



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

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

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

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

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

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

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

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

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### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
16	Friday, January 13, 1984	February 1, 1984
17	Friday, January 27, 1984	February 15, 1984
18	Friday, February 10, 1984	February 29, 1984

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## SUBSCRIPTION INFORMATION

### Iowa Administrative Bulletin

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

First quarter	July 1, 1983, to June 30, 1984	\$104.00 plus \$4.16 sales tax
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### Schedule for Rulemaking 1984

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

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

35 days from the publication date is the earliest possible date for the agency to consider a noticed rule for adoption.

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

The Administrative Rules Review Committee will hold a special meeting, Tuesday, February 7, 1984, 7:30 a.m., State Capitol (room to be announced later). The following rules ( filed emergency and filed rules which will be effective prior to statutory meeting date of February 14, 1984) will be reviewed:

The regular statutory meeting will be held on Tuesday, February 14, 1984, 7:30 a.m., State Capitol (room to be announced later). A supplemental agenda will appear in IAB February 1, 1984.

**DIVISION I**  
Emergency Filed Rules

Bulletin

**COMMERCE COMMISSION[250]**Natural gas procurement and contracting practices, 19.1(3), 19.10, 19.11, filed emergency after notice **ARC 4397** ..... 1/4/84**DENTAL EXAMINERS, BOARD OF[320]**Biennial renewals, continuing education and adjusting fees, 6.4, 10.2, 11.2(2)"e", 11.3(2)"j", 11.5(2)"e", 13.1(3), 14.1, 15.1 to 15.4, 25.2(1), 25.2(2), 25.6, filed emergency **ARC 4375** ..... 1/4/84**HEALTH DEPARTMENT[470]**Psychologists, application for and renewal of a limited permit, 140.4(3), 140.4(9), 140.8(3), 140.9(1) to 140.9(3), 140.10, filed emergency after notice **ARC 4362** ..... 1/4/84**HIGH TECHNOLOGY COUNCIL, IOWA[485]**General description, ch 1; organization and operation, ch 2; grants program, ch 3; technology transfer, ch 4; filed emergency **ARC 4365** ..... 1/4/84**HUMAN SERVICES DEPARTMENT[498]**ADC, continuing eligibility, 40.7(1)"a", filed emergency **ARC 4386** ..... 1/4/84

**DIVISION II**  
Filed Rules

Bulletin

**COLLEGE AID COMMISSION[245]**Student loans, 2.1(5)"b"(6), 2.1(8)"f", 4.1(8), 5.1(8), 9.1(1)"h" **ARC 4371** ..... 1/4/84Guaranteed loan payment program, ch 14; science and mathematics loan program, ch 15 **ARC 4372** ..... 1/4/84Science and mathematics grant program, ch 16 **ARC 4373** ..... 1/4/84**COMMERCE COMMISSION[250]**Gas and electric utilities, notice of disconnect, customer rights and remedies, 19.4(15)"h"(2) and (3), 20.4(15)"h"(2), (3) and (4) **ARC 4396** ..... 1/4/84**HEALTH DEPARTMENT[470]**Chiropractor examiners, general, discipline, continuing education, 141.11(4), 141.13(1)"d", 141.24(10), 141.64(5) **ARC 4360** ..... 1/4/84**HUMAN SERVICES DEPARTMENT[498]**Fair hearings and appeals, aid to dependent children, food stamps, and medical assistance, 7.7(1)"b", 40.4(1)"a", 40.4(2)"c", 40.4(4), 40.6, 40.7(4)"e", 40.7(5)"a", 41.2(6)"b"(4), 41.2(7), 41.4(4), 41.7(1)"h"(1), 41.7(9)"e", 46.1(5), 46.3, 46.4, 46.4(3)"b", 46.5, 46.6, 65.19(2), 65.19(18), 65.22 to 65.24, 75.1(2), 75.1(14), 75.1(15), 75.1(17) **ARC 4383** ..... 1/4/84**PUBLIC SAFETY DEPARTMENT[680]**Accident reports, 1.4(5) **ARC 4369** ..... 1/4/84**REAL ESTATE COMMISSION[700]**Brokers and salespersons, 1.9, 1.19, 1.34, 1.35 **ARC 4368** ..... 1/4/84**REVENUE DEPARTMENT[730]**Interest, 10.2(3) **ARC 4390** ..... 1/4/84Individual income tax-minimum tax, deductions, child care credit, political contributions credit, venture capital fund investment credit, out-of-state credit, optional designations of funds by taxpayer, 39.6, 41.5(2), 42.2(3), 42.2(4), 42.2(5), 42.4(3), 43.4 **ARC 4391** ..... 1/4/84Withholding, 46.1(1)"c", 46.3(2) **ARC 4392** ..... 1/4/84Allocation or apportionment of investment income, 54.2 **ARC 4393** ..... 1/4/84Inheritance tax, 86.2(2) to 86.2(15), 86.3(1) to 86.3(3), 86.6, 86.9 to 86.12, 8.1(5)"b" **ARC 4394** ..... 1/4/84**VOTER REGISTRATION COMMISSION[845]**Voter registration forms and instructions, 2.1(1), 2.3(2), 2.3(3) **ARC 4370** ..... 1/4/84

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>BEER AND LIQUOR CONTROL DEPARTMENT[150]</b>		
On-premise advertising, 6.1(8) IAB 1/4/84 ARC 4364	Conference Room Central Office 1918 S.E. Hulsizer Ave. Ankeny, Iowa	February 7, 1984 3:00 p.m.
Transportation and warehouse, 8.2(123) IAB 1/4/84 ARC 4355	Conference Room Central Office 1918 S.E. Hulsizer Ave. Ankeny, Iowa	February 7, 1984 1:00 p.m.
<b>COMMERCE COMMISSION[250]</b>		
Natural gas procurement, amendments to ch 19 IAB 1/4/84 ARC 4398	Commission Hearing Room First Floor Lucas State Office Bldg. Des Moines, Iowa	January 30, 1984 10:00 a.m.
Revision of rate notification, amendments to 7.4, 19.2, 20.2, 21.2 and 22.2 IAB 1/18/84 ARC 4417	Commission Hearing Room First Floor Lucas State Office Bldg. Des Moines, Iowa	February 13, 1984 10:00 a.m.
Weatherization adjustment methodology, 19.10(3)"c" IAB 1/18/84 ARC 4418	Commission Hearing Room First Floor Lucas State Office Building Des Moines, Iowa	February 27, 1984 10:00 a.m.
<b>CORRECTIONS, DEPARTMENT OF[291]</b>		
Community-based corrections, chs 40, 44, 45, 46 IAB 1/4/84 ARC 4378	South Conference Room Grimes State Office Bldg. Des Moines, Iowa	January 27, 1984 1:00 p.m.
Visitation rules, 21.2(2) IAB 1/18/84 ARC 4414	South Conference Room Grimes State Office Bldg. Des Moines, Iowa	February 9, 1984 1:00 p.m.
<b>HIGH TECHNOLOGY COUNCIL[485]</b>		
New agency rules, chs 1-4 IAB 1/4/84 ARC 4366	Iowa Development Commission Conference Room 600 East Court Ave. Des Moines, Iowa	January 24, 1984 10:00 a.m.
<b>HOUSING FINANCE AUTHORITY[495]</b>		
Definitions, 1.8(7)"b" IAB 1/18/84 ARC 4410	Authority Office Fifth Floor Liberty Bldg. Des Moines, Iowa	February 7, 1984 10:00 a.m.
Permissible adjusted income, 1.8(11)"c" IAB 1/18/84 ARC 4409	Authority Office Fifth Floor Liberty Bldg. Des Moines, Iowa	February 7, 1984 10:00 a.m.
<b>MERIT EMPLOYMENT DEPARTMENT[570]</b>		
Grievances, appeals and hearings, ch 12 IAB 1/4/84 ARC 4387	Grimes Conference Room First Floor Grimes State Office Bldg. Des Moines, Iowa	February 10, 1984 9:15 a.m.
Merit pay plan, 4.5(2)"b", "e" IAB 1/18/84 ARC 4416	Grimes Conference Room First Floor Grimes State Office Bldg. Des Moines, Iowa	February 24, 1984 9:30 a.m.
<b>REAL ESTATE COMMISSION[700]</b>		
Brokers and salespersons, 1.11, 1.21 IAB 1/4/84 ARC 4367	Commission Office 1223 E. Court Ave. Suite 205 Des Moines, Iowa	January 20, 1984 9:00 a.m.

**TRANSPORTATION, DEPARTMENT OF[820]**

Claim for refund,  
[07,F] 1.12  
IAB 1/18/84 ARC 4402

Department of  
Transportation Complex  
800 Lincoln Way  
Ames, Iowa

March 6, 1984

**WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900]**

Waste water construction  
and operating permits  
64.2(9)  
IAB 1/4/84 ARC 4379

Fifth Floor  
Conference Room  
Henry A. Wallace Bldg.  
Des Moines, Iowa

January 24, 1984  
10:00 a.m.

**ARC 4417**

**COMMERCE COMMISSION[250]**

**NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)\*6\*.

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

The Iowa State Commerce Commission gives notice that on December 30, 1983, the Commission issued an order in Docket No. RMU-83-31, In Re: Notice of Rate or Charge Increase, "Order Commencing Rulemaking." This proposed rulemaking is commenced to revise the rate notification rules in Iowa Administrative Code 250—rule 7.4(476) to conform to 1983 Iowa Acts, Chapter 127, section 19, subsection 5 and section 20, subsection 7. The purpose of this rulemaking is to reflect necessary technical and procedural changes with regard to the notice of increased rates or charges. Also, the language of these rules has been reorganized in a more efficient, clear manner. The proposed standard notice, as provided in Iowa Administrative Code 250—subparagraph 7.4(1)"c"(1), will include a section specifying interim rates for those rate-regulated utilities which ask for an interim increase.

Any interested persons may file written comments not later than February 7, 1984, by filing an original and six copies of such comments substantially complying with the form prescribed in Iowa Administrative Code 250—subrule 2.2(2). Such comments shall clearly indicate the author's name and address, and shall contain a specific reference to this docket and the rule upon which comment is submitted. All comments shall be directed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319. Oral presentation shall be held on February 13, 1984, 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 within the deadline for written comments. This rulemaking shall be conducted pursuant to Iowa Administrative Code 250—Chapter 3.

This rule is intended to implement 1983 Iowa Acts, Chapter 127, section 19, subsection 5, and section 20, subsection 7:

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

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

Provided, however, that if a telephone utility is proposing to increase rates for only interexchange services, excluding EAS and intrastate access services, the utility shall cause the notice of proposed increase to be published, in at least one newspaper of

general circulation in each county where such increased rates are proposed to be effective; notice of the proposed increase. The notice shall be published at least twice in such newspaper no more than sixty-two days prior to the time the application for the increase is filed with the commission.

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

c. Standardized notice.

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

Form A

Dear Customer:

We are asking the Iowa State Commerce Commission for an increase in (type of service) utility rates effective with usage commencing on (date).

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

Although the effect of the proposed increase on your bill may vary depending upon the type and extent of usage, the average monthly increase per customer for all customers classes is:

	Current		Pro-	
(Charges)	(Charge)		posed	(Charge)
(Customer	(Monthly	+	posed	(Monthly
Class)	Rate)		Increase	Rate)
			=	Percent-
				age
				Increase

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

Proposed Interim Rate Increase

	Current		Pro-	
(Charges)	(Charge)		posed	(Charge)
(Customer	(Monthly		posed	(Monthly
Class)	Rate)	+	Increase	Rate)
			=	Percent-
				age
				Increase

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

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

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

Form B

Dear Customer:

(Company Name) is petitioning We are asking the Iowa State Commerce Commission for an increase in its (type of

COMMERCE COMMISSION[250] (cont'd)

service) utility (rates) (and) (charges) effective with usage commencing on (date).

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

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

			(Percent- age
	Current	Proposed	Increase)
(Charges)	(Charge)	Increase)	(Charge) (Percent-
(Customer	(Monthly	(Monthly	(Monthly age
Class)	Rate)	Increase)	= Rate) Increase)
		+	

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

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

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

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

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

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

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

Dear Customer:

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

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

Although the effect of the proposed increase on your bill may will vary depending upon the type and extent of usage, the

(average monthly increase per customer for the primary customer classes) (and) (actual increase in nonrecurring charges per customer) (is) (are) as follows:

			(Percent- age
	Current	(Amount of	Increase)
(Charges)	(Charge)	Increase)	(Charge) (Percent-
(Customer	(Monthly	(Monthly	(Monthly age
Class)	Rate)	Increase)	= Rate) Increase)
		+	

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

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

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

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

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

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

d. Other customer notification forms.

