth the guidelines and procedures necessary to administer the ICDL program.

This chapter is identical to that published under notice.

The chapter is intended to implement Iowa Code sections 7A.41 through 7A.49, as established by the 1983 Iowa Acts, chapter 207.

These rules shall become effective May 30, 1984, at which time chapter 25, effective July 1, 1983 (ARC 3903) on an emergency basis, is rescinded.

Chapter 25, "Iowa Community Development Loan Program" is hereby adopted.

CHAPTER 25
IOWA COMMUNITY DEVELOPMENT LOAN PROGRAM

630—25.1(7A) Purpose. The purpose of the Iowa community development loan program is to aid Iowa communities in improving and developing adequate public works and facilities needed to support local economic development projects by providing a revolving loan fund.

630—25.2(7A) Program description. Any city in the state of Iowa is eligible to apply for and receive loans through the program. The program shall operate as a revolving loan fund and be administered by the office for planning and programming. Of the moneys appropriated to the revolving loan fund, twenty-five percent of the moneys shall be designated for cities with a population of less than five thousand, fifty percent of the moneys shall be designated for cities with a population of five thousand or more and twenty-five percent of the moneys shall be designated for any city. Cities shall make application directly to the office for planning and programming, which will approve or disapprove such applications based on criteria described in these rules. Loan agreements may be entered into with successful applicants, specifying the terms of the loan. As repayments are made in amounts sufficient to generate additional loans, the office for planning and programming may make said additional loans.

630—25.3(7A) Waiver. The office for planning and programming may waive or vary any procedural provision of these rules in order to allow recipients to conform to requirements of federal law necessary to secure federal assistance for projects for which a community development loan is sought, provided the waiver or variance does not conflict with the Act.

630—25.4(7A) Definitions.

25.4(1) "Act" means 1983 Iowa Acts, chapter 207, division VIII.

25.4(2) "Administrative costs" means reasonable costs and charges associated with the planning and execution of the proposed project as listed in subrule 25.6(5). Administrative costs shall not include normal and recurring overhead or salary costs of city employees.

25.4(3) "Applicant" means a city which submits an application to the office for planning and programming for loan funds through the Iowa community development loan program.

25.4(4) "Application" means a request for Iowa community development loan funds that complies with the requirements of rule 25.5(7A).

25.4(5) "Cost" means all the costs of the project as defined in the Act.

25.4(6) "Eligible activity" means public works and facilities as defined in the Act.

25.4(7) "Iowa community development loan program" means the program authorized by the Act.

25.4(8) "Local cash resources" means local cash from whatever source except state and federal grants. Examples of local cash include state and federal shared revenues and loans exclusive of loans under the Iowa community development loan program.

25.4(9) "Proposed project" means one or more eligible activities for which a city has submitted a single application for loan funds.

25.4(10) "Recipient" shall mean any applicant receiving loan funds under this program.

630—25.5(7A) Applications.

25.5(1) Application procedure. Applicants shall submit applications to the Iowa Community Development Loan Program, Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319. Applications shall be in the form prescribed by the Office for Planning and Programming (OPP). All applications submitted shall be rated by OPP on a competitive basis and loans shall be made to the highest ranking applicants to the extent funds are available. An applicant may submit more than one application, but may receive only one loan in any one funding cycle. Additional loans shall be periodically awarded by OPP. The additional loans shall be made from funds not previously awarded and from loan repayments received from prior recipients of loans.

25.5(2) Contents of application. Each application shall contain the following information:

a. A description of the proposed project including a time schedule for implementing the proposed project.

b. The amount of loan requested and proposed repayment schedule and source of repayment.

c. The amount of city, private, other local cash resources or combination thereof which are committed to the project.

d. An assurance signed by the mayor and properly attested stating that local cash resources in an amount not less than fifty percent of the amount of the loan request are committed to the project.

e. Evidence relating to the need for the loan, including a detailed description showing that other sources of assistance, including the sale of bonds, are insufficient, unavailable, or that use of other sources of assistance impose an excessive hardship upon the applicant.

f. A description of how the proposed project will retain, promote or expand business and industry, including the expected number of new jobs that will be created.

g. Project budget.

h. Such other information as may be required to sufficiently explain the proposed project and to document how the proposed project will address the objectives of the loan program.

25.5(3) Evaluation of the application will be based on the application contents and other relevant evidence presented with respect to the information described in subrule 25.5(2), paragraphs "a" to "h."

25.5(4) Review and rating of applications. The office for planning and programming shall conduct a preliminary review of each application to determine that the proposed project is consistent with the program purpose of enhancing local economic development, that it is an eligible activity, that the project cannot be completed without the assistance of the requested loan and that funds shall be matched with local cash resources equal to not less than fifty percent of the amount loaned. Applications which do not meet these criteria will not be considered for funding. Applications which meet the minimum criteria will be rated on the following factors to determine order of funding:

a. The degree to which the proposed project is needed by the community for economic development. A maximum of 100 points may be awarded.

b. The degree of economic impact the project will have as measured by the number of jobs created or retained and other appropriate factors. A maximum of 100 points may be awarded.

c. The degree to which the proposed project will create job opportunities for women and minorities. A maximum of 25 points may be awarded.

d. The most recent twelve-month unemployment rate for the applicant city or for the county in which the applicant city is situated, based upon data available from the Iowa job service department. A maximum of 25 points may be awarded.

e. The percentage of total project funds from local cash resources. A maximum of 25 points may be awarded.

f. The proposed payback schedule and the security of loan payback. A maximum of 25 points may be awarded.

630—25.6(7A) Administration of loans.

25.6(1) Loan agreement. Upon approval of each application, the office for planning and programming shall prepare a loan agreement, which shall include the terms and conditions of the loan, including the loan amount, proposed project, local and private contributions, origination fee, and terms of repayment. The office for planning and programming may, at its discretion, negotiate with the applicant concerning certain terms and conditions, but the final determination concerning such terms and conditions shall be decided by the office for planning and programming. This loan agreement must be executed by the director of the office for planning and programming or the director's designee and the mayor or other duly authorized official of the recipient city. All loan proceeds shall be disbursed after the loan agreement has been executed and as close to the start of the project as practical.

25.6(2) Loan amount and interest. The maximum amount of any loan under this program shall be two hundred fifty thousand dollars. All loans shall be repaid in equal annual installments with the first installment due no later than five years after execution of the loan agreement. All loans shall be interest free.

25.6(3) Loan fee. An origination fee of six-tenths of one percent of the loan amount shall be charged to each recipient of loan funds. Said fee shall be paid to the state office for planning and programming from local funds prior to receipt of loan funds.

25.6(4) Interest earned. Any interest earned by the recipient on loan proceeds shall be contributed to the program.

25.6(5) Administrative costs. Not more than ten percent of the loan proceeds shall be used for administrative costs. Administrative costs include technical services, reports, notices, consequential damages or costs, publication, and printing.

25.6(6) Reporting and audit requirements. The office for planning and programming may require loan recipients to submit quarterly progress reports on the status of the project, monthly expenditure reports, and such other documents as may be required in order to demonstrate compliance with the Act and these rules. All recipients shall have audited project expenditures including loan proceeds and local cash match. This audit may be part of the next regular city audit following project completion and shall be paid for by the city. Any city that is not regularly audited shall conduct an audit on the expenditure of the loan proceeds and local match within sixty days after the project is completed and said costs may be included as local cash match to the extent they may be accurately estimated at the time of submission of the loan application. Audits shall be submitted to OPP within thirty days after completion.

630—25.7(7A) Timing of loans. In order to promote sound administration and effectuate the intent of the Act, the office for planning and programming may set one or more deadlines for loan applications, enter into loan agreement, and make loans of some or all of the funds appropriated under the Act.

630—25.8(7A) Annual report. The office for planning and programming shall submit to the governor and the general assembly an annual report setting forth the details of the operation of the program. The report shall cover the operations of the program on a fiscal year basis, from July 1 through June 30.

630—25.9(7A) Prior costs. Costs of any kind, related to any project, that were incurred before execution of the loan agreement shall not be included as local cash resources, and loan proceeds shall not be used to pay for or reimburse such costs.

630—25.10(7A) Cost variations. In the event project cost is less than the cost specified in the approved project budget, then for the amount of the difference, loan funds shall be returned to OPP in the same ratio as loan funds to project cost in the originally approved budget.

In the event project cost exceeds the cost specified in the approved budget the city may apply for additional loan amounts up to the maximum amount. OPP shall review the application for additional loan amounts in accord with rule 25.5(7A).

630—25.11(7A) Ineligible activity. No loans shall be made for projects intended to facilitate the relocation of industrial or commercial plants or facilities from one Iowa city to another unless OPP finds that good cause exists for the relocation or unless OPP finds that such relocation does not significantly and adversely affect the level of unemployment or the economic base of the city from which such industrial or commercial plant or facility is to be relocated.

These rules are intended to implement Iowa Code sections 7A.41 to 7A.49.

[Filed 4/6/84, effective 5/30/84]

[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4621

PUBLIC SAFETY DEPARTMENT[680]

Pursuant to authority of the Iowa Code chapters 100, 101 and 80, the Iowa Department of Public Safety, State Fire Marshal Division hereby adopts amendments to Chapter 5, "Fire Marshal," Iowa Administrative Code.

Notice of Intended Action was published in IAB, February 29, 1984, as **ARC 4503**.

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

These rules will become effective on May 31, 1984.

The following amendments are adopted:

ITEM 1. Rule 680—5.100(100) Exits and escapes, shall be amended by adding the following new subrule:

5.100(6) *The requirements of subrule 5.52(6) for automatic sprinkler systems shall not apply to buildings constructed prior to the effective date of these rules unless required by specific occupancies enforced by the state fire marshal under the state fire marshal's jurisdiction.*

ITEM 2. Subrule 5.305(1), paragraphs "a" and "b." shall be amended as follows:

5.305(1) Self-service locations.

a. Public self-service stations dispensing Class I liquids shall have an attendant on duty within 60 feet of the dispensing units, measured from the attendant's main access door. *Facilities constructed or remodeled after the effective date of these rules may increase the distance of the attendant on duty to within 100 feet of the dispensing units provided approved automatic and manual fire extinguishment is installed at the dispensers. The state fire marshal may grant exceptions to these rules but only when it is clearly evident that reasonable and equivalent safety is thereby secured.*

b. Private locations. Dispensing of *flammable or combustible* liquids at private locations, where the dispensing equipment is not open to the public, does not require an attendant or supervisor. *Dispensing locations installed after the effective date of these rules must be equipped with approved automatic and manual fire extinguishment at the dispensers.* Such private locations may include card or key controlled dispensers.

ITEM 3. Amend chapter 5 by adding the following new rules:

680—5.40(17A, 80, 100) Portable fire extinguishers—generally. *The standard for "Portable Fire Extinguishers" No. 10, 1981 edition of the National Fire Protection Association together with its reference to other specific standards referred to and contained within the volumes of the National Fire Code, 1983 edition of the National Fire Protection Association published in 1983 shall be the rules governing portable fire extinguishers in the state of Iowa.*

5.40(1) *Portable halogenated fire extinguishers. Approved portable halogenated fire extinguishers may be permitted for use in electrical, telephone, or computer equipment areas in public buildings referred to in Iowa Code section 100.35.*

5.40(2) Reserved.

680—5.41(17A, 80, 100) "Halon fire extinguishing systems"— generally. *The standards on "Halon 1301 Fire Extinguishing Systems" No. 12A, 1980 edition of the National Fire Protection Association and "Halon 1211 Fire Extinguishing Systems," No. 12B, 1980 edition of the National Fire Protection Association together with its reference to other specific standards referred to and contained within the volumes of National Fire Code, 1983 edition of the National Fire Protection Association published in 1983 shall be the rules governing Halon fire extinguishing systems in the state of Iowa.*

[Filed 4/6/84, effective 5/31/84]

[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4625

REVENUE DEPARTMENT[730]

Pursuant to the authority of Iowa Code section 421.14, the Iowa Department of Revenue hereby adopts amendments to Chapter 76, "Determination of Value of Railroad Companies," Iowa Administrative Code.

Notice of Intended Action was published in IAB, volume VI, number 18 on February 29, 1984, as ARC 4511.

These rules are filed in order to implement Iowa Code chapter 434. The existing chapter 76 rules are rescinded and replaced by these chapter 76 rules.

On July 5, 1983, the Department of Revenue received a request for a Concise Statement on 730—chapter 76 of the administrative rules pursuant to Iowa Code section 17A.4(1)"b."

At the time of receipt of this Concise Statement request, the Department of Revenue was extensively involved in preparation for two major trials. The first was the appeal of the pipeline cases before the Iowa State Board of Tax Review. The consolidated case involved approximately 1.5 million dollars in revenue collections. This case also challenged the Department's entire valuation methods for determining the actual value of utility property in Iowa. The second case, before the United States District Court, involved the equalization and valuation of the Burlington Northern Railroad Company. This case addressed approximately 3.5 million dollars in pending revenue collections and was extremely time sensitive. The valuation portion of this case also involved the Department's entire railroad valuation procedures.

With limited resources, particularly experienced legal counsel and expert valuation personnel, the Department was greatly hindered in formulating a timely response to the Concise Statement request. In view of the length of time that has elapsed since the Concise Statement was requested, and since the Concise Statement in question must, by its very nature, address many controversial, complex and highly technical issues, the Department feels that chapter 76 rules should be rescinded and refiled.

These rules are identical to those published under Notice of Intended Action. The amendments will become effective May 30, 1984, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

None of the amendments in this chapter will necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

These rules are intended to implement Iowa Code chapter 434.

The following rules are adopted.

Chapter 76 rules are rescinded and the following inserted in lieu thereof:

CHAPTER 76
DETERMINATION OF VALUE OF RAILROAD COMPANIES

730—76.1(434) Definition of terms.

76.1(1) The term "railroad" shall mean and include all individuals or corporations engaged in the operating of a railway in this state and subject to valuation pursuant to Iowa Code chapter 434.

76.1(2) The term "unit value" or "unit market value" shall mean the market value arrived at by using the appraisal method of valuing an entire operating property, considered as a whole and capable of performing the function for which it was created, such as (by way of illustration and not limitation) transporting freight over rail.

