



IOWA ADMINISTRATIVE BULLETIN

IOWA STATE LIBRARY

Published Biweekly

VOLUME IV
April 28, 1982

NUMBER 22
Pages 1313 to 1388

CONTENTS IN THIS ISSUE APR 26 1982

Pages 1320 to 1377 include ARC 2829 to ARC 2864

ADMINISTRATIVE LAW	
Seminar schedule	1319
AGENDA	
Administrative rules review committee	1315
AGRICULTURE DEPARTMENT[30]	
Notice, Weights and measures, 55.49 ARC 2852	1320
ATTORNEY GENERAL	
Opinions summarized	1379
COMMERCE COMMISSION[250]	
Notice, Ratemaking treatment of excess electric generating capacity, 7.10(3) ARC 2836	1320
Notice Amended, Accounting-advertising, 16.8 ARC 2854	1321
Notice, Service supplied by utilities, 19.2(4), 19.3(10), 20.2(4), 20.3(8), 20.3(13), 21.2(5), 21.3(12) ARC 2855	1322
Filed Emergency, Accounting, 16.2(7), 16.2(8), 16.3(7), 16.3(8), 16.5(5), 16.5(6) ARC 2853	1339
CONSERVATION COMMISSION[290]	
Notice, Motor regulations, ch 40 ARC 2844	1326
Notice and Termination, Metal detectors, ch 43 ARC 2845	1327
Notice, Camping fees, 45.2 to 45.4 ARC 2846	1328
Filed, State forest camping, ch 41 ARC 2843	1370
DELAYS	
Nursing Board[590] ch 6	1378
ENGINEERING EXAMINERS, BOARD OF[390]	
Notice, Buildings, structures and systems, ch 5 ARC 2838	1328
HEALTH DEPARTMENT[470]	
Notice, Medical examiners, conducting examinations, 135.102(5) ARC 2856	1329
Notice, Medical examiners, discipline, 135.204(3) ARC 2857	1330
Notice, Occupational therapy assistants, license, 138.206(5) ARC 2860	1330
Filed, Medical examiners, filing dates of applications, 135.102 ARC 2858	1370
Filed, Physical and occupational therapy, examinations, continuing education, amendments to chs 137 and 138 ARC 2861	1371
Filed, Chiropractors, license renewal, continuing education, amendments to ch 141 ARC 2862	1373
INDUSTRIAL COMMISSIONER[500]	
Filed, Contested cases, 4.17, 4.18, 4.20, 4.31 ARC 2839	1373
LIVESTOCK HEALTH ADVISORY COUNCIL[565]	
Notice, Recommendations, ch 1 ARC 2837	1331
MERIT EMPLOYMENT DEPARTMENT[570]	
Notice, Appeals, grievances, 12.10, 15.3, 15.9(2) ARC 2864	1331
Filed Emergency, Appeals, grievances, 12.10, 15.3, 15.9(2) ARC 2863	1356
PLANNING AND PROGRAMMING[630]	
Filed Emergency, Community development block grant nonentitlement program, ch 23 ARC 2831	1358
PUBLIC HEARINGS	
Summarized list	1317
PUBLIC INSTRUCTION DEPARTMENT[670]	
Notice, School transportation, 22.15(2), 22.43(1) ARC 2859	1332
REAL ESTATE COMMISSION[700]	
Notice, Closing transactions, 1.28 ARC 2840	1332
Notice, Inactive licensees, addresses, 1.33 ARC 2841	1333
Notice, Licensees of other jurisdictions, 2.3 ARC 2842	1333
REVENUE DEPARTMENT[730]	
Notice, Certification, courses, 123.1, 123.3 to 123.8, 124.3, 124.6 ARC 2847	1333
SOCIAL SERVICES DEPARTMENT[770]	
Notice, ADC, application, 40.2, 40.3 ARC 2849	1336
Notice Amended, Medical services, hearing aids, 78.14 ARC 2850	1336
Notice, Intermediate care facilities, 81.6(11)"h", 82.5(11)"e" ARC 2851	1337
Filed, Mental health and mental retardation commission, 1.6 ARC 2848	1374
Filed, Adult correctional institutions, 16.10(2) ARC 2832	1375
Filed, ADC, support information, 41.2(6)"b" ARC 2833	1375
Filed Emergency, Food stamps, administration, 65.3 ARC 2829	1367
Filed, Medical assistance, dentists, 78.4(1)"b"(12) ARC 2834	1376
Filed and Notice Termination, Resources, 130.3(1), 130.5, 130.6 ARC 2835	1376
Filed Emergency, Social services block grant, amendments to ch 131 ARC 2830	1368
USURY	
Notice	1338

PREFACE

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

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

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

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

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

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

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
23	Friday, April 23, 1982	May 12, 1982
24	Friday, May 7, 1982	May 26, 1982
25	Friday, May 21, 1982	June 9, 1982

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

First quarter	July 1, 1981, to June 30, 1982	\$85.00 plus \$2.55 tax
Second quarter	October 1, 1981, to June 30, 1982	\$63.50 plus \$1.91 tax
Third quarter	January 1, 1982, to June 30, 1982	\$42.50 plus \$1.28 tax
Fourth quarter	April 1, 1982, to June 30, 1982	\$21.00 plus \$0.63 tax

Single copies may be purchased for \$2.50 plus \$0.08 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

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

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

Iowa Administrative Code - \$563.00 plus \$16.89 tax

(Price includes Volumes I through XII, skeleton index and binder, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders can be purchased for \$3.00 plus \$0.09 tax.)

Iowa Administrative Code Supplement - \$112.00 plus \$3.36 tax

(Subscription expires June 30, 1982.)

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

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

Recycled
Paper

The Administrative Rules Review Committee will hold its regular meeting Tuesday and Wednesday, May 11 and 12, 1982, 9:00 a.m., Committee Room 116, State Capitol. The following rules will be reviewed.

DIVISION I
Rules under Notice and Emergency Filed Rules

Bulletin

AGRICULTURE DEPARTMENT[30]Standards for determining gallonage on gasoline or diesel motor vehicle fuel, 55.49 **ARC 2852** 4/28/82**COMMERCE COMMISSION[250]**Ratemaking treatment of excess electric generating capacity, 7.10(3) **ARC 2836** 4/28/82Accounting, 16.2(7), 16.2(8), 16.3(7), 16.3(8), 16.5(5), 16.5(6), filed emergency **ARC 2853** 4/28/82Compiling advertisements and expenses, 16.8, amended notice **ARC 2854** 4/28/82Service supplied by utilities 19.2(4)"c"(12), 19.3(10), 20.2(4)"w", 20.3(8), 20.3(13), 21.2(5)"c"(10),
21.3(12) **ARC 2855** 4/28/82Telephone utilities, 22.11(3) **ARC 2826** 4/14/82**CONSERVATION COMMISSION[290]**Motor regulations, ch 40 **ARC 2844** 4/28/82Metal detectors in state parks, ch 43, also **ARC 2669** terminated **ARC 2845** 4/28/82State parks and preserves, 45.2, 45.2(2)"c", 45.2(4), 45.2(5)"a", 45.2(5)"b", 45.2(6), 45.3, 45.4 **ARC 2846** 4/28/82**ENGINEERING EXAMINERS, BOARD OF[390]**Buildings, structures and systems requiring professional services, ch 5 **ARC 2838** 4/28/82**ENVIRONMENTAL QUALITY DEPARTMENT[400]**Water supplies, 22.2, 22.4(3)"d", 22.4(4)"c", 22.4(5)"d", 22.5(2)"a", 22.5(3)"d", 22.6, 22.7
22.12(4)"b" **ARC 2814** 4/14/82Solid waste disposal, 25.1(7), 26.3 to 26.6, 27.2(1) **ARC 2290** terminated **ARC 2813** 4/14/82**HEALTH DEPARTMENT[470]**Medical examiners, conducting examinations, 135.102(5) **ARC 2856** 4/28/82Medical examiners, grounds for discipline, 135.204(3)"d" and "e" **ARC 2857** 4/28/82Physical therapy and occupational therapy examiners, license, 138.206(5) **ARC 2860** 4/28/82**LIVESTOCK HEALTH ADVISORY COUNCIL[565]**Recommendation of appropriation, ch 1 **ARC 2837** 4/28/82**MERIT EMPLOYMENT DEPARTMENT[570]**Conduct of appeal hearings, grievances and complaints, 12.10, 15.3—Step 4, 15.9(2) **ARC 2864**,
also filed emergency **ARC 2863** 4/28/82**PLANNING AND PROGRAMMING[630]**Community development block grant nonentitlement program, ch 23, filed emergency after notice
ARC 2831 4/28/82**PUBLIC INSTRUCTION DEPARTMENT[670]**School transportation, 22.15(2), 22.43(1)"c" **ARC 2859** 4/28/82**REAL ESTATE COMMISSION[700]**Closing transactions, 1.28 **ARC 2840** 4/28/82Addresses of inactive licensees, 1.33 **ARC 2841** 4/28/82Licensees of other jurisdictions, 2.3 **ARC 2842** 4/28/82**REVENUE DEPARTMENT[730]**Assessors, certification, courses, 123.1, 123.3 to 123.8, 124.3—item 3, 124.6 **ARC 2847** 4/28/82**SOCIAL SERVICES DEPARTMENT[770]**ADC, applications, 40.2, 40.3 **ARC 2849** 4/28/82ADC, trusts, 41.6(8) **ARC 2819** 4/14/82Food stamp program, ch 65 **ARC 2820** 4/14/82Food stamp program, administration, 65.3, filed emergency **ARC 2829** 4/28/82Medical assistance, 75.1(15)"e"(3), 78.1(1)"g", 78.3(15), 78.12(16), 79.1(4), 79.1(5), 81.10(4)"f"
and "g", 81.10(5), filed emergency **ARC 2821** 4/14/82Medical services, hearing aids, 78.14, amended notice **ARC 2850** 4/28/82Intermediate care facilities, intermediate care facilities for the mentally retarded, 81.6(11)"h",
82.5(11)"e" **ARC 2851** 4/28/82Social services block grant—implemented, 131.1, 131.2(1), 131.4, 131.5, filed emergency **ARC 2830** 4/28/82**SUBSTANCE ABUSE, IOWA DEPARTMENT OF[805]**Address corrected, advisory council, 1.2, 1.3(3)"d", 2.2(2), 3.5(1), 3.15(1),
1.4, filed emergency **ARC 2823** 4/14/82

DIVISION II

Filed Rules

Bulletin

CONSERVATION COMMISSION[290]

State forest camping, ch 41 ARC 2843 4/28/82

DENTAL EXAMINERS, BOARD OF[320]

License fees and hearings, 15.1, 15.2, 51.7(1) ARC 2811 4/14/82

EMPLOYMENT AGENCY LICENSE COMMISSION[350]

Revocation, fees, advertisement, contracts, records, forms, 5.4, 6.2, 6.3, 6.4, 7.3(1),
8.2(3), 9.3, 10.4 ARC 2809 4/14/82

ENVIRONMENTAL QUALITY DEPARTMENT[400]

Land application of wastes, ch 33 ARC 2815 4/14/82

HEALTH DEPARTMENT[470]

Funds for extending public health nursing services, visiting nurse services and homemaker-home health
aide services, 79.1, 79.3(4) to 79.3(6), 79.4(1) ARC 2824 4/14/82

Disclosure of data, 103.1(7) ARC 2825 4/14/82

Medical examiners, 135.102(1) to 135.102(4) ARC 2858 4/28/82

Physical and occupational therapy examiners, 137.2(4), 137.2(5), 137.3(1), 137.6(1), 137.6(2), 138.2(1) to
138.2(4), 138.2(6), 138.3(4), 138.4(1) to 138.4(3), 138.7, 138.9, 138.10(3), 138.206(4), 138.210(1),
138.210(8)"b" ARC 2861 4/28/82Podiatry examiners, license renewal, continuing education, fees, 139.1(16), 139.3, 139.101(1),
139.101(2), 139.101(5), 139.105, 160.2 ARC 2812 4/14/82Chiropractic examiners, license renewal, continuing education, 141.12(1), 141.13(4), 141.16(2), 141.62(1) to
141.62(6), 141.66 ARC 2862 4/28/82

INDUSTRIAL COMMISSIONER[500]

Contested cases, 4.17, 4.18, 4.20, 4.31 ARC 2839 4/28/82

LANDSCAPE ARCHITECTURAL EXAMINERS BOARD[540]

Biennial renewal of registration, 2.8, 2.10 ARC 2827 4/14/82

NURSING HOME ADMINISTRATORS BOARD OF EXAMINERS[600]

License fee, 2.5 ARC 2810 4/14/82

REVENUE DEPARTMENT[730]

Sales and use tax, 12.8, 12.9, 16.22, 18.21, 18.42(1), 19.7, 19.13, 19.13(1), 26.38 ARC 2816 4/14/82

Cigarette tax, violator penalty, 81.8(1) ARC 2817 4/14/82

Hotel and motel tax, 103.1(2), 103.6(2), 104.6 ARC 2818 4/14/82

SOCIAL SERVICES DEPARTMENT[770]

Mental health and mental retardation commission, 1.6 ARC 2848 4/28/82

Prison overcrowding state of emergency, 16.10(2) ARC 2832 4/28/82

ADC, support information, 41.2(6)"b"(1) and (3) ARC 2833 4/28/82

Medical assistance, dentist—oral prophylaxis, 78.4(1)"b"(12) ARC 2834 4/28/82

Resources, general provisions, 130.3(1), 130.5(1) to 130.5(3), 130.6(1)"a" and "b",
also terminates two notices ARC 2835 4/28/82

SUBSTANCE ABUSE, IOWA DEPARTMENT OF[805]

Licensure standards for treatment programs, complaints, 3.14 ARC 2822 4/14/82

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
COMMERCE COMMISSION[250]		
Rates and charges by telephone utilities, 22.11(3)"a" IAB 4/14/82 ARC 2826	Commission Hearing Room First Floor Lucas State Office Bldg. Des Moines, Iowa	May 11, 1982 10:00 a.m.
Ratemaking, excess electric generating capacity, 7.10(3) IAB 4/28/82 ARC 2836	Commission Hearing Room First Floor Lucas State Office Bldg. Des Moines, Iowa	June 21, 1982 10:00 a.m.
Advertising costs, 16.8 IAB 4/28/82 ARC 2854	Commission Hearing Room First Floor Lucas State Office Bldg. Des Moines, Iowa	June 2, 1982 10:00 a.m.
CONSERVATION COMMISSION[290]		
Motor regulations, ch 40 IAB 4/28/82 ARC 2844	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	May 18, 1982 9:00 a.m.
Metal detectors in state parks, ch 43 IAB 4/28/82 ARC 2845	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	May 19, 1982 10:00 a.m.
State parks and preserves, ch 45 amendments IAB 4/28/82 ARC 2846	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	May 18, 1982 10:00 a.m.
ENGINEERING EXAMINERS[390]		
Building, structures and systems requiring professional services, ch 5 IAB 4/28/82 ARC 2838	Sixth Floor Conference Room Lucas State Office Bldg. Des Moines, Iowa	May 20, 1982 1:00 p.m.
ENVIRONMENTAL QUALITY DEPARTMENT[400]		
Permits, fees for public water supplies, ch 22 amendments IAB 4/14/82 ARC 2814	Auditorium Wallace State Office Bldg. Des Moines, Iowa	May 4, 1982 1:00 p.m.
LIVESTOCK HEALTH ADVISORY COUNCIL[565]		
Recommendations for fiscal year 1982-83, ch 1 IAB 4/28/82 ARC 2837	Dean's Conference Room College of Veterinary Medicine Iowa State University Ames, Iowa	June 10, 1982 10:00 a.m.
MERIT EMPLOYMENT DEPARTMENT[570]		
Appeals, ch 12 and grievances and complaints, ch 15 IAB 4/28/82 ARC 2864	Grimes Conference Room North Half, First Floor Grimes State Office Bldg. Des Moines, Iowa	May 27, 1982 9:00 a.m.
REAL ESTATE COMMISSION[700]		
Address of inactive licensees, 1.33 IAB 4/28/82 ARC 2841	Commission Office 1223 E. Court Ave. Des Moines, Iowa	May 20, 1982 3:00 p.m.
REGENTS, BOARD OF[720]		
Reduction in force, 3.104(4) IAB 3/31/82 ARC 2802	Office of Board of Regents Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	April 30, 1982 10:00 a.m. (If requested)

SOCIAL SERVICES[770]

ADC, chs 40, 41, 44, 46

(See IAB 3/17/82 ARC 2772)

IAB 4/14/82 ARC 2828

IPF Community Room
804 North Main
Carroll, IowaMay 5, 1982
1:30 p.m.3rd Floor Conference Room
Conlin Building
Dubuque, IowaMay 5, 1982
9:00 a.m.Marshall County Office
206 West State Street
Marshalltown, IowaMay 5, 1982
7:00 p.m.Bethany Lutheran Church
15 West 14th
Spencer, IowaMay 5, 1982
7:30 p.m.

Hearing aid services, 78.14

IAB 4/28/82 ARC 2850

Conference Room
Des Moines District Office
3609½ Douglas
Des Moines, IowaMay 19, 1982
1:30 p.m.

ATTENTION

SEMINAR ON ADMINISTRATIVE LAW

The Iowa Law School will present a 15-hour course for government officials and practicing lawyers on Iowa State Administrative Law. The course will be held at the Capital Plaza Holiday Inn, 1050 Sixth Avenue, Des Moines, Iowa, between 3:00 and 6:15 p.m., Monday through Friday, May 10 - May 14, 1982. The course will be taught by Professor Arthur E. Bonfield of the Iowa Law School faculty. Professor Bonfield, as counsel to the Joint Committee of the Iowa General Assembly, was a principal draftsman of the Iowa Administrative Procedure Act.

It is planned that this program will qualify for fifteen hours under the Iowa Mandatory Legal Education Rules. Comprehensive treatment will be given to the Iowa Administrative Procedure Act with special emphasis on the recent court decisions.

Interested persons should send their \$130.00 registration fee to:

**Iowa Law School
Continuing Legal Education
College of Law
University of Iowa
Iowa City, IA 52242**

ARC 2852

**AGRICULTURE,
DEPARTMENT OF[30]
NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Sections 189.2(2), 215.18 and 215.24, The Code, the Iowa Department of Agriculture hereby gives Notice of Intended Action to amend Chapter 55, "Weights and Measures", appearing in the Iowa Administrative Code.

These rules establish standards for determining gallonage on gasoline or diesel motor vehicle fuel. The rule also provides that temperature correction or any other deliberate method of heating gasoline or diesel motor vehicle fuel shall be prohibited.

There was a public hearing on April 20, 1982 at 11:00 a.m., in the Henry A. Wallace Building, East 9th & Grand Avenue, Des Moines, Iowa. This hearing was scheduled to consider comments relating to rules for gasoline signs and pump advertising. Copies of this proposed rule were distributed. The proposed rule was discussed and comments or suggestions were solicited. Written comments will be received by Secretary Robert H. Lounsberry, Iowa Department of Agriculture, Henry A. Wallace Building, Des Moines, Iowa 50319, up to and including May 19, 1982.

This rule is intended to implement sections 214A.3 and 215.18, The Code.

The following amendments are proposed.

Chapter 55, Iowa Administrative Code, is amended by adding the following new rule:

30—55.49(214A,215) Gallonage determination for retail sales. The method of determining gallonage on gasoline or diesel motor vehicle fuel for retail sale shall be on a gross volume basis. Temperature correction or any other deliberate methods of heating shall be prohibited.

This rule is intended to implement sections 214A.3 and 215.18, The Code.

ARC 2836

**COMMERCE COMMISSION[250]
NOTICE OF INTENDED ACTION**

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

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

The Iowa State Commerce Commission hereby gives notice, pursuant to Section 17A.4(1), The Code, that on April 5, 1982, the Commission issued an order in Docket No. RMU-82-4, In Re: Ratemaking Treatment of Excess Electric Utility Generating Capacity, "Order Commencing Rulemaking."

Pursuant to the authority of Chapter 476, The Code, and specifically Sections 476.6, 476.7, 476.8, and 476.9, the Commission gives notice that it intends to consider the adoption of rules relating to the ratemaking treatment of excess electric utility generating capacity. This proceeding shall encompass the following issues:

1. How should excess electric generating capacity be defined?

2. What standard should be used in determining whether the Commission should give ratemaking treatment to this plant which is different from the treatment afforded electric plants in general?

3. If it is determined that excess electric generating capacity should receive different treatment, what sort of treatment should this be?

4. How should capital costs associated with excess electric generating capacity be treated for ratemaking purposes?

5. How should operating and maintenance expenses associated with excess electric generating capacity be treated for ratemaking purposes?

In considering these issues, the Commission believes that the following proposal to amend our rules is relevant.

Any person interested in this matter may file written comments addressing the issues stated below and the text of the rule changes set forth. The deadline for filing written comments shall be June 11, 1982. An original and eight copies of all comments, substantially complying with subrule 2.2(2), shall be filed. Such comments shall

COMMERCE COMMISSION[250] (cont'd)

clearly indicate the author's name and address and shall specifically refer to this docket, and the issues or proposals addressed. All comments shall be directed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319. This rulemaking proceeding shall be conducted pursuant to 250—Chapter 3, IAC.

Oral presentation in this matter is hereby scheduled for 10:00 a.m. June 21, 1982, in the Commission's Hearing Room on the first floor of the Lucas State Office Building, Capitol Complex, Des Moines, Iowa.

Amend rule 250—7.10(476) by adding the following new subrule:

7.10(3) Ratemaking treatment of excess electric generating capacity.

For the purpose of determining the net income and income tax components of the revenue requirement of rate-regulated electric utilities, the net income and income tax components shall be adjusted so as to disallow a proportion of the return on equity capital which is attributable to excess electric generating capacity.

a. For purposes of this subrule, the following definitions shall be used to calculate the excess electric generating capacity adjustment:

(1) "Total generating capacity" is the sum in megawatts of the net generating capacity of utility plant in service, plus participation power purchases, less participation power sales.

(2) "Acceptable generating capacity" equals one hundred twenty-five percent of the utility's actual native annual system peak load, in megawatts, plus firm power sales, less firm power purchases.

(3) "Excess capacity" is the amount the total generating capacity exceeds the acceptable generating capacity.

(4) "Equity return on excess capacity" is the product of the ratio of excess capacity to total generating capacity, multiplied by the product of the test year net investment in total capacity multiplied by the weighted cost of equity otherwise utilized in calculating the utility's fair rate of return.

b. The excess electric generating capacity adjustment shall be a reduction in net income which equals the product of multiplying the ratio of excess capacity to actual native annual system peak load in megawatts, times the equity return on excess capacity.

c. All measurements specified in this subrule shall be made during the utility's test year.

d. The use or proposed use of this ratemaking treatment of excess capacity shall not act to create any presumption or change any burden of proof which might otherwise exist at law, and shall not act to preclude any ratemaking treatment or remedy which might otherwise be properly applicable as a consequence of managerial imprudence, malfeasance, misfeasance or nonfeasance.

e. This ratemaking treatment requirement shall not be applicable to proceedings or commission actions pursuant to Chapter 476A, The Code.

ARC 2854**COMMERCE COMMISSION[250]
AMENDED NOTICE OF INTENDED ACTION**

The Iowa State Commerce Commission hereby gives notice, pursuant to Section 17A.4, The Code, that on April 9, 1982, the Commission issued an order in Docket No. RMU-81-20, In Re: Iowa State Commerce Commission Rules on Treatment of Advertising Costs, "Order Proposing Specific Rules on Treatment of Advertising Costs and Setting Oral Presentation." Pursuant to the authority of Sections 476.1, 476.2, 476.8 and 476.9, The Code, the Commission intends to consider the adoption of specific amendments to 250—Chapter 16, "Accounting," Iowa Administrative Code, concerning the ratemaking treatment of advertising expenditures by electric and gas public utility companies.

This proceeding was commenced by Commission order on November 6, 1981, and Notice of Intended Action was published on November 25, 1981 as ARC 2528. The Notice of Intended Action set out certain questions and issues concerning ratemaking treatment of advertising expenses, set a deadline of December 15, 1981 for filing of written statements of position, and scheduled an oral presentation, which was held on January 11, 1982.

The specific rules now proposed by the Commission in this docket would require that ten percent of the costs incurred by a public utility company for advertising expenditures which are currently allowed to be recovered from utility customers be shifted to the utility shareholders, unless advertising expenditures are made in compliance with an order of the Commission and that those advertisements for which no part of the cost is to be recovered from customers carry a disclaimer stating that fact.

Any person interested in this matter may file a written statement of position on the proposed rules no later than May 28, 1982, by filing an original and six copies of the written statement of position, substantially complying with the form prescribed in subrule 2.2(2).

A rulemaking oral presentation for the purpose of receiving comments on the proposed rules shall be held on June 2, 1982, in the Commerce Commission Hearing Room, First Floor, Lucas State Office Building, Des Moines, Iowa 50319 at 10:00 A.M. Persons who wish to participate in this oral presentation must file a written appearance five days prior to the oral presentation, on or before May 28, 1982, pursuant to subrule 3.7(1).

All communications shall clearly indicate the author's name and address as well as a specific reference to this docket and the rule upon which comment is submitted. All communications shall be directed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319. This rulemaking proceeding shall be conducted pursuant to 250—Chapter 3, IAC.

COMMERCE COMMISSION[250] (cont'd)

Amend rule 250—16.8(476) by adding the following unnumbered paragraph:

Ten percent of all advertising expenses compiled and classified for inclusion in accounts 909.1, et seq. and 913.1, et seq., for electric and gas utilities shall be compiled and classified for inclusion in account 426.8 for electric and gas utilities. Advertising expenses compiled and classified for inclusion in accounts 909.1 et seq. and 913.1 et seq., which are incurred at the direction of the commission, shall not be subject to this limitation. When advertisement is compiled and classified for inclusion in account 426 for electric and gas utilities, the advertisement shall display the following disclaimer: "Paid for by the shareholders of (company name)."

This rule is intended to implement sections 476.1, 476.2, 476.8 and 476.9, The Code.

ARC 2855**COMMERCE COMMISSION[250]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Sections 17A.4(1) and 476.2, The Code, the Iowa State Commerce Commission hereby gives Notice of Intended Action to amend 250—Chapter 19, "Service Supplied By Gas Utilities," and Chapter 20, "Service Supplied By Electric Utilities," and Chapter 21, "Service Supplied By Water Utilities," Iowa Administrative Code. To this end, the commission has issued on April 9, 1982, an order commencing such rulemaking proceeding which has been identified as Docket No. RMU-82-3, In Re: Utility Extension Policies, "Order Commencing Rulemaking." The proposed amendments would establish a uniform method for utilities to make main and service line extensions.

Pursuant to Commission rule 250—3.4(17A, 474), Iowa Administrative Code, any interested person may file a written statement of position with the Commission, not later than May 28, 1982, by filing an original and six copies of the written statement of position substantially complying with the form prescribed in subrule 2.2(2), Iowa Administrative Code.

Pursuant to Commission rule 250—3.6(17A, 474), any person or organization authorized to request oral presentation on the proposed amendment must do so, if at all, no later than May 28, 1982, by filing an original and six copies of such request, substantially complying with the form prescribed in subrule 2.2(4).

All communications shall clearly indicate the author's name and address as well as specific reference to this docket and the rule upon which comment is submitted.

All communications shall be directed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319.

This rulemaking proceeding shall be conducted pursuant to 250—Chapter 3, Iowa Administrative Code.

ITEM 1. Strike 19.2(4)"c"(12) and insert the following in lieu thereof:

(12) Rules for extending service in accordance with 19.3(10).

ITEM 2. Strike 19.3(10) and insert the following in lieu thereof:

19.3(10) Extensions to customers. The following definitions shall apply to the terms used in this subrule:

a. Definitions:

(1) "Extension" shall mean either a distribution main or service line extension.

(2) "Estimated annual revenues", as used in this subrule, shall be calculated based upon the following factors, including, but not limited to: The size of the facility to be used by the customer, the size and type of equipment to be used by the customer, the average annual amount of service required by the equipment, and the average number of hours per day and days per year the equipment will be in use.

(3) "Similarly situated customer" is a customer whose annual consumption or service requirements, as defined by estimated annual revenue, are similar to other customers with approximately the same annual consumption or service requirements.

(4) "Customer advances for construction records", as used in this subrule, shall mean a separate record established and maintained by the utility, which record includes by depositor, the amount of advance for construction provided by the customer, the amount of refund, if any, to which the depositor is entitled, the amount of refund, if any, which has been made to the customer, the amount unrefunded, and the construction project or work order the extension was installed on.

(5) "Estimated construction costs", as used in this subrule, shall be calculated in accordance with good engineering practices and upon the following factors: Amount of service required or desired by the customer requesting the extension, size, location and characteristics of the extension, materials and other appurtenances, and all other costs such as labor, permits, utility company engineering, supervision, insurance, tools and equipment to complete the extension.

b. Terms and conditions. The utility shall extend service to new customers under the following terms and conditions:

(1) Plant additions. The utility will provide all gas plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served. In those instances, the utility may require the customer or developer to advance funds which are subject to refund as additional customers are attached. A contract between the utility and the customer which requires an advance by the customer to make plant additions shall be available for commission inspection.

(2) Advances for construction costs for distribution main extensions for customers who will attach within thirty days. Where the customer will attach within thirty days after completion of the distribution main extension, the following shall apply:

COMMERCE COMMISSION[250] (cont'd)

1. If the estimated construction cost to provide a distribution main extension is less than or equal to three times the estimated annual revenue calculated on the basis of similarly situated customers, the utility shall finance and make the extension without requiring an advance for construction.

2. If the estimated construction cost to provide a distribution main extension is greater than three times the estimated annual revenue calculated on the basis of similarly situated customers, the applicant for the extension shall contract with the utility and deposit an advance for construction equal to the estimated construction cost less three times the estimated annual revenue to be produced by the customer prior to commencement of construction.

3. If the actual construction cost to provide a distribution main extension is less than the estimated construction cost upon which applicant has previously paid an advance for construction, the utility shall refund to the customer the difference between the amount of the actual construction cost and the estimated construction cost before the customer is attached. In no event shall the amount refunded to the customer exceed the amount advanced by the customer.

4. If the actual construction cost exceeds the estimated construction cost for a distribution main extension upon which applicant has previously paid an advance for construction, the utility shall notify applicant in writing of the additional cost and shall provide adequate documentation in support of this cost. The applicant shall deposit this additional cost with the utility prior to attachment of customer. In the event the actual construction cost exceeds by ten percent the estimated construction cost, the customer shall have the right to pay the additional cost in equal monthly installments over the twelve-month period immediately following attachment.

5. If the actual construction cost exceeds the estimated construction cost for a distribution main extension upon which customer has not previously paid an advance for construction, the utility shall notify the customer in writing of the cost in excess of three times the estimated annual revenue and shall provide documentation in support of this cost. The customer shall deposit with the utility an advance for construction equal to the actual construction cost less three times the estimated annual revenue to be produced by the customer before the customer is attached.

(3) Advances for construction costs for distribution main extensions for customers who will not attach within thirty days. Where the customer will not attach within thirty days after completion of the distribution main extension, the following shall apply:

1. The applicant for an extension shall contract with the utility and deposit, prior to the commencement of construction, an advance for construction equal to the estimated construction cost.

2. If the actual construction cost to provide a distribution main extension is less than the estimated construction cost, the utility shall refund to the applicant the difference between the actual construction cost and the estimated construction cost within thirty days of completion of the extension.

3. If the actual construction cost exceeds the estimated construction cost to provide a distribution main extension, the utility shall notify applicant in writing of the additional cost and shall provide adequate documen-

tation of this cost. Applicant shall deposit this additional cost with utility within thirty days of notification.

(4) Contribution in aid of construction for service line extensions. The utility shall finance and construct a service line extension without requiring a contribution in aid of construction or any payment by the applicant where the length of the service extension does not exceed seventy-five feet on private property.

Where the length of the service extension exceeds seventy-five feet on private property, the utility shall finance and construct the extension without requiring a contribution in aid of construction. However, the applicant shall be required to reimburse the utility for the cost attributable to the excess over seventy-five feet within thirty days of completion of the extension. The cost attributable to the excess shall be computed as follows:

$$\frac{(\text{Total Length in Excess of 75 Feet})}{(\text{Total Length of Extension})} \times (\text{Total Cost of Construction})$$

c. Refunds. The utility shall refund to the depositor (either the original depositor or the successor of the original depositor, whichever is applicable) for a period of ten years, from the date of the original advance, a pro rata share for each service attachment to the distribution main extension. The pro rata refund shall be computed in the following manner:

(1) If the combined total of three times estimated annual revenue for the depositor and each customer who has attached to the distribution main extension exceeds the total actual construction cost to provide the extension, the entire amount of the advance provided by the depositor shall be refunded to the depositor.