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

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

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

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

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

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



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

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

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

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

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

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

f. Delivery of notification.

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

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

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

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

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

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

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

(2) Issuing official and issue date.

(3) Effective date (to be left blank).

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

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

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

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

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

The effective date is to be designated by the utility and shall be not less than thirty days after the tariff or amendment is sent to the commission: left blank by the utility and the commission shall determine the effective date.

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

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

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

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

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

(2) Issuing official and issue date.

(3) Effective date (to be left blank).

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

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

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

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

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

The effective date is to be designated by the utility and shall be not less than thirty days after the tariff or amendment is sent to the commission left blank by the utility and the commission shall determine the effective date.

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

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

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

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

(2) Issuing official and issue date.

(3) Effective date (to be left blank).

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

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

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

(2) Issuing official and issue date.

(3) Effective date (to be left blank).

## ARC 4418

## COMMERCE COMMISSION[250]

## NOTICE OF INTENDED ACTION

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

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

The Iowa State Commerce Commission gives notice that on December 29, 1983, the Commission issued an order in Docket No. RMU-83-38, In Re: Weatherization Adjustment Methodology, "Order Commencing Rule-making."

The Commission intends to consider the adoption of rules setting forth minimum standards for any weatherization adjustment methodology to be used by utilities in determining whether degree-day adjustments are necessary. The methodology proposed by the Commission was previously proposed in another rulemaking proceeding, In Re: Gas Procurement and Contracting Practices, Docket No. RMU-83-26. The Commission declined to adopt a uniform weatherization adjustment methodology in that proceeding because most of the comments did not provide adequate information on the proposed methodology or alternative methodologies.

An interested person may file written comments not later than February 17, 1984, by filing the original and six copies of such comments substantially complying with the form prescribed in Iowa Administrative Code 250—subrule 2.2(2). The comments shall clearly indicate the author's name and address and shall contain a specific reference to this docket and the rule upon which comment is submitted. All comments shall be directed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319. An oral presentation has been scheduled in this docket for 10:00 a.m., February 27, 1984, in the Commission's Hearing Room on the First Floor of the Lucas State Office Building, Des Moines, Iowa. This rulemaking proceeding shall be conducted in accordance with Iowa Administrative Code 250—Chapter 3.

Since the Commission intends to adopt minimum weatherization adjustment methodology requirements, all parties filing written statements of position are requested to provide alternative proposals or propose changes to the original proposal.

Amend subparagraph 19.10(3)"c"(1) to read as follows:

(1) The sales volume, S, SB, and  $SB_n$ , and their components by account number to be used in calculation of purchased gas adjustments for the prospective twelve-month period beginning September 1, calculated by determining gas sales as defined in 19.10(3)"a" for the prior twelve-month period ending June 30, with necessary degree-day adjustments, and further adjusting these sales volumes for ~~anticipated~~ known and measurable changes to gas sales for the prospective twelve-month period beginning September 1.

To determine if degree-day adjustments are necessary, the following process should be used unless another methodology is approved by the commission:

A utility shall use a ninety-five percent confidence interval around the annual "heating degree-day normal" to determine whether gas operating income should be normalized for test-year weather experience.

A utility shall determine the necessity of an adjustment for each weather station used, and any adjustment necessary shall be made only for the related service territory.

In calculating the normalization for test-year weather experience, a utility shall use both normal and actual degree-day deficiencies as officially recorded by the National Oceanic and Atmospheric Administration (NOAA). In developing the confidence interval about the normal degree-day deficiencies at a weather station, a standard error of the normal heating degree-day of 71.3 degree-day deficiencies shall be used unless the statistical test of the variance demonstrates that the weather station's actual standard error is significantly different from 71.3 degree-day deficiencies using a ninety-five percent confidence interval when the actual standard error may be substituted.

If an adjustment to sales volume or operating income is necessary according to the confidence interval above, the adjustment shall be computed in the following manner:

1. Compile from NOAA records normal and actual degree-day deficiencies for each billing period and location served in a billing period, i.e., a billing month, or a billing cycle for each customer, or for a rate group subject to a common tariff for a location in a billing. Normal and actual degree-day deficiencies shall be calculated for the period over which volumes are used and applied to usage in the period in which this usage is billed.

2. Use the normal and actual degree-day deficiencies to develop weather normalization factors consisting of the ratio of normal degree-day deficiencies to actual degree-day deficiencies. The normalization factors are developed for each location for each billing period.

3. The heat load and base load volumes shall be determined. Customer usage which is not temperature-sensitive shall not be adjusted. The base load per customer is computed by dividing the total July, August and September volume by the total July, August and September customers, unless a lower base load, calculated similarly for a different period of three continuous months, is necessary and reasonable.

4. The base load for each billing period is the base load per customer times the number of customers in that billing period. Apply the appropriate weather normalization factor from "i" above to each period's heat load volume resulting in normalized usages, i.e.,

$$\left[ \frac{\text{Normal degree-day deficiencies}}{\text{actual degree-day deficiencies}} \times (\text{actual usage less base load usage}) \right] \text{ plus base load usage}$$

or alternatively its algebraic equivalent may be used, i.e.,  $[\text{normal degree-day deficiencies} \times (\text{actual usage less base load usage}) / \text{actual degree-day deficiencies}] \text{ plus base load usage}$ .

The normalized heat load volumes are added to the actual base load volumes to determine the normalized sales volumes for a billing period.

5. Normalized costs and/or revenues are determined by pricing normalized volumes through the applicable rate schedules.

For any degree-day deficiency adjustment made by a utility, the utility must include in its filing all documentation, data, and data sources used for weather normalization, including a schedule for each tariff being normalized stating the total sales (in units) and number of customers for each month of the year. Each tariff being normalized shall state from what weather station(s) the heating degree data is compiled, why a particular weather station site was chosen, and what relationship the site chosen has to the total gas usage in the rate area.

**ARC 4414**

**CORRECTIONS,  
DEPARTMENT OF[291]  
NOTICE OF INTENDED ACTION**

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

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

Pursuant to 1983 Iowa Acts, Chapter 96, the Department of Corrections hereby gives Notice of Intended Action to amend Chapter 21, Iowa State Penitentiary, to add one weekday per month to the visitation rules.

Any interested persons may make oral or written suggestions or comments on these proposed rules not later than 4:30 p.m., February 9, 1984. Such written materials shall be directed to the Director, Department of Corrections, Jewett Building, 10th and Grand, Des Moines, Iowa 50309. A meeting will be held for the purpose of oral presentation at 1:00 p.m., February 9, 1984, in the South Conference Room, First Floor, Grimes State Office Building, East 14th and Grand, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the director's office (515) 281-4811. The proposed rules are subject to revisions after the department considers all written and oral presentations:

Subrule 21.2(2) is amended as follows:

**21.2(2)** Approved visitors may be allowed *five* ~~four~~ visits per month. *The warden or designee may require that at least one of the five visits occurs on a weekday.*

**ARC 4412****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 Iowa Code §17A.4(1)"b".

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

Pursuant to the authority of Iowa Code sections 147.76 and 258A.5, the Iowa Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 135, "Medical Examiners", Iowa Administrative Code.

This rule would provide that the required report of final action taken by another licensing authority would be expunged from the records of the Board when a court of last resort overturns such disciplinary action.

At present there are no provisions to expunge such reports.

Any interested person may make written comments or suggestions on this proposed rule prior to February 7, 1984. Such written materials should be directed to Ronald V. Saf, Executive Director, Iowa Board of Medical Examiners, Executive Hills West, Capitol Complex, Des Moines, Iowa 50319. Persons who want to

convey their views orally should contact Ronald V. Saf at 515-281-5171 or in the offices at Executive Hills West prior to January 24, 1984.

This rule is intended to implement Iowa Code chapters 147, 148, 150, 150A and 258A.

Subrule 135.204(10) is amended to read as follows.

**135.204(10)** Failure to report a license revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country within thirty days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement: *however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.*

This rule is intended to implement Iowa Code sections 148.6, 148.7, 258.3 and 258.4.

**ARC 4410**

**HOUSING FINANCE  
AUTHORITY[495]**

**NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 220.5, subsection 15, the Iowa Housing Finance Authority hereby gives Notice of Intended Action to amend subrule 1.8(7), paragraph "b", defining the word "family", to conform to Iowa Code section 220.1, subsection 6, paragraph "a", by including within the definition a single person primarily responsible for his or her own support. The present rule of the Authority is in conflict with the statute in this regard, and this rule is to bring the Authority's rule into compliance with the statute.

Any interested person may make written suggestions or comments on this rule prior to February 7, 1984. Such written materials should be directed to the Executive Director, Iowa Housing Finance Authority, 550 Liberty Building, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Executive Director at 515/281-4058, or in the Authority's office on the fifth floor of the Liberty Building, 418-6th Avenue, Des Moines, Iowa. Also, there will be a public hearing on Tuesday, February 7, 1984, at 10:00 a.m., in the Authority's office on the fifth floor of the Liberty Building. Persons may present their views at this public hearing either orally or in writing.

This rule is intended to implement Iowa Code Chapter 220.

Subrule 1.8(7), paragraph "b" is rescinded and the following inserted in lieu thereof:

b. A single adult person who is primarily responsible for their own support, is at least sixty-two years of age, is disabled, is handicapped, or displaced, or is the remaining member of a tenant family, or is living with another person who is essential to such person's care or well-being.

This rule is intended to implement Iowa Code section 220.1, subsection 6.

**ARC 4409**  
**HOUSING FINANCE**  
**AUTHORITY[495]**  
**NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"6".

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

Pursuant to the authority of Iowa Code section 220.5, subsection 15, the Iowa Housing Finance Authority hereby gives Notice of Intended Action to amend 495—1.8(11)"c", by adding income figures for families under its new issue of bonds, 1983 Issue A. The substance of this rule is also being submitted as emergency adopted and implemented rules, **ARC 4408**, published in the Iowa Administrative Bulletin on January 18, 1984.

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

Any interested person may make written suggestions or comments on this rule prior to February 7, 1984. Such written materials should be directed to the Executive Director, Iowa Housing Finance Authority, 550 Liberty Building, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Executive Director at 515/281-4058, or in the Authority's office on the fifth floor of the Liberty Building, 418-6th Avenue, Des Moines, Iowa. Also, there will be a public hearing on Tuesday, February 7, 1984, at 10:00 a.m., in the Authority's office on the fifth floor of the Liberty Building. Persons may present their views at this public hearing either orally or in writing.

**ARC 4419**  
**INSURANCE DEPARTMENT[510]**  
**NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"6".

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

Pursuant to the authority of Iowa Code sections 505.8 and 508A.4, the Iowa Department of Insurance hereby gives Notice of Intended Action to add Chapter 33, "Variable Life Insurance Model Regulation," to the Iowa Administrative Code.

This chapter provides proper supervision and regulation of variable life insurance policies. This is necessary to protect consumers, while ensuring the solvency of the insurance companies that issue such policies.

Any interested person may make written suggestions or comments on these proposed rules prior to February 15, 1984. Such written materials should be directed to Kimerlee P. O'Hara, Market Conduct Division, Iowa Department of Insurance, Lucas Building, Des Moines,

Iowa 50319. Persons who wish to convey their views orally should contact Kimerlee P. O'Hara at 515-281-4241 or in the Insurance Department offices on the ground floor of the Lucas Building.

These rules are intended to implement Iowa Code Chapter 508A.

The following new chapter is proposed.

**CHAPTER 33**  
**VARIABLE LIFE INSURANCE**  
**MODEL REGULATION**

**510—33.1(508A) Authority.**

**33.1(1)** This chapter, applicable to variable life insurance policies, is promulgated under the authority of Iowa Code sections 505.8 and 508A.4.

**33.1(2)** This chapter is supplementary to chapter 31 of the Iowa Administrative Code, which remains in effect except that, with respect to any variable life insurance policy issued on or after the effective date of this chapter, this chapter shall control to the extent there is any conflict.