76.1(3) The term "operating property" shall mean all property owned by or leased to a railroad company, not otherwise taxed separately or made nontaxable by law, which is necessary to and without which the railroad could not perform the activities for which the railroad is formed, such as (by way of illustration and not limitation) transporting freight over rail. With regard to property whose identity as "operating" or "nonoperating" property is not clearly ascertainable, the property shall be considered operating property if the railroad could not reasonably be expected to perform the referenced activities in the absence of such property.

76.1(4) The term "nonoperating property" shall mean all property owned by a railroad not defined by subrule 76.1(3) as "operating property."

76.1(5) The term "comparable sales" shall mean actual sales transactions, between willing buyers and willing sellers, neither being under any compulsion to buy or sell, of property which is similar in purpose, function and design to the property to which the comparison is being made. Where the determination of a unit value is being made, the sale of a portion of a unit which is nominally similar in purpose and function to the unit being valued shall not be considered a comparable sale, absent proof by evidence other than the terms of the sale itself, that the sales price was based on some unit of measurement which is common both to the property sold and the property being valued and which is not affected by the fact that less than the entire unit is being sold, such as (by way of illustration and not limitation) (1) the price per mile of track (2) price per square foot of the property.

76.1(6) The term "income approach to unit value" shall mean the estimate of unit market value obtained by dividing an appropriate income stream by an appropriate and compatible discount rate.

76.1(7) The term "stock and debt approach to unit value" shall mean the estimate of unit market value determined by combining the estimate of market value of the stock, debt, current liabilities, other liabilities, including leases, and deferred credits associated with the operating property of a railroad company.

76.1(8) The term "cost approach to unit value" shall mean the estimate of value determined by combining the original cost less a depreciation allowance for the operating property of a railroad company.

76.1(9) The term "respondent" shall include the railroad company whose property is to be valued.

76.1(10) The term "leased assets" shall mean both operational and capital leases.

76.1(11) The term "original cost" shall mean the actual cost of the property to its present owner, not the first cost at the time it was originally constructed and placed in service.

This rule is intended to implement Iowa Code chapter 434.

730—76.2(434) Filing of annual reports.

76.2(1) Annual reports required to be filed by the reporting railroad company shall be on forms prescribed

and supplied by the department. It shall be the responsibility of the railroad company to obtain the forms supplied by the department.

76.2(2) Additional schedules or attachments submitted by respondent shall be identified as to subject matter, shall be typed on paper of similar size to that used in the annual report, and all data contained in the schedules or attachments shall be adequately explained and documented as to source. When such additional schedules or attachments are submitted, they shall be considered part of the annual report.

76.2(3) The director may require the filing of additional information if deemed necessary. The request for additional information shall be answered completely and in accordance with instructions therein specified. Additional information required shall be considered part of the annual report.

This rule is intended to implement Iowa Code chapter 434.

730—76.3(434) Comparable sales. Sale prices of comparable property in normal transactions shall be taken into consideration in arriving at its market value. In the event comparable sales are not available, the market value of operating property shall be determined by utilizing the three recognized unit approaches to value (i.e., stock and debt approach, income capitalization approach and the cost approach).

This rule is intended to implement Iowa Code section 434.15.

730—76.4(434) Stock and debt approach to unit value.

76.4(1) The stock and debt approach to unit value estimates the market value of the operating property by combining the market values of the common stock, preferred stock, debt, current liabilities, other liabilities, leases, and deferred credits associated with the operating property of the railroad company, on the basis that the market value of these items may be used as a surrogate for the market value of the operating property itself.

76.4(2) The market value of the long-term debt associated with the operating property shall be calculated by first determining a ratio, based on book values, whose numerator shall be the operating property and whose denominator shall be the total property of the railroad company. This ratio shall then be multiplied times the gross market value of the long-term debt and the result obtained shall be the market value of the long-term debt associated with the operating property.

The market value of publicly traded debt shall be determined by utilizing an average of the monthly high and low value of the debt for the twelve months preceding the valuation date. The values to be utilized shall be obtained by reference to any acceptable reporter of the market on which the securities are traded. If all or some of the securities are not publicly traded, the value of the securities shall be determined by appropriate comparable securities. The comparable securities shall be publicly traded and shall have a similar maturity date and coupon rate, as well as risk indicators similar to the untraded security. In each instance, the railroad company shall provide the department a statement of the market value of all securities and an explanation of how that market value was derived, including the identity of any comparable securities utilized. In the event that any utility is unable to utilize the foregoing rule to value its securities, it may provide the department with its own determination of the fair market value of its untraded securities together with a complete explanation of why the foregoing rule was not used and a detailed explanation of the method used.

76.4(3) The market value of the preferred stock associated with the operating property shall be calculated by first determining a ratio, based on book values, whose numerator shall be the operating property and whose denominator shall be the total property of the railroad company. This ratio shall then be multiplied times the gross market value of the preferred stock and the result obtained shall be the market value of the preferred stock associated with the operating property.

The market value of publicly traded shares of preferred stock shall be determined by utilizing an average of the monthly high and low value of the preferred stock for the twelve months preceding the valuation date. The values to be utilized shall be obtained by reference to any acceptable reporter of the market on which the preferred stock is traded. If all or some series of the preferred stock are not publicly traded, the value of such preferred stock shall be determined by appropriate comparable securities. The comparable securities shall be publicly traded and shall have the same or a similar dividend rate, as well as risk indicators similar to the untraded preferred stock. In each instance, the railroad company shall provide the department a statement of the market value of its preferred stock and explanation of how that market value was derived, including the identity of any comparable securities utilized. In the event that any railroad company is unable to utilize the foregoing rule to value its securities, it may provide the department with its own determination of the fair market value of its untraded securities together with a complete explanation of why the foregoing rule was not used and a detailed explanation of the method used.

76.4(4) The market value of the common equity of a railroad company associated with the company's operating property shall be determined by capitalizing the income available to the common equity holders from the operating property, by an appropriate and compatible common equity return rate, all of which shall be determined as follows:

a. The calculation of the income to be capitalized shall begin with the railroad company's net income after taxes but before interest charges and preferred dividends for the twelve-month period preceding the valuation date. The net income after taxes, but before interest charges and preferred dividends shall be determined from the railroad company's regulatory report, or if no regulatory report is filed, from the audited financial statements of the railroad company. In the event the railroad company has no income or has a negative income, an alternative method shall be used to determine the market value of the common equity.

b. The income determined in 76.4(4)"a" shall be adjusted by deducting any net income included therein received from nonoperating property and, conversely, the referenced income shall be increased to account for any net loss created by any nonoperating property.

c. The income determined in 76.4(4)"a" shall be further reduced by that portion of the preferred dividends serviced by the income generated by the operating property, which shall be calculated by multiplying the total preferred dividend requirement by the ratio determined in 76.4(3).

d. The income determined in 76.4(4)"a" shall be further reduced by that portion of the debt service

provided by the income generated by the operating property, which shall be calculated by multiplying the total debt service by the ratio determined in 76.4(2).

e. If there are any other interest payments required, a determination shall be made as to whether the underlying obligation was used to purchase operating or nonoperating assets. If no direct determination can be made, the interest payment shall be allocated in the same fashion as the debt service and preferred dividends. If the underlying obligation can be shown to be associated particularly, or in some specific proportion, to operating or nonoperating property, the interest payment shall be allocated either entirely or in such proportion to operating or nonoperating property. It shall be the obligation of the railroad company, in its reports to the department, to identify and detail any interest payments which are particularly associated with operating or nonoperating property, and if the railroad company fails to do so, the department may determine that all such payments may be allocated between operating and nonoperating property in the same ratio as is the debt service and preferred stock dividends (see subrules 76.4(2) and 76.4(3)).

f. Any extraordinary item affecting the income determined herein shall be eliminated in the calculation of the income shown under this rule.

g. The equity rate of return for the railroad company shall be determined by the use of the capital asset pricing model although where appropriate discounted cash-flow models may be utilized as an alternative. Only in circumstances where these models are not able to be utilized will reliance be placed on a risk premium model or upon an earnings-price ratio, or other similar model, for determining the expected market rate of return on equity.

h. The income attributable to operating property available to the common equity holder as determined in subrule 76.4(4) paragraphs "a" to "f" shall then be divided by the equity rate as determined in 76.4(4) "g," and the result shall be the market value of the common equity associated with the operating property.

76.4(5) In the event the railroad company has entered into leases of operating property, the market value of the property leased shall be determined by calculating the net present value of the leases, which shall be accomplished by discounting the future lease payments for each lease. The following is offered as an illustration of the calculation of such market value:

Length of Lease	Annual Lease Payments
1. Lease (a) 5 years	$1,500,000
2. Lease (b) 7 years	$ 800,000
3. Lease (c) 3 years	$ 120,000

Net present value of leases (assuming 8 percent rate)

Lease (a) = $1{,}500{,}000 \div (1.08)^1 + 1{,}500{,}000 \div (1.08)^2 \ldots 1{,}500{,}000 \div (1.08)^5$

Lease (b) = $800{,}000 \div (1.08)^1 + 800{,}000 \div (1.08)^2 \ldots 800{,}000 \div (1.08)^7$

Lease (c) = $120{,}000 \div (1.08)^1 + 120{,}000 \div (1.08)^2 \ldots 120{,}000 \div (1.08)^3$

Net Present Value of Lease (a) =	$ 5,989,065
Net Present Value of Lease (b) =	$ 4,165,096
Net Present Value of Lease (c) =	$ 309,251
Total Lease Values	$10,463,412

The discount rate shall be equal to the railroad company's overall market debt rate of return.

76.4(6) In the event the railroad company has other sources of capital, such as (by way of illustration and not limitation) current liabilities, accumulated deferred income taxes and accumulated investment tax credits which cannot be identified as having been utilized to purchase specific assets, the market value of such sources of capital shall be allocated between operating and nonoperating assets in the same manner as long-term debt or preferred stock (see subrules 76.4(2) and 76.4(3)). If any such source of capital was created specifically for the purchase of property which can be identified as operating property or nonoperating property, the railroad company must identify such sources of capital in their annual report to the department, together with the appropriate evidence of such. If the railroad company fails to provide such information, the department may determine that such sources of capital may be allocated in the same manner as long-term debt or preferred stock (see subrules 76.4(2) and 76.4(3)). The market value of any such source of capital, in the absence of evidence to the contrary submitted by the railroad with its annual report, shall be the book value.

76.4(7) The value determined by summing the portions of the enumerated sources of capital associated with the operating property of the railroad company provided in subrules 76.4(2) to 76.4(6) shall be the unit value of the operating properties determined by the stock and debt approach to unit value.

This rule is intended to implement Iowa Code section 434.15.

730—76.5(434) Income capitalization approach to unit value.

76.5(1) The income capitalization approach to unit value estimates the market value of the operating property by dividing the income stream generated by the operating assets by a market derived capitalization rate based on the costs of the various sources of capital utilized or available for use to purchase the assets generating the income stream. The purpose and intent of the income indicator of value is to match income with sources of capital and therefore every source of capital utilized or available to be utilized to purchase assets should be reflected in the capitalization rate determination as well as all operating income. In the event the railroad company has no income or has a negative income, the indicator of value set forth in this subrule shall not be utilized.

a. If the railroad company is one which is not allowed to earn a return on assets purchased with sources of capital such as the company's deferred income taxes, the income will not reflect the earnings on those assets, and as a consequence, a separate adjustment to the income indicator of value must be made to account for the value of those assets. In such instances, the income indicator of value shall be increased by an amount equal to the book value of the source of capital involved, such as the accumulated deferred income taxes. If any other operating property is clearly not income producing, therefore, not reflected in the income stream, the value of that asset shall be determined separately and added to the value of the other operating property as determined using the income indicator of value. The capitalization rate shall be adjusted, if necessary, for the market rate of return for the sources of capital utilized to purchase such nonincome producing properties where the sources can be clearly identified, otherwise the cost of the sources of capital shall be presumed to be equal to the overall market weighted costs of the other sources of capital.

b. If the railroad company is one which can earn a return on assets purchased with sources of capital such as the company's deferred income taxes, the income will reflect the earnings on those assets, and as a consequence, a separate adjustment to the capitalization rate is required. The capitalization rate shall be determined by utilizing, where appropriate, market rates of return weighted according to a market determined capital structure, with the exception of deferred credits whose market value shall be equal to its value on the company's books and whose cost shall be zero. All sources of capital shall be considered in the capital structure as well as market costs associated with each source of capital, otherwise the cost of the sources of capital shall be presumed to be equal to the overall market weighted costs of the identified sources of capital. The following is an example of the application of this rule.

	(1) Market Value	(2) Market Rate of Return	(3) % to Total	(4) Component (Col. 2 x Col. 3)
Common Stock	60,000	15%	62.50	9.38
Preferred Stock	5,000	13%	5.21	.68
Debt	25,000	12%	26.04	3.12
Deferred Credits	6,000	-0-	6.25	-0-
	96,000		100.00	13.18

76.5(2) Reserved.

This rule is intended to implement Iowa Code section 434.15.

730—76.6(434) The cost approach to unit value.

76.6(1) The cost approach to unit value shall be determined by combining the cost of the operating properties of the railroad and deducting therefrom an allowance for depreciation calculated on a straight line basis. Other forms of depreciation may be deducted if found to exist.

76.6(2) Reserved.

This rule is intended to implement Iowa Code section 434.15.

730—76.7(434) Correlation.

76.7(1) In making a final determination of value the director shall give consideration to each of the methodologies described in these rules, the use of which will result in the determination of the fair and reasonable market value of the railroad company's entire operating property. Generally, the stock and debt indicator of value shall be considered to be the most useful, the income indicator the next most useful and the cost indicator the least useful. If circumstances dictate that a particular method is inappropriate for a specific company, that method shall not be given any weight in final correlation of value.

76.7(2) Reserved.

This rule is intended to implement Iowa Code section 434.15.

730—76.8(434) Allocation of unit value to state.

76.8(1) The director shall allocate that portion of the total unit value of the railroad company's operating property to the state of Iowa based on factors which are representative of the ratio that the railroad company's property and activity in the state of Iowa bear to the railroad company's total property and activity. These factors are:

a. Gross operating revenue weighted 40 percent.
b. All track mileage weighted 35 percent.
c. Revenue traffic units weighted 15 percent.
d. Car and locomotive mileage weighted 10 percent.

76.8(2) Alternative methods. In the event that the allocation prescribed by subrule 76.8(1) does not fairly and reasonably allocate unit value of the railroad company's operating property to the state of Iowa, the director shall consider such other factors as he deems appropriate by the exercise of sound appraisal judgment.