(2) If the combined total of three times estimated annual revenue for the depositor and each customer who has attached to the distribution main extension is less than the total actual construction cost to provide the extension, the amount to be refunded to the depositor shall equal three times estimated annual revenue of the customer attaching to the extension.

(3) In no event shall the total amount to be refunded to a depositor exceed the amount of the advance for construction made by the depositor. Any amounts subject to refund shall be paid by the utility without interest. At the expiration of the above-described ten-year period, the customer advance for construction record shall be closed and the remaining balance shall be credited to the respective plant account.

d. Extensions not required. Utilities shall not be required to make extensions as described in this rule, unless the extension shall be of a permanent nature.

e. Extensions permitted. This rule shall not be construed as prohibiting any utility from making a contract with a customer in a different manner, if the contract provides a more favorable method of extension to the customer, so long as no discrimination is practiced among customers or depositors whose service requirements are similar.

ITEM 3. Strike 20.2(4) "w" and insert the following in lieu thereof:

w. Rules for extending service in accordance with 20.3(13) "a".

ITEM 4. Amend 20.3(8) by striking paragraph "a". Further amend 20.3(8) by striking "b. Assigned service areas." and assigning the letters "a" and "b" to (1) and (2), respectively.

COMMERCE COMMISSION[250] (cont'd)

ITEM 5. The following new subrule is proposed:

20.3(13) Extensions to customers.

a. Definitions. The following definitions shall apply to the terms used in this rule:

(1) "Extension" shall mean either a distribution or service line extension.

(2) "Estimated annual revenues", as used in this subrule, shall be calculated based upon the following factors, including, but not limited to: The size of the facility to be used by the customer, the size and type of equipment to be used by the customer, the average annual amount of service required by the equipment, and the average number of hours per day and days per year the equipment will be in use.

(3) "Similarly situated customer" is a customer whose annual consumption or service requirements, as defined by estimated annual revenue, are similar to other customers with approximately the same annual consumption or service requirements.

(4) "Customer advances for construction records", as used in this subrule, shall mean a separate record established and maintained by the utility, which record includes by depositor, the amount of advance for construction provided by the customer, the amount of refund, if any, to which the depositor is entitled, the amount of refund, if any, which has been made to the customer, the amount unrefunded, and the construction project or work order the extension was installed on.

(5) "Estimated construction costs", as used in this subrule, shall be calculated in accordance with good engineering practices and upon the following factors: Amount of service required or desired by the customer requesting the extension, size, location and characteristics of the extension, materials and other appurtenances, and all other costs such as labor, permits, utility company engineering, supervision, insurance, tools and equipment to complete the extension.

b. Terms and conditions. The utility shall extend service to new customers under the following terms and conditions:

(1) Plant additions. The utility will provide all electric plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served. In such instances, the utility may require the customer or developer to advance funds which are subject to refund as additional customers are attached. A contract between the utility and the customer which requires an advance by the customer to make plant additions shall be available for commission inspection.

(2) Advances for construction costs for distribution line extensions for customers who will attach within thirty days. Where the customer will attach within thirty days after completion of the distribution line extension, the following shall apply:

1. If the estimated construction cost to provide a distribution line extension is less than or equal to three times the estimated annual revenue calculated on the basis of similarly situated customers, the utility shall finance and make the extension without requiring an advance for construction.

2. If the estimated construction cost to provide a distribution line extension is greater than three times the estimated annual revenue calculated on the basis of similarly situated customers, the applicant for the exten-

sion shall contract with the utility and deposit an advance for construction equal to the estimated construction cost less three times the estimated annual revenue to be produced by the customer prior to commencement of construction.

3. If the actual construction cost to provide a distribution line extension is less than the estimated construction cost upon which applicant has previously paid an advance for construction, the utility shall refund to the customer the difference between the amount of the actual construction cost and the estimated construction cost before the customer is attached. In no event shall the amount refunded to the customer exceed the amount advanced by the customer.

4. If the actual construction cost exceeds the estimated construction cost for a distribution line extension upon which applicant has previously paid an advance for construction, the utility shall notify applicant in writing of the additional cost and shall provide adequate documentation in support of this cost. The applicant shall deposit this additional cost with the utility prior to attachment of customer. In the event the actual construction cost exceeds by ten percent the estimated construction cost, the customer shall have the right to pay the additional cost in equal monthly installments over the twelve-month period immediately following attachment.

5. If the actual construction cost exceeds the estimated construction cost for a distribution line extension upon which customer has not previously paid an advance for construction, the utility shall notify the customer in writing of the cost in excess of three times the estimated annual revenue and shall provide documentation in support of the cost. The customer shall deposit with the utility an advance for construction equal to the actual construction cost less three times the estimated annual revenue to be produced by the customer before the customer is attached.

(3) Advances for construction costs for distribution line extensions for customers who will not attach within thirty days. Where the customer will not attach within thirty days after completion of the distribution line extension, the following shall apply:

1. The applicant for an extension shall contract with the utility and deposit, prior to the commencement of construction, an advance for construction equal to the estimated construction cost.

2. If the actual construction cost to provide a distribution line extension is less than the estimated construction cost, the utility shall refund to the applicant the difference between the actual construction cost and the estimated construction cost within thirty days of completion of the extension.

3. If the actual construction cost exceeds the estimated construction cost to provide a distribution line extension, the utility shall notify applicant in writing of the additional cost and shall provide adequate documentation of this cost. Applicant shall deposit this additional cost with utility within thirty days of notification.

(4) Contribution in aid of construction for service line extensions. The utility shall finance and construct a service line extension without requiring a contribution in aid of construction or any payment by the applicant where the length of the service extension does not exceed seventy-five feet on private property.

Where the length of the service extension exceeds seventy-five feet on private property, the utility shall

COMMERCE COMMISSION[250] (cont'd)

finance and construct the extension without requiring a contribution in aid of construction. However, the applicant shall be required to reimburse the utility for the cost attributable to the excess over seventy-five feet within thirty days of completion of the extension. The cost attributable to the excess shall be computed as follows:

$$\text{(Total Cost of Construction)} \times \left[\frac{\text{(Total Length in Excess of 75 Feet)}}{\text{(Total Length of Extension)}} \right]$$

c. Refunds. The utility shall refund to the depositor (either the original depositor or the successor of the original depositor, whichever is applicable) for a period of ten years, from the date of the original advance, a pro rata share for each service attachment to the distribution line extension. The pro rata refund shall be computed in the following manner:

(1) If the combined total of three times estimated annual revenue for the depositor and each customer who has attached to the distribution line extension exceeds the total actual construction cost to provide the extension, the entire amount of the advance provided by the depositor shall be refunded to the depositor.

(2) If the combined total of three times estimated annual revenue for the depositor and each customer who has attached to the distribution line extension is less than the total actual construction cost to provide the extension, the amount to be refunded to the depositor shall equal three times estimated annual revenue of the customer attaching to the extension.

(3) In no event shall the total amount to be refunded to a depositor exceed the amount of the advance for construction made by the depositor. Any amounts subject to refund shall be paid by the utility without interest. At the expiration of the above-described ten-year period, the customer advance for construction record shall be closed and the remaining balance shall be credited to the respective plant account.

d. Extensions not required. Utilities shall not be required to make extensions as described in this rule, unless the extension shall be of a permanent nature.

e. Extensions permitted. This rule shall not be construed as prohibiting any utility from making a contract with a customer in a different manner, if the contract provides a more favorable method of extension to the customer, so long as no discrimination is practiced among customers or depositors whose service requirements are similar.

ITEM 6. Strike 21.2(5) "c"(10) and insert the following in lieu thereof:

(10) Rules for extending service in accordance with 21.3(12).

ITEM 7. Strike 21.3(12) and insert the following in lieu thereof:

21.3(12) Extensions to customers.

a. Definitions. The following definitions shall apply to the terms used in this rule:

(1) "Extension" shall mean either a distribution main or service line extension.

(2) "Estimated annual revenues", as used in this subrule, shall be calculated based upon the following factors, including, but not limited to: The size of the facility to be used by the customer, the size and type of equipment to be used by the customer, the average annual amount of service required by the equipment, and the average number of hours per day and days per year the equipment will be in use.

(3) "Similarly situated customer" is a customer whose annual consumption or service requirements, as defined by estimated annual revenue, are similar to other customers with approximately the same annual consumption or service requirements.

(4) "Customer advances for construction records", as used in this subrule, shall mean a separate record established and maintained by the utility, which record includes by depositor, the amount of advance for construction provided by the customer, the amount of refund, if any, to which the depositor is entitled, the amount of refund, if any, which has been made to the customer, the amount unrefunded, and the construction project or work order the extension was installed on.

(5) "Estimated construction costs", as used in this subrule, shall be calculated in accordance with good engineering practices and upon the following factors: Amount of service required by or desired by the customer requesting the extension, size, location and characteristics of the extension, materials and other appurtenances, and all other costs such as labor, permits, utility company engineering, supervision, insurance, tools and equipment to complete the extension.

b. Terms and conditions. The utility shall extend service to new customers under the following terms and conditions:

(1) Plant additions. The utility will provide all water plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served. In such instances, the utility may require the customer or developer to advance funds which are subject to refund as additional customers are attached. A contract between the utility and the customer which requires an advance by the customer to make plant additions shall be available for commission inspection.

(2) Advances for construction costs for distribution main extensions for customers who will attach within thirty days. Where the customer will attach within thirty days after completion of the distribution main extension, the following shall apply:

1. If the estimated construction cost to provide a distribution main extension is less than or equal to three times the estimated annual revenue calculated on the basis of similarly situated customers, the utility shall finance and make the extension without requiring an advance for construction.

2. If the estimated construction cost to provide a distribution main extension is greater than three times the estimated annual revenue calculated on the basis of similarly situated customers, the applicant for the extension shall contract with the utility and deposit an advance for construction equal to the estimated construction cost less three times the estimated annual revenue to be produced by the customer prior to commencement of construction.

3. If the actual construction cost to provide a distribution main extension is less than the estimated construction cost upon which applicant has previously paid an advance for construction, the utility shall refund to the customer the difference between the amount of the actual construction cost and the estimated construction cost before the customer is attached. In no event shall the amount refunded to the customer exceed the amount advanced by the customer.

COMMERCE COMMISSION[250] (cont'd)

4. If the actual construction cost exceeds the estimated construction cost for a distribution main extension upon which applicant has previously paid an advance for construction, the utility shall notify applicant in writing of the additional cost and shall provide adequate documentation in support of this cost. The applicant shall deposit this additional cost with the utility prior to attachment of customer. In the event the actual construction cost exceeds by ten percent the estimated construction cost, the customer shall have the right to pay the additional cost in equal monthly installments over the twelve-month period immediately following attachment.

5. If the actual construction cost exceeds the estimated construction cost for a distribution main extension upon which customer has not previously paid an advance for construction, the utility shall notify the customer in writing of the cost in excess of three times the estimated annual revenue and shall provide documentation in support of this cost. The customer shall deposit with the utility an advance for construction equal to the actual construction cost less three times the estimated annual revenue to be produced by the customer before the customer is attached.

(3) Advances for construction costs for distribution main extensions for customers who will not attach within thirty days. Where the customer will not attach within thirty days after completion of the distribution main extension, the following shall apply:

1. The applicant for an extension shall contract with the utility and deposit, prior to the commencement of construction, an advance for construction equal to the estimated construction cost.

2. If the actual construction cost to provide a distribution main extension is less than the estimated construction cost, the utility shall refund to the applicant the difference between the actual construction cost and the estimated construction cost within thirty days of completion of the extension.

3. If the actual construction cost exceeds the estimated construction cost to provide a distribution main extension, the utility shall notify applicant in writing of the additional cost and shall provide adequate documentation of this cost. Applicant shall deposit this additional cost with utility within thirty days of notification.

(4) Contribution in aid of construction costs for service line extensions. The utility shall finance and construct a service line extension without requiring a contribution in aid of construction or any payment by the applicant where the length of the service extension does not exceed seventy-five feet on private property.

Where the length of the service extension exceeds seventy-five feet on private property, the utility shall finance and construct the extension without requiring a contribution in aid of construction. However, the applicant shall be required to reimburse the utility for the cost attributable to the excess over seventy-five feet within thirty days of completion of the extension. The cost attributable to the excess shall be computed as follows:

$$\frac{(\text{Total Length in Excess of 75 Feet})}{(\text{Total Length of Extension})} \times$$

c. Refunds. The utility shall refund to the depositor (either the original depositor or the successor of the original depositor, whichever is applicable) for a period of ten years, from the date of the original advance, a pro rata share for each service attachment to the distribution

main extension. The pro rata refund shall be computed in the following manner:

(1) If the combined total of three times estimated annual revenue for the depositor and each customer who has attached to the distribution main extension exceeds the total actual construction cost to provide the extension, the entire amount of the advance provided by the depositor shall be refunded to the depositor.

(2) If the combined total of three times estimated annual revenue for the depositor and each customer who has attached to the distribution main extension is less than the total actual construction cost to provide the extension, the amount to be refunded to the depositor shall equal three times estimated annual revenue of the customer attaching to the extension.

(3) In no event shall the total amount to be refunded to a depositor exceed the amount of the advance for construction made by the depositor. Any amounts subject to refund shall be paid by the utility without interest. At the expiration of the above-described ten-year period, the customer advance for construction record shall be closed and the remaining balance shall be credited to the respective plant account.

d. Extensions not required. Utilities shall not be required to make extensions as described in this rule, unless the extension shall be of a permanent nature.

e. Extensions permitted. This rule shall not be construed as prohibiting any utility from making a contract with a customer in a different manner, if the contract provides a more favorable method of extension to the customer, so long as no discrimination is practiced among customers or depositors whose service requirements are similar.

ARC 2844**CONSERVATION COMMISSION[290]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Sections 107.24, 106.3 and 106.31, The Code, the State Conservation Commission hereby gives Notice of Intended Action to add a new Chapter 40, “Motor Regulations”, to the Iowa Administrative Code.

This rule clarifies the method of determining the horsepower rating of outboard motors permitted on artificial lakes and prohibits the use of motors that have been altered to increase their horsepower in excess of that

CONSERVATION COMMISSION[290] (cont'd)

permitted by the rule. It also permits a person to remove the propeller or propulsion mechanism of a large motor to facilitate the use of another motor of ten horsepower or less without removing the complete large motor unit from the boat.

Any interested person may make written suggestions or comments on this proposed rule prior to May 18, 1982. Such written materials should be directed to the Director, State Conservation Commission, Wallace State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally may present those views in the Wallace State Office Building, fourth floor conference room on May 18, 1982, at 9:00 a.m.

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

This rule is intended to implement section 106.31 as amended by Acts of the Sixty-ninth General Assembly 1982 Session, Senate File 399 and section 106.9, The Code.

The following chapter is proposed:

**CHAPTER 40
MOTOR REGULATIONS**

290—40.1(106) Horsepower rating. The horsepower rating of an outboard motor permitted on artificial lakes under the authority of chapter 106, The Code, and the commission's administrative rules, shall be as determined by the manufacturer when the motor was originally produced.

290—40.2(106) Alteration of horsepower rating. An outboard motor which has been altered to increase its horsepower in excess of ten as rated by the original manufacturer shall not be permitted on artificial lakes.

290—40.3(106) Propulsion mechanism removed. A power unit on a vessel motor which does not contain a propeller or propulsion mechanism shall not be considered when determining horsepower rating for artificial lake use.

ARC 2845

CONSERVATION COMMISSION[290]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Section 107.24, The Code, the State Conservation Commission hereby gives Notice of Intended Action to add a new chapter, Chapter 43, "Metal Detectors in State Parks", to the Iowa Administrative Code.

This proposed rule sets out the limitations and restrictions for the operation of metal detectors in state parks and recreation areas.

Any interested person may make written suggestions or comments on this proposed rule prior to May 19, 1982. Such written materials should be directed to the Director, State Conservation Commission, Wallace State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally may present those views in the Wallace State Office Building, fourth floor conference room on May 19, 1982, at 10:00 a.m.

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

This rule is intended to implement section 111.35, The Code.

Notice was published in the February 3, 1982, bulletin as **ARC 2669** and is hereby terminated.

The following Chapter 43 is proposed:

**CHAPTER 43
METAL DETECTORS IN STATE PARKS AND
RECREATION AREAS**

290—43.1(111) Definitions.

43.1(1) "Metal detector" means a portable electronic device carried by an individual used only for detecting metal above or below the surface of the ground.

43.1(2) "Beach" or "beach area" means that portion of state parks or recreation areas designated for swimming activity which is covered by sand only including the water area contiguous to the sand.

290—43.2(111) Use areas. Except as provided in 290—43.3(111), metal detectors may be used in all areas of state park and recreation areas during the hours established by 290—45.1(111). From May 22 to September 7 inclusive of each year, metal detectors may be used on the beach area until 8:30 a.m. each day.

290—43.3(111) Prohibited operation. Metal detector use is prohibited under the following conditions:

43.3(1) In that portion of the beach area that would not meet the definition given in 43.1(2).

43.3(2) In areas not mowed.

43.3(3) In designated campgrounds.

43.3(4) In recognized historic or archaeological sites.

290—43.4(111) Drained lakes. When an artificial lake has been completely drained for any reason, metal detector use consistent with the provisions of this chapter will be permitted in the entire lake area proper below the vegetation line on the lake shore.

290—43.5(111) Found items. All items found are subject to the provisions of Chapter 644, The Code.

290—43.6(111) Lost item search by owner. An owner of lost property may use a metal detector to search for that item in an area where such use is prohibited by 290—43.3(111) under the following conditions:

43.6(1) Approval has been granted by the director of the conservation commission or designee.

43.6(2) The search is confined to a reasonable area within the park or recreation area.

43.6(3) The search is limited to twelve hours or less in length.

290—43.7(111) Tools used. Tools used to recover items detected beneath the ground level shall be limited to the following:

CONSERVATION COMMISSION[290] (cont'd)

43.7(1) Probes not over twelve inches long, one-inch wide and one-quarter-inch thick.

43.7(2) A sand scoop or sieve not over ten inches in diameter.

290—43.8(111) Digging limitations and restoration.

43.8(1) In recovering items located below the ground, the earth is not to be unduly disturbed with all excavations limited to less than eight square inches.

43.8(2) When digging is done to search for an object, the metal detector operator shall restore the disturbed area as nearly as possible to its original condition.

290—43.9(111) Disposal of litter. Persons using metal detectors shall wear or carry a litter apron or bag, and all litter is to be disposed of in approved trash receptacles.

ARC 2846**CONSERVATION COMMISSION[290]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Sections 107.24 and 111.47, The Code, the State Conservation Commission hereby gives Notice of Intended Action to amend Chapter 45, "State Parks and Preserves", Iowa Administrative Code.

The proposed amendments make clarifying changes in the reduced camping fee for aged, handicapped and blind, defines a basic camping unit, and establishes the regular camping fees as a separate subrule.

Any interested person may make written suggestions or comments on this rule prior to May 18, 1982. Such written materials should be directed to the Director, State Conservation Commission, Wallace State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally may present those views in the Wallace State Office Building, fourth floor conference room on May 18, 1982, at 10:00 a.m.

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

This rule is intended to implement section 111.47, The Code.

The following amendments are proposed:

ITEM 1. By striking the catchwords of 290—45.2(111) and inserting in lieu thereof the word "**290—45.2(111) Fees**".

ITEM 2. By striking **45.2(2)"c"**.

ITEM 3. By striking 45.2(4) and inserting in lieu thereof:

45.2(4) *The reduced fee for aged, blind or handicapped shall be \$1.00 per night per basic camping unit, plus the applicable fee if electricity is used.*

ITEM 4. By striking the word "Monday" in 45.2(5)"a" and inserting the word "*Sunday*".

ITEM 5. By striking "May 14" in 45.2(5)"a" (in last sentence only) and inserting "*May 13*".

ITEM 6. By striking 45.2(5)"b" and inserting in lieu thereof:

b. *The camping fee must be paid for and the campsite occupied by, the aged, handicapped or blind person involved.*

ITEM 7. By striking **45.2(6)**.

ITEM 8. Amend Chapter 45 by adding two new rules as follows:

290—45.3(111) Basic unit. As used in the chapter, the words "basic unit" or "basic camping unit" means the portable shelter used by one to six persons.

290—45.4(111) Camping and electricity fees. Except as provided in 45.2(111), the established fees in state parks and recreation areas are:

45.4(1) Nonmodern area—\$3.50 per night per basic unit.

45.4(2) Modern area (shower/flush toilet) \$4.00 per night per basic unit.

45.4(3) Per person over the basic unit of six—25¢.

45.4(4) Chaperoned, organized youth groups—25¢ per person with a minimum of \$3.50 per night in a nonmodern area and \$4.00 per night in a modern area.

45.4(5) Electricity—\$1.50.

ARC 2838**ENGINEERING EXAMINERS[390]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to Chapter 17A and Section 114.6, The Code, the Iowa State Board of Engineering Examiners intends to adopt the following rules concerning its interpretation of the applicability of Chapter 114, The Code, to certain standardized building structures and systems requiring the application of engineering principles and further requiring the services of a professional engineer for their design and completion.

ENGINEERING EXAMINERS[390] (cont'd)

Notice is hereby given that on May 20, 1982, at 1:00 p.m., 6th Floor, Conference Room, Lucas State Office Building, Des Moines, Iowa, the Iowa State Board of Engineering Examiners will hold a regular board meeting at which time persons interested in commenting on these proposed rules may present their views.

Persons desirous of making an oral presentation at the aforementioned board meeting shall request opportunity from Bonita Fagerstrom, Secretary, Iowa State Board of Engineering Examiners, Second Floor, Lucas Building, Des Moines, Iowa 50319, telephone number 515/281-5602, no later than May 18, 1982. Persons desiring to submit their views in writing should mail or deliver their submissions to Bonita Fagerstrom, Secretary, Iowa State Board of Engineering Examiners, Second Floor, Lucas Building, Des Moines, Iowa 50319, with delivery no later than May 18, 1982.

This rule is intended to implement sections 114.2, 114.24 and 114.26, The Code.

CHAPTER 5

BUILDINGS, STRUCTURES, AND SYSTEMS
REQUIRING PROFESSIONAL SERVICES

390—5.1(114) General statement. Buildings, structures, and systems that are described in this chapter are subject to the requirements of chapter 114, The Code, because technical services required for their completion include the practice of professional engineering as defined in section 114.2, The Code. Buildings, structures, and systems not described herein are also subject to the requirements of chapter 114, The Code, if the public welfare or the safeguarding of life, health or property is involved, or if professional engineering services are prescribed by statute, administrative rule or ordinance.

390—5.2(114) Buildings and structures.

5.2(1) New buildings and structures (hereinafter referred to as structures) that contain more than 50,000 cubic feet in total volume, alterations to structures that contain more than 50,000 cubic feet in total volume, and additions that result in a combined structure containing more than 50,000 cubic feet in total volume.

5.2(2) Structures that are more than 30 feet in height above any adjacent grade, structures that have a floor more than 6 feet 4 inches below any adjacent grade, and structures that have a total height greater than 35 feet measured from the lowest floor level to the highest point on the roof.

5.2(3) Structures that are used primarily for the manufacture or storage of hazardous chemicals, wastes or explosives, and additions or alterations to these structures.

5.2(4) Structures whose primary use is for the assembly of fifty or more people.

5.2(5) Structures, alterations or additions not described above that are unusual or unique in nature or whose construction does not utilize simple framing techniques. Simple framing techniques are those in which the adequacy of the design can be easily verified through the use of recognized and commonly accepted technical manuals. Examples of simple framing techniques include the use of conventional wood framing, simple span steel members, and simple span concrete slabs.

390—5.3(114) Mechanical and electrical systems.

5.3(1) Electrical systems with service exceeding 600 amperes or 600 volts.

5.3(2) Mechanical systems with gage pressures exceeding 125 pounds per square inch or temperature (other than flue gas) of 300°F., steam heating systems with gage pressures exceeding 15 pounds per square inch, or temperatures exceeding 250°F., natural gas systems with gage pressures exceeding 5 pounds per square inch, and hot water heating systems with gage pressures exceeding 30 pounds per square inch or temperatures exceeding 250°F.

390—5.4(114) Standard designs. Structures and their electrical and mechanical systems that are of standard design shall be exempt from the requirements of chapter 114, The Code, if they bear the certification of a professional engineer or architect registered in another state or U.S. jurisdiction and if the design criteria, the design loads, and the adaption of the standard design to the site are certified by a professional engineer or architect registered in Iowa.

390—5.5(114) Statutory exemption. Structures and their electrical and mechanical systems designed by corporations for their own use are exempt from the requirements of chapter 114, The Code, on the basis of section 114.2f, The Code.

ARC 2856

HEALTH DEPARTMENT[470]

MEDICAL EXAMINERS, BOARD OF

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Sections 147.76 and 147.36, The Code, the Iowa Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 135, "Medical Examiners", Iowa Administrative Code.

The proposed rule would establish requirement to sit the Federation Licensing Examination (FLEX) that correspond more closely with the present requirements for licensure as specified in section 148.3, The Code, in that individuals who pass the examination and present evidence of one year of postgraduate training would be eligible for licensure in the state of Iowa.

The present rule indicates that only senior students and graduates of approved colleges of medicine may be admitted to sit the FLEX. This rule would be deleted to conform with the above proposal.

HEALTH DEPARTMENT[470] (cont'd)

Any interested person may make written comments or suggestions on these proposed rules prior to May 19, 1982. Such written material should be directed to the Executive Director, Iowa Board of Medical Examiners, Capitol Complex, Executive Hills West, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Executive Director, Iowa Board of Medical Examiners at 515-281-5171 prior to May 19, 1982.

This rule is intended to implement chapters 147, 148, and 150A, The Code.

The following amendments are proposed:

Subrule 135.102(5) is amended by striking the original language and inserting in lieu thereof the following:

135.102(5) To be eligible to take the examination for a license to practice medicine and surgery or osteopathic medicine and surgery, a person must be a graduate of a college of medicine and surgery or college of osteopathic medicine and surgery approved by the board, or present other evidence of equivalent medical education approved by the board. For the purpose of taking the examination, the board may accept all of the following evidence as equivalent medical education in lieu of graduation from a college of medicine and surgery or college of osteopathic medicine and surgery approved by the board:

- a. A diploma issued by a medical college which has been neither approved or disapproved by the board; and
- b. The recommendation of the Educational Council for Foreign Medical Graduates, Inc. or similar accrediting agency.

This rule is intended to implement sections 147.36, 148.3, and 150A.3, The Code.

handicapped physicians who are unable to make a signature.

Any interested person may make written comments or suggestions on these proposed rules prior to May 19, 1982. Such written material should be directed to the Executive Director, Iowa Board of Medical Examiners, Capitol Complex, Executive Hills West, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Executive Director, Iowa Board of Medical Examiners at 515-281-5171 prior to May 19, 1982.

These rules are intended to implement chapters 147, 148, 150, 150A and 258A, The Code.

ITEM 1. Subrule **135.204(3)** is amended by adding the following:

d. Practice harmful or detrimental to the public includes, but is not limited to, the use of a rubber stamp to affix a signature to a prescription. A person who is unable, due to a physical handicap, to make a written signature or mark, however, may substitute in lieu of a signature a rubber stamp which is adopted by the handicapped person for all purposes requiring a signature and which is affixed by the handicapped person or affixed by another person upon the request of the handicapped person and in his/her presence.

e. Practice harmful or detrimental to the public includes, but is not limited to, the practice of maintaining any presigned prescription which is intended to be completed and issued at a later time.

These rules are intended to implement sections 147.55, 148.6, and 258A.4, The Code.

ARC 2857

HEALTH DEPARTMENT[470]

MEDICAL EXAMINERS, BOARD OF
NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Section 147.76, The Code, the Iowa Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 135, "Medical Examiners", Iowa Administrative Code.

The present rules do not address two situations which the board deems to be potentially harmful or detrimental to the public: The use of presigned prescriptions and the use of rubber stamp signatures on prescriptions.

These rules would prohibit the use of both of these practices except that rubber stamp signatures, as contemplated in section 4.1(17), The Code, could be used by

ARC 2860

HEALTH DEPARTMENT[470]

BOARD OF PHYSICAL THERAPY AND
OCCUPATIONAL THERAPY EXAMINERS
NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Section 147.76, The Code, the Board of Physical and Occupational Therapy Examiners gives Notice of Intended Action to amend Chapter 138 of the IAC. The proposed rule provides a procedure for occupational therapy assistants who are not licensed in another state to become licensed in Iowa.

Consideration will be given to written comments received not later than May 12, 1982 by Peter J. Fox, Hearing Officer, State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

HEALTH DEPARTMENT[470] (cont'd)

The rule is intended to implement section 148B.5, The Code.

Rule 470—138.206(148B) is amended by adding the following new subrule:

138.206(5) An applicant for a license as an occupational therapy assistant moving into the state after December 31, 1981, who has not been licensed in another state but who has successfully completed the certification examination of the Professional Examination Service or Psychological Corporation for occupational therapy, shall show proof of practice for at least one of the past five years and provide evidence of having completed 7.5 hours of continuing education relating to the practice of occupational therapy within the year previous to the application date may be licensed by waiver. Individuals who do not meet these requirements will be licensed by examination provided by the board. This does not apply to individuals who have graduated from an accredited occupational therapy program within the last twelve months.

ested persons may also submit opinions or arguments in writing on or before June 10, 1982 to the Livestock Health Advisory Council in care of Mr. Jim Meyer, Rural Route, Odebolt, Iowa 51458.

This recommendation is intended to implement section 267.5, subsection (3), The Code.

ARC 2864**MERIT EMPLOYMENT
DEPARTMENT[570]****NOTICE OF INTENDED ACTION - HEARING**

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

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

Pursuant to the authority of Section 19A.9, The Code, the Iowa Merit Employment Department hereby gives Notice of Intended Action to amend Chapter 12, "Appeals", and Chapter 15, "Grievances and Complaints", Iowa Administrative Code. The substance of this rule was previously submitted as an emergency adopted and implemented rule, ARC 2863, published in the Iowa Administrative Bulletin on April 28, 1982.

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

Any interested persons may make written suggestions or comments on this proposed rule prior to May 18, 1982. Such written materials should be directed to the Manager, Technical Services Division, Iowa Merit Employment Department, Grimes State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Manager, Technical Services Division at 515/281-6550 or in the offices of the Merit Employment Department on the first floor of the Grimes State Office Building. There also will be a public hearing on Thursday, May 27, 1982, at 9:00 a.m. in the Grimes Conference Room, North Half, on the first floor of the Grimes State Office Building. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the manager of the Technical Services Division prior to the public hearing.

ARC 2837**LIVESTOCK HEALTH ADVISORY
COUNCIL[565]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Section 267.5, subsection (3), The Code, the Livestock Health Advisory Council proposes to amend Chapter 1, "Recommendations", by striking the chapter and replacing it with the Council's recommendations for fiscal year 1982-83.

The Livestock Health Advisory Council recommendations contained in the Iowa Administrative Code set forth the recommendations of the Council for expenditure of an annual state appropriation to be used by the Iowa State University College of Veterinary Medicine for research into livestock disease. The appropriate statute provides for an appropriation of \$150,000.00 for 1982-83. At the time of this writing, however, it appears that the 1982-83 appropriation may be changed in the 1982 Session of the Legislature.

The Council will meet at 10:00 a.m. on June 10, 1982 in the Dean's Conference Room at the College of Veterinary Medicine of Iowa State University, Ames, Iowa to make its recommendation for expenditure of the 1982-83 appropriation. Interested persons may attend this meeting/public hearing and make oral presentations. Inter-

ARC 2859

**PUBLIC INSTRUCTION,
DEPARTMENT OF[670]
NOTICE OF INTENDED ACTION**

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

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

The Department of Public Instruction will propose to the State Board of Public Instruction, pursuant to the authority of Sections 285.1 and 285.8, The Code, amendments to 670—Chapter 22, School Transportation, Iowa Administrative Code.

The proposed amendments revise the physical requirements for school bus drivers and rescinds a portion of the requirements for common carrier type vehicles used as school buses in that it is in conflict with the Acts of the Sixty-ninth General Assembly, 1981 Regular Session, Chapter 108.

Any interested persons may make written suggestions or comments on this proposed rule prior to May 18, 1982. Such written materials should be directed to the Director, School Transportation and Safety Education Division, Iowa Department of Public Instruction, Grimes State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact Dwight R. Carlson, Director, School Transportation and Safety Education Division at 515/281-5811 or in the office of school transportation and safety education on the second floor of the Grimes State Office Building. There will be no public hearing on this matter.

These rule revisions implement chapter 285, The Code. The following amendments are proposed.

ITEM 1. Amend subrule 22.15(2) by striking it in its entirety and inserting in lieu thereof the following:

22.15(2) Less than full and normal use of both hands, both arms, both feet or both legs may disqualify the applicant. Individual evaluations will be made for applicants and requirements may be waived upon submission of a written statement from the superintendent of schools attesting to the ability of the applicant to safely perform the duties of a school bus driver. The superintendent or a superintendent's designee shall evaluate the applicant's ability in the operation of a school bus including all safety equipment, in providing assistance to passengers in evacuation of the school bus and in the performance of other duties required of a school bus driver.