**510—33.2(508A) Definitions.** As used in this chapter:

**33.2(1)** "Affiliate" of an insurer means any person, directly or indirectly, controlling, controlled by, or under common control with such insurer; any person who regularly furnishes investment advice to such insurer with respect to its separate accounts for which a specific fee or commission is charged; or any director, officer, partner, or employee of any such insurer, controlling or controlled person, or person providing investment advice or any member of the immediate family of such person.

**33.2(2)** "Agent" means any individual licensed under Iowa Code chapter 522 as a life insurance agent.

**33.2(3)** "Assumed investment rate" means the rate of investment return which would be required to be credited to a variable life insurance policy, after deduction of charges for taxes, investment expenses, and mortality and expense guarantees to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable under the plan of insurance if the death benefit did not vary according to the investment experience of the separate account.

**33.2(4)** "Benefit base" means the amount to which the net investment return is applied.

**33.2(5)** "Commissioner" means the insurance commissioner of the state of Iowa.

**33.2(6)** "Control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management of policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing more than ten percent of the voting securities of any other person. This presumption may be rebutted by a showing made to the satisfaction of the commissioner that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

## INSURANCE DEPARTMENT[510] (cont'd)

**33.2(7)** "Flexible premium policy" means any variable life insurance policy other than a scheduled premium policy as specified in subrule 33.2(15).

**33.2(8)** "General account" means all assets of the insurer other than assets in separate accounts established pursuant to Iowa Code section 508A.1 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable life insurance.

**33.2(9)** "Incidental insurance benefit" means all insurance benefits in a variable life insurance policy, other than the variable death benefit and the minimum death benefit, including but not limited to accidental death and dismemberment benefits, disability benefits, guaranteed insurability options, family income, or term riders.

**33.2(10)** "May" is permissive.

**33.2(11)** "Minimum death benefit" means the amount of the guaranteed death benefit, other than incidental insurance benefits, payable under a variable life insurance policy regardless of the investment performance of the separate account.

**33.2(12)** "Net investment return" means the rate of investment return in a separate account to be applied to the benefit base.

**33.2(13)** "Person" means an individual, corporation, partnership, association, trust, or fund.

**33.2(14)** "Policy processing day" means the day on which charges authorized in the policy are deducted from the policy's cash value.

**33.2(15)** "Scheduled premium policy" means any variable life insurance policy under which both the amount and timing of premium payments are fixed by the insurer.

**33.2(16)** "Separate account" means a separate account established pursuant to Iowa Code section 508A.1 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

**33.2(17)** "Shall" is mandatory.

**33.2(18)** "Variable death benefit" means the amount of death benefit, other than incidental insurance benefits, payable under a variable life insurance policy dependent on the investment performance of the separate account, which the insurer would have to pay in the absence of any minimum death benefit.

**33.2(19)** "Variable life insurance policy" means any individual policy which provides for life insurance the amount or duration of which varies according to the investment experience of any separate account or accounts established and maintained by the insurer as to such policy, pursuant to Iowa Code section 508A.1 or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

**510—33.3(508A) Qualification of insurer to issue variable life insurance.** The following requirements are applicable to all insurers either seeking authority to issue variable life insurance in this state or having authority to issue variable life insurance in this state.

**33.3(1)** Licensing and approval to do business in this state. An insurer shall not deliver or issue for delivery in this state any variable life insurance policy unless the insurer is licensed or organized to do a life insurance business in this state, and the insurer has obtained the written approval of the commissioner for the issuance of variable life insurance policies in this state. The commissioner shall grant such written approval only after he has found that:

a. The plan of operation for the issuance of variable life insurance policies is not unsound;

b. The general character, reputation, and experience of the management and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer are such as to reasonably assure competent operation of the variable life insurance business of the insurer in this state; and

c. The present and foreseeable future financial condition of the insurer and its method of operation in connection with the issuance of such policies is not likely to render its operation hazardous to the public or its policyholders in this state. The commissioner shall consider, among other things:

(1) The history of operation and financial condition of the insurer;

(2) The qualifications, fitness, character, responsibility, reputation, and experience of the officers and directors and other management of the insurer and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer;

(3) The applicable law and regulations under which the insurer is authorized in its state of domicile to issue variable life insurance policies. The state of entry of an alien insurer shall be deemed its state of domicile for this purpose; and

(4) If the insurer is a subsidiary of, or is affiliated by common management or ownership with another company, its relationship to such other company and the degree to which the requesting insurer, as well as the other company, meet these standards.

**33.3(2)** Filing for approval to do business in this state. The commissioner may, at his discretion, require that an insurer, before it delivers or issues for delivery any variable life insurance policy in this state, file with this department the following information for the consideration of the commissioner in making the determination required by subrule 33.3(1):

a. Copies of and a general description of the variable life insurance policies it intends to issue;

b. A general description of the methods of operation of the variable life insurance business of the insurer, including methods of distribution of policies and the names of those persons or firms proposed to supply consulting, investment, administrative, custodial or distribution services to the insurer;

c. With respect to any separate account maintained by an insurer for any variable life insurance policy, a statement of the investment policy the issuer intends to follow for the investment of the assets held in such separate account, and a statement of procedures for changing such investment policy. The statement of investment policy shall include a description of the investment objectives intended for the separate account;

d. A description of any investment advisory services contemplated as required by subrule 33.6(9);

e. A copy of the statutes and regulations of the state of domicile of the insurer under which it is authorized to issue variable life insurance policies;

f. Biographical data with respect to officers and directors of the insurer on the National Association of Insurance Commissioners Uniform Biographical Data Form; and

g. A statement of the insurer's actuary describing the mortality and expense risks which the insurer will bear under the policy.

## INSURANCE DEPARTMENT[510] (cont'd)

**33.3(3) Standards of suitability.** Every insurer seeking approval to enter into the variable life insurance business in this state shall establish and maintain a written statement specifying the standards of suitability to be used by the insurer. Such standards of suitability shall specify that no recommendations shall be made to an applicant to purchase a variable life insurance policy and that no variable life insurance policy shall be issued in the absence of reasonable grounds to believe that the purchase of such policy is not unsuitable for such applicant on the basis of information furnished after reasonable inquiry of such applicant concerning the applicant's insurance and investment objectives, financial situation and needs, and any other information known to the insurer or to the agent making the recommendation.

**33.3(4) Use of sales materials.** An insurer authorized to transact variable life insurance business in this state shall not use any sales material, advertising material, or descriptive literature or other materials of any kind in connection with its variable life insurance business in this state which is false, misleading, deceptive, or inaccurate. Variable life insurance sales material, advertising material, and descriptive literature shall be subject to the additional requirements of chapter 15 of the Iowa Administrative Code.

**33.3(5) Requirements applicable to contractual services.** Any material contract between an insurer and suppliers of consulting, investment, administrative, sales, marketing, custodial, or other services with respect to variable life insurance operations shall be in writing and provide that the supplier of such services shall furnish the commissioner with any information or reports in connection with such services which the commissioner may request in order to ascertain whether the variable life insurance operations of the insurer are being conducted in a manner consistent with this chapter and any other applicable law or regulations.

**3.3(6) Reports to the commissioner.**

a. Any insurer authorized to transact the business of variable life insurance in this state shall submit to the commissioner, in addition to any other materials which may be required by this chapter or any other applicable laws or regulations:

(1) An annual statement of the business of its separate account or accounts in such form as may be prescribed by the National Association of Insurance Commissioners;

(2) Prior to the use in this state any information furnished to applicants as provided for in rule 33.7(508A);

(3) Prior to the use in this state the form of any of the reports to policyholders as provided for in rule 33.9(508A); and

(4) Such additional information concerning its variable life insurance operations or its separate accounts as the commissioner shall deem necessary.

b. Any material submitted to the commissioner under this subrule shall be disapproved if it is found to be false, misleading, deceptive, or inaccurate in any material respect and, if previously distributed, the commissioner shall require the distribution of amended material.

**33.3(7) Authority of commissioner to disapprove.** Any material required to be filed with and approved by the commissioner shall be subject to disapproval if at any time it is found by the commissioner not to comply with the standards established in this chapter.

**510—33.4(508A) Insurance policy requirements.** The commissioner shall not approve any variable life

insurance form filed pursuant to this chapter unless it conforms to the requirements of this rule.

**33.4(1) Filing of variable life insurance policies.** All variable life insurance policies, and all riders, endorsements, applications and other documents which are to be attached to be made a part of the policy and which relate to the variable nature of the policy, shall be filed with the commissioner and approved by him prior to delivery or issuance for delivery in this state.

a. The procedures and requirements for such filing and approval shall be, to the extent appropriate and not inconsistent with this chapter, the same as those otherwise applicable to other life insurance policies.

b. The commissioner may approve variable life insurance policies and related forms with provisions the commissioner deems to be not less favorable to the policyholder and the beneficiary than those required by this chapter.

**33.4(2) Mandatory policy benefit and design requirements.** Variable life insurance policies delivered or issued for delivery in this state shall comply with the following minimum requirements:

a. Mortality and expense risks shall be borne by the insurer. The mortality and expense charges shall be subject to the maximums stated in the contract.

b. For scheduled premium policies, a minimum death benefit shall be provided in an amount at least equal to the initial face amount of the policy so long as premiums are duly paid (subject to the provisions of 33.4(4)“b”);

c. The policy shall reflect the investment experience of one or more separate accounts established and maintained by the insurer. The insurer must demonstrate that the reflection of investment experience in the variable life insurance policy is actuarially sound.

d. Each variable life insurance policy shall be credited with the full amount of the net investment return applied to the benefit base.

e. Any changes in variable death benefits of each variable life insurance policy shall be determined at least annually.

f. The cash value of each variable life insurance policy shall be determined at least monthly. The method of computation of cash values and other nonforfeiture benefits, as described either in the policy or in a statement filed with the commissioner of the state in which the policy is delivered, or issued for delivery, shall be in accordance with actuarial procedures that recognize the variable nature of the policy. The method of computation must be such that, if the net investment return credited to the policy at all times from the date of issue should be equal to the assumed investment rate with premiums and benefits determined accordingly under the terms of the policy, then the resulting cash values to the minimum values required by Iowa Code section 508.37 (Standard Nonforfeiture Law) for a general account policy with such premiums and benefits. The assumed investment rate shall not exceed the maximum interest rate permitted under the Standard Nonforfeiture Law of this state. If the policy does not contain an assumed investment rate this demonstration shall be based on the maximum interest rate permitted under the Standard Nonforfeiture Law. The method of computation may disregard incidental minimum guarantees as to the dollar amounts payable. Incidental minimum guarantees include, for example, but are not to be limited to, a guarantee that the amount payable at death or maturity shall be at least equal to the

## INSURANCE DEPARTMENT[510] (cont'd)

amount that otherwise would have been payable if the net investment return credited to the policy at all times from the date of issue had been equal to the assumed investment rate.

g. The computation of values required for each variable life insurance policy may be based upon such reasonable and necessary approximations as are acceptable to the commissioner.

**33.4(3)** Mandatory policy provisions. Every variable life insurance policy filed for approval in this state shall contain at least the following:

a. The cover page or pages corresponding to the cover page of each such policy shall contain:

(1) A prominent statement in either contrasting color or in boldface type that the amount or duration of death benefit may be variable or fixed under specified conditions;

(2) A prominent statement in either contrasting color or in boldface type that cash values may increase or decrease in accordance with the experience of the separate account subject to any specified minimum guarantees;

(3) A statement describing any minimum death benefit required pursuant to 33.4(2)"b";

(4) The method, or a reference to the policy provisions which describes the method, for determining the amount of insurance payable at death;

(5) A captioned provision that the policyholder may return the variable life insurance policy within ten days of receipt of the policy by the policyholder, and receive a refund equal to the sum of:

1. The difference between the premiums paid including any policy fees or other charges and the amounts allocated to any separate accounts under the policy and

2. The value of the amounts allocated to any separate accounts under the policy, on the date the returned policy is received by the insurer or its agent.

(6) Such other items as are currently required for fixed benefit life insurance policies and which are not inconsistent with this chapter.

b. Grace period.

(1) For scheduled premium policies, a provision for a grace period of not less than thirty-one days from the premium due date which shall provide that when the premium is paid within the grace period, policy values will be the same, except for the deduction of any overdue premium, as if the premium were paid on or before the due date.