This rule is intended to implement Iowa Code section 434.15.

730—76.9(434) Exclusions.

76.9(1) From the estimate of value pursuant to rule 76.8(434), there shall be a deduction for pollution control property provided in Iowa Code section 427.1(32).

76.9(2) From the estimate of value pursuant to rule 76.8(434), there shall be a deduction for interstate bridges and other locally assessed property. Locally assessed property shall mean all property subject to an assessing authority pursuant to Iowa Code section 441.54. The respondent shall supply a schedule providing the actual value as determined by the local assessor on or nearest to the current assessment date.

This rule is intended to implement Iowa Code sections 434.15, 434.20 and 427.1(32).

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4626

REVENUE DEPARTMENT[730]

Pursuant to the authority of Iowa Code section 421.14, the Iowa Department of Revenue hereby rescinds chapter 77 of their rules appearing in the Iowa Administrative Code and adopts a new Chapter 77, "Determination of Value of Utility Companies."

Notice of Intended Action was published in IAB, Volume VI, Number 18, on February 29, 1984, as **ARC 4512**.

These rules are filed in order to implement Iowa Code chapters 428, 433, 437 and 438.

On July 5, 1983, the Department of Revenue received a request for a Concise Statement on 730—chapter 77 of the administrative rules pursuant to Iowa Code section 17A.4(1)"b."

At the time of receipt of this Concise Statement request, the Department of Revenue was extensively involved in preparation for two major trials. The first was the appeal of the pipeline cases before the Iowa State Board of Tax Review. The consolidated case involved approximately 1.5 million dollars in revenue collections. This case also challenged the Department's entire valuation methods for determining the actual value of utility property in

Iowa. The second case, before the United States District Court, involved the equalization and valuation of the Burlington Northern Railroad Company. This case addressed approximately 3.5 million dollars in pending revenue collections and was extremely time sensitive. The valuation portion of this case also involved the Department's entire railroad valuation procedures.

With limited resources, particularly experienced legal counsel and expert valuation personnel, the Department was greatly hindered in formulating a timely response to the Concise Statement request. In view of the length of time that has elapsed since the Concise Statement was requested, and since the Concise Statement in question must, by its very nature, address many controversial, complex and highly technical issues, the Department feels that Chapter 77 rules should be rescinded and refiled.

None of the amendments in this chapter will necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

In 77.1(3), definition of the term "operating property" was changed to include the language, "or property leased to companies valued and assessed pursuant to chapter 428." The change was made to address what was claimed to be vagueness in the existing rule regarding the exclusion, in the valuation process, the leases of chapter 428 companies. For the same reason the language in subrule 77.1(7) the term "stock and debt approach to unit value" was changed to include ",except those leases of companies valued and assessed pursuant to chapter 428." With these exceptions, these rules are identical to those published under Notice of Intended Action.

The rules will become effective May 30, 1984, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code chapters 428, 433, 437 and 438.

The following rules are adopted:

Chapter 77 is rescinded and the following adopted in lieu thereof:

CHAPTER 77
DETERMINATION OF VALUE OF UTILITY COMPANIES

730—77.1(428,433,437,438) Definition of terms.

77.1(1) The term "utility company" shall mean and include all persons engaged in the operating of gasworks, waterworks, telephones, including telecommunication companies, pipelines, electric transmission lines, and electric light or power plants, as set forth in Iowa Code chapters 428, 433, 437, and 438.

77.1(2) The term "unit value" or "unit market value" shall mean the market value arrived at by using the appraisal method of valuing an entire operating property, considered as a whole and capable of performing the function for which it was created, such as (by way of illustration and not limitation) (1) generating, transmitting and distributing electricity; or (2) transporting or distributing natural gas.

77.1(3) The term "operating property" shall mean all property owned by or leased to a utility company, not otherwise taxed separately, made nontaxable by law, or property leased to companies valued and assessed pursuant to Iowa Code chapter 428, which is necessary to and without which the utility could not perform the activities for which the utility is formed, such as (by way of illustration and not limitation) (1) generating, transmitting and distributing electricity; or (2) transporting or distributing natural gas. With regard to property whose identity as "operating" or "nonoperating" property is not clearly ascertainable, the property shall be considered operating property if the utility could not reasonably be expected to perform the referenced activities in the absence of such property.

77.1(4) The term "nonoperating property" shall mean all property owned by a utility not defined by subrule 77.1(3) as "operating property."

77.1(5) The term"comparable sales" shall mean actual sales transactions, between willing buyers and willing sellers, neither being under any compulsion to buy or sell, of property which is similar in purpose, function and design to the property to which the comparison is being made. Where the determination of value is being made, the sale of a portion of a unit which is nominally similar in purpose and function to the unit being valued shall not be considered a comparable sale, absent proof by evidence other than the terms of the sale itself, that the sales price was based on some unit of measurement which is common both to the property sold and the property being valued and which is not affected by the fact that less than the entire unit is being sold, such as (by way of illustration and not limitation) the price per square foot of the property.

77.1(6) The term "income approach to unit value" shall mean the estimate of unit market value obtained by dividing an appropriate income stream by an appropriate discount rate.

77.1(7) The term "stock and debt approach to unit value" shall mean the estimate of unit market value determined by combining the market value of the stock, debt, current liabilities, other liabilities, including leases, except those leases of companies valued and assessed pursuant to Iowa Code chapter 428, and deferred credits associated with the operating property of a utility company.

77.1(8) The term "cost approach to unit value" shall mean the estimate of value determined by combining the original cost less a depreciation allowance for the operating property of a utility company.

77.1(9) The term "respondent" shall include the utility company whose property is to be valued.

77.1(10) The term "leased assets" shall mean both operational and capital leases.

77.1(11) The term "original cost" shall mean the actual cost of the property to its present owner, not the first cost at the time it was originally constructed and placed in service.

This rule is intended to implement Iowa Code chapters 428, 433, 437 and 438.

730—77.2(428,433,437,438) Filing of annual reports.

77.2(1) Annual reports required to be filed by the reporting utility company shall be on forms prescribed and supplied by the department. It shall be the responsibility of the utility company to obtain the forms supplied by the department.

77.2(2) Additional schedules or attachments submitted by respondent shall be identified as to subject matter, shall be typed on paper of similar size to that used in the annual report, and all data contained in the schedules or attachments shall be adequately explained and documented as to source. When such additional schedules or attachments are submitted, they shall be considered part of the annual report.

77.2(3) The director may require the filing of additional information if deemed necessary. The request for additional information shall be answered completely and in accordance with instructions therein specified. Additional information required shall be considered part of the annual report.

This rule is intended to implement Iowa Code sections 428.28, 433.1, 433.2, 437.2, 437.4, 437.14, 438.3, 438.4, 438.5 and 438.6.

730—77.3(428,433,437,438) Comparable sales. Sale prices of comparable property in normal transactions shall be taken into consideration in arriving at its market value. In the event comparable sales are not available, the market value of operating property shall be determined by utilizing the three recognized unit approaches to value (i.e., stock and debt approach, income capitalization approach and the cost approach).

This rule is intended to implement Iowa Code sections 428.28, 433.1, 433.2, 437.2, 437.4, 437.14, 438.3, 438.4, 438.5 and 438.6.

730—77.4(428,433,437,438) Stock and debt approach to unit value.

77.4(1) The stock and debt approach to unit value estimates the market value of the operating property by combining the market values of the common stock, preferred stock, debt, current liabilities, other liabilities, leases, and deferred credits associated with the operating property of the utility company, on the basis that the market value of these items may be used as a surrogate for the market value of the operating property itself.

77.4(2) The market value of the long-term debt associated with the operating property shall be calculated by first determining a ratio, based on book values, whose numerator shall be the operating property and whose denominator shall be the total property of the utility company. This ratio shall then be multiplied times the gross market value of the long-term debt and the result obtained shall be the market value of the long-term debt associated with the operating property. The market value of publicly traded debt shall be determined by utilizing an average of the monthly high and low value of the debt for the twelve months preceding the valuation date. The values to be utilized shall be obtained by reference to any acceptable reporter of the market on which the securities are traded. If all or some of the securities are not publicly traded, the value of the securities shall be determined by appropriate comparable securities. The comparable securities shall be publicly traded and shall have a similar maturity date and coupon rate, as well as risk indicators similar to the untraded security. In each instance, the utility company shall provide the department a statement of the market value of all securities and an explanation of how that market value was derived, including the identity of any comparable securities utilized. In the event that any utility is unable to utilize the foregoing rule to value its securities, it may provide the department with its own determination of the fair market value of its untraded securities together with a complete explanation of why the foregoing rule was not used and a detailed explanation of the method used.

77.4(3) The market value of the preferred stock associated with the operating property shall be calculated by first determining a ratio, based on book values, whose numerator shall be the operating property and whose denominator shall be the total property of the utility company. This ratio shall then be multiplied times the gross market value of the preferred stock and the result obtained shall be the market value of the preferred stock associated with the operating property.

The market value of publicly traded shares of preferred stock shall be determined by utilizing an average of the monthly high and low value of the preferred stock for the twelve months preceding the valuation date. The values to be utilized shall be obtained by reference to any acceptable reporter of the market on which the preferred stock is traded. If all or some series of the preferred stock are not publicly traded, the value of such preferred stock shall be determined by appropriate comparable securities. The comparable securities shall be publicly traded and shall have the same or a similar dividend rate, as well as risk indicators similar to the untraded preferred stock. In each instance, the utility company shall provide the department a statement of the market value of its preferred stock and explanation of how that market value was derived, including the identity of any comparable securities utilized. In the event that any utility is unable to utilize the foregoing rule to value its securities, it may provide the department with its own determination of the fair market value of its untraded securities together with a complete explanation of why the foregoing rule was not used and a detailed explanation of the method used.

77.4(4) The market value of the common equity of a utility company associated with the company's operating property shall be determined by capitalizing the income available to the common equity holders from the operating property, by an appropriate common equity return rate, all of which shall be determined as follows:

a. The calculation of the income to be capitalized shall begin with the utility company's net income after taxes but before interest charges and preferred dividends for the twelve-month period preceding the valuation date. The net income after taxes, but before interest charges and preferred dividends shall be determined from the utility company's regulatory report, or if no regulatory report is filed, from the audited financial statements of the utility company. In the event that the respondent has no income or has negative income, an alternative method may be utilized to estimate the market value of the common equity.

b. For rate base regulated companies which do not earn a return on construction-work-in-progress, the income determined in subrule 77.4(4) shall be increased by the amount of income associated with the construction-work-in-progress which will be placed into service within one year of the assessment date. The income associated with the construction-work-in-progress shall be determined by multiplying the cost of said construction by the latest overall cost of capital as determined by the regulatory agency.

c. The income determined in 77.4(4)"a" shall be further reduced by that portion of the preferred dividends serviced by the income generated by the operating property, which shall be calculated by multiplying the total preferred dividend requirement by the ratio determined in 77.4(3).

d. The income determined in 77.4(4)"a" shall be further reduced by that portion of the debt service provided by the income generated by the operating property, which shall be calculated by multiplying the total debt service by the ratio determined in 77.4(2).

e. If there are any other interest payments required, a determination shall be made as to whether the underlying obligation was used to purchase operating or

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nonoperating assets. If no direct determination can be made, the interest payment shall be allocated in the same fashion as the debt service and preferred dividends. If the underlying obligation can be shown to be associated particularly, or in some specific proportion, to operating or nonoperating property, the interest payment shall be allocated either entirely or in such proportion to operating or nonoperating property. It shall be the obligation of the utility company, in its reports to the department, to identify and detail any interest payments which are particularly associated with operating or nonoperating property, and if the utility company fails to do so, the department may determine that all such payments may be allocated between operating and nonoperating property in the same ratio as is the debt service and preferred stock dividends (see subrules 77.4(2) and 77.4(3)).

f. The income determined in 77.4(4)"a," shall be adjusted by deducting any net income included therein received from nonoperating property and, conversely, the referenced income shall be increased to account for any net loss created by any nonoperating property.

g. Any extraordinary item affecting the income determined herein shall be eliminated in the calculation of the income shown under this rule. Any construction-work-in-progress not placed into service within one year of the assessment date shall be separately valued by the department.

h. The equity rate of return for the utility company shall be determined by the use of the capital asset pricing model although where appropriate discounted cash-flow model (commonly called the Gorden Growth Model —

$$r = \frac{D_1}{Po} + g)$$

may be utilized as an alternative. Only in circumstances where these models are not able to be utilized will reliance be placed on a risk premium model or upon an earnings-price ratio, or other similar model, for determining the expected market rate of return on equity.

i. The income attributable to operating property available to the common equity holder as determined in subrule 77.4(4), paragraphs "a" to "g" shall then be divided by the equity rate as determined in 77.4(4) "h," and the result shall be the market value of the common equity associated with the operating property.

77.4(5) In the event the utility company has entered into leases of operating property, the market value of the property leased shall be determined by calculating the net present value of the leases, which shall be accomplished by discounting the future lease payments for each lease. The following is offered as an illustration of the calculation of such market value:

Length of Lease	Annual Lease Payments
1. Lease (a) 5 years	$1,500,000
2. Lease (b) 7 years	$ 800,000
3. Lease (c) 3 years	$ 120,000

Net present value of leases (assuming 8 percent rate)

Lease (a) = $1{,}500{,}000 \div (1.08)^1 + 1{,}500{,}000 \div (1.08)^2 \ldots 1{,}500{,}000 \div (1.08)^5$

Lease (b) = $800{,}000 \div (1.08)^1 + 800{,}000 \div (1.08)^2 \ldots 800{,}000 \div (1.08)^7$

Lease (c) = $120{,}000 \div (1.08)^1 + 120{,}000 \div (1.08)^2 \ldots 120{,}000 \div (1.08)^3$

Net Present Value of Lease (a) =	$ 5,989,065
Net Present Value of Lease (b) =	$ 4,165,096
Net Present Value of Lease (c) =	$ 309,251
Total Lease Values	$10,463,412

The discount rate shall be equal to the utility company's overall market cost of capital.