ITEM 2. Amend subrule 22.43(1) by striking paragraph "c".

ARC 2840

**REAL ESTATE COMMISSION[700]
NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Section 117.9, The Code, the Iowa Real Estate Commission proposes action by amending rule 1.28(117) to require brokers to maintain transaction records for five years in lieu of seven as previously adopted, which was a recommendation of the administrative rules review committee.

Persons interested in commenting on the proposed rule shall submit same to the Iowa Real Estate Commission no later than 4:30 p.m., May 18, 1982. Comments shall be submitted to the Commission by sending or delivering them to the Commission office 1223 E. Court Ave., Suite 205, Des Moines, Iowa 50319.

This rule is intended to implement sections 117.34(7) and 117.46, The Code.

Rule 700—1.28(117) is amended as follows:

700—1.28(117) Closing transactions. It shall be mandatory for every broker to deliver to the seller in every real estate transaction wherein he acts as a real estate broker, at the time the transaction is consummated, a complete detailed statement, showing all of the receipts and disbursements handled by the broker. Also, the broker shall at the same time deliver to the buyer a complete statement showing all moneys received in the transaction from the buyer and how and for what the same were disbursed. The broker shall retain all trust account records and a complete file on each transaction for a period of at least ~~seven~~ five years after the date of the closing which shall include one copy of the listing, any offers to purchase, all correspondence pertinent to the transaction, and the closing statement. The listing broker shall be responsible for the closing even though the closing may be completed by another party.

ARC 2841
REAL ESTATE COMMISSION[700]
NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Section 117.9, The Code, the Iowa Real Estate Commission proposes action by adding rule 1.33(117) to require brokers to notify the Real Estate Commission of the permanent mailing address of licensees upon the return of such license and requires inactive licensees to notify the commission of changes in their permanent mailing address.

Persons interested in commenting on the proposed rule shall submit same to the Iowa Real Estate Commission no later than 4:30 p.m., May 18, 1982. Comments shall be submitted to the Commission by sending or delivering them to the Commission office at 1223 E. Court Avenue, Suite 205, Des Moines, Iowa 50319.

The Iowa Real Estate Commission will hold a public hearing concerning this rule at which time oral comments may be made to the Commission. The public hearing will be held at 3:00 p.m. May 20, 1982, in the Commission office at 1223 E. Court Avenue, Suite 205, Des Moines, Iowa 50319. Any individual wishing to present oral comments should notify the Commission office of their intent no later than the time prescribed for submitting written comments.

This rule is intended to implement section 117.32, The Code.

Chapter 1 is amended by adding rule 1.33(117) as follows:

700—1.33 (117) Address of inactive licensees: Each real estate broker who returns a license to the commission office shall include the last known permanent mailing address of the licensee. Each inactive licensee shall immediately notify the commission of any change in permanent mailing address.

ARC 2842
REAL ESTATE COMMISSION[700]
NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Section 117.9, The Code, the Iowa Real Estate Commission proposes action by

amending rule 2.3(117) for the purpose of clarifying and simplifying the rule relating to issuing licenses to individuals who currently are licensed in another jurisdiction. The deletion of "2." under "Salesperson" in rule 2.3(117) is at the suggestion of the administrative rules review committee.

Persons interested in commenting on the proposed rule shall submit same to the Iowa Real Estate Commission no later than 4:30 p.m., May 18, 1982. Comments shall be submitted to the Commission by sending or delivering them to the Commission office at 1223 E. Court Avenue, Suite 205, Des Moines, Iowa 50319.

This rule deletion is intended to implement sections 117.21 and 117.23, The Code.

Rule 700—2.3(117) is amended by deleting the following:
 2. If the applicant retains an active license in the other state, the applicant must be employed by or otherwise associated with the same broker in both states who must have an Iowa broker license.

ARC 2847
REVENUE DEPARTMENT[730]
NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Section 421.14 and Chapter 17A, The Code, the Iowa Department of Revenue hereby gives Notice of Intended Action to amend Chapter 123, "Certification" and Chapter 124, "Courses", of the department's Assessor Education Commission (AEC) rules, Iowa Administrative Code.

Proposed amendments to chapter 123 include the hours of classroom instruction required for assessors and deputy assessors. Instruction hours for assessors were reduced from 240 hours to 150 hours and deputy assessor hours were reduced from 150 to 90 hours. Other amendments were made to chapter 123 for clarification purposes.

Proposed amendments to chapter 124 reflect additional courses certified by the AEC for inclusion in the 1980-1985 continuing education program for Iowa assessors. The newly certified courses are of the International Association of Assessing Officers (IAAO), Iowa Department of Revenue and Society of Real Estate Appraisers (SREA).

Any interested person may make written suggestions or comments on these proposed amendments on or before May 28, 1982. Such written comments should be directed to the Director, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

REVENUE DEPARTMENT[730] (cont'd)

Persons who want to orally convey their views should contact the Director at (515) 281-3204 or at Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by May 21, 1982.

These rules are intended to implement section 441.8, The Code.

The following amendments are proposed.

ITEM 1. Rule 730—123.1(441) is amended as follows:
730—123.1(441) General. *Courses in the continuing education program may be taken for tested credit or nontested credit. In order to successfully complete receive tested credit for a each course in the continuing education program, an assessor or deputy assessor must attend the each session of the course and attain a grade of at least seventy percent on an examination given at the conclusion of the course. To receive nontested credit for a course, an assessor or deputy assessor must attend each session of the course. Credit will be given for each course equal to the number of hours of classroom instruction contained in the course. No credit will be given for a course for which the assessor or deputy assessor has previously received credit during his or her term of office, nor shall a person receive both tested credit and nontested credit for the same course, except for those courses specifically designated by the commission. A term of office for purposes of these rules is six years.*

ITEM 2. Rule 730—123.3(441) is amended as follows:
730—123.3(441) Certification of assessors. *An assessor who has received credit equal to at least two one hundred forty five hours of classroom instruction, of which at least ninety hours are tested credit, during his or her term as assessor shall be certified to the assessor's conference board as eligible for reappointment as assessor in that to his or her present position. Certification shall be only that the incumbent has met the requirements to be eligible for reappointment. No scores or other information will be given to the conference board.*

If an assessor's term expires prior to January 1, 1986, the number of credits required to be certified to determine eligibility for reappointment shall be prorated according to the percentage of the assessor's term that was covered by the provisions of section 441.8, The Code. The credit necessary for certification for reappointment would be determined as follows:

Number of months covered by provisions of section 441.8		Credit necessary for certification for reappointment
<u>72</u>	x	240 150 =

For example, if an assessor's term expires October 1, 1982, the credit necessary for reappointment would be ~~110~~ 69 hours, determined as follows:

$$\frac{12 \text{ months (1980)} + 12 \text{ months (1981)} + 9 \text{ months (1982)}}{72} \times \del{240} 150 =$$

$$.458 \times \del{240} 150 = \del{110} 69$$

If the number of credits necessary for certification for reappointment as determined according to the above provisions results in a partial credit hour, that required credit shall be rounded to the nearest whole number.

An assessor who was appointed to complete an unexpired term shall be certified as eligible for reappoint-

ment if he or she completes the appropriate credits determined as follows:

Number of months of unexpired term		filled filled x 240 150
<u>72</u>	x	240 150 =

For example, if an assessor ~~was~~ were appointed to fill the last 15 months of an unexpired term, the credit necessary for certification would be ~~50~~ 31 hours determined as follows:

$$\frac{15 \times \del{240} 150}{72} = \del{50} 31 \text{ hours}$$

In situations in which the required number of hours of credit must be prorated, at least sixty percent of the credits earned must be tested credit. For example, if the person in the example immediately above must earn thirty-one hours of credit for certification during the fifteen-month period, at least nineteen of the hours must be tested credit (31 x .60 = 18.6 = 19).

ITEM 3. Rule 730—123.4(441) is amended as follows:

730—123.4(441) Certification of deputy assessors. *A deputy assessor who has received credit equal to at least one hundred fifty ninety classroom hours of instruction, of which at least sixty hours are tested credit, during each six-year period following his or her term of office appointment as deputy assessor, shall be certified to the assessor employing the deputy as eligible for reappointment to continue as deputy assessor in that position. Certification shall be only that the deputy has or has not met the requirements to be eligible for reappointment to remain in his or her present position. No scores or other information will be given the assessor.*

If a deputy assessor's term expires prior to January 1, 1986, the number of credits required to receive certification shall be prorated in the same manner as credits are prorated for assessor's whose term expires as provided under rule 123.3(441) herein.

Rules 123.1 to 123.4 are intended to implement section 441.8, The Code.

ITEM 4. The following new rules are added at the end of chapter 123.

730—123.5(441) Type of credit. *A course, seminar, workshop, or symposium for which an examination is given may be taken for tested credit or nontested credit at the discretion of the assessor or deputy assessor. However, a course may not be taken twice — once for tested credit and again for nontested credit — unless specific approval is granted by the commission.*

730—123.6(441) Retaking examination. *If an assessor or deputy assessor successfully retakes an examination for a course for which nontested credit previously had been granted, the credit will be changed to tested credit upon receipt by the commission of evidence of passing the examination.*

730—123.7(441) Instructor credit. *An assessor or deputy assessor who serves as an instructor for a course approved by the commission for continuing education may receive nontested credit for the number of hours of classroom instruction. Such credit shall be granted only once for each course, and cannot be granted for a course for which the instructor previously attended and received credit as a student.*

REVENUE DEPARTMENT[730] (cont'd)

730—123.8(441) Conference board and assessor notification. Upon receiving credit for the required number of hours of tested and nontested credit, an assessor or deputy assessor should request that the commission notify the appropriate conference board or assessor that the continuing education requirements have been satisfied to ensure timely notification.

ITEM 5. Rule 730—124.3(441), item number 5, is amended as follows:

5. An organization or person desiring accreditation of a course shall apply to the commission for accreditation at least ~~ninety~~ *sixty* days in advance of the commencement of the activity on a ~~form~~ *application* provided by the commission (*form 19-361, "Application for course certification and/or accreditation"*). The commission shall approve or deny the application in writing within thirty days of receipt, unless an extension of time is agreed to by the applicant and the commission. The application shall state the dates, subjects offered, total hours of instruction, names and qualifications of the instructor, discussion leader or lecturer and shall include a statement of the objectives of the course and how these objectives will be attained, an outline of the course content, a copy of the final examination and any other pertinent information.

ITEM 6. Rule 730—124.6(441) is amended as follows:

730—124.6(441) Continuing education program for assessors. The Assessor Education Commission (AEC) has determined the initial course content of the January, 1980 through December, 1985 continuing education program for Iowa assessors. Courses, *seminars, workshops and schools* administered by the American Institute of Real Estate Appraisers (AIREA), International Association of Assessing Officers (IAAO), and the Iowa Department of Revenue (IDR), *Society of Real Estate Appraisers (SREA), American Society of Farm Managers and Rural Appraisers (ASFMRA), and the Iowa State Association of Assessors (ISAA), as qualifies under rule 122.4(441)*, has been approved for certification.

Upon registration for an approved course, it is the responsibility of the assessor or deputy assessor to request that notification of attendance and test score be forwarded by the appropriate organization(s) to the AEC justifying certification. The Department of Revenue will serve as the principal storage facility for records of attendance and scores of examinations. Such information shall be confidential in nature. Certification to the conference boards by the AEC shall be only that the incumbent has met the requirements of the continuing education program and is eligible for reappointment.

The following outlines ~~thirty~~ courses, according to organization, by course number and title, brief description and hours certified. Catalogs depicting detailed information concerning these courses, or their subsequent equivalents, as well as class schedules, can be obtained by writing to the professional appraisal organizations and the Iowa Department of Revenue. *All courses may be taken either for tested or nontested credit as requested by the assessor or deputy assessor.*

ITEM 7. The "Course Certification" section of chapter 124 is amended by adding the following new course at the end of the "American Institute of Real Estate Appraisers (AIREA)" listing and amending the "TOTAL" at the end of the category as follows:

Course: Standards of Professional Practice - Covers the conduct of a professional appraisal practice and the bylaws and regulations of the appraisal institute. Prerequisite: None. 20 hours.

TOTAL: ~~13~~ 14 courses; ~~390~~ 410 hours

ITEM 8. The "Course Certification" section of chapter 124 is amended at the "International Association of Assessing Officers (IAAO)" courses, "Workshop" section as follows:

Workshop: Computer Assisted Assessment Systems Workshop - Provides a foundation for the uses of the computer in the assessment function, including administrative, informational, and appraisal applications and better equips assessment personnel to make decisions concerning obtaining computer resources and computer system design and development. Prerequisite: None. 30 hours.

Workshop: Development and Analysis of the Assessment Ratio Study - Provides a firm foundation for preparing data for assessment-ratio analysis, for using statistical methods in developing and analyzing ratio studies at both the state level and the local level, for distinguishing the purpose and function of ratio studies and for evaluating the appropriateness of the results. Covers basic assessment performance measurement; assessment ratio central tendency and dispersion measures; obtaining, preparing and analyzing sales data; testing the accuracy of ratio studies; and evaluating the results with regard to norms and standards. Prerequisite: None. 16 nontested hours.

Seminar: Demo Report Writing - Designed to assist the individual in strengthening the quality of daily work product as well as aid in the preparation of a demonstration appraisal report. Emphasis and discussions relating to both single family and income properties. Discussions concerning all sections of the appraisal report, as well as other areas of concern such as choice of property as subject of a demo report; expectations with respect to adjustments; support of factual data and other opinionated statements; and general areas of concern experienced in the preparation and grading of reports. Strong aid in formulating the analysis and interpretations of data obtained in the market place. Prerequisite: None. 6 hours.

Conference: International Conference on Assessment Administration - Designed as a forum for the exchange of ideas, skills and knowledge; to acquaint assessment personnel with new legislation and advances in assessment administration techniques. Prerequisite: None. 7.5 nontested hours.

TOTAL: ~~13~~ 16 courses; ~~440~~ 469.5 hours.

ITEM 9. The "Course Certification" section of chapter 124 is amended at the "Iowa Department of Revenue" courses by adding the following new course at the end of the listing and amending the "TOTAL" at the end of the category as follows:

School: Basic Assessment School - A one-week seminar directed towards the fundamentals of an Iowa assessor's duties and responsibilities. The seminar consists of a number of short courses including real estate appraisal procedures, tax credit and exemption administration, appraisal of personal property and machinery, development and use of assessment/sales ratio studies and basic office management. Prerequisite: None. 28 nontested hours.

TOTAL: 6 7 courses; ~~37~~ 65 hours.

REVENUE DEPARTMENT[730] (cont'd)

ITEM 10. The "Course Certification" section of chapter 124 is amended at the "Society of Real Estate Appraisers (SREA)" courses by adding the following new course at the end of the listing and amending the "TOTAL" at the end of the category as follows:

Seminar: Application of Market Extractions - Focuses on the process of deriving sales adjustments and measuring differences between properties from available market data. Concentrates on what market data is to be gathered and how important measures can then be extracted from that data. The case study approach, using actual valuation assignments, will be used to demonstrate proper procedures of market extraction. Examples from both residential and income property appraisals will be used, as well as the background market analysis. Recommended prerequisite: Course 101. 13 hours.

TOTAL: ~~3~~ 4 courses; ~~175~~ 188 hours.

ITEM 11. The "Course Certification" section of chapter 124 is amended by adding the following new "General" category and courses at the end of the section as follows:

General:

Iowa State Association of Assessors' Annual School of Instruction - Designed as a forum for the exchange of ideas, skills and knowledge; to acquaint assessment personnel with new legislation and to foster continuing profession co-operation between Iowa assessors and the department of revenue in the mutual task of the administration of Iowa's property tax system. Prerequisite: None. 10 nontested hours.

Iowa State Association of Counties Annual School of Instruction - Designed as a forum for the exchange of ideas, skills and knowledge; to acquaint assessment personnel with new legislation and advances in valuation techniques. Prerequisite: None. 6 nontested hours.

IAAO, AIREA and SREA Annual Professional Seminar - Provides a forum for the exchange of ideas, skills and knowledge among assessors and appraisers who must deal with the ever increasing demands of the profession. Prerequisite: None. 7 nontested hours.

Initial Point Seminars: The Law of Real Property and Boundaries - Emphasis on understanding current statute and case law through the perspective of historical, legislative and judicial development utilizing appellate court decisions from local jurisdictions. Prerequisite: None. 24 nontested hours.

Marshall and Swift Publication Service: The Basic Use of the Marshall Valuation Service - Covers an overview of building costs, building components, qualities and class of construction with examples of the square foot and segregated methods, as well as the use of cost trend multipliers, depreciation and insurance exclusions. Prerequisite: None. 6 nontested hours.

ARC 2849

**SOCIAL SERVICES
DEPARTMENT[770]**

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Section 239.18, The Code, the Department of Social Services proposes amending rules appearing in the IAC relating to aid to dependent children (Chapter 40). This rule provides for a Spanish version of the aid to dependent children application. This form is needed for those individuals who read Spanish, but not English.

Consideration will be given to written data, views, or arguments thereto, received by the Bureau of Policy, Research, and Analysis, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before May 21, 1982.

These rules are intended to implement section 239.3, The Code.

ITEM 1. Rule 770—40.2(239) is amended to read as follows:

770—40.2(239) Application. The application for aid to dependent children shall be submitted on Public Assistance Application, Form PA-2207-0 or Form PA-2230-0 (Spanish). The application shall be signed by the applicant, the applicant's authorized representative, or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant's behalf. When both parents, or a parent and stepparent, are in the home, both shall sign the application.

ITEM 2. Rule 770—40.3(239) is amended to read as follows:

770—40.3(239) Date of application. The date of application is the date an identifiable Public Assistance Application, Form PA-2207-0 or Form PA-2230-0 (Spanish), is received in the county. An identifiable application is an application containing a legible name and address, that has been signed.

ARC 2850

**SOCIAL SERVICES
DEPARTMENT[770]**

AMENDED NOTICE OF INTENDED ACTION

The Notice of Intended Action published in the March 3, 1982 IAB as ARC 2738 under the authority of Section 249A.4, The Code, proposing rules relating to medical services (Chapter 78) is amended by adding notice of oral presentations. The proposed rules specify who can perform the examinations necessary before a person receives a hearing aid.

SOCIAL SERVICES DEPARTMENT[770] (cont'd)

The department wishes to make it clear that, because of a court order, the rule currently published in the IAC is not the one under which the department is operating. The Iowa district court of Polk County invalidated the published rule on July 24, 1979 and ordered that the rule prior to November 8, 1978 continue in effect. This information is given to clear up any confusion about what is being amended.

The main issue in the case revolves around who can administer the various examinations required before a person can get a hearing aid under the program.

1. In the rule under which the department is currently operating, the initial physical examination is done by a physician. The audiological examination and the hearing aid evaluation are done by an audiologist. The aid is sold by a hearing aid dealer.

2. In the rule the court invalidated, the initial physical examination is done by a physician. The audiological examination and the hearing aid evaluation could be done by a physician, an audiologist, or a hearing aid dealer. The aid is sold by a hearing aid dealer.

3. In the proposed rules, the initial physical examination is done by a physician. The audiological examination could be done by a physician or an audiologist. After the need for a hearing aid has been established, the hearing aid evaluation could be done by a physician, an audiologist, or a hearing aid dealer. The aid is sold by a hearing aid dealer. The intent of these proposed rules is to allow each practitioner to perform the services allowed within the scope of his or her practice in the licensing laws.

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

Des Moines - May 19, 1982 at 1:30 p.m.
Des Moines District Office Conference Rm.
3609½ Douglas
Des Moines, Iowa 50306

ARC 2851**SOCIAL SERVICES
DEPARTMENT[770]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Section 249A.4, The Code, the Department of Social Services proposes amending rules appearing in the IAC relating to intermediate care facilities (Chapter 81) and intermediate care facilities for the mentally retarded (Chapter 82). These rules extend the limits on compensation of owners to include their relatives. Previous interpretations show the necessity of this being placed in the rules.

Consideration will be given to written data, views, or arguments thereto, received by the Bureau of Policy, Research, and Analysis, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before May 21, 1982.

These rules are intended to implement sections 249A.2(6), 249A.3(2)“a”, and 249A.12, The Code.

ITEM 1. Subrule 81.6(11), paragraph “h”, is amended to read as follows:

h. A reasonable allowance of compensation for services of owners or immediate relatives is an allowable cost, provided the services are actually performed in a necessary function. For this purpose, the following persons are considered immediate relatives: Husband and wife; natural parent, child and sibling; adopted child and adoptive parent; stepparent, stepchild, stepbrother, and stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law; grandparent and grandchild. Adequate time records shall be maintained. Adjustments may be necessary to provide compensation as an expense for nonsalaried working proprietors and partners. Members of religious orders serving under an agreement with their administrative office are allowed salaries paid persons performing comparable services. When maintenance is provided such these persons by the facility, consideration shall be given to the value of these benefits and this amount shall be deducted from the amount otherwise allowed for a person not receiving maintenance.

(1) Compensation means the total benefit received by the owner or immediate relative for the services rendered to the facility. It includes salary amounts paid for managerial, administrative, professional, and other services; amounts paid by the facility for the personal benefit of the proprietor or immediate relative; the cost of assets and services which the proprietor or immediate relative receives from the facility; and deferred compensation.

(2) Reasonableness requires that the compensation allowance be such an amount as would ordinarily be paid for comparable services by comparable institutions, and depends upon the facts and circumstances of each case.

(3) Necessary requires that the function be such that had the owner or immediate relative not rendered the services, the facility would have had to employ another person to perform the service, and be pertinent to the operation and sound conduct of the institution.

(4) The maximum allowed compensation for an administrator involved in ownership or immediate relative is \$1,500.00 per month plus \$16.00 per month per licensed bed capacity for each bed over sixty, not to exceed \$2,220.00 per month. An administrator is considered to be involved in ownership of a facility when the administrator has ownership interest of five percent or more.

(5) The maximum allowed compensation for an assistant administrator involved in ownership or immediate relative in facilities having a licensed capacity of one hundred fifty-one or more beds is \$950.00 per month. An assistant administrator is considered to be involved in ownership of a facility when the assistant administrator has ownership interest of five percent or more.

SOCIAL SERVICES DEPARTMENT[770] (cont'd)

(6) The maximum allowed compensation for a nursing director involved in ownership or immediate relative is sixty percent of the amount allowed for the administrator, or \$950.00 per month, whichever is greater. The nursing director shall be a licensed registered or practical nurse. A nursing director is considered to be involved in ownership of a facility when the nursing director has ownership interest of five percent or more.

ITEM 2. Subrule 82.5(11), paragraph "e", is amended to read as follows:

e. A reasonable allowance of compensation for services of owners or immediate relatives is an allowable cost, provided the services are actually performed in a necessary function. For this purpose, the following persons are considered immediate relatives: Husband and wife; natural parent, child and sibling; adopted child and adoptive parent; stepparent, stepchild, stepbrother, and stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law; grandparent and grandchild. Adequate time records shall be maintained. Adjustments may be necessary to provide compensation as an expense for nonsalaried working proprietors and partners. Members of religious orders serving under an agreement with their administrative office are allowed salaries paid persons performing comparable services. When maintenance is provided such these persons by the facility, consideration shall be given to the value of these benefits and this amount shall be deducted from the amount otherwise allowed for a person not receiving maintenance.

(1) Compensation means the total benefit received by the owner or immediate relative for the services rendered to the facility. It includes salary amounts paid for managerial, administrative, professional, and other services; amounts paid by the facility for the personal benefit of the proprietor or immediate relative; the cost of assets and services which the proprietor or immediate relative receives from the facility; and deferred compensation.

(2) Reasonableness requires that the compensation allowance be such an amount as would ordinarily be paid for comparable services by comparable institutions, and depends upon the facts and circumstances of each case.

(3) Necessary requires that the function be such that had the owner or immediate relative not rendered the services, the facility would have had to employ another person to perform the service, and be pertinent to the operation and sound conduct of the institution.

(4) The maximum allowed compensation for an administrator involved in ownership or immediate relative is \$1,500.00 per month plus \$16.00 per month per licensed bed capacity for each bed over sixty, and not to exceed \$2,220.00 per month. An administrator is considered to be involved in ownership of a facility when the administrator has ownership interest of five percent or more.

(5) The maximum allowed compensation for an assistant administrator involved in ownership or immediate relative in facilities having a licensed capacity of one hundred fifty-one or more beds is \$950.00 per month. An assistant administrator is considered to be involved in ownership of a facility when the assistant administrator has ownership interest of five percent or more.

(6) The maximum allowed compensation for a nursing director involved in ownership or immediate relative is sixty percent of the amount allowed for the administrator, or \$950.00 per month, whichever is greater. The nursing director shall be a licensed registered or practical nurse. A nursing director is considered to be involved in ownership of a facility when the nursing director has ownership interest of five percent or more.

NOTICE - USURY

In accordance with the provisions of Acts of the Sixty-eighth General Assembly, First Session, 1979, Senate File 158, the Superintendent of Banking has determined that the maximum lawful rate of interest provided for in section 535.2, The Code, as amended, shall be:

July 1, 1980 - July 31, 1980	12.25%
August 1, 1980 - August 31, 1980	11.75%
September 1, 1980 - September 30, 1980	12.25%
October 1, 1980 - October 31, 1980	13.00%
November 1, 1980 - November 30, 1980	13.50%
December 1, 1980 - December 31, 1980	13.75%
January 1, 1981 - January 31, 1981	14.75%
February 1, 1981 - February 28, 1981	14.75%
March 1, 1981 - March 31, 1981	14.50%
April 1, 1981 - April 30, 1981	15.25%
May 1, 1981 - May 31, 1981	15.00%
June 1, 1981 - June 30, 1981	15.75%
July 1, 1981 - July 31, 1981	16.00%
August 1, 1981 - August 31, 1981	15.50%
September 1, 1981 - September 30, 1981	16.25%
October 1, 1981 - October 31, 1981	17.00%
November 1, 1981 - November 30, 1981	17.25%
December 1, 1981 - December 31, 1981	17.25%
January 1, 1982 - January 31, 1982	15.50%
February 1, 1982 - February 28, 1982	15.75%
March 1, 1982 - March 31, 1982	16.50%
April 1, 1982 - April 30, 1982	16.50%
May 1, 1982 - May 31, 1982	15.75%

ARC 2853**COMMERCE COMMISSION[250]**

The Iowa State Commerce Commission hereby gives notice that on April 9, 1982, the Commission issued an order in Docket No. RMU-82-5, In Re: Iowa State Commerce Commission Rules, 250 Chapter—16, "Accounting," Iowa Administrative Code, "Order Adopting and Implementing Rules On An Emergency Basis," and, pursuant to the authority of Sections 476.1, 476.2, 476.8 and 476.9, The Code, adopted certain rules containing amendments to 250 Chapter—16, "Accounting," Iowa Administrative Code. The rules adopted were originally adopted after notice and hearing on January 29, 1975 in Docket No. U-463, and July 25, 1977 in Docket No. RMU-77-1, but are included in the Iowa Administrative Code only by reference to the order issued in Docket No. U-463. By adopting and implementing these rules on an emergency basis, the Commission intends that the specific and detailed language of the rules previously adopted be set out in full in the Iowa Administrative Code.

In compliance with section 17A.4, The Code, the Commission finds that public notice and participation is unnecessary, since the sole purpose in adopting the rules is to afford greater convenience and access to the rules by providing the specific language of the rules to the code editor for inclusion in the Iowa Administrative Code. No changes to the rules as they presently exist are proposed or adopted.

In compliance with section 17A.5(2)"b"(2), The Code, the Commission finds that the normal effective date of the rules, thirty-five days after publication in the Iowa Administrative Bulletin should be waived and the rules made effective upon filing with the administrative rules coordinator. In the first place, the rules adopted today are the very same rules which were adopted in 1975 and amended in 1977, but which have not been published in full in the Iowa Administrative Code. The Commission finds that providing to the code editor for publication the specific language of the rules previously adopted confers a benefit on the public by affording greater convenience and access to the rules, and removes a restriction on the public, since it will no longer be necessary for any interested person to obtain from the Commission a copy of the order in Docket No. U-463 in order to ascertain the rules adopted by the Commission.

ITEM 1. Amend subrule 16.2(7) by striking and inserting in lieu thereof the following:

16.2(7) The definitions for the uniform systems of accounts for electric utilities, when used in account 424, "Promotional Practices," are modified to include the following definitions:

50. The word "affiliate" shall mean any person doing business in this State who directly or indirectly controls or is controlled by or is under common control with a public utility.

51. The words "appliance or equipment" shall mean any device, including a fixture, which consumes electric energy and any ancillary device required for its operation.

52. The word "consideration" shall mean any cash, donation, gift, allowance, rebate, bonds, merchandise (new or used), property (tangible or intangible), labor, service con-

veyance, commitment, right or other thing of value.

53. The word "financing" shall include acquisition of equity or debt interests, loans, guarantee of loans, advances, sale and repurchase agreements, sale and lease back agreements, sales on open account, conditional or installment sales contracts, or other investment or extensions of credit.

54. The word "person" shall include an individual, architect, builder, engineer, subdivider, developer, dealer, group, firm, partnership, corporation, cooperative, association, or other organization, but not including state or local political subdivisions or municipal corporations.

55. The words "public utility" or "utility" shall include persons defined to be public utilities in Section 476.1, Code of Iowa.

56. The words "promotional practices" shall mean any consideration offered or granted by a public utility or its affiliate to any person for the purpose, express or implied, of inducing such person to select or use the service or additional service of such utility, or to select or install any appliance or equipment designed to use such utility service; provided that the words "promotional practices" shall not include the following activities:

(a) Providing repairs and service to appliances or equipment of customers of a public utility in an emergency or to restore service or to prevent hazardous conditions or service interruptions.

(b) Inspection and adjustment of appliances or equipment by a public utility.

(c) Repairs and other maintenance to appliances or equipment by a public utility that could be performed by an independent appliance dealer or service shop if charges are at a cost or above.

(d) Providing service, wiring, piping, appliances, or equipment in accordance with tariffs, rules or regulations of a public utility on file with and approved by the Commission.

(e) Providing appliances, equipment or instructional services to an educational institution for the purpose of instructing students in the use or repair of such appliances or equipment.

(f) Providing discounts or financing employees of a public utility to encourage their use of the utility's service.

(g) Merchandising and related inventorying of appliances or equipment for sale at retail and making and fulfilling reasonable warranties against defects in material and workmanship in appliances or equipment existing at the time of delivery; the elimination of hazardous conditions which due to a grandfather provision would not be corrected by the customer and yet would require correction to protect the public and minimize company liability.

(h) The replacement or alterations to a customer's obsolete or inefficient system.

COMMERCE COMMISSION[250] (cont'd)

(i) Technical, informational, or educational assistance offered to persons on the use of energy furnished by a public utility or on the use of maintenance of appliances or equipment.

(j) Lunches, gifts, door prizes, etc., presented for attendance at informational meetings, conferences, etc., valued at \$10.00 or less shall not be considered to be a promotional practice.

(k) Providing appliances or equipment incidental to exhibitions, demonstrations, tests or experiments of reasonable duration.

ITEM 2. Amend subrule 16.2(8) by striking and inserting in lieu thereof the following:

16.2(8) The uniform systems of accounts for electric utilities are modified to include the following:

424 Promotional Practices

This account shall include the cost of labor, materials used and expenses or losses incurred by the utility or an affiliate (where such costs are charged back to the company) on promotional practices, including the following:

A. The financing of land or the construction of any building when same is not owned or otherwise possessed by the utility or its affiliate without Commission written approval.

B. The furnishing of consideration to any person for work done or to be done on property not owned or otherwise possessed by the utility or its affiliate, except for the following: Studies to determine comparative capital or operating costs and expenses, or to show the desirability and feasibility of selecting one form of energy over another, contributions for research and development of new energy sources, etc.

C. The acquisition from any person of any tangible or intangible property or service for a consideration in excess of the value thereof or the furnishing to any person of any tangible property or service for a consideration of less than the value thereof. "Value" in this instance is defined as the fair market price of the property or service under competitive market conditions and under arm's length conditions.

D. The furnishing of consideration to any person for the sale, installation, or use of appliances or equipment of one form of energy over another. Employees who are paid a commission in lieu of salary for the initial sale of appliances are exempted.

E. The provision of free, or at less than cost or value, wiring, piping, appliances, or equipment to any person; provided that a utility, engaged in an appliance merchandising sales program, shall not be precluded from conducting legitimate closeouts of appliances, clearance sales, or sales of damaged or returned appliances. All items required by service rules of this Commission are exempted.