(2) For flexible premium policies, a provision for a grace period beginning on the policy processing day when the total charges authorized by the policy that are necessary to keep the policy in force until the next policy processing day exceed the amount available under the policy to pay such charges in accordance with the terms of the policy. Such grace period shall end on a date not less than sixty-one days after the mailing date of the report to policyholders required by subrule 33.9(3).

The death benefit payable during the grace period will equal the death benefit in effect immediately prior to such period less any overdue charges. If the policy processing days occur monthly, the insurer may require the payment of not more than three times the charges which were due on the policy processing day on which the amounts available under the policy were insufficient to pay all charges authorized by the policy that are necessary to keep such policy in force until the next policy processing day.

c. For scheduled premium policies, a provision that the policy will be reinstated at any time within two years from the date of default upon the written application of the insured and evidence of insurability, including good health, satisfactory to the insurer, unless the cash surrender value has been paid or the period of extended insurance has expired, upon the payment of any outstanding indebtedness arising subsequent to the end of the grace period following the date of default together with accrued interest thereon to the date of reinstatement and payment of an amount not exceeding the greater of:

(1) All overdue premiums with interest at a rate not exceeding the legally permissible maximum rate of interest compounded annually and any indebtedness in effect at the end of the grace period following the date of default with interest at a rate not exceeding the legally permissible maximum rate of interest compounded annually; or

(2) One hundred and ten percent of the increase in cash value resulting from reinstatement plus all overdue premiums for incidental insurance benefits with interest at a rate not exceeding the legally permissible maximum rate of interest compounded annually.

d. A full description of the benefit base and of the method of calculation and application of any factors used to adjust variable benefits under the policy;

e. A provision designating the separate account to be used and stating that:

(1) The assets of such separate account shall be available to cover the liabilities of the general account of the insurer only to the extent that the assets of the separate account exceed the liabilities of the separate account arising under the variable life insurance policies supported by the separate account.

(2) The assets of such separate account shall be valued at least as often as any policy benefits vary but at least monthly.

f. A provision specifying what documents constitute the entire insurance contract under state law;

g. A designation of the officers who are empowered to make an agreement or representation on behalf of the insurer and an indication that statements by the insured, or on behalf of the insured, shall be considered as representations and not warranties;

h. An identification of the owner of the insurance contract;

i. A provision setting forth conditions or requirements as to the designation, or change of designation, of a beneficiary and a provision for disbursement of benefits in the absence of a beneficiary designation;

j. A statement of any conditions or requirements concerning the assignment of the policy;

k. A description of any adjustments in policy values to be made in the event of misstatement of age or sex of the insured;

l. A provision that the policy shall be incontestable by the insurer after it has been in force for two years during the lifetime of the insured, provided, however, that any increase in the amount of the policy's death benefits subsequent to the policy issue date, which increase occurred upon a new application or request of the owner and was subject to satisfactory proof of the insured's insurability, shall be incontestable after any such increase has been in force, during the lifetime of the insured, for two years from the date of issue of such increase;

m. A provision stating that the investment policy of the separate account shall not be changed without the

## INSURANCE DEPARTMENT[510] (cont'd)

approval of the insurance commissioner of the state of domicile of the insurer, and that the approval process is on file with the commissioner of this state;

n. A provision that payment of variable death benefits in excess of any minimum death benefits, cash values, policy loans, or partial withdrawals (except when used to pay premiums) or partial surrenders may be deferred:

(1) For up to six months from the date of request, if such payments are based on policy values which do not depend on the investment performance of the separate account, or

(2) Otherwise, for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such payment impractical.

o. If settlement options are provided, at least one such option shall be provided on a fixed basis only;

p. A description of the basis for computing the cash value and the surrender value under the policy shall be included;

q. Premiums or charges for incidental insurance benefits shall be stated separately;

r. Any other policy provision required by this chapter;

s. Such other items as are currently required for fixed benefit life insurance policies and are not inconsistent with this chapter.

t. A provision for nonforfeiture insurance benefits. The insurer may establish a reasonable minimum cash value below which any nonforfeiture insurance options will not be available.

**33.4(4)** Policy loan provisions. Every variable life insurance policy, other than term insurance policies and pure endowment policies, delivered or issued for delivery in this state shall contain provisions which are not less favorable to the policyholder than the following with respect to policy loans after the policy has been in force for five full years:

a. At least seventy-five percent of the policy's cash surrender value may be borrowed;

b. The amount borrowed shall bear interest at a rate not to exceed that permitted by state insurance law.

c. Any indebtedness shall be deducted from the proceeds payable on death.

d. Any indebtedness shall be deducted from the cash surrender value upon surrender or in determining any nonforfeiture benefit.

e. For scheduled premium policies, whenever the indebtedness exceeds the cash surrender value, the insurer shall give notice of any intent to cancel the policy if the excess indebtedness is not repaid within thirty-one days after the date of mailing of such notice. For flexible premium policies, whenever the total charges authorized by the policy that are necessary to keep the policy in force until the next following policy processing day exceed the amounts available under the policy to pay such charges, a report must be sent to the policyholder containing the information specified by subrule 33.9(3).

f. The policy may provide that if, at any time, so long as premiums are duly paid, the variable death benefit is less than it would have been if no loan or withdrawal had ever been made, the policyholder may increase such variable death benefit up to what it would have been if there had been no loan or withdrawal by paying an amount not exceeding one hundred and ten percent of the corresponding increase in cash value and by furnishing such evidence of insurability as the insurer may request.

g. The policy may specify a reasonable minimum amount which may be borrowed at any time but such minimum shall not apply to any automatic premium loan provision.

h. No policy loan provision is required if the policy is under extended insurance nonforfeiture option.

i. The policy loan provisions shall be constructed so that variable life insurance policyholders who have not exercised such provisions are not disadvantaged by the exercise thereof.

j. Amounts paid to the policyholders upon the exercise of any policy loan provision shall be withdrawn from the separate account and shall be returned to the separate account upon repayment except that the stock insurer may provide the amounts for policy loans from the general account.

**33.4(5)** Other policy provisions. The following provision may be included in a variable life insurance policy or related form delivered or issued for delivery in this state:

a. An exclusion for suicide within two years of the issue date of the policy; provided, however, that to the extent of the increased death benefits only, the policy may provide an exclusion for suicide within two years of any increase in death benefits which result from an application of the owner subsequent to the policy issue date;

b. Incidental insurance benefits may be offered on a fixed or variable basis;

c. Policies issued on a participating basis shall offer to pay dividend amounts in cash. In addition, such policies may offer the following dividend options:

(1) The amount of the dividend may be credited against premium payments;

(2) The amount of the dividend may be applied to provide amounts of additional fixed or variable benefit life insurance;

(3) The amount of the dividend may be deposited in the general account at a specified minimum rate of interest;

(4) The amount of the dividend may be applied to provide paid-up amounts of fixed benefit one-year term insurance;

(5) The amount of the dividend may be deposited as a variable deposit in a separate account.

d. A provision allowing the policyholder to elect in writing in the application for the policy or thereafter an automatic premium loan on a basis not less favorable than that required of policy loans under subrule 33.4(4), except that a restriction that no more than two consecutive premiums can be paid under this provision may be imposed;

e. A provision allowing the policyholder to make partial withdrawals;

f. Any other policy provision approved by the commissioner.

**510—33.5(508A) Reserve liabilities for variable life insurance.**

**33.5(1)** Reserve liabilities for variable life insurance policies shall be established under the Standard Valuation Law (Iowa Code section 508.36) in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

**33.5(2)** For scheduled premium policies, reserve liabilities for the guaranteed minimum death benefit shall be the reserve needed to provide for the contingency of death occurring when the guaranteed minimum death benefit exceeds the death benefit that would be paid in the absence of the guarantee, and shall be maintained in the



## INSURANCE DEPARTMENT[510] (cont'd)

general account of the insurer and shall be not less than the greater of the following minimum reserves:

a. The aggregate total of the term costs, if any, covering a period of one full year from the valuation date, of the guarantee on each variable life insurance contract, assuming an immediate one-third depreciation in the current value of the assets of the separate account followed by a net investment return equal to the assumed investment rate; or

b. The aggregate total of the "attained age level" reserve on each variable life insurance contract. The "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall equal the "residue," as described in 33.5(2)"b"(1), of the prior year's "attained age level" reserve on the contract, with any such "residue," increased or decreased by a payment computed on an attained age basis as described in 33.5(2)"b"(2).

(1) The "residue" of the prior year's "attained age level" reserve on each variable life insurance contract shall not be less than zero and shall be determined by adding interest in the valuation interest rate to such prior year's reserve, deducting the tabular claims based on the "excess," if any, of the guaranteed minimum death benefit over the death benefit that would be payable in the absence of such guarantee, and dividing the net result by the tabular probability of survival. The "excess" referred to in the preceding sentence shall be based on the actual level of death benefits that would have been in effect during the preceding year in the absence of the guarantee, taking appropriate account of the reserve assumptions regarding the distribution of death claim payments over the year.

(2) The payment referred to in 33.5(2)"b" shall be computed so that the present value of a level payment of that amount each year over the future premium paying period of the contract is equal to (A) minus (B) minus (C), where (A) is the present value of the future guaranteed minimum death benefits, (B) is the present value of the future death benefits that would be payable in the absence of such guarantee, and (C) is any "residue," as described in 33.5(2)"b"(1), of the prior year's "attained age level" reserve on such variable life insurance contract. If the contract is paid up, the payment shall equal (A) minus (B) minus (C). The amounts of future death benefits referred to in (B) shall be computed assuming a net investment return of the separate account which may differ from the assumed investment rate or the valuation interest, or both, but in no event may exceed the maximum interest rate permitted for the valuation of life contracts.

c. The valuation interest rate and mortality table used in computing the two minimum reserves described in subrule 33.5(2) paragraphs "a" and "b", shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

**33.5(3)** For flexible premium policies, reserve liabilities for any guaranteed minimum death benefit shall be maintained in the general account of the insurer and shall be not less than the aggregate total of the term costs, if any, covering the period provided for in the guarantee not otherwise provided for by the reserves held in the separate account assuming an immediate one-third depreciation in the current value of the assets of the separate

account followed by a net investment return equal to the valuation interest rate.

The valuation interest rate and mortality table used in computing this additional reserve, if any, shall conform to permissible standards for the valuation of life insurance contracts. In determining such minimum reserve, the company may employ suitable approximations and estimates, including but not limited to groupings and averages.

**33.5(4)** Reserve liabilities for all fixed incidental insurance benefits and any guarantees associated with variable incidental insurance benefits shall be maintained in the general account and reserve liabilities for all variable aspects of the variable incidental insurance benefits shall be maintained in a separate account, in amounts determined in accordance with the actual procedures appropriate to such benefit.

**510—33.6(508A) Separate accounts.** The following requirements apply to the establishment and administration of variable life insurance separate accounts by any domestic insurer:

**33.6(1)** Establishment and administration of separate accounts. Any domestic insurer issuing variable life insurance shall establish one or more separate accounts pursuant to Iowa Code section 508A.1.

a. If no law or other regulation provides for the custody of separate account assets and if such insurer is not the custodian of such separate account assets, all contracts for custody of such assets shall be in writing and the commissioner shall have authority to review and approve of both the terms of any such contract and the proposed custodian prior to the transfer of custody.

b. Such insurer shall not without prior written approval of the commissioner employ in any material connection with the handling of separate account assets any person who:

(1) Within the last ten years has been convicted of any felony or a misdemeanor arising out of such person's conduct involving embezzlement, fraudulent conversion, or misappropriation of funds or securities or involving violation of Sections 1341, 1342, 1343 of Title 18, United States Code; or

(2) Within the last ten years has been found by any state regulatory authority to have violated or has acknowledged violation of any provision of any state insurance law involving fraud, deceit or knowing misrepresentation; or

(3) Within the last ten years has been found by federal or state regulatory authorities to have violated or has acknowledged violation of any provision of federal or state securities laws involving fraud, deceit, or knowing misrepresentation.

c. All persons with access to the cash, securities, or other assets of the separate account shall be under bond in the amount of not less than the greater of the amount required pursuant to section 17(g) of the Investment Company Act of 1940 or such other amount as the commissioner may deem appropriate.