77.4(6) In the event the utility company has other sources of capital, such as (by way of illustration and not limitation) current liabilities, accumulated deferred income taxes and accumulated investment tax credits which cannot be identified as having been utilized to purchase specific assets, the market value of such sources of capital shall be allocated between operating and nonoperating assets in the same manner as long-term debt or preferred stock (see subrules 77.4(2) and 77.4(3)). If any such source of capital was created specifically for the purchase of property which can be identified as operating property or nonoperating property, the utility company must identify such sources of capital in their annual report to the department, together with the appropriate evidence of such. If the utility company fails to provide such information, the department may determine that such sources of capital may be allocated in the same manner as long-term debt or preferred stock (see subrules 77.4(2) and 77.4(3)). The market value of any such source of capital, in the absence of evidence to the contrary submitted by the utility with its annual report, shall be the book value.

77.4(7) The value determined by summing the portions of the enumerated sources of capital associated with the operating property of the utility company provided in subrules 77.4(2) to 77.4(6) shall be the unit value of the operating properties determined by the stock and debt approach to unit value.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

730—77.5(428,433,437,438) Income capitalization approach to unit value.

77.5(1) The income capitalization approach to unit value estimates the market value of the operating property by dividing the income stream generated by the operating assets by a market derived capitalization rate based on the costs of the various sources of capital utilized or available for use to purchase the assets generating the income stream. The purpose and intent of the income indicator of value is to match income with sources of capital and therefore every source of capital utilized or available to be utilized to purchase assets should be reflected in the capitalization rate determination as well as all operating income.

In the event the utility company has no income or has a negative income, the indicator of value set forth in this subrule shall not be utilized.

If the utility company is one which is not allowed to earn a return on assets purchased with sources of capital such as the company's deferred income taxes, the income will not reflect the earnings on those assets, and as a consequence, a separate adjustment to the income indicator of value must be made to account for the value of those assets. In such instances, the income indicator of value shall be increased by an amount equal to the book value of the source of capital involved, such as the accumulated deferred income taxes. If any other operating property is clearly not income producing, therefore, not reflected in the income stream, the value of that asset shall be determined separately and added to the value of the other operating property as determined using the income indicator of value. The capitalization rate shall be adjusted, if necessary, for the market rate of return for the sources of capital utilized to purchase such nonincome producing properties where the sources can be clearly identified, otherwise the cost of the sources of capital shall be

presumed to be equal to the overall market weighted costs of the identified sources of capital.

77.5(2) If the utility company is one which can earn a return on assets purchased with sources of capital such as the company's deferred income taxes, the income will reflect the earnings on those assets, and as a consequence, a separate adjustment to the capitalization rate is required. The capitalization rate shall be determined by utilizing, where appropriate, market rates of return weighted according to a market determined capital structure, with the exception of deferred credits whose market value shall be equal to its value on the company's books and whose cost shall be zero. All sources of capital shall be considered in the capital structure as well as market costs associated with each source of capital, otherwise the cost of the sources of capital shall be presumed to be equal to the overall market weighted costs of the identified sources of capital. The following is an example of the application of this rule.

	(1) Market Value	(2) Market Rate of Return	(3) % to Total	(4) Component (Col. 2 x Col. 3)
Common Stock	60,000	15%	62.50	9.38
Preferred Stock	5,000	13%	5.21	.68
Debt	25,000	12%	26.04	3.12
Deferred Credits	6,000	-0-	6.25	-0-
	96,000		100.00	13.18

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

730—77.6(428,433,437,438) The cost approach to unit value. The cost approach to unit value shall be determined by combining the cost of the operating properties of the utility and deducting therefrom an allowance for depreciation calculated on a straight line basis. Other forms of depreciation may be deducted if found to exist.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

730—77.7(428,433,437,438) Correlation.

77.7(1) In making a final determination of value the director may give consideration to each of the methodologies described in these rules, the use of which will result in the determination of the fair and reasonable market value of the utility company's entire operating property. Generally, the stock and debt indicator of value shall be considered to be the most useful, the income indicator the next most useful and the cost indicator the least useful. If circumstances dictate that a particular indicator is inappropriate or less reliable for a particular company, the correlation of the indicators of value shall be adjusted accordingly.

77.7(2) Reserved.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

730—77.8(428,433,437,438) Allocation of unit value to state.

77.8(1) The director shall allocate that portion of the total unit value of the utility company's operating property to the state of Iowa based on factors which are representative of the ratio that the utility company's property and activity in the state of Iowa bear to the utility company's total property and activity. These factors are:

a. Gross operating property weighted 75 percent, and

b. Gross operating revenues, or MCF miles, or barrel miles weighted 25 percent. The selection of the property and use factor to be utilized shall depend on the type of utility being valued.

77.8(2) Alternative methods. In the event that the allocation prescribed by subrule 77.8(1) does not fairly and reasonably allocate unit value of the utility company's operating property to the state of Iowa, the director shall consider such other factors as he deems appropriate by the exercise of sound appraisal judgment.

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

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ARC 4633

SOIL CONSERVATION DEPARTMENT[780]

Pursuant to the authority of Iowa Code section 467A.4(1), the State Soil Conservation Committee, on April 5, 1984, adopted rules amending Chapter 4, "Surface Coal Mining and Reclamation Operations."

Notice of Intended Action was published in IAB, December 21, 1983, as **ARC 4349**.

These rules expand existing rules on the amount and duration of performance bonds to include a methodology for determination of the bond itself. These rules also establish components for determining the appropriate bonding level for a permitted site.

Maximum and minimum per acre bond levels are established at $10,000 and $3,000. An alternate minimum is provided for old works areas where mining has previously occurred. The Department also maintains the option of requiring the same methodology to be applied to increments of a permit allowed under existing rules.

Changes made prior to adoption included adding a provision that requires bond for underground mines only on surface affected areas in subrule 4.42(1)"e." Also, the term "permitted acres" or "permit area" is changed to "affected acres" or "affected area" in some instances in subrule 4.42(1)"e." Subparagraphs (3) and (4) in subrule 4.42(1)"e" are expanded to clarify that the component shall not apply if no coal is removed. Subparagraph (5) of subrule 4.42(1)"e" is rewritten for the purpose of clarity. Subparagraph (6) of subrule 4.42(1)"e" is qualified to also address waste from coal processing facilities. Subrule 4.42(2) is modified to provide different minimums for coal processing facilities and previously mined land.

Due to their length and cost of publication pending completion of forthcoming changes as a result of federal regulatory reform, Chapter 4 rules are not published in the Iowa Administrative Code. The complete text of Chapter 4 rules is available for inspection at the Iowa Department of Soil Conservation, Second Floor, Wallace State Office Building, East 9th and Grand Avenue, Des Moines, Iowa 50319, (515) 281-6142.

This rule implements Iowa Code chapter 83.

This rule will become effective October 1, 1984. Additional time is provided to allow submittal of a program amendment to the Secretary of the Interior.

The following rule is adopted.

ITEM 1. Subrule **4.42(1)** is amended by redesignating existing paragraph "e" as "f" and adding new language for paragraph "e" as follows:

e. The purpose of this paragraph is to determine the bond rate per acre to be submitted. The rate is determined by the sum of applicable components.

For bonding purposes, the affected area of an underground mine shall mean only the surface affected acres.

When fractions or decimals are encountered, the numbers should be rounded up or down to the nearest whole number. Individual components are determined as follows:

(1) Prime farmland. Divide the acres of prime farmland by the total acres to be affected and multiply by 100 to obtain percentage.

Percent of affected area containing prime farmland:

5-20%	($1,000)
21-40%	($2,000)
41-60%	($3,000)
61-80%	($4,000)
81-100%	($5,000)

(2) Ground water. Divide the acres within the permit area underlain by one or more significant aquifers by the total acres to be permitted and multiply by 100.

Based upon the geology and hydrology information presented above, a determination should be made as to whether significant aquifers exist within the permit or adjacent area. Ground water resources will be considered significant if there are existing users of ground water from aquifers in the permit or adjacent area which may be affected by the surface mining operations. Where there are no existing ground water users, the ground water resources shall be considered significant where ground water yields are sufficient to support domestic water supply. A practical sustained yield of 5 gallons per minute shall be considered sufficient for domestic water supply. However, an aquifer may not be considered significant if the ground water is of inferior quality or contaminated to the point that it is useless as a supply for domestic or livestock watering uses, regardless of the yield.

If the applicant has determined that there are no significant aquifers in the permit or adjacent area, then complete justification substantiating that conclusion shall be submitted. The information submitted shall include the results of pump tests, water quality analyses, the logs of test borings and all other pertinent information upon which the decision is based.

Percent of permit area overlying significant ground water resources which have been identified:

10-25%	($750)
26-50%	($1,500)
51-75%	($2,250)
76-100%	($3,000)

(3) Consolidated material. Based upon the result of test borings or core samplings described in the permit application, compute the average percent of consolidated material down to the lowest coal seam to be mined. Consolidated materials consist of sandstones, limestones, shales or any combination thereof. This component shall not apply if a coal seam is not to be removed unless a pit or structure is created for disposal of coal processing wastes.

Average percent of consolidated material (sandstone, limestone, shale or combination thereof) down to the lowest coal seam to be mined:

25-50%	($1,000)
51-75%	($1,500)
76-100%	($2,000)

(4) Depth. Based upon the result of test borings or core samplings described in the permit application, indicate the average depth in feet down to the lowest coal seam to be mined. This component shall not apply if a coal seam is not to be removed unless a pit or structure is created for disposal of coal processing wastes.

Average depth in feet to lowest coal seam to be mined:

0-25	($500)
26-50	($750)
51-75	($1,000)
76-100	($1,500)
over 100	($2,000)

(5) Topography. Based upon the premining topography as depicted in the permit application, indicate the percent of affected area steeper than 25% (4h:1v).

Percent of affected area steeper than 25%:

0-49%	(0)
50-100%	($4,000)

(6) Acid or toxic forming strata. Based upon the results of chemical analyses of each stratum of overburden above the lowest coal seam to be mined (excluding only those coal seams which are to be mined) or of waste material from coal processing facilities, compute the average percent of overburden or waste which is potentially acid or toxic forming.

For example, if the average depth of overburden is 50 feet and the chemical analyses identified a 3.5 foot stratum of dark black shale and a .5 foot coal rider seam as being potentially acid or toxic forming, then the average percent of acid or toxic-forming overburden would be 8%.

For a description of the criteria for determining whether overburden is potentially acid or toxic forming, the following instructions shall apply: Acid or toxic-forming strata shall be those identified in the permit pursuant to subrules 4.322(3) and 4.332(3).

Average percent of overburden, excluding coal seams to be mined or waste which is potentially acid or toxic forming based upon the chemical analyses:

5-10%	($100)
11-19%	($500)
20-24%	($1,000)
25-29%	($1,500)
30-34%	($2,000)
35-39%	($2,500)
40-44%	($3,000)
45-49%	($3,500)
over 50%	($4,000)

(7) Total bond per acre. To determine the bond rate per acre add the amounts entered in items 1 to 6. If the total is less than the minimum amounts specified in subrule 4.42(2), the bond per acre will be as specified. If more than $10,000, the bond per acre will be $10,000.

(8) To determine the total bond required, multiply item 7 by the total acres to be affected in the permit area.

ITEM 2. Subrule 4.42(2) is amended to read as follows:

4.42(2) Minimum amount. The amount of the bond for surface coal mining and reclamation operations shall be $10,000 at a minimum, for the entire area under one permit and be sufficient to assure performance of reclamation, restoration and abatement work required of a person who conducts surface coal mining and reclamation operations under the Act, these rules, and the provisions of the permit, if the work had to be performed by the department in the event of forfeiture. *The bond per acre shall be no more than $10,000 per acre nor less than $3,000 per acre on areas not previously affected by surface coal mining. Areas used for coal loading or processing facilities shall require bonds that are no more than $10,000 per acre nor less than $2,000 per acre. On areas that have been mined for coal prior to May 3, 1977, and will be affected for the purpose of surface coal mining the bond per acre shall be no more than $10,000 per acre nor less than $1,500 per acre.*

ITEM 3. Subrule **4.322(3)** and subrule **4.332(3)** are both amended by adding new paragraphs "c" and "d" as follows:

c. Samples should be composited to represent each strata encountered within each drill hole. The results of chemical tests from more than one hole will be required for large permit areas to account for variability within the permit area. When more than one hole is drilled, there should be no compositing of cores between holes. The composite samples of the strata shall include representative proportions of any potentially acid or toxic producing materials. The following requirements related to chemical testing do not apply to the unconsolidated material in the overburden profile.

The results of the following chemical tests shall be submitted for all strata of the overburden including any rider coal seams which will not be mined and the strata immediately beneath the lowest coal seam to be mined:

1. Paste pH
2. Total dissolved solids in water extract filtered from the saturated paste
3. Acid-base account (expressed as tons of $CaCO_3$ equivalent/1000 tons of material) including:

Pyritic sulfur (includes combined sulfides of pyrite and marcasite)

Neutralization potential

Calcium carbonate deficiency or surplus calculated.

If the paste pH is 5.5 or less, iron, manganese, and aluminum should be analyzed in the water extract filtered from the saturated paste. If the paste pH is 8.5 or greater, sodium, calcium, magnesium, and the sodium absorption ratio (calculated) should be analyzed in the water extract.

Potentially acid or toxic-producing materials are defined as any material having a net potential deficiency of 5.0 tons of calcium carbonate equivalent or more per 1000 tons of material based upon the acid-base account. Regardless of the acid-base account, materials which have a paste pH of less than 4.0 are defined as being potentially acid or toxic forming.

If any stratum of the overburden is intended to be substituted for original topsoil, additional testing as specified in subrule 4.522(6) of this part should be performed.

d. The results of the chemical tests shall be submitted for each coal seam to be mined:

1. Total sulfur
2. Pyritic sulfur (includes combined sulfides of pyrite and marcasite)
3. BTU per pound of coal
4. Percentage of ash
5. Moisture content

The information submitted pertaining to the physical and chemical properties of the coal seam(s) to be mined will be maintained as confidential and not subject to public inspection except that information concerning the mineral or elemental content of the coal which is potentially toxic to the environment. The properties which will be maintained as confidential are the coal seam thickness, BTU's, ash content, and moisture content. The total and pyritic sulfur information cannot be maintained as confidential. In order to assure confidentiality, this information must be submitted separate from the other information required in this application and clearly identified as confidential information.

The items specified should be shown on a map with a legend provided for interpretation. In addition to the above, the geologic map should depict all observable structural and stratigraphic conditions present within the permit area.