F. The provision of free, or at less than cost or value, installation, operation, repair, modification or maintenance of appliances, equipment, wiring or piping to any person. This would not include services provided for the convenience and safety of customers such as gas leak testing, lighting of furnaces, etc.

G. The granting of a trade-in allowance on the purchase of any appliance or equipment in excess or the reasonable value of the trade-in based on the past experience of a company or the granting of a trade-in allowance for such appliance or equipment when such allowance varies by the type of energy consumed in the trade-in.

H. The financing of the acquisition of any appliance or equipment at a rate of interest or on terms significantly more favorable than those generally applicable to sales by non-utility dealers in such appliances or equipment.

I. The furnishing of consideration to any person for any advertising or publicity purpose of such person, except where appropriately classified to another account.

J. The guaranteeing of the maximum cost of electric utility service, except under published tariffs.

ITEMS

Labor: (Related to Promotional Practices)

1. Salary of employees engaged directly or indirectly in promotional practices defined.

2. Clerical and stenographic work performed in relation to promotional practices.

3. Fees paid to consultants, agents, attorneys, etc., on related promotional practices.

Materials and Expenses: (Related to Promotional Practices)

4. Amounts spent on postage, office supplies, displays, posters, exhibits, etc.

5. Films, movies, photographs prepared for promotional activities.

6. Expenses paid such as lodging, food, entertainment expenses.

7. Transportation by company auto or plane and public transportation of any mode.

426 Miscellaneous Income Deductions

Immediately following the current text and item list add the following:

7. Promotional advertising expenses.

8. Institutional or goodwill advertising expenses.

9. Rate justification advertising expenses.

The following specific subaccount instructions pertain to items 4, 7, 8 and 9 listed above:

426.4 Political Advertising Expenses

A. This account shall include the cost of labor, materials used, and expenses incurred in advertising whether on a national, regional, or local basis, which are designed to influence public opinion with respect to the election or appointment of public officials or the adoption, repeal, revocation, or modification of referenda, legislation, or ordinances. The account shall also include expenditures for influencing the decisions of public officials not including such expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with utility's existing or proposed operations.

B. Entries relating to political advertising included in this account shall contain or refer to supporting documents which identify the

COMMERCE COMMISSION[250] (cont'd)

specific advertising message. If references are used, copies or scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

C. Where political advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expenses for such advertising charged to any member or subsidiary which is an Iowa electric utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

Labor: (Related to Political Advertising)

1. Preparing material for newspapers, periodicals, billboards, etc., and preparing and conducting promotional motion pictures, radio, and television programs.

2. Preparing booklets, bulletins, etc., used in direct mail.

3. Preparing window and other displays.

4. Clerical and stenographic work.

5. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses: (Related to Political Advertising)

6. Advertising in newspapers, periodicals, billboards, radio, etc.

7. Advertising matters such as posters, bulletins, booklets, and related items.

8. Fees and expenses of advertising agencies and commercial artists.

9. Novelties for general distribution.

10. Postage on direct mail advertising.

11. Printing of booklets, dodgers, bulletins, etc.

12. Supplies and expenses in preparing advertising materials.

13. Office supplies and expenses.

NOTE: Franchise advertising and related expenses shall be charged to account 913.5 or 302.

426.7 Promotional Advertising Expenses

A. This account shall include the cost of labor, materials used, and expenses incurred in advertising designed to promote or retain the use of utility service, except advertising the sale of merchandise or load factor advertising by the utility.

B. Entries relating to promotional advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies or scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

C. Where promotional advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expenses for such advertising charged to any member or subsidiary which is an Iowa electric utility and

included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

Labor: (Related to Promotional Advertising)

1. Direct supervision of advertising activities.

2. Preparing material for newspapers, periodicals, billboards, etc., and preparing and conducting motion pictures, radio, and television programs.

3. Preparing booklets, bulletins, etc., used in direct mail.

4. Preparing window and other displays.

5. Clerical and stenographic work.

6. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses: (Related to Promotional Advertising)

7. Advertising in newspapers, periodicals, billboards, radio, etc.

8. Advertising matters such as posters, bulletins, booklets, and related items.

9. Fees and expenses of advertising agencies and commercial artists.

10. Novelties for general distribution.

11. Postage on direct-mail advertising.

12. Premiums distributed generally, such as recipe books, etc., when not offered as inducement to purchase appliances.

13. Printing of booklets, dodgers, bulletins, etc.

14. Supplies and expenses in preparing advertising materials.

15. Office supplies and expenses.

NOTE A: The cost of advertisements, which sets forth the value or advantages of utility service (without reference to specific appliances or if reference is made to appliances from dealers or refers to appliances not carried for sale by the utility), shall be considered sales promotion advertising and charged to this account. However, advertisements which are limited to specific makes of appliances sold by the utility and prices, terms, etc., thereof, without referring to the value or advantages of utility service, shall be considered as merchandise advertising, and the cost shall be charged to account 416, Costs and Expenses of Merchandising, Jobbing, and Contract Work.

NOTE B: Advertisements which substantially mention or refer to the value or advantages of utility service, together with specific reference to makes or appliances sold by the utility and the price, terms, etc., thereof, and designed for the joint purpose of increasing the use of utility service and the sales of appliances, shall be considered as a combination advertisement, and the costs shall be distributed between this account and account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work, on the basis of space, time, or other proportional factors.

COMMERCE COMMISSION[250] (cont'd)

426.8 Institutional or Goodwill Advertising Expenses

A. This account shall include the cost of labor, materials used, and expenses incurred in advertising which is designed to create, enhance, or sustain the utility's image or goodwill to the general public or its customers.

B. Entries relating to institutional or goodwill advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies or scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

C. Where institutional or goodwill advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expense for such advertising charged to any member or subsidiary which is an Iowa electric utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

Labor: (Related to Institutional or Goodwill Advertising)

1. Supervision of advertising activities.
2. Preparing material for newspapers, periodicals, billboards, etc., and preparing or conducting motion pictures, radio, and television programs.
3. Preparing booklets, bulletins, etc., used in direct mail.
4. Preparing window and other displays.
5. Clerical and stenographic work.
6. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses: (Related to Institutional or Goodwill Advertising)

7. Advertising in newspapers, periodicals, billboards, radio, etc.
8. Advertising matters such as posters, bulletins, booklets, and related items.
9. Fees and expenses of advertising agencies and commercial artists.
10. Postage on direct mail advertising.
11. Printing of booklets, dodgers, bulletins, etc.
12. Supplies and expenses in preparing advertising materials.
13. Office supplies and expenses.
14. Novelties for general distribution.

Below are examples of the advertising to be included in this account:

(a) Pronouncements primarily lauding the utility or the area or community it serves.

(b) Advertising activities to inform the ratepayers of the social and economic advantages or status of the area or community it serves.

(c) Advertising activities to inform the public of the utility's participation in programs to improve the economic condition of the area or community it serves.

(d) Advertising activities to inform the public of the utility's role of good citizenship.

(e) Information and routine data supplied by the utility to local governments, planning agencies, civic groups, businesses, and the general public which is not inclusive in account 909.3, Informational Consumer Advertising Expenses.

(f) Advertising activities to inform the public of the utility's consciousness of, or involvement in, health, safety, conservation, or environmental programs, except as included in accounts 909.1, 909.2 and 909.3.

426.9 Rate Justification Advertising Expenses

A. This account shall include the cost of labor, materials used, and expenses incurred in advertising, whether on a regional or local basis which is designed to promote public acceptance of utility rate increases or the utility's filed rates. The account shall also include all costs incurred by the utility for advertising in opposition to the decision of the regulatory agency. However, the expenses associated with simply informing customers that new rates have been requested shall be recorded in account 928.

B. Entries relating to rate justification advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies or scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

C. Where advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expense for such advertising charged to any member or subsidiary which is an Iowa electric utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

Labor: (Related to Rate Justification Advertising)

1. Preparing material for newspapers, periodicals, billboards, etc., and preparing and conducting motion pictures, radio, and television programs.

2. Preparing booklets, bulletins, etc., used in direct mail.

3. Preparing window and other displays.

4. Clerical and stenographic work.

5. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses: (Related to Rate Justification Advertising)

6. Advertising in newspapers, periodicals, billboards, radio, etc.

7. Advertising matters such as posters, bulletins, booklets, and related items.

8. Fees and expenses of advertising agencies and commercial artists.

COMMERCE COMMISSION[250] (cont'd)

9. Postage on direct-mail advertising.
10. Printing of booklets, dodgers, bulletins, etc.
11. Supplies and expenses in preparing advertising materials.
12. Office supplies and expenses.

909.1 Conservation Advertising Expenses

A. This account shall include the cost of labor, materials used, and expenses incurred in advertising activities which primarily inform the customer of the reasons for and methods whereby energy may be conserved and energy consumption reduced by the consumer. Include in this account advertising activity relating to the electric utility which is related directly to company's provision of service to the customer during energy, fuel, and related shortages.

B. Entries relating to conservation advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies or scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

C. Where conservation advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expense for such advertising charged to any member or subsidiary which is an Iowa electric utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

Labor: (Related to Conservation Advertising)

1. Direct supervision of advertising activities.
2. Preparation of materials for newspapers, periodicals, billboards, etc., and preparing and conducting motion pictures, radio, and television programs.
3. Preparation of booklets, bulletins, etc., used in direct mail.
4. Preparation of window and other displays.
5. Clerical and stenographic work.
6. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses: (Related to Conservation Advertising)

7. Advertising in newspapers, periodicals, billboards, radio, etc.
8. Fees and expenses of advertising agencies and commercial artists.
9. Postage on direct-mail advertising.
10. Printing of booklets, dodgers, bulletins, etc.
11. Supplies and expenses in preparing advertising materials.
12. Office supplies and expenses.
13. Novelties for general distribution.

Below are examples of the advertising to be included in this account:

(a) Instructions in the proper use of equipment owned by the utility or the customer which will result in less consumption of energy.

(b) Advertising designed to convince consumers to turn down thermostats, turn off lights when not in use, and turn off appliances, television sets, etc., when not in use.

909.2 Environmental Advertising Expenses

A. This account shall include the cost of labor, materials used, and expenses incurred in advertising activities which primarily are designed to inform the public concerning the methods by which customers can participate with the utility in preserving and improving the environment. However, advertising which is primarily designed to laud the utility's achievements or projects purporting to preserve or enhance the environment, shall be recorded in account 426 (subaccount 8).

B. Entries relating to environmental advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies or scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

C. Where environmental advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expenses for such advertising charged to any member or subsidiary which is an Iowa electric utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

Labor: (Related to Environmental Advertising)

1. Direct supervision of advertising activities.
2. Preparation of materials for newspapers, periodicals, billboards, etc., and preparing and conducting motion pictures, radio, and television programs.
3. Preparation of booklets, bulletins, etc., used in direct mail.
4. Preparation of window and other displays.
5. Clerical and stenographic work.
6. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses: (Related to Environmental Advertising)

7. Advertising in newspapers, periodicals, billboards, etc.
8. Fees and expenses of advertising agencies and commercial artists.
9. Postage on direct-mail advertising.
10. Printing of booklets, dodgers, bulletins, etc.
11. Supplies and expenses in preparing advertising materials.
12. Office supplies and expenses.

COMMERCE COMMISSION[250] (cont'd)

13. Novelties for general distribution.

909.3 Informational Consumer Advertising Expenses

A. This account shall include the cost of labor, materials used, and expenses incurred in advertising activities which primarily convey information as to what the utility urges or suggests customers should do in utilizing electric service to protect their health and safety, to utilize their electric equipment safely and economically.

B. Entries relating to informational advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies or scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

C. Where informational advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expense for such advertising charged to any member or subsidiary which is an Iowa electric utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

Labor: (Related to Informational Consumer Advertising)

1. Direct supervision of advertising activities.
2. Preparing materials for newspapers, periodicals, billboards, etc., and preparing and conducting motion pictures, radio, and television programs.
3. Preparing booklets, bulletins, etc., used in direct mail.
4. Preparing window and other displays.
5. Clerical and stenographic work.
6. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.

Material and Expenses: (Related to Informational Consumer Advertising)

7. Advertising in newspapers, periodicals, billboards, radio, etc.
 8. Fees and expenses of advertising agencies and commercial artists.
 9. Postage on direct-mail advertising.
 10. Printing of booklets, dodgers, bulletins, etc.
 11. Supplies and expenses in preparing advertising materials.
 12. Office supplies and expenses.
 13. Novelties for general distribution.
- Below are examples of the advertising to be included in this account:

(a) Instructions in the proper use of equipment owned by the utility or the customer which make use of the utility's service.

(b) Information as to new rates, billing practices, new inspection, or meter-reading schedules.

(c) Notification of emergency conditions and procedures to be followed during the emergency.

(d) Advice concerning hazards associated with the utility's electric service.

NOTE: Exclude from this account and charge to account 930, Miscellaneous General Expenses, the cost of publication of stockholder reports, dividend notices, bond redemption notices, financial statements, and other notices of a general corporate character. Also, exclude all expenses of promotional, institutional, or goodwill, and political advertising. (See account 426.7, Promotional Advertising Expenses; account 426.8, Institutional or Goodwill Advertising Expenses; and account 426.4, Political Advertising Expenses.)

Advertising expense directly related to obtaining a franchise or renewing an old franchise shall be charged to account 302, Franchise and Consents. Such amounts shall be maintained in a separate subaccount for ready identification.

Advertising expense directly related to securing of new debt financing shall be charged to account 181, Unamortized Debt Discount and Expense. Such amounts shall be maintained in a separate subaccount for ready identification.

Advertising expense directly related to securing of new equity financing shall be charged to account 214, Capital Stock Expense. Such amounts shall be maintained in a separate subaccount for ready identification.

909.4 Load Factor Advertising Expenses

A. This account shall include the cost of labor, materials used, and expenses incurred in advertising activities designed to improve load factor so that plant and equipment already installed can be operated more efficiently and to a greater degree of capability, thereby resulting in lower overall costs to the consumer.

B. This shall include advertising expenditures which are designed to further industrial and commercial development of the company's service area.

C. Entries relating to load factor advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies or scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

D. Where load factor advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expense for such advertising charged to any member or subsidiary which is an Iowa electric utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

COMMERCE COMMISSION[250] (cont'd)

ITEMS

Labor: (Relating to Load Factor Advertising)

1. Direct supervision of advertising activities.
2. Preparation of advertising materials for newspapers, periodicals, billboards, etc., and preparing and conducting motion pictures, radio, and television programs.
3. Preparation of booklets, bulletins, etc., used in direct mail.
4. Preparation of window and other displays.
5. Clerical and stenographic work.
6. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses: (Related to Load Factor Advertising)

7. Advertising in newspapers, periodicals, billboards, radio, etc.
8. Fees and expenses of advertising agencies and commercial artists.
9. Postage on direct-mail advertising.
10. Printing of booklets, dodgers, bulletins, etc.
11. Supplies and expenses in preparing advertising materials.
12. Office supplies and expenses.
13. Novelties for general distribution.

Below is an example of the advertising to be included in this account:

- (a) Encouragement for manufacturers to go to night operations.

913 Advertising Expenses

Delete the entire current text of this account and add the following subaccount:

913.5 Franchise Advertising Expenses

A. This account shall include only reasonable advertising expenditures for the purpose of obtaining approval, modification, or revocation of franchises.

B. Entries relating to reasonable franchise advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies or scripts of the advertising matter shall be readily available to Staff or any party involved in a discovery proceeding.

ITEMS

Labor: (Related to Franchise Advertising)

1. Preparing material for newspapers, periodicals, billboards, etc., and preparing and conducting motion pictures, radio, and television programs.
2. Preparing booklets, bulletins, etc., used in direct mail.
3. Preparing window and other displays.
4. Clerical and stenographic work.
5. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses: (Related to Franchise Advertising)

6. Advertising in newspapers, periodicals, billboards, radio, etc.
7. Advertising matters such as posters, bulletins, booklets, and related items.
8. Fees and expenses of advertising agencies and commercial artists.
9. Novelties for general distribution.
10. Postage on direct-mail advertising.
11. Printing of booklets, bulletins, etc.
12. Supplies and expenses in preparing advertising materials.
13. Office supplies and expenses.

930 Miscellaneous General Expenses

Delete the current Item No. 12 of this account and renumber the current Item No. 13 to become Item No. 12.

ITEM 3. Amend subrule 16.3(7) by striking and inserting in lieu thereof the following:

16.3(7) The definitions for the uniform systems of accounts for gas utilities, when used in account 424, "Promotional Practices," are modified to include the following definitions:

50. The word "affiliate" shall mean any person doing business in this State who directly or indirectly controls or is controlled by or is under common control with, a public utility.

51. The words "appliance or equipment" shall mean any device, including a fixture, which consumes electric energy and any ancillary device required for its operation.

52. The word "consideration" shall mean any cash, donation, gift, allowance, rebate, bonds, merchandise (new or used), property (tangible or intangible), labor, service conveyance, commitment, right or other thing of value.

53. The word "financing" shall include acquisition of equity or debt interests, loans, guarantee of loans, advances, sale and repurchase agreements, sale and lease back agreements, sales on open account, conditional or installment sales contracts, or other investment or extensions of credit.

54. The word "person" shall include any individual, architect, builder, engineer, subdivider, developer, dealer, group, firm, partnership, corporation, cooperative, association, or other organization, but not including state or local political subdivisions or municipal corporations.

55. The words "public utility" or "utility" shall include persons defined to be public utilities in Section 476.1, Code of Iowa.

56. The words "promotional practices" shall mean any consideration offered or granted by a public utility or its affiliate to any person for the purpose, express or implied, of inducing such person to select or use the service or additional service of such utility, or to select or install any appliance or equipment designed to use such utility service; provided that the words "promotional practices" shall not include the following activities:

COMMERCE COMMISSION[250] (cont'd)

(a) Providing repairs and service to appliances or equipment of customers of a public utility in an emergency or to restore service or to prevent hazardous conditions or service interruptions.

(b) Inspection and adjustment of appliances or equipment by a public utility.

(c) Repairs and other maintenance to appliances or equipment by a public utility that could be performed by an independent appliance dealer or service shop if charges are at a cost or above.

(d) Providing service, wiring, piping, appliances, or equipment in accordance with tariffs, rules or regulations of a public utility on file with and approved by the Commission.

(e) Providing appliances, equipment or instructional services to an educational institution for the purpose of instructing students in the use or repair of such appliances or equipment.

(f) Providing discounts or financing employees of a public utility to encourage their use of the utility's service.

(g) Merchandising and related inventory of appliances or equipment for sale at retail and making and fulfilling reasonable warranties against defects in material and workmanship in appliances or equipment existing at the time of delivery; the elimination of hazardous conditions which due to a grandfather provision would not be corrected by the customer and yet would require correction to protect the public and minimize company liability.

(h) The replacement or alterations to a customer's obsolete or inefficient system.

(i) Technical, informational, or educational assistance offered to persons on the use of energy furnished by a public utility or on the use of maintenance of appliances or equipment.

(j) Lunches, gifts, door prizes, etc., presented for attendance at informational meetings, conferences, etc., valued at \$10 or less shall not be considered to be a promotional practice.

(k) Providing appliances or equipment incidental to exhibitions, demonstrations, tests or experiments of reasonable duration.

ITEM 4. Amend subrule 16.3(8) by striking and inserting in lieu thereof the following:

16.3(8) The uniform systems of accounts for gas utilities are modified to include the following:

424 Promotional Practices

This account shall include the cost of labor, materials used and expenses or losses incurred by the utility or an affiliate (where such costs are charged back to the company) on promotional practices, including the following:

A. The financing of land or the construction of any building when same is not owned or otherwise possessed by the utility or its affiliate without Commission written approval.

B. The furnishing of consideration to any person for work done or to be done on property not owned or otherwise possessed by the utility or its affiliate, except for the following: Studies

to determine comparative capital or operating costs and expenses, or to show the desirability and feasibility of selecting one form of energy over another, contributions for research and development of new energy sources, etc.

C. The acquisition from any person of any tangible or intangible property or service for a consideration in excess of the value thereof or the furnishing to any person of any tangible property or service for a consideration of less than the value thereof. "Value" in this instance is defined as the fair market price of the property or service under competitive market conditions and under arm's length conditions.

D. The furnishing of consideration to any person for the sale, installation, or use of appliances or equipment of one form of energy over another. Employees who are paid a commission in lieu of salary for the initial sale of appliances are exempted.

E. The provision of free, or at less than cost or value, wiring, piping, appliances, or equipment to any person; provided that a utility, engaged in an appliance merchandising sales program, shall not be precluded from conducting legitimate closeouts of appliances, clearance sales, or sales of damaged or returned appliances. All items required by service rules of this Commission are exempted.

F. The provision of free, or at less than cost or value, installation, operation, repair, modification or maintenance of appliances, equipment, wiring or piping to any person. This would not include services provided for the convenience and safety of customers such as gas leak testing, lighting of furnaces, etc.

G. The granting of a trade-in allowance on the purchase of any appliance or equipment in excess of the reasonable value of the trade-in based on the past experience of a company or the granting of a trade-in allowance for such appliance or equipment when such allowance varies by the type of energy consumed in the trade-in.

H. The financing of the acquisition of any appliance or equipment at a rate of interest or on terms significantly more favorable than those generally applicable to sales by non-utility dealers in such appliances or equipment.

I. The furnishing of consideration to any person for any advertising or publicity purpose of such person, except where appropriately classified to another account.

J. The guaranteeing of the maximum cost of gas utility service, except under published tariffs.

ITEMS

Labor: (Related to Promotional Practices)

1. Salary of employees engaged directly or indirectly in promotional practices defined.

2. Clerical and stenographic work performed in relation to promotional practices.

3. Fees paid to consultants, agents, attorneys, etc., on related promotional practices.

COMMERCE COMMISSION[250] (cont'd)

Materials and Expenses: (Related to Promotional Practices)

4. Amounts spent on postage, office supplies, displays, posters, exhibits, etc.

5. Films, movies, photographs prepared for promotional activities.

6. Expenses paid such as lodging, food, entertainment expenses.

7. Transportation by company auto or plane and public transportation of any mode.

426 Miscellaneous Income Deductions

Immediately following the current text and item list add the following:

7. Promotional advertising expenses.

8. Institutional or goodwill advertising expenses.

9. Rate justification advertising expenses.

The following specific subaccount instructions pertain to items 4, 7, 8, and 9 listed above:

426.4 Political Advertising Expenses

A. This account shall include the cost of labor, materials used, and expenses incurred in advertising whether on a national, regional, or local basis, which are designed to influence public opinion with respect to the election or appointment of public officials or the adoption, repeal, revocation, or modification of referenda, legislation, or ordinances. The account shall also include expenditures for influencing the decisions of public officials not including such expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with utility's existing or proposed operations.

B. Entries relating to political advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies of scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

C. Where political advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expenses for such advertising charged to any member or subsidiary which is an Iowa gas utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

Labor: (Related to Political Advertising)

1. Preparing material for newspapers, periodicals, billboards, etc., and preparing and conducting promotional motion pictures, radio, and television programs.

2. Preparing booklets, bulletins, etc., used in direct mail.

3. Preparing window and other displays.

4. Clerical and stenographic work.

5. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses: (Related to Political Advertising)

6. Advertising in newspapers, periodicals, billboards, radio, etc.

7. Advertising matters such as posters, bulletins, booklets, and related items.

8. Fees and expenses of advertising agencies and commercial artists.

9. Novelties for general distribution.

10. Postage on direct-mail advertising.

11. Printing of booklets, dodgers, bulletins, etc.

12. Supplies and expenses in preparing advertising materials.

13. Office supplies and expenses.

NOTE: Franchise advertising and related expenses shall be charged to account 913.5 or 302.

426.7 Promotional Advertising Expenses

A. This account shall include the cost of labor, materials used, and expenses incurred in advertising designed to promote or retain the use of utility service, except advertising the sale of merchandise or load factor advertising by the utility.

B. Entries relating to promotional advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies or scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

C. Where promotional advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expenses for such advertising charged to any member or subsidiary which is an Iowa gas utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

Labor: (Related to Promotional Advertising)

1. Direct supervision of advertising activities.

2. Preparing material for newspapers, periodicals, billboards, etc., and preparing and conducting motion pictures, radio, and television programs.

3. Preparing booklets, bulletins, etc., used in direct mail.

4. Preparing window and other displays.

5. Clerical and stenographic work.

6. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses: (Related to Promotional Advertising)

7. Advertising in newspapers, periodicals, billboards, radio, etc.

8. Advertising matters such as posters, bulletins, booklets, and related items.

9. Fees and expenses of advertising agencies and commercial artists.

10. Novelties for general distribution.

11. Postage on direct-mail advertising.

12. Premiums distributed generally, such

COMMERCE COMMISSION[250] (cont'd)

as recipe books, etc., when not offered as inducement to purchase appliances.

13. Printing of booklets, dodgers, bulletins, etc.

14. Supplies and expenses in preparing advertising materials.

15. Office supplies and expenses.

NOTE A: The cost of advertisements, which sets forth the value or advantages of utility service (without reference to specific appliances or if reference is made to appliances from dealers or refers to appliances not carried for sale by the utility), shall be considered sales promotion advertising and charged to this account. However, advertisements which are limited to specific makes of appliances sold by the utility and prices, terms, etc., thereof, without referring to the value or advantages of utility service, shall be considered as merchandise advertising, and the cost shall be charged to account 416, Costs and Expenses of Merchandising, Jobbing, and Contract Work.

NOTE B: Advertisements which substantially mention or refer to the value or advantages of utility service, together with specific reference to makes or appliances sold by the utility and the price, terms, etc., thereof, and designed for the joint purpose of increasing the use of utility service and the sales of appliances, shall be considered as a combination advertisement, and the costs shall be distributed between this account and account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work, on the basis space, time, or other proportional factors.

426.8 Institutional or Goodwill Advertising Expenses

A. This account shall include the cost of labor, materials used, and expenses incurred in advertising which is designed to create, enhance, or sustain the utility's image or goodwill to the general public or its customers.

B. Entries relating to institutional or goodwill advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies or scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

C. Where institutional or goodwill advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expense for such advertising charged to any member or subsidiary which is an Iowa gas utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

Labor: (Related to Institutional or Goodwill Advertising)

1. Supervision of advertising activities.
2. Preparing material for newspapers, periodicals, billboards, etc., and preparing

and conducting motion pictures, radio, and television programs.

3. Preparing booklets, bulletins, etc., used in direct mail.

4. Preparing window and other displays.

5. Clerical and stenographic work.

6. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses: (Related to Institutional or Goodwill Advertising)

7. Advertising in newspapers, periodicals, billboards, radio, etc.

8. Advertising matters such as posters, bulletins, booklets, and related items.

9. Fees and expenses of advertising agencies and commercial artists.

10. Postage on direct-mail advertising.

11. Printing of booklets, dodgers, bulletins, etc.

12. Supplies and expenses in preparing advertising materials.

13. Office supplies and expenses.

14. Novelties for general distribution.

Below are examples of the advertising to be included in this account:

(a) Pronouncements primarily lauding the utility or the area or community it serves.

(b) Advertising activities to inform the ratepayers of the social and economic advantages or status of the area or community it serves.

(c) Advertising activities to inform the public of the utility's participation in programs to improve the economic condition of the area or community it serves.

(d) Advertising activities to inform the public of the utility's role of good citizenship.

(e) Information and routine data supplied by the utility to local governments, planning agencies, civic groups, businesses, and the general public which is not inclusive in account 909.3, Informational Consumer Advertising Expenses.

(f) Advertising activities to inform the public of the utility's consciousness of, or involvement in, health, safety, conservation, or environmental programs, except as included in accounts 909.1, 909.2 and 909.3.

426.9 Rate Justification Advertising Expenses

A. This account shall include the cost of labor, materials used, and expenses incurred in advertising, whether on a regional or local basis which is designed to promote public acceptance of utility rate increases or the utility's filed rates. The account shall also include all costs incurred by the utility for advertising in opposition to the decision of the regulatory agency. However, the expenses associated with simply informing customers that new rates have been requested shall be recorded in account 928.

B. Entries relating to rate justification advertising included in this account shall

COMMERCE COMMISSION[250] (cont'd)

contain or refer to supporting documents which identify the specific advertising message. If references are used, copies or scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

C. Where advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expense for such advertising charged to any member or subsidiary which is an Iowa gas utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

Labor: (Related to Rate Justification Advertising)

1. Preparing material for newspapers, periodicals, billboards, etc., and preparing and conducting motion pictures, radio, and television programs.

2. Preparing booklets, bulletins, etc., used in direct mail.

3. Preparing window and other displays.

4. Clerical and stenographic work.

5. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses: (Related to Rate Justification Advertising)

6. Advertising in newspapers, periodicals, billboards, radio, etc.

7. Advertising matters such as posters, bulletins, booklets, and related items.

8. Fees and expenses of advertising agencies and commercial artists.

9. Postage on direct-mail advertising.

10. Printing of booklets, dodgers, bulletins, etc.

11. Supplies and expenses in preparing advertising materials.

12. Office supplies and expenses.

909.1 Conservation Advertising Expenses

A. This account shall include the cost of labor, materials used, and expenses incurred in advertising activities which primarily inform the customer of the reasons for and methods whereby energy may be conserved and energy consumption reduced by the consumer. Include in this account advertising activity relating to the gas utility which is related directly to company's provision of service to the customer during energy, fuel, and related shortages.

B. Entries relating to conservation advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies or scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

C. Where conservation advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its

subsidiaries, the amount of expense for such advertising charged to any member or subsidiary which is an Iowa gas utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

Labor: (Related to Conservation Advertising)

1. Direct supervision of advertising activities.

2. Preparation of materials for newspapers, periodicals, billboards, etc., and preparing and conducting motion pictures, radio, and television programs.

3. Preparation of booklets, bulletins, etc., used in direct mail.

4. Preparation of window and other displays.

5. Clerical and stenographic work.

6. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses: (Related to Conservation Advertising)

7. Advertising in newspapers, periodicals, billboards, radio, etc.

8. Fees and expenses of advertising agencies and commercial artists.

9. Postage on direct-mail advertising.

10. Printing of booklets, dodgers, bulletins, etc.

11. Supplies and expenses in preparing advertising materials.

12. Office supplies and expenses.

13. Novelties for general distribution.

Below are examples of the advertising to be included in this account:

(a) Instructions in the proper use of equipment owned by the utility or the customer which will result in less consumption of energy.

(b) Advertising designed to convince consumers to turn down thermostats, turn off appliances, etc., when not in use.

909.2 Environmental Advertising Expenses

A. This account shall include the cost of labor, materials used, and expenses incurred in advertising activities which primarily are designed to inform the public concerning the methods by which customers can participate with the utility in preserving and improving the environment. However, advertising which is primarily designed to laud the utility's achievements or projects purporting to preserve or enhance the environment, shall be recorded in account 426 (subaccount 8).

B. Entries relating to environmental advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies or scripts of the advertising message shall be readily avail-

COMMERCE COMMISSION[250] (cont'd)

able to Staff or any party involved in a discovery proceeding.

C. Where environmental advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expenses for such advertising charged to any member or subsidiary which is an Iowa gas utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

Labor: (Related to Environmental Advertising)

1. Direct supervision of advertising activities.
2. Preparation of materials for newspapers, periodicals, billboards, etc., and preparing and conducting motion pictures, radio, and television programs.
3. Preparation of booklets, bulletins, etc., used in direct mail.
4. Preparation of window and other displays.
5. Clerical and stenographic work.
6. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses: (Related to Environmental Advertising)

7. Advertising in newspapers, periodicals, billboards, etc.
8. Fees and expenses of advertising agencies and commercial artists.
9. Postage on direct-mail advertising.
10. Printing of booklets, dodgers, bulletins, etc.
11. Supplies and expenses in preparing advertising materials.
12. Office supplies and expenses.
13. Novelties for general distribution.

909.3 Informational Consumer Advertising Expenses

A. This account shall include the cost of labor, materials used, and expenses incurred in advertising activities which primarily convey information as to what the utility urges or suggests customers should do in utilizing gas service to protect their health and safety, and to utilize their gas equipment safely and economically.

B. Entries relating to informational advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies or scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

C. Where informational advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expense for such advertising charged to any member or sub-

sidary which is an Iowa gas utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

Labor: (Related to Informational Consumer Advertising)

1. Direct supervision of advertising activities.
2. Preparing materials for newspapers, periodicals, billboards, etc., and preparing and conducting motion pictures, radio, and television programs.
3. Preparing booklets, bulletins, etc., used in direct mail.
4. Preparing window and other displays.
5. Clerical and stenographic work.
6. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses: (Related to Informational Consumer Advertising)

7. Advertising in newspapers, periodicals, billboards, radio, etc.
 8. Fees and expenses of advertising agencies and commercial artists.
 9. Postage on direct-mail advertising.
 10. Printing of booklets, dodgers, bulletins, etc.
 11. Supplies and expenses in preparing advertising materials.
 12. Office supplies and expenses.
 13. Novelties for general distribution.
- Below are examples of the advertising to be included in this account:
- (a) Instructions in the proper use of equipment owned by the utility or the customer which make use of the utility's service.
 - (b) Information as to new rates, billing practices, new inspection, or meter-reading schedules.
 - (c) Notification of emergency conditions and procedures to be followed during the emergency.
 - (d) Advice concerning hazards associated with the utility's gas service.