**33.6(2)** Investments by the separate account.

a. No sale, exchange, or other transfer of assets may be made by an insurer or any of its affiliates between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(1) In case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the policies with respect to the separate account to which the transfer is made; and

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(2) Such transfer, whether into or from a separate account, is made by a transfer of cash; but other assets may be transferred if approved by the commissioner in advance.

b. The separate account shall have sufficient net investment income and readily marketable assets to meet anticipated withdrawals under policies funded by the account.

**33.6(3) Limitations on ownership.**

a. A separate account shall not purchase or otherwise acquire the securities of any issuer, other than securities issued or guaranteed as to principal and interest by the United States, if immediately after such purchase or acquisition the value of such investment, together with prior investments of such account in such security valued as required by this chapter, would exceed ten percent of the value of the assets of the separate account. The commissioner may waive this limitation in writing if he believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state.

b. No separate account shall purchase or otherwise acquire the voting securities of any issuer if as a result of such acquisition the insurer and its separate accounts in the aggregate, will own more than ten percent of the total issued and outstanding voting securities of such issuer. The commissioner may waive this limitation in writing if he believes such waiver will not render the operation of the separate account hazardous to the public or the policyholders in this state or jeopardize the independent operation of the issuer of such securities.

c. The percentage limitation specified in 33.6(3)"a", shall not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to the Investment Company Act of 1940 or other pools of investment assets if the investments and investment policies of such investment companies or asset pools comply substantially with the provisions of subrule 33.6(2) and other applicable portions of this chapter.

**33.6(4) Valuation of separate account assets.** Investments of the separate account shall be valued at their market value on the date of valuation, or at amortized cost if it approximates market value.

**33.6(5) Separate account investment policy.** The investment policy of a separate account operated by a domestic insurer filed under 33.3(2)"c" shall not be changed without first filing such change with the commissioner.

a. Any change filed pursuant to this rule shall be effective sixty days after the date it was filed with the commissioner, unless the commissioner notifies the insurer before the end of such sixty-day period of his disapproval of the proposed change. At any time the commissioner may, after notice and public hearing, disapprove any change that has become effective pursuant to this subrule.

b. The commissioner may disapprove the change if he determines that the change would be detrimental to the interests of the policyholders participating in such separate account.

**33.6(6) Charges against separate account.** The insurer must disclose in writing, prior to or contemporaneously with delivery of the policy, all charges that may be made against the separate account, including, but not limited to, the following:

a. Taxes or reserves for taxes attributable to investment gains and income of the separate account;

b. Actual cost of reasonable brokerage fees and similar direct acquisition and sale costs incurred in the purchase or sale of separate account assets;

c. Actuarially determined costs of insurance (tabular costs) and the release of separate account liabilities;

d. Charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate account;

e. A charge, at rate specified in the policy, for mortality and expense guarantees;

f. Any amounts in excess of those required to be held in the separate accounts;

g. Charges for incidental insurance benefits.

**33.6(7) Standards of conduct.** Every insurer seeking approval to enter into the variable life insurance business in this state shall adopt by formal action of its board of directors a statement specifying the standards of conduct of the insurer, its officers, directors, employees, and affiliates with respect to the purchase or sale of investments of separate accounts. Such standards of conduct shall be binding on the insurer and those to whom it refers. A code or codes of ethics meeting the requirements of Section 17(j) under the Investment Company Act of 1940 and applicable rules and regulations thereunder shall satisfy the provisions of this subrule.

**33.6(8) Conflicts of interest.** Rules under any provision of the insurance laws of this state or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee or other similar body.

**33.6(9) Investment advisory services to a separate account.** An insurer shall not enter into a contract under which any person undertakes, for a fee, to regularly furnish investment advice to such insurer with respect to its separate accounts maintained for variable life insurance policies unless:

a. The person providing such advice is registered as an investment advisor under the Investment Advice Act of 1940; or

b. The person providing such advice is an investment manager under the Employee Retirement Income Securities Act of 1974 with respect to the assets of each employee benefit plan allocated to the separate account; or

c. The insurer has filed with the commissioner and continues to file annually the following information and statements concerning the proposed advisor:

(1) The name and form of organization, state of organization, and its principal place of business;

(2) The names and addresses of its partners, officers, directors, and persons performing similar functions or, if such an investment advisor be an individual, of such individual;

(3) A written standard of conduct complying in substance with the requirements of subrule 33.6(7) which has been adopted by the investment advisor and is applicable to the investment advisor, its officers, directors, and affiliates;

(4) A statement provided by the proposed advisor as to whether the advisor or any person associated therewith:

Has been convicted within ten years of any felony or misdemeanor arising out of such person's conduct as an

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employee, salesman, officer or director of an insurance company, a banker, an insurance agent, a securities broker, or an investment advisor involving embezzlement, fraudulent conversion, or misappropriation of funds or securities, or involving the violation of Sections 1341, 1342, or 1343 of Title 18 of the United States Code;

Has been permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment advisor, underwriter, broker, or dealer, or as an affiliated person or as an employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity;

Has been found by federal or state regulatory authorities to have willfully violated or have acknowledged willful violation of any provision of federal or state securities laws or state insurance laws or of any rule or regulation under any such laws; or

Has been censured, denied an investment advisor registration, had a registration as an investment advisor revoked or suspended, or been barred or suspended from being associated with an investment advisor by order of federal or state regulatory authorities; and

d. Such investment advisory contract shall be in writing and provide that it may be terminated by the insurer without penalty to the insurer or the separate account upon no more than sixty days' written notice to the investment advisor.

The commissioner may, after notice and opportunity for hearing, by order require such investment advisory contract to be terminated if he deems continued operation thereunder to be hazardous to the public or the insurer's policyholders.

**510—33.7(508A) Information furnished to applicants.** An insurer delivering or issuing for delivery in this state any variable life insurance policies shall deliver to the applicant for the policy, and obtain a written acknowledgement of receipt from such applicant coincident with or prior to the execution of the application, the following information. The requirements of this rule shall be deemed to have been satisfied to the extent that a disclosure containing information required by this rule is delivered, either in the form of 1. A prospectus included in the requirements of the Securities Act of 1933 and which was declared effective by the Securities and Exchange Commission; or 2. all information and reports required by the Employee Retirement Income Security Act of 1974 if the policies are exempted from the registration requirements of the Securities Act of 1933 pursuant to Section 3(a)(2) thereof.

**33.7(1)** A summary explanation, in nontechnical terms, of the principal features of the policy, including a description of the manner in which the variable benefits will reflect the investment experience of the separate account and the factors which affect such variation. Such explanation must include notices of the provision required by 33.4(3)"a"(5) and 33.4(3)"f".

**33.7(2)** A statement of the investment policy of the separate account, including:

a. A description of the investment objectives intended for the separate account and the principal types of investments intended to be made; and

b. Any restrictions or limitations on the manner in which the operations of the separate account are intended to be conducted.

**33.7(3)** A statement of the net investment return of the separate account for each of the last ten years or such lesser period as the separate account has been in existence.

**33.7(4)** A statement of the charges levied against the separate account during the previous year.

**33.7(5)** A summary of the method to be used in valuing assets held by the separate account.

**33.7(6)** A summary of the federal income tax aspects of the policy applicable to the insured, the policyholder, and the beneficiary.

**33.7(7)** Illustrations of benefits payable under the variable life insurance contract. Such illustrations shall be prepared by the insurer and shall not include projections of past investment experience into the future or attempted predictions of future investments experience, provided that nothing contained herein prohibits use of hypothetical assumed rates of return to illustrate possible levels of benefits if it is made clear that such assumed rates are hypothetical only.

**510—33.8(508A) Applications.** The application for a variable life insurance policy shall contain:

**33.8(1)** A prominent statement that the death benefit may be variable or fixed under specified conditions.

**33.8(2)** A prominent statement that cash values may increase or decrease in accordance with the experience of the separate account (subject to any specified minimum guarantees).

**33.8(3)** Questions designed to elicit information which enables the insurer to determine the suitability of variable life insurance for the applicant.

**510—33.9(508A) Reports to policyholders.** Any insurer delivering or issuing for delivery in this state any variable life insurance policies shall mail to each variable life insurance policyholder at the policyholder's last known address the following reports.

**33.9(1)** Within thirty days after each anniversary of the policy, a statement or statements of the cash surrender value, death benefit, any partial withdrawal of policy loan, any interest charge, any optional payments allowed pursuant to subrule 33.4(4) under the policy computed as of the policy anniversary date. Provided, however, that such statement may be furnished within thirty days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than sixty days prior to the mailing of such notice. This statement shall state that, in accordance with the investment experience of the separate account, the cash values and the variable death benefit may increase or decrease, and shall prominently identify any value described therein which may be recomputed prior to the next statement required by this rule. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in such statement, the statement shall be modified to so indicate. For flexible premium policies, the report must contain a reconciliation of the change since the previous report in cash value and cash surrender value, if different, because of payments made (less deductions for expense charges), withdrawals, investment experience, insurance charges and any other charges made against the cash value. In addition, the report must show the projected cash value and cash surrender value, if different, as of one year from the end of the period covered by the report assuming that: (i) planned periodic premiums, if any, are paid as scheduled;

## INSURANCE DEPARTMENT[510] (cont'd)

(ii) guaranteed costs of insurance are deducted; and (iii) the net return is equal to the guaranteed rate or, in the absence of a guaranteed rate, is not greater than zero. If the projected value is less than zero, a warning message must be included that states that the policy may be in danger of terminating without value in the next 12 months unless additional premium is paid.

**33.9(2)** Annually, a statement or statements including:

a. A summary of the financial statement of the separate account based on the annual statement last filed with the commissioner;

b. The net investment return of the separate account for the last year and, for each year after the first, a comparison of the investment rate of the separate account during the last year with the investment rate during prior years, up to a total of net less than five years when available;

c. A list of investments held by the separate account as of a date not earlier than the end of the last year for which an annual statement was filed with the commissioner;

d. Any charges levied against the separate account during the previous year;

e. A statement of any change, since the last report, in the investment objective and orientation of the separate account, in any investment restriction or material quantitative or qualitative investment requirement applicable to the separate account or in the investment advisor of the separate account.

**33.9(3)** For flexible premium policies, a report must be sent to the policyholder if the amounts available under the policy on any policy processing day to pay the charges authorized by the policy are less than the amount necessary to keep the policy in force until the next following policy processing day. The report must indicate the minimum payment required under the terms of the policy to keep it in force and the length of the grace period for payment of such amount.

**510—33.11(508A) Qualifications of agents for the sale of variable life insurance.****33.11(1)** Qualification to sell variable life insurance.

a. No person may sell or offer for sale in this state any variable life insurance policy unless such person is an agent and has filed with the commissioner, in a form satisfactory to the commissioner, evidence that such person holds any license or authorization which may be required for the solicitation or sale of variable life insurance.

b. Any examination administered by the department for the purpose of determining the eligibility of any person for licensing as an agent shall, after the effective date of this chapter, include such questions concerning the history, purpose, regulation, and sale of variable life insurance as the commissioner deems appropriate.

**33.11(2)** Reports of disciplinary actions. Any person qualified in this state under this rule to sell or offer to sell variable life insurance shall immediately report to the commissioner:

a. Any suspension or revocation of his agent's license in any other state or territory of the United States.

b. The imposition of any disciplinary sanction, including suspension or expulsion from membership, suspension, or revocation of or denial of registration, imposed upon him by any national securities exchange, or national securities association, or any federal, state, or territorial agency with jurisdiction over securities or variable life insurance.

c. Any judgment or injunction entered against him on the basis of conduct deemed to have involved fraud, deceit, misrepresentation, or violation of any insurance or securities law or regulation.

**33.11(3)** Refusal to qualify agent to sell variable life insurance—suspension, revocation, or nonrenewal of qualification. The commissioner may reject any application or suspend or revoke or refuse to renew any agent's qualification under this rule to sell or offer to sell variable life insurance upon any ground that would bar such applicant or such agent from being licensed to sell other life insurance contracts in this state. The rules governing any proceeding relating to the suspension or revocation of an agent's license shall also govern any proceeding for suspension or revocation of an agent's qualification to sell or offer to sell variable life insurance.

**510—33.12(508A) Separability article.** If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

**ARC 4416**

**MERIT EMPLOYMENT  
DEPARTMENT[570]  
NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 19A.9, the Iowa Merit Employment Department hereby gives Notice of Intended Action to amend Chapter 4 "Pay Plan".