If requested in writing, the director may waive the requirements above pertaining to logs of test borings, thickness and chemical properties of the coal, potentially acid or toxic-forming strata, or chemical analyses of the stratum immediately below the coal if this information is available from other reliable sources. The waiver request must be submitted with the application for a permit and demonstrate that the same or similar information for the permit area is already on file with the department. The request shall identify the information sources.

ITEM 4. Subrule **4.41(1)**, paragraph "b," subparagraph (1) is amended to read as follows:

(1) Liability on the performance bond shall cover all surface coal mining and reclamation operations to be conducted within the permit area during the life of the mine. After the amount of the bond has been determined for the permit area in accordance with ~~4.4(2)~~ *rule 780—4.42(83)*, the permittee or applicant may either file: The entire performance bond required during the term of the permit; or an incremental bond schedule and the new performance bond required for the first increment in the schedule. *When an incremental bond schedule is submitted, the department has the option of requiring a separate bond calculation in accordance with subrule 4.42(1)"e" for any or all of the increments identified in the schedule.*

ITEM 5. Subrule **4.41(1)**, paragraph "c", is amended to read as follows:

c. The amount, duration, form, conditions and terms of the performance bond shall conform to ~~4.4(2)~~ *rules 780—4.42(83)* and ~~4.4(3)~~ *780—4.43(83)*.

[Filed 4/6/84, effective 10/1/84]

[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4632

SOIL CONSERVATION DEPARTMENT[780]

Pursuant to the authority of Iowa Code section 467A.4(1), the State Soil Conservation Committee, on January 16, 1984, adopted this rule amending Chapter 4, "Surface Coal Mining and Reclamation Operations."

Notice of Intended Action was published in IAB, December 7, 1983, as **ARC 4287**.

This rule incorporates flexibility allowed in federal regulations as a result of changes made since Iowa's program was adopted. The rule is one of ninety-one subrules that adopt, by reference, federal regulations as permanent program performance standards for underground mining activities.

The rule as adopted allows the department more flexibility in establishing the length of time necessary for notice to surface landowners prior to the initiation of underground mining activities.

Due to their length and cost of publication, pending completion of forthcoming changes as a result of federal regulatory reform, Chapter 4 rules are not published in the Iowa Administrative Code. The complete text of Chapter 4 rules is available for inspection at the Iowa Department of Soil Conservation, Second Floor, Wallace State Office Building, East 9th and Grand Avenue, Des Moines, Iowa 50319, (515) 281-6142.

This adopted rule is identical to that published under earlier Notice of Intended Action.

This rule implements Iowa Code chapter 83.

This rule will become effective October 1, 1984. Additional time is provided to allow submittal of a program amendment to the Secretary of the Interior.

The following rule is adopted:

Subrule 4.523(63) is amended as follows:

4.523(63) Subsidence control. Public notice. The following is adopted by reference: 30 CFR Part 817.122 as promulgated ~~March 13, 1979 (44 FR 15440)~~ *June 1, 1983 (48 FR 24652).*

[Filed 4/6/84, effective 10/1/84]
[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

ARC 4634

SOIL CONSERVATION DEPARTMENT[780]

Pursuant to the authority of Iowa Code section 467A.4(1), the State Soil Conservation Committee adopted rules on March 1, 1984, amending Chapter 5, "Iowa Financial Incentives Program for Soil Erosion Control."

Notice of Intended Action was published in IAB, December 21, 1983, as **ARC 4350**.

This rule applies to the Wind Erosion Control Incentive Program (WECIP). Landowners receive WECIP payments for installing tree or grass plantings or maintaining established levels of crop residues along designated road segments.

This adopted rule provides that, as of July 1, 1984, applicants will only be eligible to participate in WECIP one time. Additionally, no one applicant will be eligible to receive payment for more than two miles of eligible road segment. Acres for which previous payment was provided under WECIP will not qualify.

This adopted rule is identical to that published in the Notice of Intended Action.

This rule implements Iowa Code chapter 467A and Iowa Code chapter 312 as amended by 1983 Iowa Acts, chapter 198, section 19.

This rule will become effective June 1, 1984.

The following rule is adopted:

ITEM 1. A new paragraph "e" is added to subrule **5.55(2)** to read as follows:

e. No incentive payment has previously been provided for this land area under the WECIP.

ITEM 2. A new subrule 5.55(3) is added as follows and the remaining subrule is renumbered accordingly:

5.55(3) Applicant eligibility for WECIP. After July 1, 1984:

a. No one applicant shall be eligible to receive more than one incentive payment under the WECIP program.

b. No one applicant shall be eligible to receive incentive payment for more than two miles of eligible road segments under the WECIP program.

[Filed 4/6/84, effective 6/1/84]
[Published 4/25/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/25/84.

State of Iowa

Executive Department

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

EXECUTIVE ORDER NUMBER FIVE

WHEREAS, Chapter 68B, 1983 Code of Iowa, relates to the giving, acceptance and reporting of gifts; and

WHEREAS, the Governor, under Section 68.11(2), has the authority and the responsibility to establish formal procedures and criteria for the reporting of gifts made to officials and employees of the executive department of the state and their immediate family members;

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, do hereby establish the following gift reporting requirements for the executive department of state government.

ARTICLE I. SCOPE OF APPLICATION

"Officials and employees of the executive department of the state" shall include all employees and officials of state government who are not members of the legislative and judicial departments. The term "official" includes elected and appointed officials, and board and commission members who are required by law to file oaths of office. The words "gifts" and "immediate family members" shall have the meanings specified in section 68B.2, 1983 Code of Iowa.

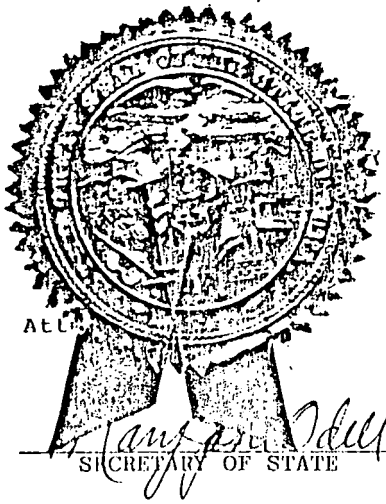
ARTICLE II. DISCLOSURE REPORT

A. An official or employee who receives or whose immediate family receives a gift in any one occurrence which has a value in excess of fifteen dollars shall file a written report of the gift in the office of the Secretary of State.

B. If a gift is made to an official or employee or an immediate family member and others which cannot be precisely attributed to that recipient, the report shall list the pro-rata value of the gift attributable to the donee if that value exceeds fifteen dollars. The fact of apportionment shall be disclosed. A gift may not be apportioned between multiple donors to reduce its "value" unless it qualifies as a separate occurrence.

C. The report shall be filed by the fifteenth day of the month following the month in which the gift was received. The report shall show the donor, donee, nature, value and date of the gift. The report shall also show the street address, city and state of residence of the donor, if known.

D. The Secretary of State shall make available forms for the filing of these reports, upon request, to any person required to file a report. The reports shall be available for public inspection under conditions consistent with Chapter 68A, Code of Iowa, relating to public records.



Attest:

SECRETARY OF STATE

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 25th day of October, in the year of our Lord one thousand nine hundred eighty three.

Terry E. Branstad

GOVERNOR

State of Iowa

Executive Department

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

EXECUTIVE ORDER NUMBER EIGHT

WHEREAS, it is the historic policy of the United States and the state of Iowa to provide safe asylum to refugees who are the victims of war and persecution and who have been forced from their homeland; and

WHEREAS, the state of Iowa, pursuant to the Refugee Act of 1980 and regulations promulgated by the U.S. Department of Health and Human Services, receives federal funds for the purpose of coordinating and providing services to refugees in Iowa, their families and other public and private agencies serving refugees; and

WHEREAS, the Iowa Refugee Service Center has been the organization in state government responsible for coordinating and providing these services in Iowa since 1975.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the state of Iowa, by the power and authority vested in me by the Constitution and the laws of Iowa, do hereby formally establish the Iowa Refugee Service Center with an Executive Director to serve at the pleasure of the Governor to:

I. Coordinate, develop, and implement federal, state and local programs which provide resettlement services and other social services which promote the economic self-sufficiency and social self-reliance of refugees and other eligible groups.

II. Provide specialized cultural information and immigration and other services to refugees, entrants, and immigrants as well as the private individuals, organizations, corporations, and state agencies whose activities are associated with them.

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 27th day of January in the year of our Lord one thousand nine hundred and eighty-four.

Terry E. Branstad
GOVERNOR

ATTEST:

Mary Jane Odell
SECRETARY OF STATE

State of Iowa

Executive Department

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

EXECUTIVE ORDER NUMBER NINE

WHEREAS, the health and vigor of Iowa's economy is dependent to a large degree on our export of agricultural products and manufactured goods; and

WHEREAS, the State of Iowa will need additional expert advice in order to further expand our sales overseas; and

WHEREAS, the District Export Council, consisting of top Iowa executives knowledgeable in all phases of worldwide trade, has advised the U.S. Department of Commerce, International Trade Administration for many years; and

WHEREAS, it is desired to have continuity in Iowa's export efforts.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the power and authority vested in me by the Constitution and the laws of Iowa, do hereby appoint all present members of the District Export Council, and future members of that organization, to membership on the Governor's Export Advisory Council. Rules and policies for the Council will be promulgated in cooperation with the Iowa Development Commission.

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 8th day of February in the year of our Lord one thousand nine hundred and eighty-four.

Terry E. Branstad
Governor

Attest

Secretary of State

State of Iowa

Executive Department

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

EXECUTIVE ORDER NUMBER TEN

WHEREAS, on October 21, 1983, the Ways and Means Committee of the United States House of Representatives reported out of committee HR 4170, the Tax Reform Act of 1983 (the "Tax Reform Act");

WHEREAS, on November 16, 1983, the Ways and Means Committee of the United States House of Representatives reported out of committee certain amendments to the Tax Reform Act (the Tax Reform Act, as reported out of the Ways and Means Committee and as so amended or as it may be amended in the future is hereafter referred to as "HR 4170");

WHEREAS, Section 721 of HR 4170 would restrict the total principal amount of certain municipal bonds the interest on which is exempt from federal income taxes under Section 103 of the Internal Revenue Code of 1954, as amended (the "Bonds"), which may be issued by any state of the United States during each calendar year;

WHEREAS, the provisions of Section 721 of HR 4170, if enacted into law in either present form, would be effective retroactively on January 1, 1984;

WHEREAS, Section 721 of HR 4170 provides a method of allocating the total amount of Bonds which may be issued within a state in any calendar year among the various cities, counties and issuing agencies and authorities of the state (collectively the "Political Subdivisions" or singularly the "Political Subdivision"), which method of allocation will become effective at the time HR 4170 is enacted into law and will apply retroactively unless the legislature of a state or the Governor of a state, on an interim basis, provides for an alternative method of allocating the total amount of Bonds which may be issued within the state in this calendar year;

WHEREAS, the Governor of the State of Iowa recognizes that the provisions of Section 721 of HR 4170 place unnecessary, cumbersome and costly restrictions on the amount of Bonds which may be issued by the Political Subdivisions of the State of Iowa during this calendar year;

WHEREAS, the Governor of the State of Iowa further recognizes that the provision of Section 721 of HR 4170 for allocating, among the Political Subdivisions of the State of Iowa, the amount of Bonds which may be issued within the State of Iowa during each calendar year is inequitable and would result in a decrease in the amount of

industrial, agricultural and commercial development within the State of Iowa and would result in a decrease in the amount of financing available for pollution control facilities and health care facilities, and would potentially decrease the amount of financial aid provided to the students of the State of Iowa;

WHEREAS, the effect of the proposed January 1, 1984 retroactive effective date of HR 4170 has been to curtail the issuance of Bonds until such time as HR 4170 is defeated;

WHEREAS, in accordance with the provisions of Section 721 of HR 4170 and to permit the issuance of Bonds within the State of Iowa during the period while HR 4170 is pending in the United States Congress, the Governor of the State of Iowa deems the best interest of the citizens of the State of Iowa to be served by an executive order that will permit, on an interim basis only, an orderly and equitable allocation of the amount of Bonds which can be issued by Political Subdivisions of the State of Iowa during the calendar year 1984 or until such time as HR 4170 is defeated or is no longer pending, or the legislature of the State of Iowa enacts an alternate allocation method.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the power and authority vested in me by the Constitution and by the laws of the State of Iowa, do hereby order and decree that the following procedure be used to allocate the total principal amount of Bonds which can be issued by Political Subdivisions of the State of Iowa during the calendar year 1984 or until such time as HR 4170 is defeated or is no longer pending, or the legislature of the State of Iowa enacts an alternate allocation method, it being fully understood that the procedure ordered hereby is for the purpose of promoting commerce, including industrial, agricultural and commercial development within the State of Iowa, controlling pollution of the air or water, creating and improving health care facilities and insuring the availability of financial aid to students of the State of Iowa, on an interim basis only, and is not intended to be a permanent solution to or acceptance of the unnecessary, cumbersome and costly provisions contained in Section 721 of HR 4170:

Section 1. The aggregate amount of Bonds which may be issued collectively by all of the Political Subdivisions of the State of Iowa during the calendar year 1984, or until such time as HR 4170 is defeated or is no longer pending, shall not exceed the total amount of Bonds allocated to the State of Iowa by HR 4170 (the "Ceiling").

Section 2. The "Ceiling" shall be allocated among the Political Subdivisions of the State of Iowa on the basis of the chronological order of receipt from a Political Subdivision of the application described in Section 3 of this Executive Order.

Section 3. A Political Subdivision of the State of Iowa which proposes to issue Bonds for a specific project or purpose must make application for an allocation of a portion of the Ceiling for the particular project or purpose by submitting an application (in the form prescribed and approved by the Governor, or his designee) to the Governor, or his designee, which contains, where appropriate, the following information:

(a) The name and address of the Political Subdivision and the name of the elected chief executive officer of the Political Subdivision;

(b) The name and location (by mailing address or other definitive description) of the project for which an allocation of the Ceiling is requested and the name and mailing address of both the initial owner or operator of the project and an appropriate person from whom information regarding the project can be obtained;

(c) The date of adoption by the governing body of the Political Subdivision of an inducement resolution adopted for the purpose of taking "official action", as required by the Treasury Regulations relating to Section 103 of the Internal Revenue Code of 1954, as amended (the "Code"), if the issue of Bonds for which the allocation of the Ceiling is requested requires the taking of "official action" under the Code; and

(d) The amount of the Ceiling which the Political Subdivision is requesting be allocated for the project or purpose subject to the application.