NOTE: Exclude from this account and charge to account 930, Miscellaneous General Expenses, the cost of publication of stockholder reports, dividend notices, bond redemption notices, financial statements, and other notices of a general corporate character. Also, exclude all expenses of promotional, institutional, or goodwill, and political advertising. (See account 426.7, Promotional Advertising Expenses; account 426.8, Institutional or Goodwill Advertising Expenses; and account 426.4, Political Advertising Expenses).

Advertising expense directly related to obtaining a franchise or renewing an old franchise shall be charged to account 302, Franchise and Consents. Such amounts shall be maintained in a separate subaccount for ready identification.

COMMERCE COMMISSION[250] (cont'd)

Advertising expense directly related to securing of new debt financing shall be charged to account 181, Unamortized Debt Discount and Expense. Such amounts shall be maintained in a separate subaccount for ready identification.

Advertising expense directly related to securing of new equity financing shall be charged to account 214, Capital Stock Expense. Such amounts shall be maintained in a separate subaccount for ready identification.

913 Advertising Expenses

Delete the entire current text of this account and add the following subaccount:

913.5 Franchise Advertising Expenses

A. This account shall include only reasonable advertising expenditures for the purpose of obtaining approval, modification, or revocation of franchises.

B. Entries relating to reasonable franchise advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies or scripts of the advertising matter shall be readily available to Staff or any party involved in a discovery proceeding.

ITEMS

Labor: (Related to Franchise Advertising)

1. Preparing material for newspapers, periodicals, billboards, etc., and preparing and conducting motion pictures, radio, and television programs.
2. Preparing booklets, bulletins, etc., used in direct mail.
3. Preparing window and other displays.
4. Clerical and stenographic work.
5. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses: (Related to Franchise Advertising)

6. Advertising in newspapers, periodicals, billboards, radio, etc.
7. Advertising matters such as posters, bulletins, booklets, and related items.
8. Fees and expenses of advertising agencies and commercial artists.
9. Novelties for general distribution.
10. Postage on direct-mail advertising.
11. Printing of booklets, bulletins, etc.
12. Supplies and expenses in preparing advertising materials.
13. Office supplies and expenses.

Delete the current Item No. 12 of this account and renumber the current Item No. 13 to become Item No. 12.

ITEM 5. Amend subrule 16.5(5) by striking and inserting in lieu thereof the following:

16.5(5) The definitions for the uniform system of accounts for telephone companies when used in account 324, "Promotional and Miscellaneous Nonutility Practices" are modified to include the following definitions:

31.01—3(11) The word "affiliate" shall mean any person doing business in this State, who directly or indirectly controls or is controlled by or is under common control with, a public utility.

31.01—3(mm) The word "equipment" shall mean any device which serves a telephone function and any ancillary device required for its operation.

31.01—3(nn) The word "consideration" shall mean any cash, donation, gift, allowance, rebate, bonus, merchandise (new or used), property (tangible or intangible), labor, service, conveyance, commitment, right or other thing of value.

31.01—3(oo) The word "financing" shall include acquisition of equity or debt interests, loans, guarantee of loans, advances, sale and repurchase agreements, sale and leaseback agreements, sales on open account, conditional or installment sales contracts, or other investment or extensions of credit.

31.01—3(pp) The word "person" shall include any individual, architect, builder, engineer, subdivider, developer, group, firm, partnership, corporation, cooperative, association, or other organization.

31.01—3(qq) The words "public utility" and "utility" shall include persons defined to be public utilities in section 476.1, Code of Iowa.

31.01—3(rr) The words "promotional practices" shall mean any consideration offered or granted by a public utility or its affiliate to any person for the purpose, express or implied, of inducing such person to select or use the service or install any equipment designed to use such utility service; provided that the words "promotional practices" shall not include the following activities:

(1) Providing repairs and service to equipment of customers of a public utility in an emergency or to restore service or to prevent hazardous conditions or to service interruptions.

(2) Inspection and adjustment of equipment by a public utility.

(3) Providing service, wiring, equipment in accordance with tariffs, rules, or regulations of a public utility on file with the Commission.

(4) Providing equipment or instructional services to an educational institution for the purpose of instructing students in the use or repair of such equipment.

(5) Providing discounts to employees of a public utility to encourage their use of the utility's service or providing discounts on employees' telephone service if such are included in Company's filed tariff.

(6) Merchandising of equipment for sale at retail and making and fulfilling reasonable warranties against defects in material and workmanship in equipment existing at the time of delivery.

COMMERCE COMMISSION[250] (cont'd)

(7) Technical, informational, or educational assistance offered to persons on the maintenance of equipment.

(8) Lunchees, gifts, door prizes, etc., presented for attendance at meetings, conferences, etc., valued at \$10.00 or less shall not be considered to be a promotional practice.

ITEM 6. Amend subrule 16.5(6) by striking and inserting in lieu thereof the following:

16.5(6) The uniform systems of accounts for telephone companies are modified to include the following:

31.323 Miscellaneous Income Charges

Delete the current text of this account and all items presently included thereunder, and substitute the new text as follows:

This account shall include all items properly chargeable to income, not provided for elsewhere. The account shall be maintained according to subaccounts shown below.

31.323.1 Expenditures for Certain Civic, Political, and Related Activities

This account shall include expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances, or repeal or modification of existing referenda, legislation, or ordinances) or for the purpose of influencing the decisions of public officials or advancing the political objective of the utility, but shall not include such expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations.

31.323.2 Donations

This account shall include all payments or donations for charitable, social, or community welfare purposes.

31.323.3 Institutional or Goodwill Advertising

A. This account shall include expenses incurred in advertising and related activities which is designed to create, enhance or sustain the utility's image or goodwill to the general public or its customers.

B. Entries relating to institutional goodwill advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies or scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

C. Where institutional or goodwill advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expenses for such advertising charges to any member or subsidiary which is an Iowa telephone utility and included in this account shall be determined in accordance with the text of this account as set forth herein.

ITEMS

1. Direct supervision of advertising activities.
2. Advertisements in newspapers, magazines, radio, and television.
3. Advertising matters such as posters, bulletins, booklets, and related items.
4. House service. (Note also account 31.707)
5. Lectures, exhibits, and other programs designed to improve the image of the utility itself or of the area or community it serves.
6. Pay and expenses of employees engaged in advertising.
7. Office supplies.
8. Postage, printing, and stationery.
9. Radio and television programs.
10. Repairs of furniture or office equipment and the cost and repairs of individual items of small value or short life.
11. Traveling expenses.
12. Window displays.

Below are examples of the advertising to be included in this account:

(a) Pronouncements primarily lauding the utility or the area or community it serves except those ads specifically designed to attract industry or further commercial development of the service area which shall be charged to a separate subaccount under account 31.642.4, Load Factor Advertising.

(b) This account shall include expenses incurred in advertising and related activities which are designed to create, enhance, or sustain the utility's image or goodwill to the general public or its customers.

(c) Advertising activities to inform the public of the social and economic advantages or status of the area or community it serves.

(d) Advertising activities to inform the ratepayers of the utility's participation in programs to improve the economic condition of the area or community it serves.

(e) Advertising activities to inform the public of the utility's role of good citizenship.

(f) Information and routine data supplied by the utility to local governments, planning agencies, civic groups, businesses, and the general public which is not inclusive in account 31.642.1 Informational Consumer Advertising Expenses.

(g) Advertising activities to inform the public of the utility's consciousness of, or involvement in, health, safety, conservation, or environmental programs.

31.323.4 Rate Justification Advertising Expenses

A. This account shall include expenses incurred in advertising activities whether on national, regional, or local basis which are designed to promote public acceptance of the utility's filed rates. The account shall also include all costs incurred by the utility for advertising in opposition to the decisions of the regulatory agency. However, the expenses associated with simply informing customers

COMMERCE COMMISSION[250] (cont'd)

that new rates have been requested shall be recorded as rate case expense.

B. Entries relating to rate justification advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies of scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

C. Where rate justification advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expenses for such advertising charged to any member or subsidiary which is an Iowa telephone utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

1. Direct supervision of advertising activities.
2. Advertisements in newspapers, magazines, radio, and television.
3. Advertising matters such as posters, bulletins, booklets, and related items.
4. House service. (Note also account 31.707)
5. Pay and expenses of employees engaged in advertising.
6. Office supplies.
7. Postage, printing, and stationery.
8. Radio and television programs.
9. Repairs of furniture or office equipment and the cost and repairs of individual items of small value or short life.
10. Traveling expenses.
11. Window displays.
12. Information and routine data supplied by the utility to local governments, planning agencies, civic groups, and businesses.

31.323.5 Other Charges

This account shall include all other items not provided for elsewhere chargeable to income.

ITEMS

1. Amortization of amounts included in account 31.201, Organization.
2. Cost of abandoned construction projects. (See also account 31.139)
3. Current expenses of trustees in maintaining and administering trusts incidental to outstanding debt of the company.
4. Losses realized on sales of temporary, cash investments.
5. Uncollectible amounts previously credited to accounts 31.312 to 31.316, inclusive. (See note to account 31.530)

31.324 Promotional and Miscellaneous Nonutility Practices

This account shall include the cost of labor, materials used, and expenses or losses incurred by the utility or affiliate, where such costs are charged back to the company on promotional practices, including the following:

A. The financing of land or the construction of any building when same is not owned or otherwise possessed by the utility or its affiliate without Commission written approval.

B. The furnishing of consideration to any person for work done or to be done on property not owned or otherwise possessed by the utility or its affiliate.

C. The acquisition from any person of any tangible or intangible property or service for a consideration in excess of the value thereof or the furnishing to any person of any tangible property or service for a consideration of less than the value thereof. "Value" in this instance is defined as the fair market price of the property or service under competitive market conditions and under arm's length conditions.

D. The furnishing of consideration to any person for the sale, installation, or use of equipment or service. Employees who are paid a commission in lieu of salary for the initial sale of equipment or services such as yellow pages advertising commissions are exempted.

E. The provision of free, or at less than cost or value, wiring, piping, appliances, or equipment to any person. All items required by service rules, tariffs, and accepted industry practices are exempted.

F. The cost of labor and related costs of furnishing of telephone manpower and/or equipment such as trenchers, diggers, vehicles to any organization or person for nonutility work.

ITEMS

1. Salary of employees engaged directly or indirectly in promotional practices defined.
2. Clerical and stenographic work performed in relation to promotional practices.
3. Fees paid to consultants, agents, attorneys, etc., on related promotional practices.
4. Expenses paid such as lodging, food, and entertainment expenses.

5. Transportation by company auto or plane and public transportation of any mode.

31.642 Advertising

Delete the current text of this account and substitute the following:

31.642.1 Informational Consumer Advertising

A. This account shall include expenses incurred in advertising activities which primarily convey information as to what the utility urges or suggests customers should do in utilizing telephone service (Note C) to protect their health and safety, to promote efficient and conservative use, or to utilize telephone equipment safely and economically.

B. Entries relating to informational advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies of scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

COMMERCE COMMISSION[250] (cont'd)

C. Where informational advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expenses for such advertising charged to any member or subsidiary which is an Iowa telephone utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

1. Direct supervision of advertising activities.
2. Information as to new rates and new billing practices.
3. Advertisements in newspapers, magazines, radio, and television. (See also Notes A and B to this account)
4. Advertising matters such as posters, bulletins, booklets, and related items. (See also Note A to this account)
5. Demonstrations, exhibits, lectures, and other programs designed to instruct customers in the economical or efficient use of telephone service.
6. Electric current consumed in illuminating public telephone signs.
7. Information on and promotion of more economical customer practices, e.g.; direct dialing.
8. Information on the avoidance of hazards associated with the use of telephone service.
9. Instructions in the proper use of equipment owned by the utility or customers which make use of the utility's service.
10. House service. (Note also account 31.707)
11. Pay and expenses of employees engaged in advertising.
12. Motion pictures.
13. Office supplies.
14. Postage, printing and stationery.
15. Radio and television programs.
16. Repairs of furniture or office equipment and the cost and repairs of individual items of small value or short life.
17. Traveling expenses.
18. Window displays.

NOTE A: This account shall not include expenses incurred in advertising activities designed to stimulate and promote the sale of telephone service, improve the image of the telephone utility or the area it serves, or to advance a political objective of the telephone utility. Such expenses shall be charged to the accounts appropriate for such costs. (See account 31.323.3, Institutional or Goodwill Advertising and account 31.323.1, Expenditures for Certain Civic, Political and Related Activities)

NOTE B: The cost of newspaper advertisements, literature, etc., other than for informational advertising purposes, such as advertisements of stock and bond issues, advertising for operators, notices of dividends declared, and advertisements for sale of directory advertising, or to popularize and

increase use of classified sections of directories, shall be charged to the accounts appropriate for such costs.

NOTE C: Advertising designed for increased use of service during specific low periods of usage must be charged to account 31.642.4.

31.642.2 Environmental Advertising

A. This account shall include expenses incurred in advertising activities which primarily are designed to inform the public concerning the methods by which customers can assist the utility in preserving and improving the environment. However, advertising which is primarily designed to laud the utility's achievements or projects supporting to preserve or enhance the environment shall be recorded in account 31.323.3.

B. Entries relating to environmental advertising included in this account shall contain or refer to purporting documents which identify the specific advertising message. If references are used, copies of scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

C. Where environmental advertising is undertaken by an association on behalf of its members or holding company on behalf of its subsidiaries, the amount of expenses for such advertising charged to any member or subsidiary which is an Iowa telephone utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

1. Direct supervision of advertising activities.
2. Advertisements in newspapers, magazines, radio, and television (See also Note A)
3. Advertising matters such as posters, bulletins, booklets, and related items. (See also Note A to this account)
4. Information on and promotion of more environmental customer practices.
5. Pay and expenses of employees engaged in advertising.
6. Motion pictures.
7. Office supplies.
8. Postage, printing, and stationery.
9. Radio and television programs.
10. Traveling expenses.
11. Window displays.

NOTE A: All other advertising shall be charged to accounts 31.642.1, 31.642.3, 31.642.4 and 31.642.5 as deemed appropriate.

31.642.3 Promotional Advertising

A. This account shall include expenses incurred in advertising activities primarily designed to stimulate demand for new service, a higher grade of service, or optional equipment.

B. Entries relating to promotional advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references

COMMERCE COMMISSION[250] (cont'd)

are used, copies of scripts of the advertising message shall be readily available to Staff or any party involved in a discovery proceeding.

C. Where promotional advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expense for such advertising charged to any member or subsidiary which is an Iowa telephone utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

1. Advertisements in newspapers, magazines, radio, and television.

2. Advertising matters such as posters, bulletins, booklets, and related items.

3. Exhibits in connection with industrial expositions.

4. Lectures and demonstration tours.

5. Pay and expenses of managers and their office forces in charge of advertising and publicity.

6. Suggestions as to the beneficial uses of telephone service (e.g.; the pleasure or usefulness of long distance telephone calls) apart from methods relating to health, safety, economy, or conservation.

7. Motion pictures.

8. House service. (See Note A to this account and note also account 31.707)

9. Postage, printing and stationery.

10. Promotional advertising in the company's directories, such as colored page inserts, when additional printing and binding costs are incurred.

11. Radio and television programs.

12. Repairs of furniture and office equipment and the cost of repairs of individual items of small value or short life.

NOTE A: The cost of flags, bunting, and similar expenses of decorating buildings shall be charged to account 31.707 or to the appropriate expense account of the department concerned.

31.642.4 Load Factor Advertising

A. This account shall include expenses incurred in advertising activities which are primarily designed to stimulate the use of telephone service during periods of relatively low plant utilization. The primary marketing objective is to improve load so that plant and equipment already installed can be more efficiently used or to a greater degree of capacity thereby resulting in lower, overall costs to the consumers.

B. This account shall include advertising expenditures which are designed to further industrial and commercial development of the company's service area.

C. Entries relating to load factor advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies of scripts of the advertising message shall be readily available to Staff or

any party involved in a discovery proceeding.

D. Where load factor advertising is undertaken by an association on behalf of its members or by a holding company on behalf of its subsidiaries, the amount of expense for such advertising charged to any member or subsidiary which is an Iowa telephone utility and included in this account, shall be determined in accordance with the text of this account as set forth herein.

ITEMS

1. Direct supervision of advertising activities.

2. Advertisements in newspapers, magazines, radio and television. (See also Note to this account)

3. Advertising matters such as posters, bulletins, booklets, and related items. (See also Note to this account)

4. Demonstrations, exhibits, lectures, and other programs designed to instruct customers in using the telephone service during specific hours or on specific days.

5. Information on and promotion of customer practices in use of telephone services during certain periods of low plant utilization.

6. House service. (Note also account 31.707)

7. Pay and expenses of employees engaged in advertising.

8. Motion pictures.

9. Office supplies.

10. Postage, printing and stationery.

11. Radio and television programs.

12. Repairs of furniture or office equipment and the cost and repairs of individual items.

13. Traveling expenses.

14. Window displays.

NOTE: This account shall not include expenses incurred in advertising activities designed to stimulate and promote other normal or routine sales of telephone service, improve the image of the telephone utility or the area it serves, or to advance a political objective of the telephone utility. Such expenses shall be charged to the accounts appropriate for such costs. (See account 31.642.3, Promotional Advertising, account 31.323.3, Institutional or Goodwill Advertising, and account 31.323.1, Expenditures for Certain Civic, Political, and Related Activities).

31.642.5 Franchise Advertising

A. This account shall include only reasonable advertising expenditures for the purpose of obtaining approval, modification, or revocation of franchises.

B. Entries relating to reasonable franchise advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies or scripts of the advertising matter shall be readily available to Staff or any party involved in a discovery proceeding.

COMMERCE COMMISSION[250] (cont'd)

ITEMS

1. Preparing material for newspapers, periodicals, billboards, etc., and preparing and conducting motion pictures, radio, and television programs.
2. Preparing booklets, bulletins, etc., used in direct mail.
3. Preparing window and other displays.
4. Clerical and stenographic work.
5. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of advertising.
6. Advertising in newspapers, periodicals, billboards, radio, etc.
7. Advertising matters such as posters, bulletins, booklets, and related items.
8. Fees and expenses of advertising agencies and commercial artists.
9. Novelties for general distribution.
10. Postage on direct-mail advertising.
11. Printing of booklets, bulletins, etc.
12. Supplies and expenses in preparing advertising materials.
13. Office supplies and expenses.

31.642.6 Rate Change Notification Advertising

This account shall include expenses incurred in providing notice to customers that approval of new rates has been requested.

These rules are intended to implement sections 476.1, 476.2, 476.8 and 476.9, The Code.

[Filed emergency 4/9/82, effective 4/9/82]
[Published 4/28/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 3/17/82.

ARC 2863**MERIT EMPLOYMENT
DEPARTMENT[570]**

Pursuant to the authority of Section 19A.9, The Code, the Iowa Merit Employment Department emergency adopts amendments to Chapter 12, "Appeals", and Chapter 15, "Grievances and Complaints", Iowa Administrative Code, to allow an administrative hearing office appointed by the commission to preside at appeal hearings on its behalf and make proposed decisions for final agency action.

In compliance with section 17A.4(2), The Code, the department finds that public notice and participation is unnecessary in that these amendments simply update the department's rules to provide for that which has already been authorized by section 17A.11, The Code, and no other substantial change is being made.

The department also finds, pursuant to section 17A.5 (2)"b"(2), that the normal effective date of these amendments thirty-five days after publication should be waived and the amendments be made effective upon filing with the Administrative Rules Coordinator on April 9, 1982, as they provide immediately for the means by which the serious backlog of cases on appeal to the commission can be timely heard.

These amendments are simultaneously being submitted as Notice of Intended Action, ARC 2864. [IAB 4/28/82].

These rules implement chapter 19A, The Code. The following amendment is adopted.

ITEM 1. Rule 570—12.10(19A) is amended to read as follows:

570—12.10(19A) Conduct of appeal hearings by the commission.

12.10(1) Information about the conduct of appeal hearings.

a. Appeal hearings ~~before the commission~~ under rules 12.6(19A), and 12.9(19A) and from grievance appeal under chapter 15 of these rules shall not be open to the public, unless an open hearing is requested by the appellant prior to or at the hearing date. All other appeal hearings shall be open. All appeal hearings shall be conducted in accordance with ~~12.10(19A)~~ *this rule*.

b. Appeal hearings shall be held in an informal manner and technical rules of evidence shall not apply.

c. The commission's chairperson, ~~or~~ any member of the commission, ~~or a hearing officer appointed by the commission~~ may preside at an appeal hearing. *The decision as to who will hear the appeal shall rest with the commission.*

d. An appointing authority may appear in person or through designated representatives.

e. An appellant may appear in his/her own behalf or may be represented by any designated representative.

f. The commission will require that appeal requests, allegations, charges, answers, issues, and motions be clearly and sufficiently set forth so the commission and the parties to the appeal understand the appeal issues presented. This does not prohibit nor prevent parties to an appeal hearing availing themselves of a formal procedure, such as, but not limited to, the taking of depositions; under the Code of Iowa. Where formal procedures are requested, the provisions of the Code must be reasonably followed. The commission will make no preliminary assumption of innocence, guilt, truth, fact or judgment of any material item. The decision of the commission shall be based solely upon the testimony, evidence, data, facts and materials presented and admitted to the hearing record of the appeal. The commission shall also take "official notice" as provided in section 17A.14, The Code.

g. Although technical rules of evidence shall not ~~be involved~~ *apply* at an appeal hearing, testimony, facts, data, documents and other materials offered must be reasonably relevant and pertinent to the issues presented by the appeal. Testimony, facts, documents or other materials considered not to meet ~~this~~ *these* criteria will be excluded. ~~The commission person presiding at the hearing~~ will consider the objection of either party to the admission of the aforementioned.

h. Parties to an appeal hearing are defined to include the appellant, an agency, an appointing authority, the department or their designated representatives. Decisions or orders of the commission as the result of an appeal

MERIT EMPLOYMENT DEPARTMENT[570] (cont'd)

hearing shall not be made concerning any nonparty to an appeal hearing.

i. All testimony and statements for the appeal record shall be made under oath or affirmation. Testimony and statements shall be subject to cross-examination and informational questions or inquiry by the commission, if desired.

j. Any letter, paper, document or other materials offered for identification or appeal record shall be properly presented to the *person* presiding ~~commission member~~ *at the hearing* and shall be marked with a distinguishing number, such as Appointing Authority Exhibit #1. Parties shall be entitled to examine the exhibits as offered and make objections if desired.

k. Testimony may be presented in statement form or by question and answer. Testimony and statements of record shall be recorded, transcribed or otherwise preserved as the commission may direct. Parties to an appeal hearing may provide shorthand reporters or other reporting systems for their own use and at their own expense.

l. No questioning shall be allowed or statements made by any person attending an appeal hearing except through the parties or by permission of the *person* presiding ~~member of the commission~~ *at the hearing*. Examination of materials admitted to the hearing record shall be at the discretion of the ~~commission's~~ *presiding member officer*.

m. The members of the commission, *a hearing officer appointed by the commission*, and the director have the authority to administer oaths or affirmations to witnesses, subpoena witnesses and compel the production of books, papers, records and other documents or materials pertinent to or relevant to any investigation or appeal hearing authorized by these rules or chapter 19A, The Code.

Parties to an appeal hearing have the right to request the issuance of a subpoena. The service of the subpoena and the costs, if any, are the sole responsibility and obligation of the party requesting ~~a~~ *the* subpoena. A subpoena will not be issued less than five working days prior to a scheduled appeal hearing date, unless good and sufficient cause for the request delay is demonstrated to the director. The issued subpoena is subject to the pertinent provisions of the Code of Iowa. Notification of the issuance of a subpoena will be made to the parties. Challenges, resistance or objection to the reasonableness of a requested or issued subpoena may be made and ruling thereon shall be made by the commission prior to or on the date of the scheduled appeal hearing.

Per diem expenses, mileage payments, use of a state vehicle or payment of wages for attendance at an appeal hearing by a classified employee, are not authorized for the appellant or other employee representing the appellant or for appearing as a witness at the request of the appellant, except in an appeal hearing which results from a grievance filed according to the provisions of chapter 15 of these rules.

Per diem expenses, mileage payments, use of a state vehicle or payment of wages for attendance at an appeal hearing by a classified employee may be allowed by the appointing authority for employees representing management at an appeal hearing in accordance with the authority and practices of the appointing authority.

The commission will not authorize payment by the department for legal counsel or other representation for parties or for the cost of the appearance of witnesses or for the production of materials or for any other cost of an appeal hearing. No hearing costs will be assessed and all incurred costs are the sole responsibility of the parties and not the commission or the department.

n. For good reason an appeal hearing may be continued, rescheduled, adjourned or recessed by the commission or by mutual agreement of the parties. Requests for continuance or rescheduling shall be made to the commission at least five working days prior to the scheduled appeal hearing date, but may be waived by the commission upon proper showing of good cause.

ITEM 2. Rule 570—15.3(19A), Step 4 is amended to read as follows:

Step 4. If the grievant is not satisfied with the decision of the appointing authority, the grievant may, within seven calendar days after the receipt of the written decision of the appointing authority, file the grievance or complaint in writing to the commission containing all pertinent matters which were brought forth and decided in the steps of the appointing authority's approved grievance procedure. The commission, *a member of the commission, or a hearing officer appointed by the commission* will hear the grievance or complaint as quickly as scheduling permits after receipt of the written grievance or complaint.

The ~~commission~~ *person presiding at the hearing* will follow the appeal hearing procedure outlined in 12.10 (19A) of these rules in the conduct of any grievance or complaint appeal hearing.

The appointing authority, either under their approved grievance procedure or under this chapter, may designate for the final administrative step in their grievance procedure, in place of the commission, *or hearing officer appointed by the commission*, any of the following:

- a. A hearing ~~appeal~~ officer appointed in accordance with the provisions of chapter 17A, The Code.
- b. A single arbitrator.
- c. A tripartite final review.

In the choice of an alternate final administrative review, all costs shall be borne by the appointing authority. The commission shall approve the alternative chosen and the procedure adopted.

ITEM 3. Subrule 15.9(2) is amended to read as follows:
15.9(2) The presiding officer of the respective hearings at the various steps, in the absence of a different approved appointing authority's grievance procedure, shall be:

Step 2. The next higher designated representative of the appointing authority.

Step 3. The appointing authority or its designated representative.

Step 4. The ~~presiding officer of the~~ *commission, a member of the commission, a hearing officer appointed by the commission, or the person selected in the alternative procedure set forth in 15.3(19A), Step 4.*

[Filed emergency 4/9/82, effective 4/9/82]
[Published 4/28/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/28/82.

ARC 2831

PLANNING AND PROGRAMMING[630]

Pursuant to the authority of Chapter 7A, The Code, the Office for Planning and Programming adopts and emergency implements rules creating a new chapter 23, "Community Development Block Grant Nonentitlement Program," to specify the procedures by which the Community Development Block Grant Nonentitlement Program will be administered by the state of Iowa.

The Community Development Block Grant Nonentitlement Program is authorized by Title I of the Housing and Community Development Act of 1974 (P.L. 93-383). Since its inception in 1975, the Nonentitlement Program in Iowa has been administered by the Housing and Urban Development (HUD) Omaha office. The Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) amended the Act to offer states the option to administer this program on their own. In accordance with the unanimous advice of a council of local officials formed to assist state government on CDBG issues, the Governor, pursuant to Acts of the Sixty-ninth General Assembly, Chapter 17, assumed state responsibility for the program and assigned administrative responsibility to the Office for Planning and Programming.

Extensive review and comment procedures have been utilized in the formulation of these rules. In September and October of 1981, OPP consulted with over 200 local officials, 13 Councils of Government, and 14 state and federal agencies concerning state administration of the program and the formulation of rules to govern the program. The ten member council of local officials was again convened to assist OPP staff in designing program rules. This council reviewed a draft of the rules on January 5, 1982, and reviewed the public hearing comments on March 16, 1982. Five public hearings were held in different locations throughout the state on March 10, 1982, to solicit comments and suggestions on the proposed rules contained in the Notice of Intended Action. In addition, the Administrative Rules Review Committee has reviewed, with OPP staff, the proposed rules on two occasions, March 8, 1982 and March 23, 1982.

Notice of Intended Action was published in IAB 17, February 17, 1982 as ARC 2709. Suggestions from all the public hearings and other sources have been considered in this rulemaking and it is being filed in emergency form at the request of the Administrative Rules Review Committee.

Changes from the Notice of Intended Action are as follows:

Item 1: In-kind resources will be allowed to count towards local effort for grantees under 2,500 in population. The preliminary rules included this as an option in 23.6(2)"b"(4). Final rules allow this in subrules 23.1(15) and 23.1(17);

Item 2: Multipurpose grants will be allowed, and multiyear grants will be allowed for cities of 2,500 population and over. The preliminary rules included these options under 23.5(1)"c". Final rules clarify these provisions in 23.5(1)"c" and 23.6(2)"d" and subrule 23.1(20);

Item 3: There will be no limit on the number of consecutive years a grantee may be funded. The preliminary rules prohibited consecutive year funding for

cities of under 2,500 in population in 23.5(1)"e". This prohibition has been deleted in the final rules;

Item 4: The definition of low- and moderate-income families has been revised. The preliminary rules included a statewide standard for low and moderate income in subrule 23.1(16). The final rules define low- and moderate-income families on a county-by-county basis, using HUD-derived figures, in subrule 23.1(18);

Item 5: The criteria used to rate grant applications are described in greater detail in 23.6(2)"a" and "b";

Item 6: The distribution of grant funds by population category has been specified. The preliminary rules provided options for distribution of funds in subrule 23.7(4). The final rules utilize option #1 from the preliminary rules, and clarify how counties will be categorized, in subrule 23.7(3);

Item 7: Grant ceilings have been specified. The preliminary rules provided options for grant ceilings in subrule 23.7(5). The final rules, in subrule 23.7(5), combine options #1 and #3 from the preliminary rules, with a modification of the per capita limit to \$1,000;

Item 8: Deletes the requirement that an environmental assessment must be filed with the application package. This requirement was located in 23.6(1)"e" of the preliminary rules;

Item 9: Revises the list of eligible and ineligible activities to allow additional activities, such as construction of sewage treatment facilities, group homes, and airport facilities. The preliminary rules included provisions for eligible and ineligible activities in subrules 23.4(2) and 23.4(3). The final rules simply quote federal law regarding eligible activities in subrule 23.4(2). Subrule 23.4(3), relating to ineligible activities, has been revised to include only those activities which are clearly ineligible under federal law;

Item 10: Inserts an explanation of criteria which will be utilized to assess performance on previous grant administration. Subrule 23.6(1) paragraph "a" of the final rules contains this explanation;

Item 11: Reduces the amount of grant funds which may be used for local administration from 18% to 10%. The preliminary rules contained this provision in 23.4(2)"p". The provision is located in 23.4(2)"m" in the final rules;

Item 12: Inserts a definition of "competitive program." This definition was omitted from the preliminary rules, and is located in subrule 23.1(6);

Item 13: Adds as a threshold criteria, in 23.6(1)"c", that each application must address at least one of those federal objectives for use of funds under this program.

In addition to the substantive revisions noted above, typographical or grammatical corrections were made in the following:

23.1(7), 23.1(9), 23.1(12), 23.1(13), 23.1(14), 23.1(18), 23.1(20), 23.1(21), 23.1(22), 23.2(1)"a", 23.3(7A), 23.4(1)"e", 23.4(1)"f", 23.4(1)"f"(3), 23.4(3)"f", 23.5(1)"a", 23.5(1)"b", 23.5(1)"d", 23.5(2), 23.5(3)"b", 23.5(3)"c", 23.5(3)"e"(2), 23.6(1)"a", 23.6(1)"b", 23.6(1)"e", 23.6(2), 23.6(2)"a", 23.6(2)"b", 23.6(2)"c", 23.6(2)"d", 23.6(3), 23.7(1), 23.7(2), 23.7(3), 23.8(2)"a", 23.8(2)"c", 23.8(2)"d"(1), 23.8(2)"d"(5)"3", 23.8(3), 23.8(3)"b", 23.8(4), 23.8(4)"a", 23.8(4)"b", 23.8(4)"c", 23.8(5), 23.9(1), 23.9(2), 23.9(3), 23.9(7)"a"(1), 23.9(7)"b"(4), 23.9(7)"b"(9), 23.9(7)"b"(10), 23.9(7)"b"(11), 23.9(7)"c"(1).