This amendment updates the rules on pay plan administration by: 1. Clearly differentiating the treatment of contractual and noncontractual employees for purposes of pay increase eligibility, 2. provides for the department's responsibilities in the administration of merit pay increase suspension and reinstatement, and 3. directs the reader to the proper subrule for the handling of salary adjustments for professional/managerial employees.

Any interested person may make written suggestions or comments on these proposed rules no later than February 7, 1984, to the Division Manager, Technical Services Division, Iowa Merit Employment Department, Grimes State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact the Division Manager, Technical Services Division at (515) 281-6602 or at the above address. Also, there will be a public hearing on Friday, February 24, 1984 at 9:30 a.m. in the Grimes Conference Room 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 Division Manager of

## MERIT EMPLOYMENT DEPARTMENT[570] (cont'd)

the Technical Services Division prior to the date of the public hearing in order to be scheduled.

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

The following amendments are proposed.

ITEM 1. Subrule 4.5(2) paragraph "b" is amended to read as follows:

b. Merit pay increase eligibility. Permanent full-time or part-time *noncontractual* employees *not covered by the professional/managerial pay plan* may be considered by the appointing authority for a one step merit pay increase at the beginning of the pay period following the completion of the prescribed minimum periods of *satisfactory competent* service set forth below. ~~Merit pay increases for employees covered by the professional/managerial pay plan shall be in accordance with 4.4(3). Contractual employees shall be given pay increases in accordance with the provisions of their respective collective bargaining agreements.~~ The minimum periods of *satisfactory* service shall be exclusive of time spent on educational leave (except as that required by the appointing authority), or other types of leave without pay which exceeds thirty calendar days or as otherwise provided for in these rules. A *satisfactory current* job performance evaluation with an "overall rating" of at least "competent" (3.00) must accompany the request be sent to the department for an increase to be approved; ~~except where collective bargaining agreement provisions call for automatic step increases.~~ *Noncontractual employees must have a job performance evaluation with an "overall rating" of at least "competent" (3.00) before a merit pay increase will be approved by the department. Minimum periods of competent service shall be:*

(1) Progression from 1st to 2nd step — twenty-six weeks.

(2) Progression from 2nd to 3rd, and all subsequent steps — fifty-two weeks.

(3) Progression between steps below the 1st step — twenty-six weeks.

(4) *Progression between steps for employees covered by collective bargaining agreements shall be as determined by the employment relations division.*

ITEM 2. Subrule 4.5(2) paragraph "e" is rescinded and the following adopted in lieu thereof:

e. Suspension of merit pay increases. Whenever merit pay increases are suspended by Acts of the general assembly, the rules providing for merit pay increase eligibility shall be suspended until such time as merit pay increase eligibility has been fully reimplemented. The department shall provide for the administration of the suspension and for the reinstatement of merit pay increase eligibility following the suspension.

ITEM 3. Subrule 4.5(2) paragraph "f" is adopted as follows:

f. Employees who are allocated to classes covered by the professional/managerial pay plan shall be adjusted according to subrule 4.4(3).

## ARC 4411

NURSING HOME  
ADMINISTRATORS,  
BOARD OF EXAMINERS[600]  
NOTICE OF INTENDED ACTION

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

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under §17A.9(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 258A.2, the Nursing Home Administrators Board of Examiners gives Notice of Intended Action to amend Chapter 3 of the Iowa Administrative Code relating to continuing education.

The proposed amendment removes provisions concerning continuing education no longer pertinent and removes the grace period of not more than thirty-one days to complete continuing education requirements.

Any interested person may make written comments concerning the proposed rules prior to 4:30 p.m. February 9, 1984 addressed to Peter J. Fox, Hearing and Compliance Officer, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed amendment is intended to implement Iowa Code section 258A.2.

Subrule 3.2(2) is amended to read as follows:

**3.2(2) The 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. A licensee shall have a grace period of not less than thirty-one days until January 31 of the following year to complete continuing education requirements. The report of continuing education during the grace period shall be submitted not later than January 31.**

Beginning October 1, 1981, the continuing education compliance period shall extend from October 1 of one odd-numbered year of a biennium to September 30 of the next odd-numbered year of the biennium during which period attendance at approved continuing education programs may be used as evidence of fulfilling continuing education requirements for the subsequent license renewal period beginning January 1. **A licensee shall have a grace period of not more than thirty-one days until October 31 to complete continuing education requirements.**

**ARC 4413**  
**PHARMACY EXAMINERS,**  
**BOARD OF[620]**  
**NOTICE OF INTENDED ACTION**

Twenty-five interested persons, a governmental subdivision, an agency or an association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §17A.4(1)"6".

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

Pursuant to the authority of Iowa Code section 17A.10, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 9, "Purpose and Organization." The proposed amendment was approved during the December 13, 1983, meeting of the Iowa Board of Pharmacy Examiners.

The proposed amendment will allow more flexibility in negotiating informal settlements with licensees.

Any interested person may submit data, views and arguments in writing on or before February 10, 1984, to Norman C. Johnson, Executive Secretary, Board of Pharmacy Examiners, 1209 E. Court, Executive Hills West, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 17A.10.

Subrule 9.2(3) paragraphs "b" and "c" are amended as follows:

b. The conference may be by conference telephone or in person. No recording or other transcription need be made except that the board *or its representative* shall cause to have prepared a summary of the conference ~~and submit it to the licensee or registrant for comment and corrections including the terms of any mutually acceptable negotiated settlement.~~ *The board representative shall present the terms of a negotiated settlement to the board at its next scheduled board meeting. The board may accept, reject or recommend modification to the terms of the settlement. A negotiated settlement which is acceptable to both parties shall be signed and dated by the licensee or registrant and by the board chairperson. The terms of the agreed upon settlement shall be binding on both parties. The conference may be continued if the parties deem it justified.*

c. ~~At the conclusion of the informal conference the board may elect to proceed to a disciplinary hearing. Informal conferences may be terminated by either party. Upon termination of an informal conference, the board may elect to proceed to a disciplinary hearing.~~

**ARC 4402**  
**TRANSPORTATION,**  
**DEPARTMENT OF[820]**  
**07 MOTOR VEHICLE DIVISION**  
**NOTICE OF INTENDED ACTION**

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.

On March 6, 1984, at their regular meeting at the Department of Transportation Complex, 800 Lincoln Way, Ames, Iowa, the Transportation Commission shall consider for adoption the administrative rules as described herein. This action shall be in accord with the Iowa administrative procedure Act, Iowa Code chapter 17A, and Department of Transportation rules 820—[01, B] Chapter 1, "Administrative Rules".

Written comments concerning these proposed rules or written requests to make an oral presentation at the above specified commission meeting shall be addressed to the Department of Transportation, Office of Financial/Operational Analysis, 800 Lincoln Way, Ames, Iowa 50010. Written comments or written requests to make an oral presentation may be accepted if received by the Department of Transportation on or before February 21, 1984.

Any person or agency, as defined in Iowa Code section 17A.2, subsections 1 and 6, may submit written comments or written requests to make an oral presentation. These comments or requests shall clearly state:

1. The name, address and phone number of the person or agency authoring the comment or request.
2. The title and number of the proposed rule as given in this notice which is the subject of the comment or request. (Comments pertaining to a specific section of a proposed rule shall reference that section by subrule, paragraph, and subparagraph as appropriate.)
3. If an oral presentation is requested, the general content shall be indicated.

Pursuant to the authority of Iowa Code section 307.10, the Department of Transportation hereby gives Notice of Intended Action to amend 820—[07,F] Chapter 1 entitled "Interstate Registration and Operation of Vehicles".

Iowa Code section 326.15 as amended by 1983 Iowa Acts, Chapter 161, establishes the requirements for obtaining a refund of registration fees. A revised rule on refund claims is proposed as a result of this legislation. The revised rule references the correct Iowa Code section and specifies the form to be used in claiming a refund.

This rule is intended to implement Iowa Code sections 326.12 and 326.15.

Proposed rulemaking actions:

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of Iowa Code section 307.10, rules 820—[07,F] Chapter 1 entitled "Interstate Registration and Operation of Vehicles" are hereby amended.

820—[07,F] 1.12(326) is amended by striking the current rule and inserting in lieu thereof the following:

**820—[07,F] 1.12(326) Making claim for refund.** Refunds of fees previously paid for the registration of motor vehicles may be made in accordance with Iowa Code section 326.15. Claim forms (Form 441021) may be obtained from and completed claim forms shall be returned to:

Office of Operating Authority  
 Iowa Department of Transportation  
 5238 NW Second Avenue  
 Des Moines, Iowa 50313  
 (515) 281-5664

This rule is intended to implement Iowa Code sections 326.12 and 326.15.

**ARC 4404****CITY FINANCE COMMITTEE[230]**

Pursuant to the authority of Iowa Code sections 384.13 to 384.22, the City Finance Committee is filing this rule as emergency implemented to become effective when filed with the Administrative Rules Coordinator on December 23, 1983. It was published as a Notice of Intended Action in IAB as ARC 4192 on October 26, 1983.

Emergency implementation is necessary as allowed in Iowa Code section 17A.5(2)"b"(2) so the rule will be in effect before city governments adopt their budgets for fiscal year 1984/85.

Words in the definition were made plural in the adopted rule and provide for transfers in and transfers out at the suggestion of the Administrative Rules Review Committee.

A public hearing was held on November 18, 1983, and the following comment was received: Would this definition require additional forms to be filed with the budget? Answer: No, this rule provides a definition of the "detailed budget" as stated in the Iowa Code section 384.16(2).

This rule implements Iowa Code Chapter 384.

Amend rule 2.1(384,388) by adding the following new definition.

2.1(7) "Detailed budget" shall mean documenting revenues and transfers in by sources and funds, and documenting expenditures and transfers out by programs, funds, activities, and characters.

[Filed emergency after notice 12/23/83, effective 12/23/83]  
[Published 1/18/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/18/84.

**ARC 4408****HOUSING FINANCE  
AUTHORITY[495]**

Pursuant to the authority of Iowa Code section 220.5, subsection 15, the Iowa Housing Finance Authority emergency adopts rules defining a low or moderate income family under its 1983 Issue A Bonds for Single Family Housing, under 495—subrule 1.8(11)"c".

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

impracticable, unnecessary and contrary to the public interest in that the sale of bonds for this program must be completed prior to December 30, 1983, and there is no time to proceed with the normal rulemaking process before the rule must take effect. Furthermore, it would be contrary to the public interest to delay this issuance of bonds to allow rulemaking as, under Section 103A, United States Internal Revenue Code of 1954, the interest on any bonds issued after December 31, 1983, will not be exempt from Federal Income Taxation, which would result in a drastically higher interest rate to eligible families. In addition, this rule is within a very narrowly tailored category of rules whose issuance has been previously exempted from subsection 1 by a special rule relying on section 17A.4, subsection 2, which contains a finding and statement of reason for the category. Also, the agency is publishing notice of intended rulemaking to allow public input on this same issue, **ARC 4409**.

The Authority also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of this rule thirty-five days after publication should be waived and the rule be made effective upon filing with the Administrative Rules Coordinator on December 23, 1983, as it confers a benefit on the public in the form of below-market interest rate mortgage loans for eligible families seeking mortgage financing for eligible properties.

The Housing Finance Authority adopted this rule at a special telephonic board meeting on December 20, 1983, and ratified and readopted it at a special telephonic meeting on December 21, 1983.

This rule implements Iowa Code Chapter 220.

Subrule 1.8(11), paragraph "c", is amended to read as follows:

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

1977 Series A	\$20,000.00	
1979 Series A	\$20,000.00	
1982 Issue A to buy newly built housing		\$33,100.00
1982 Issue A to buy previously occupied housing		\$24,900.00
1983 Issue A to buy newly built housing		\$33,100.00
1983 Issue A to buy previously occupied housing		\$25,500.00

This rule implements Iowa Code section 220.1, subsection 2.

[Filed emergency 12/23/83, effective 12/23/83]  
[Published 1/18/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/18/84.

**ARC 4407**  
**GENERAL SERVICES**  
**DEPARTMENT[450]**

Pursuant to the authority of Iowa Code Chapter 18, the Iowa Department of General Services adopts amendments to 450—Chapter 1, Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. VI, No. 9, October 26, 1983, as ARC 4188. Departmental representatives appeared before the Administrative Rules Review Committee on November 8, 1983.