Section 4. Upon receipt of the completed application required by Section 3 hereof, the Governor, or his designee, shall immediately notify the Political Subdivision of the allocation of the Ceiling to be applied to the project or purpose requested in the Political Subdivision's application. The allocation of the Ceiling will remain valid for 90 days from the date notice of the allocation is mailed to the Political Subdivision unless either of the following conditions have occurred:

(a) The Bonds are issued and delivered within the 90 day period in which event the allocation will be debited against the Ceiling on the date of issuance and delivery of the Bonds; or

(b) Evidence of an agreement to purchase the Bonds is obtained from an entity with the legal ability to so purchase and is filed with the Governor, or his designee, in which event the allocation will be extended for an additional 30 days beyond the date of expiration of the 90 day period. In the event the Bonds are not issued and delivered within the additional 30 day period, the allocation of the Ceiling will expire at the close of business on the 30th day.

Section 5. In the event the allocation of the Ceiling expires as provided in Section 4 of this Executive Order, the Political Subdivision may resumbit its application for an allocation of a portion of the Ceiling for a specific project or purpose and the application of the Political Subdivision relating to the project or purpose will be reviewed in chronological order of receipt with no preference or priority being given to the Political Subdivision as a result of its prior application for the same project or purpose.

Section 6. In the event the last day of either the 90 day period or the 30 day period described in Section 4 hereof is a Saturday, Sunday or any day on which offices of the State of Iowa, banking institutions or savings and loan associations in the State of Iowa are authorized or required to close, then the time for expiration of either the 90 day period or the 30 day period shall be extended to the first day thereafter which is not a Saturday, Sunday or any of the previously described days.

Section 7. The Governor reserves the right to modify the allocation method set forth in Section 2 of this Order to comply with any provisions of HR 4170, which require that certain projects or purposes be given priority over other projects or purposes in the allocation of the Ceiling.

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 22nd day of March in the year of our Lord one thousand nine hundred and eighty-four.

Terry E. Branstad
GOVERNOR

ATTEST:

Maxine Gault
SECRETARY OF STATE

State of Iowa
Executive Department

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

EXECUTIVE ORDER NUMBER ELEVEN

WHEREAS, Executive Order Number Fifteen, dated April 2, 1973, and Chapter 601, the Code of Iowa, established basic policy for Equal Opportunity and Affirmative Action for the State of Iowa; and

WHEREAS, the Governor's Task Force on Contract Compliance has determined that Articles VIII and IX, Executive Order Number Fifteen, require clarification to assure compliance with the provisions of state policy.

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 do hereby order that:

I. The provisions of Executive Order Fifteen, dated April 2, 1973, remain in effect as a statement of basic policy and a code of fair practices as the state of Iowa.

II. Articles VIII and IX, Executive Order Number Fifteen, dated April 2, 1973, are amended to add the following:

A. The following agencies are designated as Primary Interest Agencies (PIA) for contract compliance activities in the areas indicated:

1. Construction contracts: The Department of Transportation

2. Purchase of services contracts: The Department of Human Services

3. Grant-in-Aid Contracts: The Office for Planning and Programming

4. Goods and Supplies Contracts: The Board of Regents, having independent contracting and purchasing authority, has agreed to serve as PIA.

B. There is hereby established a Contract Compliance Coordinating Group to consist of the Iowa Civil Rights Commission, the Primary Interest Agencies, the Department of General Services, and the Small Business Division of the Iowa Development Commission. This group shall be responsible for implementing the four recommendations of the Governor's Task Force on Contract Compliance and making further policy recommendations to the Governor's Office.

In order to implement the four recommendations, the Contract Compliance Coordinating Group may take any of the actions recommended by the Governor's Task Force as deemed reasonable. Agencies shall not be required to enter into 28E Agreements, but may do so if they so desire.

C. The Primary Interest Agencies shall serve as information and advisory resources for all other state agencies in the areas of expertise listed in Article II, Section A herein. State agencies shall seek the advice and assistance of the Primary Interest Agencies in order to ensure equal opportunity contract compliance. Each Primary Interest Agency should monitor equal opportunity contract compliance in its designated area by periodically asking other state agencies for contract compliance information, reviewing the information, making helpful recommendations to the state agencies and by reporting any serious problems to the Contract Compliance Coordinating Group.

D. Agencies not included under the executive authority of the Governor are encouraged to adopt comparable policies and procedures and cooperate with and assist the Primary Interest Agencies and the Contract Compliance Coordinating Group in fulfilling their responsibilities.

E. The Contract Compliance Coordinating Group shall evaluate current state efforts to encourage participation by small, minority, women and other disadvantaged contractor groups and shall submit recommendations for any policy changes that may be required to the Governor prior to December 1, 1984.

F. The Iowa Civil Rights Commission shall incorporate in its annual report to the Governor a report of contract compliance activities undertaken in response to this Order.

IN TESTIMONY WHEREOF, I have here unto subscribed my name, and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 30th day of March in the year of our Lord one thousand nine hundred eighty-four.

Terry E. Branstad
GOVERNOR

Mary Jane Odell
SECRETARY OF STATE

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA
FILED - April 11, 1984

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. 68988. KUNKLE WATER & ELECTRIC, INC. v. CITY OF PRESCOTT. On review from Iowa Court of Appeals. Appeal from the Iowa District Court for Adams County, Thomas S. Bown, Judge. Decision of court of appeals and judgment of district court affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, Larson, and Carter, JJ. Opinion by Reynoldson, C.J. (19 pages $7.60)

Plaintiff appeals from a jury verdict in favor of defendant city in plaintiff's suit to collect a delinquent account for labor and equipment furnished in repairing the city's water system. OPINION HOLDS: I. Evidence that Kunkle in 32 other instances over a five-year period had estimated below the statutory limitation on projects that later overran the $10,000 trigger for competitive bidding, and had in a number of those instances divided his billing to disguise that fact, tended to establish an overall pattern lending support to the city's contentions of fraud and deliberate evasion of the statute; trial court did not abuse its discretion in admitting the challenged testimony. II. There was sufficient evidence to justify trial court's submission of the fraud issue to the jury. III. Although the city never rescinded the contract and tendered back the consideration received, this was not necessary because the alleged fraud represented an attempt to avoid the competitive bidding statute, and contracts let in violation of the statute are void, not merely voidable. IV. We reject Kunkle's theory that each item of "an open account constitutes a separate contract, separate work, separate items"; Kunkle's approach in fragmenting an open account that exceeds the bidding limitation in order to produce a spawn of little contracts would nullify the competitive bidding statute, section 384.96. Nor did Kunkle establish that the transactions at issue were legally separable and factually separate transactions. V. The Home Rule Amendment grants home rule power "not inconsistent with the laws of the general assembly"; the "not inconsistent with the laws" exception to the Home Rule Amendment applies here, making the competitive bidding law applicable. Therefore, the trial court did not err by subjecting Kunkle's quantum meruit claim to the city's affirmative defense of failure to comply with the competitive bidding law.

No. 83-62. LAMPHERE v. STATE.

Appeal from the Iowa District Court for Polk County, C. Edwin Moore, Senior Judge. Affirmed as modified, remanded with direction. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Schultz, JJ. Opinion by Reynoldson, C.J. (19 pages $7.60)

In 1979 the applicant was convicted and sentenced for first-degree kidnapping and second-degree sexual abuse; both charges arose from the same set of events. He challenged these convictions by applying for postconviction relief, and appeals from the trial court's denial of same. OPINION HOLDS: I. Because the applicant has demonstrated "sufficient reason" for failing to raise his issues in a direct appeal, he is not barred from raising the issues in a postconviction proceeding. II. The applicant's trial attorney did not render ineffective assistance in his implementation of the applicant's alibi defense. III. The trial attorney also did not render ineffective assistance by failing to object to certain instructions. The instructions were erroneous because they omitted the element of general intent from the definition of sexual abuse; however, the applicant was not prejudiced by counsel's failure to object because intent was not a fighting issue at trial and because other instructions referred to intent. IV. Under the facts of this case the second-degree sexual abuse charge was a lesser included offense of the first-degree kidnapping charge. Under the mandate of section 701.9, we nullify the judgment and sentence for second-degree sexual abuse. The kidnapping conviction is not affected by this holding. V. The warrantless search of the applicant's car was justified by exigent circumstances. The trial court did not err by overruling the applicant's fourth amendment objections to the admission of evidence seized from the car. VI. The life sentence imposed on the first-degree kidnapping charge is not so disproportionate to the offense that it amounts to cruel and unusual punishment.

No. 83-35. STATE v. ERVING.

Appeal from the Iowa District Court for Scott County, C. H. Pelton, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, Larson, and Carter, JJ. Opinion by Reynoldson, C.J. (9 pages $3.60)

Defendant appeals from conviction of second-degree attempted burglary, a violation of Iowa Code section 713.2, following defendant's attempt to enter the locked pharmacy area at the rear of a drugstore. OPINION HOLDS: I. Because there was credible evidence from which the jury could have found defendant attempted entry, and from which it could infer defendant's intent to steal, trial court did not err in overruling defendant's motions for judgment of acquittal.

II. The prosecutor committed no misconduct in alerting the court, in chambers, that a codefendant, against whom charges had been dropped, might be charged again. III. Because there was no prosecutorial misconduct, there is no merit to defendant's claim that his trial attorney was ineffective for failing to timely object or move for mistrial on this issue.

No. 69220. ROWEN V. LEMARS MUTUAL INSURANCE CO.
Appeal from the Iowa District Court for Plymouth County, J. H. Andreasen, Judge. Modified, affirmed, and remanded on appeals and cross-appeal. Considered by Reynoldson, C.J., and Harris, McCormick, McGiverin, and Schultz, JJ. Opinion by McCormick, J. (23 pages $9.20)

Several defendants appeal and plaintiffs cross-appeal from the trial court's judgment concerning certain financial issues in this derivative action involving court-ordered divestiture of control of one mutual insurance company over another. OPINION HOLDS: I. Iowa Mutual's appeal. Because this case is equitable, our review of trial court findings of fact is de novo. In reviewing the special master's findings of fact, however, we are in the same position as the district court. Like the district court, this court must "review the evidence before the master in an equity case to determine whether the findings adopted by the [district] court are clearly erroneous." A. Except for confirming the $92,500 credit due on the Alesch, Inc. stock and ordering an additional credit of $100,000 based on the value of Alesch, Inc. liquid assets on the date of acquisition, we affirm the trial court determination of credits due Iowa Mutual relating to transfer to LeMars of Alesch, Inc. B. We do not find clear error in the master's findings regarding credits allowed Iowa Mutual. We have considered all of Iowa Mutual's contentions and except as indicated find them without merit. We also reject plaintiffs' cross-appeal challenge to the credits for coadjusting and computer services. II. Burton Dull's appeal. The trial court did not err in determining Dull's retainer fee was excessive, in disallowing certain claims for non-retainer services, and in allowing only $35 an hour for his non-retainer services after 1977. III. The M. H. Tappan and W. K. Tappan appeals. The appeals by other defendants and cross-appeal by plaintiffs did not deprive the court of jurisdiction to enter judgment against W. K. Tappan. Because the judgment was an original judgment against her upon full submission of the case, it was not entered without notice. Pension rights established for the Tappans at the April 16, 1968 meeting should not be taken away; to the extent the trial court's judgment ordered reimbursement from the Tappans for those benefits, we modify the judgment to eliminate that requirement. IV. The appeals of P. A. Vander Meer, John M. Vollmar and M. H. Gearke. As with the Tappans, we hold that these defendants are entitled to any pension rights acquired by them at the April 1968 LeMars policyholders' meeting.

V. The Alesch family appeal. Because an appeal may be "taken and perfected" without service of the notice, we conclude that service is not jurisdictional. Noncompliance with the rule will, however, subject a party to sanctions, including possible dismissal in appropriate cases. We overrule these defendants' motions to dismiss, as no prejudice was shown. We overrule as moot a motion to dismiss the "cross-appeal" attempted by defendants Sevenich, Buffington and Warnock. We uphold the disallowance of the Alesch salary credit. We find that the trial court's determination of primary and secondary liability does not purport to affect possible claims among the defendants for contribution or indemnity. It does not preclude defendants from litigating their responsibilities among themselves, and it does not affect their joint and several liability to LeMars. VI. The trial court used the punitive damage assessments in part as a "control device" in an effort to obtain cooperation in the complicated process of disengaging the companies. While this is a novel use of tentative assessments of punitive damages, we cannot say the trial court lacked authority to make tentative awards subject to review before entry of final judgment. We uphold the punitive damages awards assessed in the present judgment. VII. The trial court erred in finding the amendment to section 535.3 inapplicable in the present case. The trial court was obliged to order prejudgment interest at the rate of ten percent in this case from the date the action was commenced. We uphold the trial court's determinations concerning the dates on which the statutory interest obligation commences on transactions that occurred subsequent to the filing of the petition. VIII. The master and trial court properly allowed Iowa Mutual interest on uncompensated services of Iowa Mutual to LeMars which were determined to be compensable. We reject plaintiffs' cross-appeal on this issue.

No. 69525. CHAO v. CITY OF WATERLOO.

Appeal from the Iowa District Court for Black Hawk County, Joseph C. Keefe, Judge. Reversed and remanded. Considered by Uhlenhopp, P.J., and Harris, Larson, Carter, and Wolle, JJ. Opinion by Wolle, J. (10 pages $4.00)

We have granted the City of Waterloo (city) permission to take this interlocutory appeal from several orders entered by the district court dismissing the city's cross-appeal in a condemnation proceeding. OPINION HOLDS: I. Once the city had complied with Iowa code section 472.18 by timely serving a notice of appeal, the district court had jurisdiction to hear the appeal regardless of whether the city's cross-petition satisfied the requirements of Iowa Code 472.22; the district court had jurisdiction to hear the city's appeal. II. A. Iowa rule of Civil Procedure 88 gave the city the right to amend its cross-petition against condemnees who had not answered; the district court should have granted the city's motion to amend and then considered the allegations of the proposed amended cross-petition in

ruling on the motion to dismiss. B. The City's proposed amendment cured the defect in the substantive allegations of the original cross-petition by not predicating a reduction of equitable owner's award on an increase in the amount which the tenants would recover; consequently the district court erred both in denying the city's motion to amend and in finding the city's pleadings inadequate.