The following subrules were renumbered:

23.1(6) to 23.1(29), 23.6(1)"e", and 23.7(2) to 23.7(4).

PLANNING AND PROGRAMMING[630] (cont'd)

The Office for Planning and Programming finds pursuant to section 17A.5(2)"b"(2), The Code, that the normal effective date of these rules thirty-five days after publication should be waived and the rules be made effective upon filing with the Administrative Rules Coordinator on April 2, 1982 as it confers a benefit upon the public by minimizing the delay communities will face in obtaining funds through this program, especially communities which have had funds committed to them by HUD for Fiscal Year 1982, and which have expectations of consistent and predictable funding cycles.

These rules will automatically expire on January 1, 1983. The Office for Planning and Programming intends to submit these rules for Notice of Intended Action again by August 1, 1982.

The Office for Planning and Programming adopted these rules on April 2, 1982.

CHAPTER 23
COMMUNITY DEVELOPMENT BLOCK GRANT
NONENTITLEMENT PROGRAM

630—23.1(7A) Definitions. When used in this chapter, unless the context otherwise requires:

23.1(1) "Act" shall mean Title I of the Housing and Community Development Act of 1974, as amended (PL 93-383 and PL 97-35).

23.1(2) "Application" shall mean a request for program funds including the required forms and attachments.

23.1(3) "Application on behalf of" shall mean any application submitted by one eligible applicant requesting funds for one or more other eligible applicants.

23.1(4) "Community" shall mean any eligible applicant.

23.1(5) "Community Development Block Grant Nonentitlement Program" shall mean the grant program authorized by Title I of the Housing and Community Development Act of 1974, as amended, for cities and counties except those designated as entitlement areas by the U.S. Department of Housing and Urban Development.

23.1(6) "Competitive program" shall mean the CDBG nonentitlement program, excluding the HUD multiyear program, described in subrule 23.9(1), and the imminent threat contingency program, described in subrule 23.9(2).

23.1(7) "Designated community development areas" shall mean any area(s) designated by the community as an area in need of a concerted community development effort. This may include but is not restricted to an urban renewal area, urban revitalization area, or neighborhood strategy area. In any city of 2,500 population or less, the entire city may be considered a designated community development area.

23.1(8) "Economic development" shall mean the alleviation of physical and economic distress through the stimulation of private investment and community revitalization in areas with declining populations, out-migration or a stagnating or declining tax base.

23.1(9) "Eligible applicant" shall mean any county or incorporated city within the state of Iowa, except those designated as entitlement areas by the U.S. Department of Housing and Urban Development.

23.1(10) "Grant" shall mean funds received through the community development block grant nonentitlement program.

23.1(11) "Historic sites" shall mean any site listed on the national register of historic sites or any other site

deemed to have historical significance by the Iowa division of historic preservation.

23.1(12) "HUD" shall mean the U.S. Department of Housing and Urban Development.

23.1(13) "HUD multiyear program" shall mean those projects with funding commitments made by the U.S. Department of Housing and Urban Development extending beyond the 1981 fiscal year.

23.1(14) "Imminent threat contingency fund" shall mean a separate allocation to fund projects which will alleviate an imminent threat to public health and safety which requires immediate action. Up to five percent of the total nonentitlement program funds may be reserved for this purpose. Rules governing these funds are specified in subrule 23.9(2).

23.1(15) "In-kind resources" shall mean noncash resources contributed by public or private sources within the community which are used to directly support the program activities described in the application. This may include the donation or lending of materials, equipment, or labor. Methods for determining the cash equivalent of these resources will be described in the application package.

23.1(16) "Joint application" shall mean an application submitted by more than one eligible applicant to complete a single project for the benefit of all those applying.

23.1(17) "Local effort" shall mean cash provided by public or private sources within the community which is used to directly support the costs of program activities as described in an application. Local effort may include in-kind resources for communities of less than 2,500 population.

23.1(18) "Low- and moderate-income families" shall mean those families earning no more than eighty percent of the median four-person family income of the county as determined by the latest U.S. Department of Housing and Urban Development, section 8 income guidelines. This includes individuals living alone.

23.1(19) "Low- and moderate-income persons" shall mean members of low- and moderate-income families as defined in this rule.

23.1(20) "Multipurpose application" shall mean an application having two or more major related activities, which occur within a designated community development area(s).

23.1(21) "Multiyear funding" shall mean a project receiving a funding commitment from two or three program years' allocations.

23.1(22) "Nonentitlement area" shall mean an area which is not a metropolitan city.

23.1(23) "OMB Circular A-87" shall mean the U.S. Office of Management and Budget report entitled "Cost Principles Applicable to Grants and Contracts With State and Local Governments".

23.1(24) "OMB Circular A-102" shall mean the U.S. Office of Management and Budget report entitled "Uniform Administration Requirements for Grants-in-Aid to State and Local Governments".

23.1(25) "OPP" shall mean the Iowa office for planning and programming.

23.1(26) "Program income" shall mean program income as defined by Attachment E of OMB Circular No. A-102.

23.1(27) "Project" shall mean an activity or activities funded with community development block grant nonentitlement funds.

PLANNING AND PROGRAMMING[630] (cont'd)

23.1(28) "Recipient" shall mean any eligible applicant receiving funds under this program.

23.1(29) "Single purpose application" shall mean an application having only one primary or major activity and any number of other activities incidental to the primary activity.

23.1(30) "Single-year funding" shall mean a project receiving a funding commitment from only one program year's allocation.

630—23.2(7A) Goals and objectives.

23.2(1) National objectives. The Act apportions funds to states, on a formula basis, to be used by local governments, for the purposes listed in this rule.

As outlined in section 101(c) of the Act, the primary goal of this program is "the development of viable urban communities, by providing decent housing and suitable living environment and expanding economic opportunities, principally for persons of low and moderate income."

The Act also lists the following specific objectives:

a. The elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community, principally persons of low and moderate income;

b. The elimination of conditions which are detrimental to health, safety, and public welfare, through code enforcement, demolition, interim rehabilitation assistance and related activities;

c. The conservation and expansion of the nation's housing stock in order to provide a decent home and a suitable living environment for all persons, but principally those of low and moderate income;

d. The expansion and improvement of the quantity and quality of community services, principally for persons of low and moderate income, which are essential for sound community development and for the development of viable urban communities;

e. A more rational utilization of land and other natural resources and the better arrangement of residential, commercial, industrial, recreational, and other needed activity centers;

f. The reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods to attract persons of higher income;

g. The restoration and preservation of properties of special value for historic, architectural, or esthetic reasons; and

h. The alleviation of physical and economic distress through the stimulation of private investment and community revitalization in areas with population out-migration or a stagnating or declining tax base. It is the intent of Congress that the federal assistance made available under this title not be utilized to reduce substantially the amount of local financial support for community development activities below the level of the support prior to the availability of assistance.

23.2(2) State objectives.

As amended in 1981, the Act allows states the option of administering this program.

In addition to the national program goals and objectives listed above, the state of Iowa will address the

following objectives through its administration of the program:

a. Involve local officials in program decisions, including program design, administrative policies, and review;

b. Increase the number of funding recipients, if feasible, while maintaining adequate program impact in each funded community;

c. Simplify the application procedures and administration of the program;

d. Design the program to be flexible enough to address community priorities. As required by federal statute, however, the projected use of funds must give maximum feasible priority to activities which benefit low- and moderate-income families, or aid in the prevention or elimination of slums or blight; or must meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet these needs;

e. Ensure neutrality and fairness in the treatment of all applications submitted under this program.

630—23.3(7A) Eligibility. All incorporated cities and all counties in the state of Iowa, except those designated as entitlement areas by the U.S. Department of Housing and Urban Development, are eligible to apply for and receive funds under this program.

630—23.4(7A) Eligible and ineligible activities. This rule provides a general summary of eligible and ineligible activities under the CDBG program. In instances where questions arise concerning the eligibility of a specific activity, OPP will utilize the more detailed description of eligible and ineligible activities in the Procedural Manual for Iowa CDBG Recipients, which may be obtained from OPP.

23.4(1) General policies relating to eligible activities.

a. Facilities containing both eligible and ineligible uses. Where a facility, otherwise eligible for assistance under the block grant program in subrule 23.4(2), is to be provided as a part of a multiple-use building or facility that also contains otherwise ineligible uses, the portion of the costs attributing to the eligible facility may be assisted with block grant funds if: The facility, which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and the applicant can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building or facility.

b. Facilities located on school property. Any facility eligible for assistance under subrule 23.4(2), which is designed primarily for a public purpose other than education, is not considered to be a school or educational facility where, although it is to be located on a site controlled by a school district, school board or similar body responsible for public education, the facility will be used by any adjacent school or educational facility on an incidental basis. In order to determine whether the facility is to be used on an incidental basis, the applicant shall at a minimum demonstrate that: After school hours and on weekends the facility shall be available for use by the general public to the same extent as similar facilities operating within the applicant's jurisdiction; and during

PLANNING AND PROGRAMMING[630] (cont'd)

school hours the facility is not used for school purposes for more than four hours each day.

c. Activities outside an applicant's boundaries. Applicants may conduct activities which are otherwise eligible for block grant assistance outside of their boundaries which are not inconsistent with state or local law, only if the applicant can demonstrate that community objectives could not be achieved if the activities were located within the community's boundaries.

d. Special assessments under the block grant program. The term "special assessment" means a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, such as streets, curbs, and gutters. The amount of fee represents the pro rata share of the capital costs of the public improvement levied against the benefiting properties. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes. The following policies relate to the use of special assessment under the block grant program:

(1) Special assessments to recover capital costs funded in whole or in part with block grant funds. The general rule is that special assessments shall not be used to recover any of the capital costs of public improvements funded in whole or in part with block grant funds. Applicants may request an exception to this rule where the use of special assessments as a means to leverage private investment is necessary and appropriate to implement the applicant's strategy for economic development or neighborhood revitalization. OPP will not grant exceptions for any special assessments that will recover the capital costs of public improvements funded in whole or in part with block grant funds from properties owned and occupied by low- and moderate-income persons.

(2) Where the capital costs of a public improvement are funded with both block grant and local funds. Any amount of special assessment greater than the amount of local investment in the project shall be considered as program income. An applicant may retain that portion of the special assessment equivalent to, or less than, the amount of local investment in the block grant project.

(3) The total amount of any special assessment and the amount of funds, as collected, shall be recorded as part of the grant program transactions in accordance with Attachment G of OMB Circular No. A-102.

(4) Special assessments paid with block grant funds. Block grant funds may be used to pay special assessments levied against properties owned and occupied by low- and moderate-income persons for the capital costs of eligible public facilities and improvements financed from local revenue sources, other than block grant funds, which are described in the approved application, are initiated later than one year prior to approval of the application, and represent the pro rata share of the capital cost of the eligible facility or improvement to the benefiting property. Applicants that propose to pay special assessments with block grant funds must carry out the appropriate environmental reviews and clearances for the public improvements under 24 Code of Federal Regulations Part 58.

e. Consultant activities. Consulting services, including professional assistance in program planning, and other general professional guidance relating to program execution are eligible for assistance. The use of consultants is governed by the following:

(1) Employer-employee type of relationship. No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with block grant funds which, on a daily basis, shall not exceed the maximum daily rate of compensation for a GS-18 as established by federal law. These services shall be evidenced by written agreements between the parties which detail the responsibilities, standards and compensations. Adjustments of eligible costs for these services may be made where audit and monitoring reviews indicate that the rates of compensation were not reasonable, or exceeded the maximum daily rate for a GS-18.

(2) Independent contractor relationship. Consultant services provided under an independent contractor relationship are governed by the procurement standards of Attachment O of OMB Circular No. A-102 and are not subject to the GS-18 limitation.

f. Activities for which other federal funds must be sought. A recipient may use community development funds for the provision of reclamation and other construction activities as described in 23.4(2)"b"; or for flood or drainage facilities as described in 23.4(2)"b", if a written inquiry has been made to the federal agency or agencies, if any, which conduct a program or programs most likely to meet the needs for which community development funds are being considered, or of the state or local agency or agencies, if any, which customarily receive funds from such programs and administer them within the recipient's jurisdiction, and one of the following responses has been received:

(1) A written statement of rejection from such federal, state or local agency, if any;

(2) A written statement that funds cannot be made available for at least ninety days after the request; or

(3) No response from the federal, state or local agency, within a forty-five-day period from the date of application or inquiry.

The recipient must notify OPP of the results of the inquiry and receive prior authorization from OPP in order to incur costs for such activities.

23.4(2) Eligible activities. As authorized by Title I, Section 105 of the Housing and Community Development Act of 1974, as amended, activities assisted by this program may include only the following:

a. The acquisition of real property (including air rights, water rights, and other interests therein) which is blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; appropriate for rehabilitation or conservation activities; appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development; to be used for the provision of public works, facilities, and improvements eligible for assistance under this title; or to be used for other public purposes;

b. The acquisition, construction, reconstruction, or installation (including design features and improvements with respect to construction, reconstruction, or installation which promote energy efficiency) of public works, facilities and site or other improvements — including neighborhood facilities, centers for the handicapped, senior centers, historic properties, utilities (including power generation and distribution facilities using

PLANNING AND PROGRAMMING[630] (cont'd)

renewable resource energy systems), streets, street lights, water and sewer facilities, foundations and platforms for air rights sites, pedestrian malls and walkways, and parks, playgrounds, and recreation facilities (including parks, playgrounds, and recreation facilities established as a result of reclamation and other construction activities carried out in connection with a river and land adjacent thereto where assistance under other federal laws or programs is determined to be unavailable), flood and drainage facilities in cases where assistance for these facilities under other federal laws or programs is determined to be unavailable, and parking facilities, solid waste disposal facilities, recycling or conversion facilities, and fire protection services and facilities which are located in or which serve designated community development areas.

c. Code enforcement in deteriorated or deteriorating areas in which enforcement, together with public improvements and services to be provided, may be expected to arrest the decline of the area.

d. Clearance, demolition, removal, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for rehabilitation, and rehabilitation, of privately owned properties and including renovation of closed school buildings);

e. Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

f. Payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by activities under this title;

g. Disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to this title or its retention for public purposes;

h. Provisions of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government (through funds raised by such unit, or received by such unit from the state in which it is located) during any part of the twelve-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under this title, and which are to be used for these services, unless the secretary finds that the discontinuation of these services was the result of events not within the control of the unit of general local government, except that not more than ten percentum of the amount of any assistance to a unit of general local government under this title may be used for activities under this paragraph;

i. Payment of the nonfederal share required in connection with a federal grant-in-aid program undertaken as part of activities assisted under this title;

j. Payment of the cost of completing a project funded under Title I of the Housing Act of 1949;

k. Relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate;

l. Activities necessary to develop a comprehensive community development plan, and to develop a policy-planning-management capacity so that the recipient of

assistance under this title may more rationally and effectively: Determine its needs; set long-term goals and short-term objectives; devise programs and activities to meet these goals and objectives; evaluate the progress of the programs in accomplishing these goals and objectives; and carry out management, co-ordination, and monitoring of activities necessary for effective planning implementation;

m. Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of these activities, and including the carrying out of activities as described in section 701(e) of the Housing Act of 1954 on the date prior to the date of enactment of the Housing and Community Development Amendments of 1981. Funds used for these purposes may not exceed ten percent of the total grant amount.

n. Activities which are carried out by public or private nonprofit entities, including: Acquisition of real property; acquisition, construction, reconstruction, rehabilitation, or installation of public facilities, site improvements, and utilities, and commercial or industrial buildings or structures and other commercial or industrial real property improvements; and planning;

o. Grants to neighborhood-based nonprofit organizations, local development corporations, or entities organized under section 301(d) of the Small Business Investment Act of 1958 to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of subrule 23.2(1);

p. Activities necessary to the development of comprehensive community-wide energy use strategy, which may include items such as:

(1) A description of energy use and projected demand by sector, by fuel type, and by geographic area;

(2) An analysis of the options available to the community to conserve scarce fuels and encourage use of renewable energy resources;

(3) An analysis of the manner in, and the extent to, which the community's neighborhood revitalization, housing, and economic development strategies will support its energy conservation strategy;

(4) An analysis of the manner in, and the extent to, which energy conservation objectives will be integrated into local government operations, purchasing and service delivery, capital improvements, budgeting, land use planning and zoning, and traffic control, parking, and public transportation functions;

(5) A statement of the actions the community will take to foster energy conservation and the use of renewable energy resources in the private sector, including the enactment and enforcement of local codes and ordinances to encourage or mandate energy conservation or use of renewable energy resources, financial and other assistance to be provided (principally for the benefit of low- and moderate-income persons) to make energy conserving improvements to residential structures, and any other proposed energy conservation activities;

(6) Appropriate provisions for energy emergencies;

(7) Identification of the local governmental unit responsible for administering the energy use strategy;

PLANNING AND PROGRAMMING[630] (cont'd)

(8) Provision of a schedule for implementation of each element in the strategy; and

(9) A projection of the savings in scarce fossil fuel consumption and the development and use of renewable energy resources that will result from implementation of the energy use strategy; and

q. Provision of assistance to private, for-profit entities, when the assistance is necessary or appropriate to carry out an economic development project.

23.4(3) Ineligible activities. The following is a list of activities which are ineligible for block grant assistance under most circumstances and serves as a general guide regarding ineligible activities. The list of examples of ineligible activities is merely illustrative and does not constitute a list of all ineligible activities.

a. Purchase of equipment. The purchase of equipment with block grant funds is generally ineligible.

(1) Construction equipment. The purchase of construction equipment is ineligible, but compensation for the use of this equipment through leasing, depreciation or use allowances pursuant to Attachment B of OMB Circular A-87 for an otherwise eligible activity is an eligible use of block grant funds. An exception is the purchase of construction equipment which is used as a part of a solid waste disposal facility which is eligible for block grant assistance, such as a bulldozer used at a sanitary landfill.

(2) Furnishings and personal property. The purchase of equipment, fixtures, motor vehicles, or furnishings or other personal property not an integral structural fixture is ineligible, except when necessary for use by a recipient or its subgrantees in the administration of its community development program.

b. Operating and maintenance expenses. The general rule is that any expense associated with operating, maintaining, or repairing public facilities and works or any expense associated with providing public services not assisted with block grant funds is ineligible for assistance. However, operating and maintenance expenses associated with providing public services or interim assistance otherwise eligible for assistance may be assisted. For example, the cost of a public service being operated with block grant funds in a neighborhood facility may include reasonable expenses associated with operating the public service within the facility, including costs of rent, utilities and maintenance. Examples of activities which are not eligible for block grant assistance are:

(1) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for the handicapped, parking and similar public facilities. Examples of maintenance and repair activities for which block grant funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs.

(2) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities; and

(3) Expenses associated with provision of any public service which is not eligible for assistance.

c. General government expenses. Except as otherwise specifically authorized in these rules or under OMB Circular A-87, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part.

d. Political activities. No expenditure may be made for the use of equipment or premises for political pur-

poses, sponsoring or conducting candidates' meetings, engaging in voter registration activity or voter transportation or other partisan political activities.

e. New housing construction. Assistance may not be used for the construction of new permanent residential structures or for any program to subsidize or finance such new construction. For the purpose of this paragraph, activities in support of the development of low- or moderate-income housing, including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing preconstruction costs, are not considered as programs to subsidize or finance new residential construction.

f. Income payments. The general rule is that assistance shall not be used for income payments for housing or any other purpose.

630—23.5(7A) Application requirements.

23.5(1) Restrictions on applicants.

a. No more than one application per community per program year will be considered. An exception to this restriction is that a community may be funded under both the competitive and imminent threat contingency fund programs.

b. Joint applications from two or more communities will be accepted only in those instances where the most efficient solution to a problem requires mutual action.

c. Cities of 2,500 population or over may apply for multiyear funding. All eligible applicants may apply for single-year, single-purpose or multipurpose funding. Single-year funding does not necessarily require project completion within a twelve-month period.

d. Communities may not apply on behalf of applicants other than themselves. Applicants will be allowed, however, to utilize staff from counties, areawide planning organizations, or other jurisdictions to administer the program.

23.5(2) Application procedure.

Each year, prior to solicitation of applications, the office for planning and programming will, to the extent funds are available for this purpose, conduct a training program for all eligible applicants. All eligible applicants will be notified of the time, date, place and agenda by mail. Application instructions and all necessary forms will be available upon written request to OPP's division of municipal affairs, 523 E. 12th Street, Des Moines, Iowa 50319, or by calling (515) 281-3982. The training program will include a discussion of the program's purpose, eligible and ineligible program activities and instructions regarding the preparation and submission of an application.

The deadline for submission of applications (original and one copy) shall be two months following the date of the training program. No applications will be accepted after the deadline for submission. Only data submitted by the established deadline will be considered in the selection process, unless additional data is specifically requested by OPP in writing.

Review and ranking of the applications will be performed by OPP personnel after consultation, where appropriate, with other state agencies with program responsibility in CDBG-related areas. All applications meeting threshold requirements will be reviewed and ranked within one hundred twenty days of the final submission deadline. Those applications with the highest rankings within each population category will be funded, to the extent that competitive program funding is avail-

PLANNING AND PROGRAMMING[630] (cont'd)

able. All successful applicants will be notified and invited to a conference with OPP personnel to outline procedures to be followed as grant recipients.

23.5(3) Contents of application. Each application must address each of the threshold criterion, and demonstrate that each criteria has been satisfied. In addition, each application must contain each of the following items:

- a. Description of community need (and how need was determined);
- b. Project description (includes amount of funding requested, use of funds, project's impact on community need, and project schedule);
- c. Percent of project addressed towards low- and moderate-income persons, including method of determination;
- d. Description of local effort, including the amount;
- e. Certifications. All applicants will be required to certify that, if they receive funds under this program, they will comply with the following requirements:
 - (1) The Civil Rights Act of 1964 (PL 88-352) and Title VIII of the Civil Rights Act of 1968 (PL 90-284);
 - (2) Title I of the Housing and Community Development Act of 1974, as amended;
 - (3) Age Discrimination Act of 1975;
 - (4) Section 504 of the Rehabilitation Act of 1973;
 - (5) Davis Bacon Act, as amended (40 U.S.C. 276a-276a-5) where applicable under Section 110 of the Housing and Community Development Act of 1974, as amended;
 - (6) Preservation of Historical and Archaeological Data Act of 1974 (PL 93-291);
 - (7) National Historic Preservation Act of 1966, Section 106 (PL 89-665);
 - (8) National Environmental Policy Act of 1969;
 - (9) Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1979, Title II and Title III;
 - (10) Other relevant regulations as noted in the Procedural Manual for Iowa CDBG Recipients.

630—23.6(7A) Selection criteria.

23.6(1) Threshold criteria. All applicants must satisfy these criteria before their application will be considered complete and eligible for ranking.

- a. Evidence of local capacity to administer the grant, such as satisfactory previous grant administration, availability of qualified personnel, or plans to obtain qualified personnel. Where applicable, satisfactory previous grant administration may include an assessment of past performance in initiating and carrying out activities within established time frames; maintaining adequate books and records; resolution of any audit findings; timely obligation of grant funds; and satisfaction of local effort requirements;
- b. Feasibility of completing identified project with funds requested. If an applicant intends to use other funding sources, they must be identified and the level of commitment and time frames involved must be explained;
- c. Project must address one of the following three objectives:
 - (1) Give maximum feasible priority to activities which will benefit low- and moderate-income persons;
 - (2) Aid in the prevention or elimination of slums or blight; or
 - (3) Meet other community development needs having a particular urgency because existing conditions pose a serious threat to the health or welfare of the community where other financial resources are not available to meet these needs.

d. Project funds may only be used for an eligible activity or activities;

e. At least one public hearing must be conducted, after being publicized in accordance with section 362.3, The Code, to solicit comments on the community's proposed CDBG program, prior to submission of the community's CDBG application.

23.6(2) Rating factors (to be based on point system). There are two categories of rating factors, community-wide and project-specific. The highest point total possible is 1,000.

- a. Community-wide. (Data supplied by OPP.)
 - (1) Percent of community below the poverty level as defined by HUD, 200 points possible;
 - (2) Housing distress factors, including overcrowded housing and housing units lacking plumbing, 100 points possible; and
 - (3) Change in tax base, 100 points possible.
- b. Project-specific. (Data obtained from applications.)
 - (1) Magnitude of need identified by community, 100 points possible;
 - (2) Project impact - extent to which project addresses community need, 200 points possible;
 - (3) Percent of project funds benefiting low- and moderate-income families, 200 points possible; and,
 - (4) Local effort, 100 points possible.
- c. Ties in applications. Ties will be decided in favor of the community whose project benefits the largest number of low- and moderate-income families.
- d. Rating of multiyear and multipurpose applications. All applications will be rated on the factors noted in paragraphs "a" and "b" of this subrule. Multiyear applications will be rated on the basis of the total number of years applied for, and multipurpose applications will be rated on the basis of overall need and impact for all the projects applied for.

23.6(3) Verification of data. Applications which rate high enough to be funded will be reviewed to verify figures or statements in the applications. At the discretion of OPP, this may include site visits. In cases where inaccuracies, omissions, or errors are found, OPP will have the discretion of rejecting the application or rerating it based on correct information. In cases where an applicant loses funding through this process, its grant amount may be awarded to the highest ranking nonfunded applicant(s). In an instance where the highest ranking nonfunded applicant requests more funds than what are available, OPP will have complete discretion concerning the disposition of the excess funds, including renegotiating the amount requested or carrying those funds over to the next program year.

630—23.7(7A) Funding allocation.

23.7(1) Up to two percent of total state program funds may be used for state administration.

23.7(2) Up to five percent of total program funds may be reserved in any year for the imminent threat contingency fund. If this fund is not fully utilized in any year, the excess amount will be reallocated to the general nonentitlement program for the following year. (Rules for this fund are in subrule 23.9(2).)

23.7(3) Distribution of competitive funds. The funds remaining after deducting those used for state administration and the imminent threat contingency fund will be allocated in the following manner:

PLANNING AND PROGRAMMING[630] (cont'd)

Cities	Counties	Percent of Funds
0 - 2,499 population	0 - 6,799 population (54 smallest)	35%
2,500 - 49,999 population	6,800+ population (45 largest)	65%

The division of counties is based on unincorporated population only. The counties have been divided between the two population categories in order to maintain an equal per capita distribution of funds. The division points between counties are not the same as the population division between cities.

Competitive grants in each category will be reduced by the amount of multiyear commitments within each category.

23.7(4) Prior HUD multiyear funding commitments will be honored subject to the provisions of subrule 23.9(1).

23.7(5) Grant ceilings. Maximum grant amounts are as follows:

All Applicants	Grant Ceiling
0 - 2,499 population	\$200,000
2,500 - 14,999 population	\$350,000
15,000 - 49,999 population	\$500,000

However, no grantee may receive more than \$1,000 per capita, based on the total population within the grantee's jurisdiction. In determining grant ceilings, county populations will be calculated on the basis of unincorporated areas only. Joint applications may be funded up to one and one-half times the maximum amount allowable for either of the joint applicants. The ceilings noted above will also apply to each individual year of a multiyear commitment from OPP.

630—23.8(7A) Administration.

23.8(1) Contracts. Upon selection of a project(s) for funding, the office for planning and programming will issue a contract. In the absence of special circumstances in which there is a legal incapacity on the part of the applicant to accept funds for eligible activities, the contract shall be between the office for planning and programming and the community. The designation by the community of another public agency to undertake activities assisted under this program shall not relieve the recipient of its responsibilities in assuring the administration of the program in accordance with all federal and state requirements, including these rules. These rules, and applicable federal and state laws and regulations become a part of the contract.

23.8(2) Financial management standards.

a. All recipients shall comply with applicable provisions of OMB Circular No. A-102, "Uniform Administrative Requirements For Grant-in-Aid To State And Local Governments", as specified in the Procedural Manual for Iowa CDBG Recipients. Further, each recipient shall be responsible for compliance with state and local laws which govern subjects included in the Circular. Where requirements differ between the Circular and state or local law, the more restrictive requirement shall prevail. Contracts may also be conditioned to provide other requirements.

b. Allowable costs shall be determined in accordance with OMB Circular No. A-87, "Cost Principles Applicable To Grants And Contracts With State And Local

Governments". Any clarifications or modifications of this standard by the state shall be clearly stated in the Procedural Manual For Iowa CDBG Recipients provided to each recipient with the contract.

c. All contracts made under these rules are subject to audit. Recipients shall be responsible for the payment of costs for audits. Audits may be performed by the state auditor's office or by an independent public accountant and, subject to state law, shall be prepared in accordance with the "Audit Guide and Standards for Community Development Block Grant Recipients", in the Procedural Manual for Iowa CDBG Recipients. Audits shall be conducted not less frequently than once every two years. Audits for single-year funding, and for the final year of a multiyear funding shall commence within sixty days of completion of the funded activities. Audit completion, meaning the issuance of the audit, shall occur within one hundred fifty days of completion of the funded activities. Variations of these time requirements shall only be allowed upon written approval of OPP.

d. Program income.

(1) Units of general local government shall be required to return to the federal government interest (except for interest described in subparagraph 23.8(2)"d"(3)) earned on grant funds advanced in accordance with Attachment E of OMB Circular No. A-102, "Program Income".

(2) Proceeds from the sale of personal property shall be handled in accordance with Attachment N of OMB Circular No. A-102, "Property Management Standards".

(3) All other program income earned during any period under which the recipient is assisted under these rules shall be retained by the recipient and added to funds committed to the program and used in accordance with the provisions of 23.4(7A) of these rules. Included in this category are proceeds from disposition of real property, payments of principal and interest on rehabilitation loans, interest earned on revolving funds, and proceeds from special assessments levied to recover the cost of constructing a public work or facility to the extent the cost was initially paid with funds provided under this part. Receipts derived from the operation of a public work or facility, the construction of which was assisted under this program (e.g., admission fees paid by persons using recreational facilities constructed with grant funds; service fees paid by households using a water facility constructed with grant funds), do not constitute program income.

(4) Recipients shall record the receipt and expenditure of revenues related to the program (such as taxes, special assessments, levies, fines, etc.) as a part of the grant program transactions.

(5) Program income received subsequent to grant closeout.

1. Except as may be otherwise provided under the terms of the grant agreement or any closeout agreement, program income received subsequent to grant closeout may be treated by the recipient as follows: Subject to the requirements of this subparagraph, items 2. and 3., program income may be treated as miscellaneous revenue, the use of which is not governed by the provisions of the grant: Provided, that if the recipient has another ongoing grant under these rules, the program income received subsequent to the grant closeout shall be treated as program income of the active grant program.

PLANNING AND PROGRAMMING[630] (cont'd)

2. Disposition of tangible personal property. The recipient shall account for any tangible personal property acquired with grant funds in accordance with Attachment N of OMB Circular No. A-102, "Property Management Standards".

3. Disposition of real property. Proceeds derived after the closeout from the disposition of real property acquired with grant funds under this program shall be subject to the program income requirements of 1. above, provided that where such income may be treated as miscellaneous revenue pursuant to 1. above, it shall be used by the recipient for community development activities eligible pursuant to subrule 23.4(2) to further the general purposes and objectives of the Act. The use of income subject to this proviso is not governed by any other requirements of these rules.

23.8(3) Reimbursements. Grant recipients shall submit billings for reimbursement in the manner and on forms prescribed by OPP. Advance payments may be made to recipients when the following conditions are met:

a. The recipient has demonstrated to OPP, initially through certification in a form prescribed by OPP and subsequently through performance, its willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds to it and its disbursement of the funds;

b. The recipient's financial management system meets the standards for fund control and accountability prescribed in Attachment G of OMB Circular No. A-102, "Standards for Grantee Financial Management Systems";

c. Grant recipients shall provide documentation as required by OPP to substantiate all costs incurred on a project.

23.8(4) Recordkeeping and retention. Financial records, supporting documents, statistical records, the environmental review records required by 24 Code of Federal Regulations 58.11, and all other records pertinent to the grant program shall be retained by the recipient in accordance with the provisions of Attachment C of OMB Circular No. A-102, "Retention and Custodial Requirements for Records", with the following additions:

a. Records for any displaced person shall be retained for three years after the person has received final payment.

b. Records pertaining to each real property acquisition shall be retained for three years after settlement of the acquisition, or until disposition of the applicable relocation records in accordance with 23.8(4)"a", whichever is later;

c. Representatives of the Secretary of the Department of Housing and Urban Development, the inspector general, the general accounting office, the state auditor's office and the office for planning and programming shall have access to all books, accounts, documents, records and other property belonging to or in use by recipients pertaining to the receipt of assistance under these rules.

23.8(5) Performance reports and reviews. At the completion of twelve months, calculated from the contract effective date, and at the completion of each succeeding twelve months until contract expiration, each recipient shall submit a grantee performance report to OPP. However, in the instance of a contract due to expire within eighteen months of its issuance, the grantee may elect, with the approval of OPP, to submit a final completion report in accordance with the closeout procedures of 23.8(6) in lieu of a grantee performance report.