Changes from such notice are as follows:

- 1.2(3)
- 1.3(18)
- 1.4(3)
- 1.5(1)
- 1.6(1) and adding 1.6(9)

The rules will become effective on February 22, 1984.

Renumber Chapter 1 as Chapter 6 and insert the following as a new Chapter 1:

**CHAPTER 1**  
**ORGANIZATION AND OPERATION**

**450—1.1(18) Function.** The Iowa department of general services was established by Iowa Code chapter 18. The department is responsible for purchasing goods and services for all state agencies, except those specifically exempted by law; printing; mail service; providing for the proper maintenance of buildings and grounds at the seat of government; risk management; records management; vehicle fleet management; state communications; and state and federal surplus property.

**450—1.2(18) Organization and operations.**

**1.2(1) Location.** The department is located in the Hoover State Office Building, Capitol Complex, Des Moines, Iowa 50319; phone (515) 281-5856. Office hours are 8:00 a.m. to 4:30 p.m. Monday through Friday.

**1.2(2) Administration of the department.**

a. The chief executive officer of the department is the director of general services who is appointed by the governor with the approval of two-thirds of the members of the senate. The director serves at the pleasure of the governor.

b. The director is assisted by a deputy director who is appointed by the director and serves at the pleasure of the director.

**1.2(3)** In order to carry out the functions of the department, the following divisions have been established:

a. The buildings and grounds division is responsible for buildings and grounds maintenance in the capitol complex.

b. The communications division is responsible for administering, unifying and co-ordinating statewide communications services:

c. The printing division is responsible for all copy machines, printing purchases, centralized printing, state document sales and state complex mail.

d. The purchasing division is responsible for purchasing goods and services for all state agencies except those specifically exempted by law.

e. The records management division is responsible for functions assigned by Iowa Code chapter 304, and reviews records related systems for state agencies, maintains centralized records storage, and is responsible for micrographics services to state agencies.

f. The risk management division is responsible for analyzing loss exposures of state agencies and making recommendations for the purchase of insurance or other risk control programs for state agencies.

g. The materials management division is responsible for the receipt, accounting and distribution of federal surplus property to state agencies, political subdivisions and certain nonprofit health and education activities. This division is also responsible for state surplus property and central supply.

h. The vehicle dispatcher division is responsible for the management of a fleet of vehicles for all state agencies except those exempted by law.

i. The budget and accounting division is responsible for internal accounting, inventory, vendor payment and budgeting for the department.

j. The personnel officer is responsible for recruitment, selection, training and payroll for employees of the department. In addition, the personnel officer is responsible for first aid, word processing, capitol complex parking and co-ordination of state functions.

k. The facilities engineer is responsible for new construction and assignment of space in metropolitan Des Moines area.

This rule is intended to implement Iowa Code section 18.3.

**450—1.3(18) Open records.** Except as provided in Iowa Code sections 68A.7 and 17A.2(7), all public records of the department are available for public inspection during business hours. Requests to obtain records may be made either by mail, telephone or in person. Minutes of capitol planning commission meetings, forms and other records routinely requested by the public may be obtained without charge. Other records requiring more than four copies may be obtained upon payment of a reasonable cost to cover the cost of copying and labor. All publications are priced to include distribution costs. Prices are derived by taking the total price of printing the items, dividing by the number of items ordered, and adding the distribution costs. Prices of publications and ordering instructions are available upon request from the printing division office. This charge may be waived in the case of requests made by governmental agencies or indigent persons.

**450—1.4(18) Petitions.**

**1.4(1) Petitions for declaratory rulings.** Petitions shall be sent to the director who shall review and announce a ruling and notify all interested parties, or defer a ruling until a later time.

**1.4(2) Vendor appeals.** Vendor appeals of decisions by the divisions of purchasing and printing shall be filed with the director within three days of decision, exclusive of Saturdays, Sundays and legal holidays. The director may issue a decision on the appeal after a review of the relevant records or after an informal public hearing to allow presentation of facts relating to the appeal. The decision of the director may be appealed to the Iowa executive council within three days of the decision, exclusive of Saturdays, Sundays and legal holidays.

**1.4(3) District court petitions.** Service of petitions for district court review of all department decisions, rulings and actions (where such service is required by Iowa Code chapter 17A) shall be made on the director. The department shall consult with the attorney general in all litigation.

This rule is intended to implement Iowa Code sections 18.4 and 18.7.



## GENERAL SERVICES DEPARTMENT[450] (cont'd)

**450—1.5(18) Smoking.**

1.5(1) Smoking is prohibited in all capitol complex buildings, except where specifically permitted by the director or by the officer to whom the director has assigned the area. The secretary of the senate, the clerk of the house and the court administrator are responsible for areas in the capitol building under their control.

1.5(2) Entrance doors of all capitol complex buildings shall be posted with signs reading, "smoking prohibited by law."

1.5(3) Smoking is allowed in offices where the department, agency or agency officer has posted signs reading, "smoking permitted."

1.5(4) Smoking is not permitted in lobbies, conference rooms, elevators, restrooms, hallways, stairwells and the Wallace building auditorium, unless specifically allowed by the director.

1.5(5) Cafeterias under control of the commission for the blind in the capitol complex shall be divided into smoking and nonsmoking sections and appropriate signs shall be posted.

This rule is intended to implement Iowa Code section 98A.2(6).

**450—1.6(18) Use of buildings and grounds in the capitol complex.**

1.6(1) Conference rooms and auditoriums within the capitol complex are for use by state agencies, boards and commissions for authorized purposes only. The secretary of the senate, the clerk of the house and the court administrator are responsible for areas in the capitol building under their control.

1.6(2) Arrangements for use of conference rooms and auditoriums by state agencies, boards and commissions may be made by contacting the agency responsible for scheduling the facility. Questions about usage shall be resolved by the personnel officer.

1.6(3) State agencies or the general public may request use of capitol complex grounds or parking lots for public events by letter to the director stating the name of the group, the purpose, the date, the number of participants and the name, address and telephone number of the responsible person and contact person. This shall not be interpreted as an infringement on the right of assembly and petition guaranteed by Section 20, Article I, The Constitution of Iowa.

1.6(4) Any state agency or public group granted permission to use the capitol complex facilities shall be responsible for a thorough cleanup after the event is concluded. All debris and animal waste shall be removed.

1.6(5) Consumption of alcoholic beverages is not permitted on the capitol complex.

1.6(6) The director may refuse to allow use of the facilities which, in his judgment, would be disruptive of official state business or of the public health and welfare. The director may consider recommendations of capitol security, previous experience with the requesting group or events such as that requested.

1.6(7) The director may require, when reasonable, that a damage deposit or bond be posted by any group requesting use of the capitol grounds.

1.6(8) State agencies desiring to lease meeting space away from the capitol complex in metropolitan Des Moines shall request in writing approval of the director and shall comply with comptroller's preaudit rules before obligating the state for an expenditure for this purpose.

1.6(9) Permission to distribute literature on the capitol complex grounds or in state-owned or occupied buildings

in metropolitan Des Moines must be obtained from the director or the director's designee. The director may designate specific locations from which literature may be distributed in order to assure control of litter, unobstructed access to public buildings and reasonable conduct of public business.

This rule is intended to implement Iowa Code section 18.10.

**450—1.7(18) Solicitation and sales in state-owned and occupied buildings in metropolitan Des Moines.**

1.7(1) Canteens, cafeterias and vending machines under the control of the commission for the blind and gift shops under the control of the state historical department are the only authorized methods of direct sales to employees and visitors in state-owned and occupied buildings in metropolitan Des Moines.

1.7(2) Solicitation of state employees for direct sales, within state-owned and occupied buildings is expressly forbidden. Solicitation of state employees for political contributions shall be governed by Iowa Code section 721.3.

1.7(3) Vendors seeking to sell supplies, equipment and services to state agencies shall comply with 450—2.2(18), approved vendors, and shall contact the purchasing division to schedule sales calls. This provision is not applicable to agencies otherwise excepted by law or rule.

This rule is intended to implement Iowa Code sections 18.10, 303.9(2), 601C.2(2), and 601C.3.

[Filed 12/23/83, effective 2/22/84]

[Published 1/18/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/18/84.

**ARC 4415****MERIT EMPLOYMENT  
DEPARTMENT[570]**

Pursuant to the authority of Iowa Code section 19A.9, the Iowa Merit Employment Commission adopts an amendment to Chapter 11, "Separations, Disciplinary Actions and Reduction in Force", Iowa Administrative Code.

This amendment modified the current subrule which requires that employees can only be reduced by whole days and which also limits the period of time the employee can be affected. This amendment provides for an equivalent reduction in the number of work hours and allows an agency the flexibility to extend the reduction over a greater period of time, as long as the impact on the employee does not exceed 120 hours in a fiscal year, as is currently the case.

Notice of Intended Action-Hearing was published in the Iowa Administrative Bulletin on October 26, 1983 as ARC 4171. The substance of this rule was submitted as an Emergency Adopted and Implemented Rule, ARC 4170, published in the Iowa Administrative Bulletin on October 26, 1983, and was effective on October 5, 1983.

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

The Iowa Merit Employment Commission adopted this rule at a public hearing held on December 8, 1983.

## MERIT EMPLOYMENT DEPARTMENT[570] (cont'd)

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

This rule will become effective on February 22, 1984.

The following amendment is adopted.

Rule 570—11.3(19A), is amended by striking subrule 11.3(1) and inserting in lieu thereof the following:

**11.3(1)** The following agency actions shall not constitute a reduction in force nor require application of these reduction in force rules:

a. An interruption of employment for no more than a total of fifteen work days or 120 hours in a fiscal year due to budgetary limitations or lack of work.

b. Interruptions in the employment of school term employees during recesses in the academic year or during the summer, or other seasonal interruptions that are a condition of employment.

c. The transfer of an employee within an agency.

[Filed 12/29/83, effective 2/22/84]

[Published 1/18/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/18/84.

## ARC 4405

### TRANSPORTATION, DEPARTMENT OF[820]

#### 07 MOTOR VEHICLE DIVISION

Pursuant to the authority of Iowa Code section 307.10, the Transportation Commission, on December 20, 1983, adopted amendments to 820—[07,D] Chapter 11 entitled "Vehicle Registration and Certificate of Title".

A Notice of Intended Action for these rule amendments was published in the November 9, 1983 Iowa Administrative Bulletin as ARC 4218.

A new subrule on vehicles leased by the government for sixty days or more is adopted. This subrule implements 1983 Iowa Acts, Chapter 40, section 1, which exempts these vehicles from payment of registration fees.

A new rule on the bonding procedure for titles is adopted. The bonding procedure is required if the applicant for a certificate of title cannot provide the required supporting documents evidencing vehicle ownership. This rule implements Iowa Code section 321.24.

A new rule on remanufactured vehicles is adopted. The rule implements 1983 Iowa Acts, Chapter 9, section 3, which allows the Department to establish equipment requirements and a vehicle inspection procedure for remanufactured vehicles.

A revised rule on specially constructed and reconstructed vehicles is adopted. This rule has been renumbered to place it next to the new rule on remanufactured vehicles and has been rewritten to make the requirements easier to understand.

These rule amendments are identical to the ones published under notice.

These rule amendments are intended to implement Iowa Code chapter 321.

These rule amendments are to be published as adopted in the January 18, 1984 Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective February 22, 1984.

#### 07 MOTOR VEHICLE DIVISION

Pursuant to the authority of Iowa Code section 307.10, rules 820—[07,D] Chapter 11 entitled "Vehicle Registration and Certificate of Title" are hereby amended.

ITEM 1. Rule [07,D]11.2(321) is amended by renumbering subrules 11.2(6) to 11.2(11) as 11.2(7) to 11.2(12), and by adding subrule 11.2(6) as follows:

**11.2(6)** Vehicles leased by the government. Vehicles leased by the government for a period of sixty days or more are exempted from payment of registration fees. A copy of the lease agreement, certificate of lease, or other evidence that the vehicle is being leased by the government shall be required in order to obtain this exemption. However, the lessor is not exempted from the requirements for obtaining a certificate of title as set out in Iowa Code chapter 321 and these rules, including payment of the appropriate certificate of title fee.

ITEM 2. Rescind subrule 11.3(6) and reserve for future use.