No. 69148. MADISON V. COLBY.
Appeal from the Iowa District Court for Polk County, A. M. Critelli, Judge. Reversed and remanded. Considered en banc. Opinion by McCormick, J. Special concurrence by Carter, J. (24 pages $9.60)

Plaintiffs appeal from judgments entered on jury verdicts following trial of their claims arising from plaintiff Ambert's fall on an icy parking lot. OPINION HOLDS: I. The trial court erred in overruling plaintiffs' hearsay objections to certain medical records. As the presumption of prejudice which accompanies the erroneous admission of evidence was not overcome in this case, plaintiffs are entitled to a new trial. II. One issue likely to recur on retrial concerns the correctness of the trial court's instruction on the elements of Alan's claim for loss of spousal consortium. The deprived spouse, not the injured person, has the right to sue for and recover for pre-death loss of consortium. This interpretation does not affect the separate and independent right of the injured person to recover for loss of support, as distinguished from loss of services. As a result of our holding in Audubon-Exira and this case, all loss of consortium recoveries, whether pursuant to common law, rule 8 or section 613.15, go to the person who incurred the loss. In each instance recovery is for tangible and intangible elements as a unified whole. Furthermore, only one recovery of consortium damages is allowed. This interpretation nullifies an injured person's right under section 613.15 to recover personally for a spouse or child's loss of consortium, but we believe this result is demanded by the overriding legislative intent, the spirit of the statute, and the historical interplay between the common law and the statute. We also hold that consortium claims must be joined with the injured person's or administrator's action whenever feasible. III. We find no error in certain rulings concerning admissibility of evidence of other falls on the parking lot and letters from Ambert's employer to defendants' manager about the incidents and danger, nor in a ruling permitting defense counsel to withdraw certain objections and statements he made during plaintiffs' deposition of defendants' manager. SPECIAL CONCURRENCE ASSERTS: I concur specially in the result and in all of the majority opinion except Division II. With respect to the issue of spousal consortium discussed in Division II, I disagree with both the result and the rationale. The majority gratuitously nullifies the right of recovery by the injured spouse which section 613.5 expressly grants. In addition

the majority gratuitously issues an advisory opinion on the scope of rule 8 of the Iowa Rules of Civil Procedure even though that rule is in no way involved in the present case. Rather than developing new rules which affect the rights of persons who are not parties to this litigation and in which the present parties have no interest, I would decide this case solely on the spousal consortium claims involved in this litigation.

No. 69483. HAAFKE v. MITCHELL.
On appeal from the Iowa District Court for Woodbury County, James P. Kelley, Judge. Affirmed in part, reversed in part, and remanded. Considered en banc. Opinion by Larson, J. Concurrence in part, dissent in part by Uhlenhopp, J. Dissent by Harris, J. (30 pages $12.00)

Plaintiffs appeal with permission from interlocutory dismissal of claims against defendants arising out of accident allegedly caused by illegal sale of intoxicating beverages. OPINION HOLDS: I. Even under the broad reading which we have accorded the appellants' brief, we cannot find that they have preserved any issues as to the dismissal of defendant Merchants Mutual Bonding Co., and we deem the issue waived. We also deem any issues as to defendants Kingsbury waived. II. The dram shop statute, Iowa Code section 123.92 (1983), does not preempt all common-law actions based on the illegal sale of intoxicating beverages. For claims covered by the dram shop act, it is the exclusive remedy as to defendants who are licensees, but common-law liability may lie against certain parties as to whom the dram shop act is inapplicable. III. We hold that employees may be held liable under common law for negligence in furnishing liquor to the underage driver, and such negligence may be based upon violations of statute or ordinance as alleged here. IV. It was not error for the district court to sustain the motion to dismiss insofar as it raised issues of the licensees' dram shop liability for sale of liquor to an intoxicated person. A negligent act, such as sale to a minor, which is not covered by the dram shop act will support a common-law claim against the licensee. V. Grief, mental anguish, remorse and humiliation are not allowable elements of damage under either the survival statute or our dram shop act. VI. The district court was correct in striking the claim for exemplary damages against Mitchell, as licensee, insofar as his liability is based on the dram shop act. The allegations of malice in the petition were adequate to withstand a motion to dismiss as to the common-law claim, and we therefore reverse the dismissal of the claims for exemplary damages to that extent. CONCURRENCE IN PART, DISSENT IN PART BY UHLENHOPP, J., ASSERTS: I believe the dram shop act preempts the tort field as to the expressly-covered licensees and permittees. I also believe that to hold a licensee or permittee responsible under respondeat superior for conduct of an employee, the employee must

serve a person who is intoxicated or serve a person to a point of intoxication. Otherwise the statutory condition under which licensees and permittees are made liable would be undercut. DISSENT ASSERTS: In setting the parameters of liability the legislature preempted the dram shop field and delineated what claims are to be allowed against those involved in the commercial sale of alcoholic beverages. I think the majority is wrong in reentering the field.

No. 69558. IN RE ESTATE OF DAVENPORT.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Ida County, Michael S. Walsh, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, Larson, and Carter, JJ. Opinion by Larson, J. (6 pages $2.40)

Plaintiff was granted review of court of appeals decision affirming the district court's grant of defendant's motion for summary judgment and dismissal of plaintiff's petition to set aside a will on grounds of lack of due execution, lack of testamentary capacity, undue influence, fraud and mistake. The will left everything to defendant, testator's daughter, who had visited testator in the month before the will was executed. Plaintiff, testator's son, received nothing under the will, but he did receive substantial property he had held in joint tenancy with testator. OPINION HOLDS: We agree with court of appeals that there is no genuine issue of material fact on any of the alleged grounds. Plaintiff's case on his undue influence claim rises only to "scintilla" level.

No. 83-181. OTTUMWA PRODUCTION CREDIT ASSOCIATION v. KEOCO AUCTION CO.

Appeal from the Iowa District Court for Keokuk County, Robert Bates, Judge. Reversed and remanded. Considered by Uhlenhopp, P.J., and Harris, Larson, Carter, and Wolle, JJ. Opinion by Larson, J. (12 pages $4.80)

Defendant auction company appeals from judgment for conversion of livestock in which plaintiff lender claimed a security interest. One of plaintiff's borrowers had sold, through defendant auction company, hogs in which plaintiff had a security interest. OPINION HOLDS: Under Iowa Code section 554.9306(2), a security interest continues in collateral notwithstanding sale by the debtor unless the sale is authorized by the secured party in the security agreement or otherwise. Plaintiff's security interest was expressly waived. Plantiff directed the borrower to liquidate his inventory and to apply the proceeds on his loan.

No claim was made that the buyer or auctioneer knew of the conditions of the waiver or was required to pay the proceeds directly to plaintiff, so any exception to the general waiver rule that might apply under such circumstances would not apply here.

No. 83-486. STATE EX REL. RAKE V. OHDEN.
Appeal from the Iowa District Court for Sac County, R. K. Richardson, Judge. Reversed and remanded. Considered by Uhlenhopp, P.J., and Harris, Larson, Carter, and Wolle, JJ. Opinion by Harris, J. (9 pages $3.60)

The Iowa Code provides two alternative procedures to establish paternity. Chapter 675 includes a two-year statute of limitations; chapter 252A is subject to no statute of limitations during the child's minority. The trial court upheld the constitutionality of the statute of limitations in chapter 675, and the petitioner appeals with permission. OPINION HOLDS: The statute of limitations found in chapter 675 denies equal protection to petitioners under that chapter. The statute of limitations is not saved by the fact that an alternative procedure is available under chapter 252A. Chapter 252A is more restrictive in certain ways than chapter 675, and these restrictions are not substantially related to a legitimate state interest.

No. 69121. STATE V. GAINES.
Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge. On review from the Iowa Court of Appeals. Decision of court of appeals vacated; judgment of the trial court affirmed. Considered by Harris, P.J., and McCormick, McGiverin, Schultz, and Wolle, JJ. Per curiam. (4 pages $1.60)

We granted further review of a court of appeals decision which reversed defendant's convictions of second-degree burglary in violation of §§ 713.1 and 713.3 (1981), and assault while participting in a felony in violation of § 708.3. OPINION HOLDS: Two of defendant's three assignments of error on appeal were rejected by the court of appeals and are without merit for the reasons explained in the opinion of the court of appeals. The testimony of two police officers did not exceed the scope of the minutes of testimony and the trial court therefore did not err in admitting it.

No. 83-572. CAMPBELL V. VAN ROEKEL.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge. Affirmed on appeal; cross-appeal dismissed. Considered en banc. Opinion by McGiverin, J. Dissents by Uhlenhopp, J. and Schultz, J. (24 pages $9.60)

Defendants, driver and vehicle owner, appeal and plaintff passenger cross-appeals from judgment on jury verdict in a personal injury action arising out of a one-vehicle accident. OPINION HOLDS: I. The trial court should have instructed the jury in terms of negligence on the part of plaintiff under the usual reasonable person or objective standard without reference to assumption of risk terminology or strictly subjective standards, but defendants suffered no harm from the improper instruction because the jury found plaintiff five percent negligent notwithstanding the use of a subjective standard in the instruction. Use of such terms as "gross negligence," "recklessness," and "wantonness" in instructions addressed to the issue of punitive damages only was proper. Defendants cannot assert the defense of assumption of risk as to punitive damages when such defense is not applicable to the underlying cause of action from which the claim for punitive damages is derived. II. The trial court properly exercised its discretion in refusing to permit defendants to cross-examine plaintiff in regard to his academic performance and post-accident driving record. III. The trial court did not err in allowing plaintiff to inquire into matters concerning defendant Van Roekel's medical insurance and her prior driving record and drinking habits. IV. We find no error in the court's submitting to the jury the issue of permanency of plaintiff's injuries. V. We need not consider the merits of plaintiff's cross-appeal in view of our disposition of defendants' appeal and plaintiff's conditional assertion of the issue raised. DISSENT BY SCHULTZ, J. ASSERTS: I. I believe that the erroneous instruction was prejudicial. II. The majority opinion fails to recognize and resolve irreconcilable differences in aspects of our tort law relating to assumption of the risk. III. A jury should not be allowed to award punitive damages based on reckless misconduct when it also finds that the injured party assumed the risk. DISSENT BY UHLENHOPP, J. ASSERTS: I would expressly hold that subjective assumption of the risk constitutes a complete defense to a negligence claim.

No. 83-47. STATE V. MILES.

On appeal from the Iowa District Court for Black Hawk County, Leonard D. Lybbert, Judge. Affirmed. Considered by Harris, P.J., and McCormick, McGiverin, Schultz, and Wolle, JJ. Opinion by McCormick, J. (6 pages $2.40)

Defendant appeals from her conviction by the court and sentence for third-degree theft in violation of Iowa Code section 714.1(1) (1981). OPINION HOLDS: I. A defendant in a bench-tried criminal case who has not filed a motion for new trial seeking amendment or enlargement of the court's findings and conclusions cannot rely on appeal on the insufficiency of those findings and conclusions to support the court's decision so long as the evidence would support the necessary additional findings and conclusions. Therefore defendant is precluded from attacking the sufficiency of evidence to support necessary findings, unless excused from raising the issue in the trial court by ineffective assistance of counsel. Defendant has failed to demonstrate that counsel's omission caused her prejudice of the requisite constitutional magnitude. II. The evidence was sufficient to support defendant's conviction; the trial court did not err in overruling her motion for acquittal. III. Defendant's additional claims of ineffectiveness of counsel cannot be decided on the present record.

No. 83-656. IOWA-ILLINOIS GAS AND ELECTRIC COMPANY V. IOWA STATE COMMERCE COMMISSION.

Appeals from the Iowa District Court for Scott County, Margaret S. Briles, Judge. Affirmed in part and reversed and remanded in part. Considered by Harris, P.J., and McCormick, McGiverin, Schultz, and Wolle, JJ. Opinion by McCormick, J. (13 pages $5.20)

Utility and unincorporated association separately appeal from a district court decision affirming the commerce commission decision in rate proceedings and dismissing the assocation's petition for judicial review. OPINION HOLDS: I. The record at the time of the court's ruling was sufficient to demonstrate the standing of the unincorporated association to represent members who were rate payers of the utility. The utility was obliged to raise the issue in district court if it wished to make an issue of the association's standing in that forum. Remand is necessary to decide the merits of the association's contentions presented to but not ruled on by the district court. II. The utility was not denied substantive due process by the commerce commission's decision to reduce its return on excess generating capacity.

No. 83-102. NANKE V. NAPIER.

Appeal from the Iowa District Court for Black Hawk County, Peter Van Metre, Judge. Affirmed. Considered by Harris, P.J., and McCormick, McGiverin, Schultz, and Wolle, JJ. Opinion by McGiverin, J. Dissent by Wolle, J. (10 pages $4.00)

Plaintiff mother appeals from dismissal of her claim for child rearing expenses against a physician whose alleged negligence in performing an abortion permitted the birth of a healthy child. OPINION HOLDS: The parent of a normal, healthy child may not maintain an action to recover the expenses of rearing that child from a physician whose alleged negligence in performing a therapeutic abortion permitted the birth of the child. DISSENT ASSERTS: I do not believe the mother should be foreclosed from proving that in her particular circumstances, the raising of an unplanned child constituted compensable damage to her.

Nos. 69505 and 69523. STATE V. BLAIR.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge. Affirmed. Considered by Harris, P.J., and McCormick, McGiverin, Schultz, and Wolle, JJ. Opinion by McGiverin, J. (12 pages $4.80)

Defendants appeal their convictions for first-degree murder. OPINION HOLDS: I. The evidence was sufficient to support the verdicts. II. Some of the defendants' claims of ineffective assistance of counsel are reserved for postconviction proceedings. However, one of their claims cannot be reserved for postconviction proceedings because it is a bald assertion without substance or logic.

No. 83-687. CARLSON V. CARLSON.

Appeal from the Iowa District Court for Webster County, R. K. Richardson, Judge. Affirmed. Considered by Harris, P.J., and McCormick, McGiverin, Schultz, and Wolle, JJ. Opinion by McGiverin, J. (6 pages $2.40)

Plaintiffs appeal from summary judgment for defendant in a negligence action. OPINION HOLDS: A member of a partnership is an employer of the partnership's employees. Iowa Code section 85.20 precludes an injured employee and his dependents from suing a partner in an independent tort action for injuries received during the course of employment for the partnership.