The report will assess the use of funds in accordance with program objectives, the timeliness of completion of program activities, and compliance with the certifications made under 23.5(3)"e", and will be prepared in accordance with instructions found in the Procedural Manual for Iowa CDBG Recipients.

OPP may perform any reviews or field inspections it deems necessary to assure program compliance, including reviews of grantee performance reports. When problems of compliance are noted, OPP may require remedial actions to be taken. Failure to respond to a notification of need for remedial action may result in the implementation of 23.9(4).

23.8(6) Grant closeouts. Upon completion of project activities, recipients will initiate grant closeout in accordance with procedures specified in the Procedural Manual for Iowa CDBG Recipients.

23.8(7) Compliance with federal and state laws and regulations. All grant recipients shall comply with all applicable provisions of the Act and its implementing regulations, including these rules. Recipients shall also comply with any provisions of the Code governing activities performed under this program, including chapter 403 (urban renewal).

23.8(8) Lump sum drawdowns for property rehabilitation financing. (Reserved).

630—23.9(7A) Miscellaneous.

23.9(1) HUD multiyear grants. In the case of some communities, grant awards have been made by HUD with a commitment of funding beyond federal fiscal year 1981. All such multiyear commitments will be fully funded under the state's CDBG nonentitlement program provided performance has been found acceptable in the program year previously funded. HUD shall assess grantee performance during program years for which HUD provided funds. OPP shall assess grantee performance during program years for which the state provided funds.

These communities shall in general follow the same application procedures required by HUD of second or third year applicants. Forms and instructions are included in the Procedural Manual for Iowa CDBG Recipients. Communities shall send the applications and any other material or documentation to OPP. If the application is complete, and the grantee's past performance is judged to be satisfactory by HUD or OPP, as appropriate, release of funds to the community will be initiated.

Communities with HUD multiyear grants may amend their proposals, but only after receiving written approval from OPP to do so. OPP may approve, approve with conditions, or deny a request for amendment. If a proposed amendment is a major change, and especially if the amendment might significantly alter program impact, OPP may reclassify the application as a competitive application rather than one which would automatically be funded. The amended application would then have to achieve a certain rating in order to be funded, the same as all other competitive applications.

23.9(2) Imminent threat contingency fund. Up to five percent of the total nonentitlement program funds allocated to the state may be reserved for communities which are experiencing an imminent threat to public health or safety which necessitates corrective action sooner than could be accomplished through the regular application process under the nonentitlement program.

PLANNING AND PROGRAMMING[630] (cont'd)

Communities in need of these funds must submit a written request to the director of the division of municipal affairs, office for planning and programming, Des Moines, Iowa 50319. The request must include a description of the community's problem, the amount of funding requested, projected use of funds, and why the problem cannot be remedied through the normal CDBG funding procedure.

Upon receipt of a request for imminent threat funding, OPP will make a determination as to whether the community and the project are eligible for funding. This determination will be made by OPP, after consultation with the department of health, office of disaster services, or other appropriate federal, state, or local agencies. A project will be considered eligible for funding only if: It is an eligible activity under rule 23.4(7A), an imminent threat to health or safety exists, the problem cannot be remedied through the normal CDBG funding procedure, and other local, state or federal resources cannot be obtained to alleviate the problem.

If OPP determines that the community and the proposed activity are eligible for funding, it shall notify the governor of its determination. Upon the personal authorization of the governor to do so, OPP will make funds available to an applicant which meets the eligibility criteria.

Any community receiving funds under the imminent threat program must comply with all laws, rules, and regulations applicable to the CDBG nonentitlement program, with the exception of those rules waived by the governor pursuant to subrule 23.9(6).

23.9(3) Amendments to competitive applications. Communities may amend proposals at any time after approval of their application by OPP. In any case where program amendments involve new activities or significant alteration of existing activities that may change the scope, location, objectives or scale of the approved activities or beneficiaries, the community must first obtain written approval from OPP to amend their proposal. In order for such an amendment to be approved, the amended application must rate at least as high on the selection criteria point system as the original application rated, and the community must be capable of completing the proposed activities in a reasonable period of time.

23.9(4) Remedies for noncompliance. At any time before project closeout, OPP may, for cause, find that a community is not in compliance with its requirements under this program. At OPP's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to OPP. Reasons for a finding of noncompliance include, but are not limited to: The recipient using program funds for activities not described in its application, the recipient's failure to complete approved activities in a timely manner, the recipient's failure to comply with any applicable state or federal rules or regulations, or the lack of a continuing capacity of the recipient to carry out the approved program in a timely manner.

23.9(5) Contractors and subrecipients limited. Project funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any contractor or subrecipient during any period of debarment, suspension or placement in ineligibility status by the Department of Housing and Urban Development under the provisions of 24 Code of Federal Regulations Part 24.

23.9(6) Waivers. When the governor of the state of Iowa has determined that sufficient cause for such action exists, he may waive any requirement under these rules not required by law. A waiver may be applied to one or more eligible applicants under this program. Sufficient cause for a waiver may include, but not be limited to, instances where a community has requested imminent threat contingency funds under subrule 23.9(2), or where undue hardship will result from applying the requirement. Waivers will become effective only upon the personal authorization of the governor.

23.9(7) Forms. Participants in the block grant program must complete the following forms, as applicable:

- a. Grant application procedures.
 - (1) CDBG 1.A - Standard application package for competitive program.
 - (2) CDBG 1.B - Standard application package for HUD multiyear program.
- b. Program administration procedures.
 - (1) CDBG 2.A - Conditioned grant agreement.
 - (2) CDBG 2.B - Designation of depository for direct deposit of grant funds.
 - (3) CDBG 2.C - Authorized signature card and witness certification for letter of credit.
 - (4) CDBG 2.D - Request for payment and status of funds.
 - (5) CDBG 2.E - Request for release of funds and certification.
 - (6) CDBG 2.F - Satisfaction of conditional approval.
 - (7) CDBG 2.G - Notice of removal of grant conditions.
 - (8) CDBG 2.H - Standard contractor compliance forms package.
 - (9) CDBG 2.I - Program activities schedule.
 - (10) CDBG 2.J - Grantee performance report.
 - (11) CDBG 2.K - Grantee local effort documentation forms package.
- c. Program close-out procedures.
 - (1) CDBG 3.A - Certification of completion.

[Filed emergency after Notice 4/2/82, effective 4/2/82]
[Published 4/28/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/2/82.

ARC 2829**SOCIAL SERVICES
DEPARTMENT[770]**

Pursuant to the authority of Section 234.6, The Code, rules of the Department of Social Services appearing in the IAC relating to the food stamp program (Chapter 65) are hereby amended. This rule adopts federal regulations which exempt shelters for battered women and children which provide meals to residents from being considered

SOCIAL SERVICES DEPARTMENT[770] (cont'd)

institutions. Residents who are otherwise eligible to participate in the program can receive food stamps.

The department of social services finds that notice and public participation are unnecessary. The changes are mandated by changes in federal regulation and the state must adopt these changes in order to stay in compliance and not lose federal funds. Therefore, these rules are filed without notice and public participation pursuant to section 17A.4(2), The Code.

The department of social services finds that this rule confers a benefit on the public. The rule puts Iowa into compliance with federal regulations and is necessary to protect Iowa's participation in the food stamp program. It also enables residents of shelters for battered women and children to receive food stamps which they cannot currently do. Therefore this rule is filed pursuant to section 17A.5(2)"b"(2), The Code.

The council on social services adopted this rule March 30, 1982.

This rule is intended to implement section 234.12, The Code.

This rule shall become effective April 1, 1982.

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

770—65.3(234) Administration of program. The food stamp program shall be administered in accordance with the Food Stamp Act of 1977 and in accordance with federal regulation, Title 7, Parts 270 through 282 as amended to ~~October 9, 1981~~ *December 8, 1981*.

[Filed emergency 3/31/82, effective 4/1/82]

[Published 4/28/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/28/82.

ARC 2830

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of Sections 217.6 and 234.6, The Code, rules of the Department of Social Services appearing in the IAC relating to Social Security Act - Title XX implemented (Chapter 131) are hereby amended. These rules implement the provisions of Acts of the Sixty-ninth General Assembly, 1982 Session, H.F. 2336 and the social services block grant. They eliminate references to Title XX and mini-XX funds and define the use of state dollars appropriated to replace federal dollar losses. These rules are intended to provide procedures for the department to use for the remainder of fiscal year 1982.

The department of social services finds that notice and public participation are impracticable. H.F. 2336 specifies that these rules are to be effective immediately, so there is not time to go through the regular rulemaking

process. Therefore, these rules are filed without notice and public participation pursuant to section 17A.4(2), The Code.

The department of social services finds that H.F. 2336 specifies that these rules become effective immediately. Therefore, these rules are filed pursuant to section 17A.5(2)"b"(1), The Code.

The council on social services adopted these rules March 30, 1982.

These rules are intended to implement section 234.6, The Code.

These rules shall become effective April 1, 1982.

ITEM 1. The chapter title is amended to read as follows: **SOCIAL SECURITY ACT — TITLE XX SERVICES BLOCK GRANT — IMPLEMENTED.**

ITEM 2. Rule 770—131.1(217,234) is amended to read as follows:

770—131.1(217,234) Planning process.

131.1(1) The ~~proposed~~ plan for Title XX shall be developed on an annual basis for each fiscal year beginning July 1 and ending June 30, in accordance with federal regulations, Code of Federal Regulations ~~228 Title 45 Part 96~~ as amended to ~~January 31, 1977~~ *October 1, 1981*. A copy of ~~such~~ the regulations may be obtained at no more than the ~~actual~~ cost of reproduction by contacting a district office of the Iowa department of social services.

131.1(2) Advisory committees may be established and selected by ~~the~~ district administrator. Persons interested in participating in ~~such~~ the district advisory committees may contact the district administrator. An advisory committee at the state level may be established. This committee shall consist of ~~two~~ members ~~of~~ from each district level ~~Title XX~~ committee. Costs for meals, lodging, and travel for the state level advisory committee shall be paid by the department of social services at the same rate as state employees traveling within the state. For a one-day meeting, only one overnight expenditure will be allowed.

131.1(3) Public meetings may be arranged by the district administrator within ~~such~~ district administrator's the district to assist in preparing the district plan.

ITEM 3. Subrule 131.2(1) is amended to read as follows:

131.2(1) A description of the ~~proposed~~ plan shall ~~may~~ be published in at least one newspaper in each district ~~and the entire~~ during the development of the plan. The annual plan shall be available for public review and comment for ~~forty-five~~ days beginning ~~March 1~~ and ending ~~April 15~~ at a ~~each~~ district office of the Iowa department of social services.

ITEM 4. Rule 131.4(234) is amended to read as follows:

770—131.4(234) Geographic area. The geographic areas for Title XX services are the ~~sixteen~~ districts as defined in social services' subrule 1.4(3). ~~When a service defined in the Title XX plan is available in a district, it shall be available to all eligible individuals in the district.~~

ITEM 5. Rule 770—131.5(234) is rescinded and the following inserted in lieu thereof:

770—131.5(234) State appropriated funds.

131.5(1) State appropriated funds shall be allocated in the plan for the following purposes:

- a. Direct service to individuals by department staff.
- b. Community based services.
- c. Home based services.

SOCIAL SERVICES DEPARTMENT[770] (cont'd)

- d. Foster care services.
- e. Local purchase services.
- f. Administrative costs of maintaining and overseeing services.

131.5(2) State funds appropriated to local purchase of social services shall be divided by the department among the planning districts for the state of Iowa on the basis of the following formula:

Fifty percent of the appropriated funds will be divided on the basis of poverty level population and fifty percent of the funds will be divided on the basis of the previous year's allocation.

The department may consult with the statewide advisory committee concerning distribution of the funds.

131.5(3) Local purchase funds shall require a twenty-five percent match with the department providing seventy-five percent as authorized in the department's appropriation. Where the twenty-five percent is provided by a county, a county participation agreement shall be signed.

131.5(4) In no event shall a county be granted reimbursement for more funds than have been allocated.

131.5(5) A client shall apply for services in the

appropriate office of the Iowa department of social services.

a. The department shall determine eligibility according to 770—130.3(234).

b. The department shall develop a case plan and monitor the client's receipt of service and the client's progress towards achieving goals as defined in 770—130.7(234).

131.5(6) Allocations under this program shall be monitored over the course of the fiscal year and may be modified by the district administrator where there are surpluses or unexpected shortfalls on prior projections. The district administrator may authorize use of funds unexpended in one county to relieve shortages in another. The county receiving reallocated funds must provide the twenty-five percent match.

This rule is intended to implement section 234.6, The Code.

[Filed emergency 3/31/82, effective 4/1/82]

[Published 4/28/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/28/82.

ARC 2843**CONSERVATION COMMISSION[290]**

Pursuant to the authority of Section 107.24, The Code, the State Conservation Commission on April 7, 1982, adopted a new Chapter 41, "State Forest Camping", to the Iowa Administrative Code.

Notice of Intended Action was published in IAB 16, February 3, 1982, as ARC 2668.

This rule establishes regulated camping areas and operations in state forests.

There is one change from the Notice of Intended Action; 290—41.4(111) has been amended to clarify the authority of peace officers to carry firearms within the designated camping areas.

This rule implements sections 111.35, 111.44, and 111.47 through 111.51, The Code, and becomes effective June 2, 1982.

CHAPTER 41
STATE FOREST CAMPING

290—41.1(111) Applicability. This rule governs camping activity in the following areas:

1. Yellow River State Forest, Allamakee County.
2. Stephens State Forest, Clarke, Lucas, Appanoose, Davis, and Monroe Counties.
3. Shimek State Forest, Van Buren and Lee Counties.

290—41.2(111) Camping areas established and marked.

41.2(1) Areas to be utilized for camping shall be established within each of these state forests.

41.2(2) Signs designating the established camping areas shall be posted along the access roads into these areas and around the perimeter of the area designated for camping use.

41.2(3) Areas approved for backpack camping (no vehicular access) shall be marked with appropriate signs and shall contain fire rings.

290—41.3(111) Camping restricted.

41.3(1) No person shall camp in these state forests except within the designated camping areas or at established backpack camping sites.

41.3(2) Camping within the designated camping area shall be on sites posted by numbered signs marking the location to be used by the camping unit or within the marked boundary of camping areas where sites are not posted.

290—41.4(111) Firearm use prohibited. The use by the public, except peace officers acting in the scope of their employment, of firearms, fireworks, explosives, and weapons of all kinds is prohibited within the established camping area as delineated by signs marking the area.

290—41.5(111) Camping fees.

41.5(1) The fees for camping in these state forest established campgrounds shall be the same as in all other nonmodern areas managed by the commission where fees are charged. A basic camping unit is defined as the portable shelter used by one to six persons.

41.5(2) Chaperoned, organized youth group fees are the same as in all group camp areas managed by the commission.

41.5(3) The reduced fees for aged, blind, and handicapped established by 290—45.2(111) are applicable to camping in state forest areas.

41.5(4) Persons using backpack camping sites shall register at the forest area check station or other designated site. No fee will be charged for the use of the designated backpack campsites.

290—41.6(111) Hours. Access into and out of the established camping areas shall be permitted from 4:00 a.m. to 10:30 p.m. During the hours of 10:31 p.m. to 3:59 a.m. only registered campers are permitted in the campgrounds.

[Filed 4/9/82, effective 6/2/82]

[Published 4/28/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/28/82.

ARC 2858**HEALTH DEPARTMENT[470]****MEDICAL EXAMINERS, BOARD OF**

Pursuant to the authority of Sections 147.29 and 147.36, The Code, the Iowa Board of Medical Examiners adopts amendments to Chapter 135, "Medical Examiners", Iowa Administrative Code.

These rules adjust the filing dates of applications to sit the Federation Licensing Examination (FLEX) to allow the board to comply with the federation bylaws, which require all applications to be filed with the federation sixty days prior to the examination. These rules also bring the board into compliance with chapter 147, The Code, as amended by Acts of the Sixty-ninth General Assembly, 1981 Session, Chapter 5.

Notice of Intended Action was published in IAB 16, February 3, 1982 as ARC 2671.

These rules are identical to those published as Notice of Intended Action and will become effective June 2, 1982.

ITEM 1. Subrule 135.102(1) is amended to read as follows:

135.102(1) The application accompanied by a fee of one hundred fifty dollars must be on file at least ~~sixty~~ *seventy-five* days prior to the date of the examination.

ITEM 2. Subrule 135.102(3) is amended to read as follows:

135.102(3) The board has adopted and is administering the federation licensing examination (FLEX). FLEX examinations are ordinarily held in June and December of each year. Applications for the June examination must be on file by ~~April~~ *March 15* and applications for the December examination must be filed by ~~October~~ *September 15*.

ITEM 3. Subrule 135.102(4) is amended to read as follows:

135.102(4) The FLEX examination is a three-day examination and the candidate must successfully pass the entire examination with a flex-weighted average of seventy-five percent or better, in one sitting. ~~Any candidate who fails in his/her examination shall be entitled to~~

HEALTH DEPARTMENT[470] (cont'd)

take a second examination without further fee or application at any time within fourteen months after the first examination. The candidate shall be required to repeat the entire examination in his/her second examination. Any candidate who fails the examination shall be required to repeat the entire examination.

These rules are intended to implement sections 147.81, 148.3 and 150A.3, The Code, as amended by, the Acts of the Sixty-ninth General Assembly, 1981 Regular Session, Chapter 5.

[Filed 4/9/82, effective 6/2/82]
[Published 4/28/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/28/82.

ARC 2861

HEALTH DEPARTMENT[470]

BOARD OF PHYSICAL AND OCCUPATIONAL THERAPY
EXAMINERS

Pursuant to the authority of Sections 147.76, 147.80, and 258A.2, The Code, the rules of the Board of Physical and Occupational Therapy Examiners appearing in Chapters 137 and 138 of the IAC relating to examinations and continuing education are hereby amended. The board adopted the rules April 8, 1982.

Notice of Intended Action concerning the rules was published in the IAB March 3, 1982 as ARC 2742. The rules eliminate a free second examination; increase license fees; permit not more than five hours of continuing education to be indirectly related to the practice of physical therapy; place a limitation on the time period a certificate of exemption may be issued; and make some corrective amendments to the occupational therapy rules.

Editorial changes were made from the notice in the following: Paragraphs "c" and "d" of subrule 137.3(1) of Item 3; subrule 138.4(3) of Item 11; rule 470-138.9(258A) of Item 13; and Items 15 and 16.

The rules are intended to implement sections 147.80 and 258A.2, The Code.

The rules will become effective June 2, 1982.

ITEM 1. Subrule 137.2(4) is amended to read as follows:

137.2(4) An examinee failing one part of the examination shall be required to repeat only the part failed. The second examination ~~must~~ shall be taken within a period of fourteen months after the first examination, ~~and is without further fee.~~ *Payment of the examination fee is required for all repeats of the examination.* An applicant failing the repeat examination shall be required to ~~pay the examination fee and~~ take the entire examination.

ITEM 2. Subrule 137.2(5) is amended to read as follows:

137.2(5) An examinee failing two or more parts of the examination shall be required to repeat the entire examina-

tion. *Payment of the examination fee is required for all repeats of the examination. The second examination must be taken within a period of fourteen months after the first examination and is without further fee.* An applicant failing the repeat examination shall be required to ~~pay the examination fee and~~ take the entire examination.

ITEM 3. Subrule 137.3(1) is amended to read as follows:

137.3(1) Applications for licensure to practice physical therapy in Iowa shall be made directly to the Iowa State Department of Health, Lucas Building, Des Moines, Iowa, at least fifteen days prior to a scheduled practical or oral examination by the board.

If the applicant is to take the written examination, the application shall be received at least forty-five days before the date of the examination. The application form will be furnished by the department. The notarized application shall include the following:

a. Full name, current address, age, date of birth, place of birth, etc. as requested on the application form.

b. Declaration as to licensures or registrations held and examinations taken.

c. A notarized copy of the certificate or diploma awarded the applicant from a school of physical therapy accredited by an accrediting agency recognized by the United States Commissioner of Education or the Council on Postsecondary Accreditation. If graduated from a degree program which did not issue a diploma stating applicant's degree was in physical therapy, a statement verifying that the degree was in physical therapy is required from the school. Foreign trained physical therapists shall submit an English translation and a board ~~authorized~~ *approved* evaluation of the professional curriculum. Applicant will bear the expense of the curriculum evaluation.

d. A certified copy *from the Interstate Reporting Service* of the grades achieved on parts I, basic sciences; II, clinical sciences; and III, physical therapy, theory and practice, of the American Physical Therapy Association approved professional examination.

e. Required fee in the form of a check or money order made payable to the Iowa state department of health.

137.3(2) The board will conduct a practical or oral examination, or both, of all applicants for licensure.

137.3(3) The department will stamp each application with a date stamp upon its receipt at the department.

This rule is intended to implement sections 147.36 and 147.76, The Code.

ITEM 4. Subrule 137.6(1) is amended to read as follows:

137.6(1) License to practice physical therapy issued upon the basis of an examination is ~~sixty~~ *seventy-five* dollars.

ITEM 5. Subrule 137.6(2) is amended to read as follows:

137.6(2) License to practice physical therapy issued under endorsement is ~~sixty~~ *seventy-five* dollars.

ITEM 6. Subrules **138.2(1)**, **138.2(2)**, **138.2(3)**, and **138.2(4)** are rescinded.

ITEM 7. Subrule 138.2(6) is amended to read as follows:

138.2(6) Beginning January 1, 1981, each person licensed to practice physical therapy in this state shall complete during each continuing education compliance

HEALTH DEPARTMENT[470] (cont'd)

period a minimum of forty hours of continuing education approved by the board. *At least thirty-five of the forty hours of continuing education shall be directly related to the clinical practice of physical therapy. Not more than five hours may be indirectly related to the practice of physical therapy.* Compliance with the requirement of continuing education is a prerequisite for license renewal in each subsequent license renewal period.

ITEM 8. Subrule 138.3(4) is amended to read as follows:

138.3(4) Except as may be allowed pursuant to rule 138.8(258A) hereof, no licensee shall receive credit exceeding ten percent of the ~~annual~~ total required hours for self-study, e.g., television viewing, video or sound-recorded programs, reading, or by other similar means as authorized by the board.

ITEM 9. Subrule **138.4(1)** is rescinded.

ITEM 10. Subrule 138.4(2) is amended to read as follows:

138.4(2) Prior approval of activities. An organization or person ~~other than an accredited sponsor~~, which desires prior approval of a course, program or other continuing education activity or who desires to establish accreditation of such activity prior to attendance thereat, shall apply for approval to the board at least ninety days in advance of the commencement of the activity on a form provided by the board. The board shall approve or deny ~~such the~~ application in writing within sixty days of receipt of ~~such the~~ application. The application shall state the dates, subjects offered, course outline, total hours of instruction, names and qualifications of speakers and other pertinent information.

ITEM 11. Subrule 138.4(3) is amended to read as follows:

138.4(3) Post approval of activities. A licensee seeking credit for attendance and participation in an educational activity which was ~~not conducted by an accredited sponsor nor otherwise approved not prior approved by the board~~ shall submit to the board, within thirty days after completion of such activity, a request for credit, including a brief resume' of the activity, its dates and hourly schedule, subjects, instructors and their qualifications, related paper, manual, or outline and the number of credit hours requested therefor. A licensee not complying with the requirements of this subrule may be denied credit for such activity.

ITEM 12. Rule 470—138.7(258A) is rescinded and the following adopted in lieu thereof:

470—138.7(258A) Attendance record report. The person or organization sponsoring continuing education activities which have received prior approval of the board shall make a written record of the Iowa licensees registered and completing those activities and send a signed copy of such to the board upon completion of the educational activity, but in no case later than thirty days following completion of the continuing education activity. The report shall be sent to Board of Physical and Occupational Therapy Examiners, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319. Failure to submit the report may result in denial of future prior approval requests by the sponsor.

ITEM 13. Rule 470—138.9(258A) is amended to read as follows:

470—138.9(258A) Exemptions for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa residing within or without the state of Iowa may be granted a ~~waiver of compliance and obtain a~~ certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of physical therapy in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board.

Individuals granted certificates of exemption after July 1, 1982 who fail to request reinstatement after a four-year period from the date the certificate of exemption was granted shall lose their license at the end of the four-year period. Those individuals who desire to be reinstated shall apply for licensure by examination or interstate endorsement.

ITEM 14. Rule 470—138.10(258A) is amended by adding the following new subrule:

138.10(3) The board may require successful completion of an oral examination prior to reinstatement.

ITEM 15. Subrule 138.206(4) is amended to read as follows:

138.206(4) An applicant for a license as an occupational therapist moving into the state after December 30, 1981, who has not been licensed in another state but who *has successfully completed the registration examination of the Professional Examination Service or Psychological Corporation for occupational therapy, is certified with the Occupational Therapy Association*, shall show proof of practice for at least one of the past five years and provide evidence of having completed fifteen hours of continuing education relating to the practice of occupational therapy within the year previous to the application date may be licensed by waiver. Individuals who do not meet these requirements will be licensed by examination provided by the board. This does not apply to individuals who have graduated from an accredited occupational therapy program within the last twelve months *prior to the application date.*

ITEM 16. Subrule 138.210(1) is amended to read as follows:

138.210(1) Beginning January 1, 1982 each person licensed to practice occupational therapy shall complete fifteen continuing education hours ending December 31, 1982. All licensed occupational therapy assistants shall complete seven and one-half continuing education hours during calendar year 1982. The first biennial period ~~begins shall extend from~~ January 1, 1983 to December 31, ~~1985-1984. Thereafter~~ All occupational therapists ~~will~~ shall complete thirty continuing education hours per biennium. *All occupational therapy assistants shall complete fifteen continuing education hours per biennium.*

ITEM 17. Subrule **138.210(8)**, paragraph "b" is amended to read as follows:

b. It pertains to common subjects or other subject matters which ~~integrally~~ *directly* relate to the clinical practice of occupational therapy; and

[Filed 4/9/82, effective 6/2/82]

[Published 4/28/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/28/82.

ARC 2862**HEALTH DEPARTMENT[470]****BOARD OF CHIROPRACTIC EXAMINERS**

Pursuant to the authority of Sections 147.76 and 258A.2, The Code, the Board of Chiropractic Examiners hereby adopts amendments to Chapter 141 of the IAC.

The amendments provide for biennial license renewal and adjusts the continuing education. Renewal fees are adjusted to reflect actual costs of board expenditures.

Notice of Intended Action was published in the IAB, Vol. IV, No. 17, February 17, 1982, as ARC 2689. These rules were adopted by telephone conference call on April 9, 1982.

The proposed rules are identical to those proposed in the Notice of Intended Action, except we are omitting 141.66(1) and 141.66(2) as they were not being changed.

These rules become effective on June 2, 1982.

ITEM 1. Subrule 141.12(1) is rescinded and the following inserted in lieu thereof:

141.12(1) Beginning July 1, 1982, the licensure period shall be from July 1 of the even-numbered year to June 30 of the subsequent even-numbered year.

ITEM 2. Subrule 141.13(4) is rescinded and the following inserted in lieu thereof:

141.13(4) Any candidate who fails the examination may take a second examination at a regularly scheduled examination upon payment of the examination fee. The candidate shall be required to repeat the entire examination if a previous examination is failed. Additional repeats of the examination are permitted at the discretion of the board.

ITEM 3. Subrule 141.16(2) is rescinded and the following inserted in lieu thereof:

141.16(2) For the biennial renewal fee of a license to practice chiropractic, eighty dollars. Renewal fees shall be received by the board before the end of the last month of the renewal period.

ITEM 4. Rule 470—141.62(258A) is amended to read as follows:

141.62(1) ~~Beginning July 1, 1978~~ *From July 1, 1978 through December 31, 1981* each person licensed to practice chiropractic in this state shall complete during each calendar year a minimum of twenty hours of continuing education approved by the board. Compliance with the requirements of continuing education is a prerequisite for license renewal in each subsequent license renewal year.

Beginning January 1, 1982 each person licensed to practice chiropractic in this state shall complete during the biennium ending December 31, 1983 and each biennium thereafter ending on an odd-numbered year a minimum of forty hours of continuing education approved by the board.

141.62(2) ~~The~~ *From July 1, 1978 through December 31, 1981* continuing education compliance year shall extend from January 1 to December 31, during which period attendance at approved continuing education programs may be used as evidence of fulfilling continuing education requirements for the subsequent license renewal year beginning July 1 and expiring June 30.

Beginning January 1, 1982, the continuing education compliance period shall extend from January 1, 1982 to December 31, 1983 and each biennium thereafter with the

periods ending on December 31 of the odd-numbered years, during which period attendance at approved continuing education programs may be used as evidence of fulfilling continuing education requirements for the subsequent biennial license renewal period beginning July 1 of the even-numbered years.

141.62(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity which meets the requirements herein and is approved by the board pursuant to rule 141.64(151).

141.62(4) A licensee desiring to obtain credit for one or more succeeding calendar years, not exceeding two such years, for completing more than twenty hours of approved continuing education during any one calendar year shall report the carry-over credit at the time of filing the annual report to the board on or before February 1 of the year following the ~~calendar year~~ *continuing education period* during which the claimed additional continuing education hours were completed. *Carry-over credit of continuing education shall not be permitted after December 31, 1983.*

141.62(5) It is the responsibility of each licensee to finance their costs of continuing education.

141.62(6) *If a new license holder is licensed during the first year of the biennial continuing education period, he or she is only required to complete twenty hours of continuing education for renewal. If a new license holder is licensed during the second year of the biennial continuing education period, he or she will be exempt from meeting the continuing education requirements for the first license renewal. The new license holder will be required to obtain forty hours of continuing education for the second license renewal.*

ITEM 5. Rule 470—141.66(258A) is amended to read as follows:

470—141.66(258A) Reports and records. Each licensee shall file evidence of continuing chiropractic education satisfactory to the board previous to *the date of relicensure of the year following the calendar year* in which claimed continuing education hours were completed. A report of continuing chiropractic education on a form furnished by the board, shall be sent to the Executive Secretary, Iowa State Board of Chiropractic Examiners, Lucas State Office Building, Des Moines, Iowa 50319, or to ~~such~~ *any* other address as may be designated on the form.

[Filed 4/9/82, effective 6/2/82]

[Published 4/28/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/28/82.

ARC 2839**INDUSTRIAL COMMISSIONER[500]**

Pursuant to the authority of Section 86.8, The Code, the Industrial Commissioner adopts amendments to Chapter 4, "Contested Cases", Iowa Administrative Code.

INDUSTRIAL COMMISSIONER[500] (cont'd)

Notice of Intended Action was published in IAB, Vol. IV, No. 18, March 3, 1982, as ARC 2723.

Section 86.18, The Code, which governs contested case proceedings before the Industrial Commissioner, states that proceedings within the agency shall be as summary as practicable. The amendments are designed to simplify and shorten the proceedings by requiring doctors' and practitioners' reports to be served on the opposing party prior to the prehearing conference, providing a party the right to cross-examine the doctor or practitioner at the party's own initial expense, providing that the commissioner or deputy commissioner may order, upon request of a party in the case, the parties to appear for a prehearing conference, clarifying prehearing conference procedure, and allowing no evidence to be taken after the hearing.

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

The rules were adopted April 7, 1982, and will become effective on June 2, 1982.

These rules are intended to implement Section 86.18, The Code.

ITEM 1. Rule 500—4.17(85,86,17A) is amended to read as follows:

500—4.17(85,86,17A) Doctors' and practitioners' reports evidence. *Service of doctors' and practitioners' reports.* Each party to a contested case shall serve all ~~written doctors' or practitioners' reports~~ in the possession of the party upon each other party at least thirty days prior to the date of hearing. ~~A party obtaining a medical report within thirty days of a hearing immediately shall serve upon each other party a copy of the report.~~ *reports of a doctor or practitioner relevant to the contested case proceeding in the possession of the party upon each opposing party. The service shall be received prior to the time for the prehearing conference.* Notwithstanding 4.14(86), the reports need not be filed with the industrial commissioner; however, each party shall file a notice that such service has been made in the industrial commissioner's office, identifying the reports sent by the name of the doctor or practitioner and date of report. Any party failing to comply with this provision shall be subject to 4.36(86).

This rule is intended to implement sections 86.8 and 86.18, The Code.

ITEM 2. Rule 500—4.18(85,86,17A) is amended to read as follows:

500—4.18(85,86,17A) Submission of doctors' and practitioners' reports—evidence. *Doctors' and practitioners' reports—evidence.* In any contested case commenced after July 1, 1976, a signed narrative report of a doctor or practitioner setting forth the history, diagnosis, findings and conclusions of the doctor or practitioner and which is relevant to the contested case shall be considered evidence on which a reasonably prudent person is accustomed to rely in the conduct of serious affairs. The industrial commissioner takes official notice that such narrative reports are used daily by the insurance industry, attorneys, doctors and practitioners and the industrial commissioner's office in decisionmaking concerning injuries under the jurisdiction of the industrial commissioner.

Any party against whom the report may be used shall have the right, at the party's own *initial* expense, of cross-examination of the doctor or practitioner. ~~The cross-~~

~~examination shall be performed no later than thirty days after the hearing.~~ Nothing in this rule shall prevent direct testimony of the doctor or practitioner.

This rule is intended to implement sections 86.8 and 86.18 and to interpret section 17A.14, The Code.

ITEM 3. Rule 500—4.20(86) is amended to read as follows:

500—4.20(86) Prehearing procedure. After issues are joined in a contested case, a deputy commissioner or the industrial commissioner may, ~~and shall~~ on written request of any ~~attorney party~~ in the case, order ~~attorneys parties~~ in the case to either appear before the commissioner or a deputy commissioner for a conference, or communicate with the commissioner or a deputy commissioner and with each other in any manner as may be prescribed to consider, so far as applicable to the particular case:

ITEM 4. Subrule 4.20(3) is amended to read as follows:
4.20(3) Limiting the number of expert witnesses;

This rule is intended to implement sections 86.17 and 86.18, The Code.

ITEM 5. Strike all of rule 500—4.31(86) and insert in lieu thereof the following:

500—4.31(86) Completion of contested case record. No evidence shall be taken after the hearing.

This rule is intended to implement section 86.18, The Code.

[Filed 4/8/82, effective 6/2/82]

[Published 4/28/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/28/82.

ARC 2848

SOCIAL SERVICES
DEPARTMENT[770]

Pursuant to the authority of Section 17A.3 The Code, rules of the Department of Social Services appearing in the IAC relating to departmental organization and procedures (Chapter 1) are hereby amended. The mental health and mental retardation commission adopted these rules April 6, 1982.

Notice of Intended Action regarding this rule was published in the IAB January 20, 1982 as ARC 2656. This is the organizational and procedural rule for the mental health and mental retardation commission.

"Who are present" was removed from 1.6(2).

This rule is intended to implement section 17A.3, The Code.

This rule shall become effective June 2, 1982.

770—1.6(17A) Mental health and mental retardation commission. The director of the division of mental

SOCIAL SERVICES DEPARTMENT[770] (cont'd)

health, mental retardation, and developmental disabilities has, by statute, the advice and counsel of the mental health and mental retardation commission. This fifteen-member commission is appointed by the governor with confirmation by two-thirds of the members of the senate. The commission's powers and duties are policymaking and advisory with respect to mental health and mental retardation, services and programs administered by the division of mental health, mental retardation, and developmental disabilities.

1.6(1) A quorum shall consist of two-thirds of the membership appointed and qualified to vote.

1.6(2) Where a quorum is present, a position is carried by a majority of the qualified members of the commission.

1.6(3) Copies of administrative rules and other materials considered are made a part of the minutes by reference.

1.6(4) Copies of the minutes are kept on file in the office of the director of the division of mental health, mental retardation, and developmental disabilities.

1.6(5) At each meeting the commission shall determine the next meeting date. Special meetings may be called by the chair or at the request of the majority of commission members.

1.6(6) Any person wishing to make a presentation at a commission meeting shall notify the Director, Division of Mental Health, Mental Retardation, and Developmental Disabilities, Hoover State Office Building, Des Moines, Iowa 50319, (515) 281-5874 at least fifteen days prior to the commission meeting.

1.6(7) In cases not covered by these rules, Robert's Rules of Order shall govern.

1.6(8) The office of appeals and fair hearings shall be the authorized representative to conduct hearings and appeals for the mental health and mental retardation commission.

[Filed 4/9/82, effective 6/2/82]
[Published 4/28/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/28/82.

ARC 2832**SOCIAL SERVICES
DEPARTMENT [770]**

Pursuant to the authority of Acts of the Sixty-ninth General Assembly, 1981 Session, Chapter 11, Section 3, rules of the Department of Social Services appearing in the IAC relating to adult correctional institutions (Chapter 16) are hereby amended. The Council on Social Services adopted this rule March 30, 1982.

Notice of Intended Action regarding this rule was published in the IAB January 20, 1982 as ARC 2657. This

change removes the provision for the department to individually categorize crimes not appearing in the rules.

This rule is identical to that published under notice.

This rule is intended to implement Acts of the Sixty-ninth General Assembly, 1981 Session, Chapter 11, Section 3.

This rule shall become effective June 2, 1982.

Subrule 16.10(2) is amended to read as follows:

16.10(2) All crimes shall be defined as a crime against property or a crime against persons. ~~Offenses not listed in these rules due to omission or new law shall be individually categorized by the division of adult corrections.~~

[Filed 4/5/82, effective 6/2/82]
[Published 4/28/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/28/82.

ARC 2833**SOCIAL SERVICES
DEPARTMENT[770]**

Pursuant to the authority of Section 239.18, The Code, rules of the Department of Social Services appearing in the IAC relating to aid to dependent children (Chapter 41) are hereby amended. The Council on Social Services adopted this rule March 30, 1982.

Notice of Intended Action regarding this rule was published in the IAB January 20, 1982 as ARC 2658. This rule specifies that the applicant or recipient must complete the support information form.

This rule is identical to that published under notice.

This rule is intended to implement section 239.5, The Code.

This rule shall become effective July 1, 1982.

Subrule 41.2(6), paragraph "b", subparagraphs (1) and (3), are amended to read as follows:

(1) Appearing at the local office or the child support recovery unit to provide verbal or written information or documentary evidence known to, possessed by, or reasonably obtained by the applicant or recipient that is relevant to achieving the objectives of the child support recovery program. *This includes completing and signing the Support Information, CS-1101-5, upon request of the local office.*

(3) Providing information, or attesting to the lack of information, under penalty of perjury.

[Filed 4/5/82, effective 7/1/82]
[Published 4/28/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/28/82.

ARC 2834**SOCIAL SERVICES
DEPARTMENT [770]**

Pursuant to the authority of Section 249A.4, The Code, rules of the Department of Social Services appearing in the IAC relating to medical assistance (Chapter 78) are hereby amended. The Council on Social Services adopted this rule March 30, 1982.

Notice of Intended Action regarding this rule was published in the IAB January 20, 1982 as ARC 2660. This rule permits oral prophylaxis more frequently than every six months for a physically or mentally disabled individual who cannot maintain adequate oral hygiene at home.

This rule is identical to that published under notice.

This rule is intended to implement sections 249A.2 and 249A.6, The Code.

This rule shall become effective June 2, 1982.

Subrule 78.4(1), paragraph "b", subparagraph (12) is amended to read as follows:

(12) Oral prophylaxis, including necessary scaling and polishing, is payable once in a six-month period, *except for persons who because of physical or mental disability cannot maintain adequate oral hygiene at home and prophylaxis is necessary more frequently. These cases require prior authorization.* Topical application of fluoride is payable once in a six-month period. (This does not include the use of fluoride prophylaxis paste as fluoride treatment).

[Filed 4/5/82, effective 6/2/82]

[Published 4/28/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/28/82.

ARC 2835**SOCIAL SERVICES
DEPARTMENT [770]**

Pursuant to the authority of Sections 217.6 and 234.6, The Code, rules of the Department of Social Services appearing in the IAC relating to general provisions for social services (Chapter 130) are hereby amended. The Council on Social Services adopted these rules March 30, 1982.

Notice of Intended Action regarding these rules was published in the IAB October 14, 1981 as ARC 2403. These rules provide that a service can be denied, reduced, or terminated when funding is not available. They also eliminate the provision for a waiting list.

In addition, the department is **terminating** rule-making under **Notices of Intended Action** on rules relating to general provisions for social services (Chapter 130) appearing in the October 14, 1982 IAB as ARC 2402

and ARC 2401. The department is not adopting any of the proposals appearing in those notices.

References to Title XX were changed to pre-expenditure report and block grant in item 1. "Investigation" was added to paragraph "e" in item 2. Items 3, 4, and 5 are identical to those placed under notice.

These rules are intended to implement section 234.6, The Code.

These rules shall become effective July 1, 1982.

ITEM 1. Subrule 130.3(1) and paragraph "b" are amended to read as follows, paragraph "c" is relettered as paragraph "d", and new paragraph "c" added:

130.3(1) Eligibility for services is based on individual need for service, ~~service availability in the Title XX Plan, and~~ financial eligibility, and service availability in the pre-expenditure report or service availability through other department resources.

b. The block grant service to be provided shall be contained in the ~~Title XX Plan~~ pre-expenditure report and listed for the specific district and county. Service available through the department and funded by resources other than the social service block grant is identified in rules for that specific service.

c. Service shall be provided only when funds are available for service delivery.

ITEM 2. Subrule 130.5(1) and paragraphs "d" and "e" are amended to read as follows and new paragraphs "f" and "g" added:

130.5(1) Denial. Services shall be denied when it is determined by the ~~worker~~ department that:

d. There is another community resource available to provide the service or a similar service free of charge to the client that will meet the client's needs, or

e. In cases other than protective service investigation, the client, parent, or representative refuses to sign the application form, or

f. The service for which the client is eligible is currently not available; a list of these services will be posted in each local office, or

g. Funding is not available to provide the service. A list of services not available due to lack of funding shall be posted in each local office.

ITEM 3. Subrule 130.5(2) and paragraphs "d", "g", and "h" are amended to read as follows and new paragraph "i" added:

130.5(2) Termination. A particular service may be terminated when the ~~worker~~ department determines that:

d. The client's income or resources exceeds the financial guidelines, or

g. Another community resource is available to provide the service or a similar service free of charge to the client that will meet the client's needs, or

h. The client refuses to allow documentation of eligibility both as to need, and income, and resources, or

i. Funding is not available to provide the service. A list of services not available due to lack of funding shall be posted in each local office.

ITEM 4. Subrule 130.5(3) and paragraph "a" are amended to read as follows and new paragraph "c" added:

130.5(3) Reduction. A particular service may be reduced when the ~~worker~~ department determines that:

a. The client is moving to achieve or maintain the goals and objectives set down in the individual client

SOCIAL SERVICES DEPARTMENT[770] (cont'd)

~~service plan and continued~~ Continued provision of service at its current level is not necessary to facilitate the client's continued progress. The ~~worker~~ department shall determine the level to which the service may be reduced without jeopardizing the clients continued progress toward achieving or maintaining the goal. The client shall be notified of the decision.

c. *Funding is not available to continue the service at the current level. The client shall be reassessed to determine the level of service to be provided.*

ITEM 5. Subrule 130.6(1) paragraphs "a" and "b" are rescinded (but not the main body of the subrule).

[Filed 4/5/82, effective 7/1/82]
[Published 4/28/82]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 4/28/82.

EFFECTIVE DATE DELAY**[Pursuant to §17A.4(5)]**

AGENCY	RULE	EFFECTIVE DATE DELAYED
Nursing Board[590]	Chapter 6 [IAB 3/17/82 ARC 2763]	Seventy days from effective date of April 21, 1982

SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

March, 1982CONSTITUTIONAL LAW

Contracting Debts. Iowa Const. Art. VII, § 2. Any interest that may accrue on an advance from the federal government to replenish Iowa's unemployment insurance trust fund creates a valid legal obligation upon the state. (Miller to Ray, Governor, 3/2/82) #82-3-1

COUNTIES AND COUNTY OFFICERS

Board of Supervisors: Selection of Representation Plan. Ch. 331, §§ 331.207, 331.208, 331.209 and 331.210. A special election held under section 331.207, which results in a change in the supervisor representation plan, requires a transition in the membership on the board of supervisors pursuant to section 331.207(4). New members must be elected under the new supervisor representation plan at the general election pursuant to sections 331.208, 331.209 or 331.210. The terms of current members who were elected under the previous representation plan must expire in January following the general election. The length of terms of the new members should be determined by lot pursuant to section 331.208(4). (Pottorff to Hutchins, State Senator, 3/23/82) #82-3-15(L)

County Attorney: 28E Organizations. Chapter 28E, Sections 28E.11; 1981 Session, 69th G.A., Ch. 117, §§ 756, 756.2, 756.6, 756.7. A county Attorney is not required to represent a 28E organization to which the county belongs as a part of his or her official duties. However, in the event a 28E agreement so provides, a county attorney may represent the organization in his or her official capacity so long as no conflict of interest problem appears. Further, in the absence of a contrary provision, a 28E organization has the implied authority to hire private legal counsel, which could include a part-time, but not a full-time, county attorney. (Weeg to Swearingen, State Representative, 3/23/82) 82-3-17(L)

Historical Preservation Tax Funds. 1981 Session, 69th G.A., ch. 117, § 421.18. Historical preservation tax funds may be used for the preservation of historical buildings. (Weeg to Howell, State Representative, 3/24/82) #82-3-21(L)

Incompatibility. Chapter 174, The Code 1981; 1981 Session Laws, 69th G.A., ch. 117, §§ 500 to 511. The positions of deputy county auditor and secretary to a county agricultural society are not public offices and therefore are not incompatible. (Weeg to Swaim, Davis County Attorney, 3/23/82) #82-3-20(L)

Medical Examiner. Ch. 339, The Code 1981; § 339.7. The county in which a death occurs is liable for the costs of an autopsy, the exception being where the death occurred in the manner specified in § 339.6(10). Accordingly, a county may not attempt to recover those costs from either the county of the deceased's resident if the death occurred in a different county, or from the deceased's estate. (Weeg to Gustafson, Crawford County Attorney, 3/10/82) #82-3-8(L)

Prisoners: County Liability for Emergency Medical Care Provided to a Prisoner. § 356.5(2) and 356.15, The Code 1981. The county in which a prisoner is taken into custody is responsible for the provision of life necessities to such prisoners, including emergency medical care. (Mann to Jensen, Monona County Attorney, 3/31/82) #82-3-30(L)

COURTS

Petition to Modify a Decree. A petition or application to modify a decree of dissolution is a "petition" and the clerk of court is required to collect a \$25 filing fee from the party moving to initiate such an action. 1981 Session, 69th G.A., ch. 117, § 704 and ch. 189, § 4; § 598.21(8); Ia.R.Civ.P. 48. (Hege to Tofte, State Representative, 3/31/82) #82-3-29-L)

CRIMINAL LAW

Bail Bond. Sections 811.2(1), 811.8, and 907.6, The Code 1981. Subject to the limitations, if any, of their contract with the defendant, the bonding company may avail themselves of the provisions of § 811.8 thereby causing the clerk of court to order the exoneration of the surety. A condition of posting a bond as a condition of probation does not affect the bonding company's rights under § 811.8, The Code. (Cleland to Slater, State Senator, 3/4/82) #82-3-3(L)

Contributing to Juvenile Delinquency, Classification of Public Offenses. §§ 233.1, 233.2, 701.8, 801.4(3), 903.1, The Code 1981. Contributing to juvenile delinquency in violation of § 233.1, The Code 1981, is a simple misdemeanor. (Cleland to Heitland, Hardin County Attorney, 3/19/82) #82-3-12

OMVUI: Implied Consent. Ch. 321B. A refusal to sign the implied consent form following an oral consent to the withdrawal of a blood specimen for chemical testing to determine blood alcohol content does not constitute a refusal of the test. (Gregersen to Ritchie, Buena Vista County Attorney, 3/22/82) #82-3-13(L)

ELECTIONS

School Elections; Precincts. Ch. 49, §§ 49.1, 49.3, 49.11; ch. 277, § 277.3. Precincts drawn pursuant to section 49.3 are applicable in school elections. These precincts may be temporarily merged under sections 49.11(1), 49.11(3)(a), or 49.11(3)(b). The merger of precincts under section 49.11(3)(b) is restricted by the population and geographic limitations of section 49.3. The merger of precincts under sections 49.11(1) and 49.11(3)(a) are not restricted by the population and geographic limitations of section 49.3. (Pottorff to Hall, State Representative, 3/31/82) #82-3-27(L)

HIGHWAYS

Sale of Excess Right of Way - Preference of Sale. § 306.23, The Code 1981. In the proposed sale of excess right of way by the Department of Transportation, present owners of adjacent land from which a piece of land was originally bought or condemned for highway purposes are not allowed to ascertain the highest bid and make a subsequent offer after the close of the sealed bidding process. (Dundis to Taylor, State Senator, 3/17/82) #82-3-11(L)

JUVENIE LAW

Probation Officer. A juvenile probation officer should qualify as a "law enforcement" or "public safety" officer under the federal "Public Safety Officers' Death Benefits" program, entitling their family to the \$50,000 death benefits to a public safety officer who is "killed as a direct and proximate result of personal injury sustained in the line of duty." 42 U.S.C. § 3796, et. seq.; §§ 231.10, 232.19(1), 232.28, 292.29, 232.45(4), 232.47(7), 232.48, and 801.4(7), The Code 1981. Secondly, Senate File 474, amending ch. 613A -- Tort Liability of Governmental Subdivisions -- would apply to limit the liability of juvenile probation officers, since counties are municipalities under ch. 613A and juvenile probation officers are employees of the county. Senate File 474, §§ 1-6; ch. 613A, § 321.10, The Code 1981. (Hege to Welsh, State Representative, 3/23/82) #82-3-18(L)

MENTAL HEALTH

County liability for Costs of Care of Mental Patients Admitted to Private Hospitals. §§ 125.34(2), 229.22, 229.22(2), 230.20(5), 444.12(3), The Code 1981. The county of legal settlement is responsible for the costs of care and treatment of a mental patient treated at a private facility under § 229.22. Where the legal settlement of the patient is in another state or is unknown, the county of admission or commitment is liable for the costs of care and treatment of mental patients treated at private facilities under § 229.22.

Detention of a person pursuant to § 229.22 does not constitute an arrest within the meaning of the criminal law, but rather constitutes the taking of a person into protective custody to prevent injury to the detainee or others.

Where a court enters an order placing a person in the custody of a private facility, such order extinguishes all prior rights to custody that may have been reposed in either a city, county, or state agency, unless specifically excepted by the order.

Where a person detained pursuant to § 229.22 is treated at a state mental health facility, and the person's legal settlement is in another state or is unknown, the state is liable for the costs of such care and treatment. If legal settlement is in a county in Iowa, and the patient is treated at a state mental health facility, the county is liable for eighty percent of the costs of care and treatment and the state is liable for the remainder. (Mann to Smith, State Representative, 3/24/82) #82-3-22(L)

SUBSTANCE ABUSE: MENTAL HEALTH: Privacy and Confidentiality Requirements. 21 U.S.C. §§ 1175(a) and 1175(b)(2)(c), 42 U.S.C. § 4582(a); 42 C.F.R. § 2.12(a)(1-4), § 2.23, § 2.64(g), § 2.65(c); §§ 4.1(36)(a), 68A.7, 125.1(1), 125.33(2) and (3), 125.37, 217.30(1)(d), 217.30(4), 229.25, 622.10, 703.3, 719.1, 719.2, 804.15, 808.1; §§ 803-3.9 and 805-3.9, I.A.C.

Section 622.10, which creates a physician-patient testimonial privilege, does not preclude a physician from testifying in a civil or criminal proceeding as a result of a diagnostic examination performed to determine a person's mental or physical condition.

Section 68A.7's confidentiality requirements do not bar the non-consensual disclosure of medical records where sought by subpoena or court order.

Section 125.33(2) and (3) and section 125.37 generally prohibit substance abuse treatment facilities from disclosing the fact that a person is participating in a treatment program, and from disclosing information on the nature of the treatment given, but does not prohibit the non-consensual disclosure of non-treatment related information where required to do so by court order in pursuit of the administration of justice.

Section 217.30(1)(d) generally prohibits the disclosure of medical or psychiatric data by a treatment facility, including diagnosis and past history of disease or disability of a patient, but pursuant to § 217.30(4) such information shall be disclosed without a patient's consent to law enforcement officials for use in connection with their official duties relating to law enforcement where authorized by court order.

Section 229.25 general prohibition on the disclosure of medical records may be abrogated where non-treatment related information is sought pursuant to court order.

The constitutional right to privacy precludes the non-consensual disclosure of confidential medical information, unless such disclosure is justified by compelling state interests.

Neither the constitution nor statutory confidentiality provisions would permit a treating physician/psychiatrist or other medical staff to testify at an involuntary commitment hearing under ch. 229 to communications and observations gained as a result of treating a patient, and not as a result of a diagnostic evaluation performed pursuant to court order.

A treatment facility's staff may report to law enforcement officials, without violating § 125.33, neutral facts surrounding the possession of a weapon by a patient, so long as the identity or identities of patients are not disclosed.

If the identity or identities of patients involved in suspected criminal violations are sought by law enforcement officials, such information should not be disclosed by a treatment facility unless authorized to do so by court order.

Law enforcement officials may execute a search warrant at a treatment facility since search warrants are court orders, and searches are proper when made under the authority of a validly issued search warrant.

Absent a court order affirmatively authorizing a treatment facility's staff to assist in the execution of a search warrant, said staff must passively observe the execution of the search warrant.

A treatment facility's staff will not incur criminal liability under §§ 703.3, 719.1 and 719.2, where said staff abides by statutory or constitutional confidentiality requirements and refuse to disclose confidential information to law enforcement personnel, so long as they do not affirmatively act to obstruct law enforcement personnel in the performance of their duties. (Mann and Freeman to Wilson, Buchanan County Hospitalization Referee, 3/31/82) #82-3-25(L)

MUNICIPALITIES

Civil Service. Section 4001.3, The Code 1981; Acts, 65th G.A., 1973 Session, ch. 233, § 2. An ordinance imposing disparate salaries between members and nonmembers of the police department vying for the office of the chief of police violates § 400.13, The Code 1981. (Walding to Welsh, State Representative, 3/31/82) #82-3-28(L)

Police and Fire Pensions. Section 411.1(12), The Code 1981; Acts of the 67th G.A., 1978 Session, Ch. 1060, § 42; Acts, 66th G.A., 1976 Session, Ch. 1089, § 18. Base wages and longevity, holiday pay, and educational pay included in a wage are to be included as earnable compensation. Acting pay and educational pay not included in a wage are not to be included. As to corrective measures in the event that a municipality has incorrectly computed the earnable compensation, the judgment of the police and fire pensions boards prevail. (Walding to Slater, State Senator, 3/31/82) #82-3-26(L)

SCHOOLS

Minors' School License. §§ 17A.19, 321.194, ch. 613A, The Code 1981. A school board or school superintendent who issues a "statement of necessity" to a student who wishes to apply for a minor's school license performs a ministerial act. A student whose application for such "statement of necessity" and has been rejected has recourse by way of an administrative appeal pursuant to Chs. 17A and 290, The Code 1981. The School district or official would be exempt from any claims of

liability in connection with such a ministerial act under the terms of § 613A.4(3), The Code 1981. (Fleming to Angrick, Citizens'Aide/Ombudsman, 3/23/82) #82-3-14(L)

SOCIAL SERVICES

Reimbursement From Third Parties for Medicaid Payments: Assignment of Rights to Benefits vis-a-vis the State's Subrogation Statute. 42 U.S.C. §§ 1396a(a)(25), 1396k(a), 42 CFR § 433.146, § 249A.6(1), Code of Iowa. The Department of Social Services meets the requirements of federal law pertaining to the assignment of rights to benefits by Medicaid recipients against third parties for the purpose of reimbursement by those legally liable to pay for such medical assistance. (Stephen C. Robinson to Don Kassar, Chief, Bureau of Medical Services, Department of Social Services, 3/23/82) #82-3-19(L)

STATE DEPARTMENTS AND OFFICERS

Auditor; Revenue; State Tax Records; Confidentiality. Sections 11.4, 11.28, 422.20(1), and 422.72(1), The Code 1981; 730 I.A.C. § 38.6. "Tax administration" as contemplated in section 422.72(1) means the administration, management, conduct, direction, and supervision of the execution and application of the state tax laws; the development and formulation of state tax policy; and includes assessment, collection, enforcement, litigation, publication, and statistical functions. The functions of the Auditor of State are not included within the meaning of "tax administration." The functions of the Auditor of State do not constitute an exception "provided by law" to the confidentiality provisions of sections 422.20(1) and 422.72(1). The revenue director's discretion to adopt administrative rules authorizing examinations of state tax returns by other officers and employees of this state is limited to examinations only for purposes of "tax administration." (Richards to Johnson, Auditor and Bair, Dept. of Revenue, 3/4/82) #82-3-2

Board of Psychology. §§ 147.72, 154B.4, The Code 1981. Section 154B.4, The Code 1981. Section 154B.4, The Code, prohibits an unlicensed person who is not otherwise exempt from the provisions of Chapter 154B from using the title "psychotherapist" in connection with an offer to practice or the practice of psychology. Section 147.72, The Code does not prohibit the use of said title by an unlicensed person. An applicant for licensure as a psychologist is subject to the same restrictions on using the title "psychotherapist" as are other unlicensed individuals. (Brammer to Scott, Chairman, Board of Psychology Examiners, 3/31/82) #82-3-31(L)

IPERS; Area Education Agencies; Retirement Age of Employees. Ch. 97B, §§ 97B.41, 97B.46, Ch. 273, §§ 273.2, 273.9. Area Education Agencies are "political subdivisions" which constitute "employers" within the meaning of Section 97B.41(3). An employee of an Area Education Agency, therefore, is not an employee of the "state" as the term is used in Sections 97B.41 and 97B.46 of the Code. (Pottorff to Tieden, State Senator, 3/17/82) #82-3-10(L)

National Guard Armory Board; Authority to Lease or Accept Donated Property to be Used for Training Purposes. §§ 29A.12; 29A.13; 29A.57; 29A.58; 29A.59; 565.3; 565.4, The Code. The state armory board may lease or accept donated property to be used for the purpose of training units of the Iowa National Guard. Lease of property must be approved by state executive council. (Swanson to Gilbert, Adjutant General, 3/23/82) #82-3-16(L)

Real Estate Commission; Exemption from Real Estate Licensing Commission. § 117.3, The Code 1981. Attorneys who engage in real estate transactions for a client incident to the practice of law are not required to seek a real estate license. However, the mere fact that a person is licensed as an attorney does not exempt that person from the licensing requirements of Chapter 117 if the person engages in real estate practices subject to licensure outside the attorney-client relationship. (Thomas to Dreeszen and Waldstein, State Senators, 3/9/82) #82-3-7(L)

Worker's Compensation: Agricultural Exemptions. U.S. Const. amend. XIV; Iowa Const. art. I, § 6; 1976 Session 66th G.A., Ch. 1084, § 1; §§ 85.1, 87.1 The Code 1981. That portion of § 85.1 which exempts certain "persons engaged in agriculture" from the Iowa Worker's Compensation statute violates neither U.S. Const. amend. XIV nor Iowa Const. Art. I, § 6. (Benton to Comito, State Senator, 3/24/82) #82-3-23(L)

MUNICIPALITIES

Conflict of Interest. Section 362.6, The Code 1981. Section 362.6 The Code 1981, does not require an interested officer to disqualify himself or herself on a measure before a municipal committee. (Walding to Nystrom, State Senator, 3/25/82) #82-3-24(L)

TAXATION

Application of the Board of Review's or Court's Final Disposition of a Real Property Tax Assessment Protest Filed for A Reassessment Protest Filed for a Reassessment Year to the Assessed Value of the Property for the Following Interim Assessment Years. §§ 441.37, 441.35, The Code 1977. The board of review's or court's final disposition of a real property tax assessment protest filed pursuant to § 441.37 for a reassessment year shall also control and set the assessed value of the property on the assessment rolls for the following interim assessment years provided that the assessor or board of review did not change the assessed value for an interim assessment year or that a protest was not filed by the taxpayer (property owner) for an interim assessment year successfully showing that the assessed value had changed for the particular interim assessment year being protested. (Kuehn to Martens, Emmet County Attorney, 3/17/82) #82-3-9(L)

Application for Industrial Real Estate New Construction Tax Exemption. Sections 427B.1, 427B.3, and 427B.4, The Code 1981. A purported application for the local option industrial real estate new construction property tax exemption filed with the assessor before a city council enacted an ordinance to authorize the exemption is

ineffectual and cannot be considered as an application for such exemption. Claimants must file their exemption applications between January 1 and February 1 of the assessment year in which the value added is first assessed for taxation. Department of Revenue instructions which state that if a new construction industrial project requires more than a year to construct or complete a single application for exemption may be filed upon completion of the project are inconsistent with § 427B.4. (Griger to Kimes, Clarke County Attorney, 3/5/82) #82-3-5(L)

Mobile Home Owned by a Religious Organization and Used as a Classroom, but Which Has Not Been Converted to Real Estate.

Sections 135D.22, 135D.26 and 427.1(1), The Code 1981. A mobile home which is owned by a religious organization and used as a classroom, but which has not been converted to real estate would not be exempt from the semi-annual taxes imposed on mobile homes under Section 135D.22. (Donahue to Davis, Scott County Attorney, 3/5/82) #82-3-4(L)

Tax on Grain Handled. Section 428.35, The Code 1981. The tax imposed by § 428.35, The Code 1981, is an excise tax on the handling of grain. Handling occurs when the grain is received. Ownership of the grain is not a relevant consideration, and as a result when the ownership of grain changes without movement of the grain, the transaction would not be taxable under § 428.35. (Schuling to Harbor, State Representative, 3/8/82) #82-3-6(L)

STATUTES CONSTRUED

<u>Code, 1981</u>	<u>Opinion</u>	<u>Code, 1981</u>	<u>Opinion</u>
11.4	82-3-2	801.4(7)	82-3-18(1)
11.28	82-3-2	801.4(3)	82-3-12
17A.19	82-3-14(L)	811.2(1)	82-3-3(L)
28E.11	82-3-17(L)	811.8	82-3-3(L)
29A.12	82-3-16(L)	903.1	82-3-12
29A.13	82-3-16(L)	907.6	82-3-3(L)
29A.57	82-3-16(L)		
29A.58	82-3-16(L)	<u>69th G.A.</u>	
29A.59	82-3-16(L)		
49.1	82-3-27(L)	Ch. 117, § 421.18	82-3-21(L)
49.3	82-3-27(L)	Ch. 117, § 756.2	82-3-17(L)
85.1	82-3-23(L)	Ch. 117, § 756.6	82-3-17(L)
87.1	82-3-23(L)	Ch. 117, § 756.7	82-3-17(L)
97B.41	82-3-10(L)	Ch. 117, § 500	82-3-20(L)
117.3	82-3-7(L)	Ch. 117, § 511	82-3-20(L)
135D.22	82-3-4(L)	Ch. 117, § 704	82-3-29(L)
135D.26	82-3-4(L)	Ch. 189, § 4	82-3-29(L)
147.72	82-3-31(L)	Ch. 189, § 598.21(8)	82-3-29(L)
174	82-3-20(L)		
233.1	82-3-12	<u>Const. of Iowa</u>	
233.2	82-3-12		
232.19(L)	82-3-18(L)	Art. I, § 6	82-3-23(1)
248A.6(L)	82-3-19(L)	Art. VII, § 2	82-3-1
273.2	82-3-10(L)		
273.9	82-3-10(L)	<u>U.S. Const.</u>	
277.3	82-3-27(L)		
306.23	82-3-11(L)	Amend. XIV	82-3-23(L)
321B	82-3-13(L)	1396a(a)(25)	82-3-19(L)
321.194	82-3-14(L)		
331.207	82-3-15(L)	<u>Acts, 66th G.A.</u>	
331.208	82-3-15(L)		
331.209	82-3-15(L)	Ch. 1084, § 1	82-3-23(L)
331.210	82-3-15(L)	Ch. 1089, § 18	82-3-26(L)
339.7	82-3-8(L)		
356.5(2)	82-3-30(L)	<u>Acts, 65th G.A.</u>	
356.15	82-3-30(L)		
362.6	82-3-24(L)	Ch. 233, § 2	82-3-28(L)
400.13	82-3-28(L)		
411.1(12)	82-3-26(L)	<u>Acts, 67th G.A.</u>	
422.20(1)	82-3-2		
422.72(1)	82-3-2	Ch. 1060, § 42	82-3-26(L)
427B.1	82-3-5(L)		
427B.3	82-3-5(L)	<u>Ia. Rules Civ.P.</u>	
427B.4	82-3-5(L)		
428.35	82-3-5(L)	P. 48	82-3-28(L)
441.35	82-3-9(L)		
441.37	82-3-9(L)	<u>I.A.C.</u>	
565.3	82-3-16(L)		
565.4	82-3-16(L)	730, § 38.6	82-3-2
613A	82-3-14(L)		
701.8	82-3-12	<u>Code of Fed. Reg.</u>	
		433.146	82-3-19(1)

IOWA ADMINISTRATIVE BULLETIN

Iowa State Printing Division
Grimes State Office Building
Des Moines, Iowa 50319

Bulk Rate
U.S. Postage
PAID
Des Moines, Iowa
Permit No. 1195