No. 83-919. KROBLIN v. RDR MOTELS, INC.
Appeal from the Iowa District Court for Black Hawk County, L. John Degnan, Judge. Affirmed. Considered by Harris, P.J., and McCormick, McGiverin, Schultz, and Wolle, JJ. Opinion by Wolle, J. (15 pages $6.00)

The purchaser of corporate stock appeals from an adverse declaratory judgment determining the principal amount owed to defendant sellers under the contract of purchase. OPINION HOLDS: I. Established principles of contract interpretation and the circumstances of this case support the trial court's consideration of the extrinsic evidence offered by the parties to determine what their contractual language meant. The language chosen by the parties for their written agreement did not unequivocally fix the rights and obligations of the parties with respect to general taxes on the property sold. II. Plaintiffs' request for reformation is not properly raised on appeal because it is based on a theory of mutual mistake which was not presented to the trial court. III. Buyer has failed to establish that its substantial rights were adversely affected by the trial court's reliance on opposing counsel in drafting the orders which overruled the buyer's post-trial motions, although we disapprove the manner in which the trial court obtained and used the proposed rulings. We also note our disapproval of the inordinate length of time which elapsed between the one-day trial on May 19, 1980 and the filing of the trial court's rulings on post-trial motions on June 17, 1983.

NO. 83-551. POTTEBAUM v. HINDS.
Appeal from the Iowa District Court for Woodbury County, James P. Kelley, Judge. Reversed and remanded. Considered en banc. Opinion by Schultz, J. Dissent by Harris, J. (16 pages $6.40)

Defendant dram shop operator appeals with permission from the trial court's denial of his motion for judgment on the pleadings in a tort action brought by police officers injured by an intoxicated patron. OPINION HOLDS: We adopt the fireman's rule denying recovery to a firefighter and a policeman whenever their injuries are caused by the very wrong that initially required the presence of an officer in his official capacity and subjected him to harm. We also hold that the rule, when applicable, bars recovery in a dram shop action. DISSENT ASSERTS: I. I see no need for establishing a special rule of no liability in tort claims by firefighters or police officers. II. If a fireman's rule is to be adopted it should not apply to a statutory dram shop action.

No. 69606. SCHRIER v. STATE.

Appeal from Iowa District Court for Polk County, C. Edwin Moore, Senior Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, Larson, and Carter, JJ. Opinion by Carter, J. (23 pages $9.20)

Postconviction applicant appeals from district court's denial of relief from his 1979 conviction of murder in the first degree. OPINION HOLDS: I. Trial counsel's decision to forego developing the scientific aspects of the State's evidence of sexual abuse was not an unreasonable tactical decision nor did it constitute other than conscientious, meaningful representation within the constitutional standard of performance; petitioner has also failed to establish he was prejudiced by such a decision. II. The record does not show it was ineffective assistance for trial counsel not to secure blood typing and sperm tests on fluids from the victim's body in or was it ineffective assistance not to comment upon and seek favorable inferences from the State's apparent failure to conduct such tests. III. The petitioner acceded to counsel's recommendation that the petitioner not take the stand. Counsel's decision was supportable trial strategy and did not constitute ineffective assistance. IV. Trial counsel was not ineffective in failing to call witnesses to corroborate evidence concerning petitioner's limited access to the victim. V. Trial counsel was not ineffective by failing to object to testimony allegedly not shown to have been based on personal knowledge. VI. Assuming that certain testimony should have been excluded, no error of a constitutional dimensions was shown because its import was speculative and it concerned basically a matter of impeachment of an insignificant witness. VII. Evidence of petitioner's demeanor and activities immediately following his son's injuries was relevant and material to the jury's understanding of the events surrounding the victim's injuries; counsel's failure to object to the evidence was not a breach of an essential duty or prejudicial. VIII. Assuming that the petitioner is correct that a theory of willful, premeditated murder should not have been submitted to the jury as an alternative means of finding first-degree murder, we find this instruction created no prejudice. IX. The petitioner's claim that trial counsel was ineffective in not objecting to the court's instruction that malice aforethought may be implied from an action of sexual abuse affords petitioner no basis for relief. X. Trial counsel was not ineffective for failing to object to the court's instruction defining sexual abuse. XI. Since neither the underlying felony of sexual abuse nor the offense of sexual abuse in the first degree of which petitioner was convicted meet the statutory test for an included offense under a charge of felony murder, the double jeopardy claim seeking to preclude his conviction on both first-degree murder and first-degree sexual abuse is

without merit and trial counsel and appellate counsel were not ineffective in failing to raise it. XII. Appellate counsel on direct appeal was not ineffective for failing to assert the claims of ineffective assistance of trial counsel rejected above; we find no merit to the petitioner's contention that counsel representing petitioner on his direct appeal should have contended that this court was bound to review the sufficiency of the evidence on appeal by an erroneous standard for viewing circumstantial evidence set forth in the trial court's instructions.

No. 83-648. PROCHELO V. PROCHELO.
Appeal from the Iowa District Court for Woodbury County, Richard F. Branco, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, Larson, and Carter, JJ. Opinion by Harris, J. (7 pages $2.80)

Defendant appeals from judgment for plaintiff in an action seeking either indemnity or contribution for the amount of a judgment collected from plaintiff based upon two promissory notes jointly signed by the parties when they were married to each other. OPINION HOLDS: I. Silence of the parties' dissolution decree means there was no change in the liability of the parties to each other as co-makers of the notes. Plaintiff was not entitled to indemnity for his payment of the judgment and the trial court erred in concluding otherwise. II. Upon remand defendant's counterclaim can be urged in defense of any claim by plaintiff for contribution even though it might otherwise be barred by the general statute of limitations.

No. 83-41. STATE V. GULLY.
Appeal from the Iowa District Court for Webster County, Albert L. Habhab, Judge. Affirmed. Considered en banc, except McCormick, J., who takes no part. Opinion by Harris, J. (7 pages $2.80)

Defendant appeals from his first-degree murder conviction. A young Fort Dodge woman was found murdered near a mobile home where she had been babysitting. A wallet, which contained a YMCA card with defendant's name on it, was found on a table. The following day a police officer pulled alongside defendant in a squad car and said "they want to talk to [you] down at the station." Defendant got into the car and accompanied the officer to the station. OPINION HOLDS: I. Defendant was not seized at the initial stop. For a seizure there must be something uttered or done which would amount to an objective indication that the officer exercised some dominion over the person seized. II. As soon as defendant entered the police station, an officer noticed defendant's

gym shoe print appeared to match the mud pattern found on the victim's face. This fact, coupled with the fact of the wallet in the trailer house, amounted to probable cause to seize defendant.

No. 69614. STATE v. CRANEY.

Appeal from the Iowa District Court for Buchanan County, Carroll E. Engelkes, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, Larson, and Carter, JJ. Opinion by Uhlenhopp, J. (29 pages $11.60).

Defendant appeals his conviction of first-degree murder arising out of the brutal slaying of his three-week old son. At trial, Dr. Thomas Sannito, a psychologist whom defendant initially retained, testified for the State that defendant was sane at the time of the homicide. OPINION HOLDS: I. A. Under the fifth and fourteenth amendments to the U.S. Constitution, trial court did not err in admitting Sannito's opinion on sanity and diminished responsibility and his non-incriminating observations of defendant including statements by defendant; but the court erred in admitting Sannito's testimony as to defendant's incriminating admissions of killing the child. The error in admitting the inadmissible part of the Sannito testimony was harmless beyond a reasonable doubt; the State overwhelmingly proved the killing by defendant and the defense itself used evidence of the homicide by defendant to attempt to prove its insanity defense. B. Defendant's sixth amendment right to counsel does not create an attorney-client privilege for a defendant's communications with a mental expert. Sannito's testimony was not inadmissible on this theory. C. The attorney-client privilege under Iowa Code section 622.10 is not applicable to Sannito's testimony. II. The rebuttal testimony of three Mental Health Institute staff members was admissible because defendant opened the door to such testimony by previously relying on his mental health history in support of his insanity defense. III. The telephone calls which Iowa Code section 804.20 assures to persons in custody are not confidential. Section 804.20 does not violate defendant's sixth amendment right to consult with counsel. Therefore, trial court properly admitted a jailer's testimony about incriminating statements defendant made in an initial telephone call to his attorney. IV. There is no merit to defendant's claims that his fifth amendment right to remain silent and sixth amendment right to counsel were violated by a jailer's testimony about a comment defendant made while waiting for his attorney to arrive. V. Trial court did not err in refusing defendant's request to instruct on irresistible impulse as a separate defense from insanity under the M'Naghten test. VI. The evidence was sufficient to generate a jury question regarding whether defendant had the capacity to form and had formed the requisite premeditation and deliberation elements of first-degree murder.

No. 83-406. ORR v. CITY OF KNOXVILLE.
Appeal from the Iowa District Court for Marion County, Richard D. Morr, Judge. Affirmed in part, reversed in part, and remanded with directions. Considered en banc. Opinion by Reynoldson, C.J. (7 pages $2.80)

Dwight Orr sued the defendant city for personal injuries, and his wife Donna sued for loss of consortium. They appeal from the dismissal of their lawsuit. OPINION HOLDS: I. Dwight Orr substantially complied with the notice requirement of Iowa Code section 613A.5. A letter to the city from a workers' compensation carrier met all requirements for timeliness and content of notice. Under the unusual circumstances of this case, the fact that the letter was sent by the workers' compensation carrier, rather than by Dwight Orr, is not fatal. This holding pertains only to Dwight Orr's case and does not save Donna Orr's consortium claim; therefore we briefly consider her other issues. II. This court has previously rejected contentions that section 613A.5 denies equal protection and that section 613A.5 is subject to the "discovery rule." Farnum v. G. D. Searle & Co., 339 N.W.2d 392, 396-98 (Iowa 1983). We adhere to the Farnum holdings. III. Section 613A.5 specifically applies to actions brought against a municipality "under common law"; therefore Donna Orr cannot avoid the notice requirements of section 613A.5 on the ground her consortium claim was maintainable at common law.

No. 83-620. STATE v. RIDOUT.
Appeal from the Iowa District Court for Madison County, Van Wifvat, Judge. Affirmed in part, reversed in part, and remanded with direction. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, Larson, and Carter, JJ. Opinion by Reynoldson, C.J. (6 pages $2.40)

State appeals the dismissal of a trial information charging defendant with third-offense operating while intoxicated (OWI), a violation of Iowa Code section 321.281. One of defendant's two prior alleged offenses had resulted in a deferred judgment. OPINION HOLDS: I. The motion to dismiss should have been overruled because the number of defendant's previous offenses is not an element of the current OWI charge, but goes instead only to the penalty once the defendant is found guilty. II. A deferred sentence is not an Iowa Code subsection 321.281(2)(c) "offense" for the purposes of imposing enhanced punishment.

NO. 69579. STATE v. CLARK.

Appeal from the Iowa District Court for Jackson County, David J. Sohr, Judge. Reversed but not remanded. Considered by Harris, P.J., and McCormick, McGiverin, Schultz, and Wolle, JJ. Opinion by Schultz, J. (8 pages $3.20)

The State sought discretionary review to challenge the trial court's giving of an instruction on a mistake of law defense in a kidnapping trial. OPINION HOLDS: The defendants were not entitled to an instruction on the defense of mistake of law, where the defendants knew their acts were unlawful but did not realize the acts constituted kidnapping (the crime charged). The State was required to prove only that the defendants deliberately and intentionally did the prohibited act, not that they were subjectively aware they were violating the kidnapping statute.

No. 83-382. LAMB v. EADS.

Certiorari to Iowa District Court for Tama County, William R. Eads, Judge. Writ annulled. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, Larson, and Carter, JJ. Opinion by Uhlenhopp, J. (8 pages $3.20)

In this original certiorari proceeding plaintiff challenges the constitutionality of a district court order holding him in contempt for failure to pay child support, requiring his incarceration, and withholding mittimus on condition. OPINION HOLDS: I. The district court did not err in placing the burden on plaintiff to show lack of willfulness and in finding willfulness in the absence of evidence that plaintiff's failure to pay was not willful. II. Inferring willfulness from plaintiff's failure to show that he could not pay did not cause him to incriminate himself by his silence and ordering him incarcerated unless he makes future payments did not deprive him of due process and equal protection.

NO. 83-258. RIFE v. CIVIL SERVICE COMMISSION.

On review from Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge. Decision of court of appeals vacated; reversed and remanded with directions. Considered by Harris, P.J., and McCormick, McGiverin, Schultz, and Wolle, JJ. Per curiam.

(6 pages $2.40)

A city employee seeks further review of the court of appeals decision reversing the district court's reinstatement of the employee and upholding the City and Civil Service Commission's original fifteen-day suspension. OPINION HOLDS: We reject the Commission's contention that further review should not have been granted because the application for review did not comply with Iowa Rule of Appellate Procedure 402(b) by specifying precisely and in what manner the court of appeals erred. The trial court correctly treated the appeal as a trial anew and based its decision on the evidence before it while affording no weight or presumption of regularity to the findings of the Commission. A two-day rather than a fifteen-day suspension was appropriate punishment for the employee's infractions.

No. 83-880. STATE v. PETERSON.

Appeal from the Iowa District Court for Cerro Gordo County, John F. Stone, Judge. Reversed and remanded with directions. Considered en banc. Opinion by Wolle, J. Dissent by Carter, J. (17 pages $6.80)

The State appeals from dismissal of its civil action to find defendant a habitual traffic offender and revoke his operator's license under Iowa Code sections 321.555-.560. OPINION HOLDS: I. Out-of-state convictions for driving while intoxicated may be counted in determining whether a driver is a habitual offender whose license should be revoked pursuant to Iowa Code sections 321.555-.560. II. The State's revocation proceeding was timely filed. The statutory reference to "six years" measures the period within which three or more final convictions must have been rendered, not the period during which the civil action for revocation must be brought. Moreover, the defendant did not meet his burden to establish the equitable defense of laches. DISSENT ASSERTS: I do not believe that Iowa Code section 321.555(1)(b) permits out-of-state convictions for driving while intoxicated to be counted in determining whether a driver is a habitual offender.

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