ITEM 3. Rule [07,D]11.5(321) is amended by renumbering subrules 11.5(2) to 11.5(7) as 11.5(3) to 11.5(8), and by adding subrule 11.5(2) as follows:

**11.5(2)** Registration of vehicles leased by the government for a period of sixty days or more.

ITEM 4. [07,D] chapter 11 is amended by adding rule [07,D]11.13(321) as follows:

**820—[07,D]11.13(321) Bond required before title issued.** If an applicant for a certificate of title cannot provide the supporting documents required in rule 11.4(321) of this chapter, the following shall apply:

**11.13(1)** Application. Form 411008, "Application for Registration and Certificate of Title for a Vehicle upon which the County Treasurer or Department of Transportation is not Satisfied as to the Ownership Thereof", shall be completed by the applicant and submitted to the department.

**11.13(2)** Exhibits. The following exhibits shall be submitted with the application:

a. A photograph of the vehicle which shows the front and one side of the vehicle.

b. The written ownership document received at the time the vehicle was acquired.

c. A pencil tracing of the vehicle identification number. If the vehicle identification number is missing or has been defaced or altered, the applicant shall complete and submit Form 411041, "Application for Assigned Vehicle Identification Number Plate".

**11.13(3)** Examination.

a. After a properly completed application and the required exhibits have been submitted, the department shall search the state files to determine if there is an owner of record for the vehicle and if the vehicle has been reported stolen or embezzled.

b. If a record is found, the applicant shall be advised to send a certified letter return receipt requested to the owner of record at the last known address stating that the applicant is the present owner of the vehicle and requesting a duplicate title with an assignment to the applicant on the reverse side. The applicant shall submit the returned receipt to the department.

**11.13(4)** Approval.

a. If the department determines that the applicant has complied with this rule, that there is sufficient evidence to indicate that the applicant is the rightful

## TRANSPORTATION DEPARTMENT[820] (cont'd)

owner, and that there is no known unsatisfied security interest, the department shall:

- (1) Determine the current value of the vehicle.
- (2) Notify the applicant to deposit cash or file a surety bond with the department in an amount equal to one and one-half times the current value of the vehicle.
  - b. After the cash deposit or surety bond has been received, the department shall:
    - (1) If applicable, affix an assigned identification number plate to the vehicle.
    - (2) Notify the county treasurer in writing that a certificate of title and registration receipt may be issued for the vehicle.
  - c. The applicant shall have the vehicle inspected at an official motor vehicle inspection station and submit the approved inspection certificate to the county treasurer, unless title is being applied for under Iowa Code section 321.51 (red title).
  - d. The applicant shall submit to the county treasurer a completed Form 411007, "Application for Certificate of Title and/or Registration for a Vehicle".
  - e. The applicant shall submit to the county treasurer an odometer statement completed by the seller; if the seller cannot be located, Form 411099, "Odometer Certification and Statement of Fact", shall be submitted in accordance with rule 11.52(321) of this chapter.
  - f. The county treasurer shall then issue a certificate of title and registration receipt for the vehicle upon payment of the appropriate fees. (Exception: A registration receipt shall not be issued for a "red title" vehicle.)

**11.13(5) Disapproval.** If the department determines that the applicant has not complied with this rule, that there is sufficient evidence to indicate that the applicant may not be the rightful owner, or that there is an unsatisfied security interest, then the department shall not authorize issuance of a certificate of title or registration receipt and shall notify the applicant in writing of the reason(s) therefor.

This rule is intended to implement Iowa Code section 321.24.

ITEM 5. [07,D] chapter 11 is amended by adding rule [07,D]11.16(321) as follows:

**820—[07,D]11.16(321) Application for certificate of title or original registration for a specially constructed or reconstructed vehicle.**

**11.16(1) Forms and definitions applicable to this rule.**

- a. Forms.
  - (1) Form 411007, "Application for Certificate of Title and/or Registration for a Vehicle".
  - (2) Form 417050, "Application for Registration and Certificate of Title for a Specially Constructed or Reconstructed Vehicle".
  - (3) Form 411041, "Application for Assigned Vehicle Identification Number Plate".
- b. Definitions.
  - (1) Ownership document for the vehicle. The certificate of title, the manufacturer's certificate of origin, the junking certificate, or other evidence of ownership acceptable to the department.
  - (2) Ownership documents for essential parts. Bills of sale for all essential parts used to construct or reconstruct the vehicle. Each bill of sale shall contain a description of the part, the manufacturer's identification number of the part, if any, and the name, address, and telephone number of the seller.

**11.16(2) Motor vehicle.** If the vehicle to be titled and registered is a specially constructed or reconstructed motor vehicle, the following shall apply:

- a. Application forms. The applicant shall complete Forms 411007, 417050, and 411041 and submit them to the county treasurer.
- b. Exhibits. The following exhibits shall be submitted with the application forms:
  - (1) Two photographs of the vehicle: One which clearly shows the front and one side of the vehicle, and one which clearly shows the back and the other side of the vehicle.
  - (2) A photocopy of the face of the ownership document for the vehicle. If the applicant is unable to comply with this subparagraph, the applicant may follow the bonding procedure set out in rule 11.13(321) of this chapter.
  - (3) Photocopies of the ownership documents for essential parts.
  - (4) A pencil tracing of the vehicle identification number, unless no vehicle identification number is on the frame being used.
  - (5) A weigh ticket indicating the weight of the vehicle. However, a weigh ticket is not required for motorcycles, trucks, truck tractors, road tractors or trailer-type vehicles.

c. Examination.

- (1) The county treasurer shall submit the application forms and exhibits to the department.
- (2) Upon receipt of the application forms and exhibits, the department shall contact the applicant in person or by telephone and schedule a time and place for an examination of the motor vehicle and the ownership documents.
- (3) The applicant, when appearing with the motor vehicle for the examination, shall submit to the department the ownership documents for the vehicle and essential parts.

d. Approval. If the department determines that the motor vehicle complies with rules 820—[07,E] chapter 1, that the motor vehicle is in safe operating condition, that the integral parts and components have been identified as to ownership, and that the application forms have been completed properly:

- (1) The department shall affix to the motor vehicle an assigned identification number plate with a distinguishing number, and the motor vehicle shall thereafter be identified by that number.
- (2) If the motor vehicle is a passenger-type vehicle, the department shall determine its weight and value. The vehicle weight shall be fixed at the next even one hundred pounds above the actual weight of the vehicle fully equipped, as provided in Iowa Code section 321.162. The weight and value shall constitute the basis for determining the annual registration fee under Iowa Code section 321.109.
- (3) The department shall complete, date, and sign those parts of the application forms reserved for departmental approval. This approval shall constitute authorization by the department to have the motor vehicle titled and registered under Iowa Code section 321.23.
- (4) The department shall return the application forms, exhibits and ownership documents for the vehicle and essential parts to the applicant.
- (5) The applicant shall have the motor vehicle inspected at an official motor vehicle inspection station and submit the approved inspection certificate to the county treasurer.

## TRANSPORTATION DEPARTMENT[820] (cont'd)

(6) The applicant shall submit to the county treasurer an odometer statement completed by the seller; if the seller cannot be located, Form 411099, "Odometer Certification and Statement of Fact", shall be submitted in accordance with rule 11.52(321) of this chapter.

(7) The applicant shall submit the application forms, exhibits, and the ownership document for the vehicle to the county treasurer.

(8) The county treasurer shall then issue a certificate of title and registration receipt for the motor vehicle upon payment of the appropriate fees.

e. *Disapproval.* If the department determines that the motor vehicle does not comply with rules 820—[07,E] chapter 1, that the motor vehicle is not in safe operating condition, that the integral parts or components have not been properly identified as to ownership, or that the application forms have not been completed properly, then the department shall not approve the motor vehicle for titling and registration.

**11.16(3)** Mobile home, travel trailer, semitrailer, or trailer with empty weight exceeding two thousand pounds. If the vehicle to be titled is a specially constructed or reconstructed mobile home, or if the vehicle to be titled and registered is a specially constructed or reconstructed travel trailer, semitrailer, or a trailer with an empty weight exceeding two thousand pounds, the following shall apply:

a. Application forms. The applicant shall complete Forms 411007, 417050, and 411041 and submit them to the county treasurer.

b. Exhibits. The following exhibits shall be submitted with the application forms:

(1) Two photographs of the vehicle: One which clearly shows the front and one side of the vehicle, and one which clearly shows the back and the other side of the vehicle.

(2) A photocopy of the face of the ownership document for the vehicle. If the applicant is unable to comply with this subparagraph, the applicant may follow the bonding procedure set out in rule 11.13(321) of this chapter.

(3) Photocopies of the ownership documents for essential parts.

(4) A pencil tracing of the vehicle identification number, unless no vehicle identification number is on the frame being used.

c. Examination. The county treasurer shall submit the application forms and exhibits to the department.

d. Approval. If the application forms appear to be properly completed and the photographs indicate that the vehicle is a specially constructed or reconstructed vehicle:

(1) The department shall forward to the applicant the application forms and exhibits, an assigned identification number plate with a distinguishing number, and an information sheet which indicates the location for attachment of the assigned identification number plate and equipment requirements applicable to trailer-type vehicles.

(2) The applicant shall attach the assigned identification number plate to the vehicle as specified and shall certify and sign in the appropriate space on Form 411041 that the plate has been attached and that the vehicle is properly equipped.

(3) The applicant shall submit the application forms, exhibits, and the ownership document for the vehicle to the county treasurer.

(4) The county treasurer shall then issue a certificate of title and registration receipt for the vehicle upon

payment of the appropriate fees. (Exception: A registration receipt shall not be issued for a mobile home.)

e. *Disapproval.* If the department determines that the application forms have not been properly completed or that the vehicle is not a specially constructed or reconstructed vehicle, the department shall not authorize issuance of a certificate of title or registration receipt and shall notify the applicant in writing of the reason(s) therefor within thirty days.

**11.16(4)** Trailer with empty weight of two thousand pounds or less. If the vehicle to be registered is a specially constructed or reconstructed trailer with an empty weight of two thousand pounds or less, the following shall apply:

a. Application forms. The applicant shall complete Forms 411007 and 417050 and submit them to the county treasurer.

b. Exhibits. The ownership document for the vehicle shall be submitted with the application forms.

c. Issuance of registration. When the application forms have been properly completed and the appropriate fees paid, the county treasurer shall register the vehicle, but shall not issue a certificate of title.

This rule is intended to implement Iowa Code sections 321.20, 321.23, 321.24, 321.52, 321.109 and 321.162.

ITEM 6. [07,D] chapter 11 is amended by adding rule [07,D]11.17(321) as follows:

**820—[07,D]11.17(321) Remanufactured vehicle.** If the vehicle to be titled and registered is a remanufactured vehicle, the following shall apply:

**11.17(1)** Application forms.

a. The applicant shall complete the following forms and submit them to the Office of Motor Vehicle Enforcement, Department of Transportation, 5268 N.W. 2nd Avenue, Des Moines, Iowa 50313:

(1) Form 420016, "Application for Remanufactured Vehicle".

(2) Form 411007, "Application for Certificate of Title and/or Registration for a Vehicle".

(3) Form 411041, "Application for Assigned Vehicle Identification Number Plate".

b. Form 420016 includes a certification by the applicant that the vehicle described meets all equipment requirements of the Federal Motor Carrier Safety Regulations (October 1, 1981). A copy of these regulations may be purchased from the office of motor vehicle enforcement at the address listed in paragraph "a" of this subrule.

**11.17(2)** Exhibits. The following exhibits shall be submitted with the application forms:

a. A photocopy of the face of the certificate of title for the original vehicle. The certificate of title for the original vehicle shall be in the applicant's name.

b. Photocopies of the invoices for all component parts used in assembling the remanufactured vehicle. Each invoice shall include a description of the part, the manufacturer's identification number of the part, if any, and the name, address and telephone number of the seller.

c. A photocopy of any other invoice or record of expense incurred by the applicant in remanufacturing the vehicle. A written description of any labor performed shall be required.

d. A photocopy of a document issued by the manufacturer of the cab of the chassis which shows the gross vehicle weight rating. However, this is not required if the

## TRANSPORTATION DEPARTMENT[820] (cont'd)

rating as certified by the manufacturer is shown on the cab of the chassis.

**11.17(3) Examination and fee.**

a. Upon receipt of the application forms and exhibits, the department shall contact the applicant in person or by telephone and schedule a time and place for an examination of the vehicle and required documents.

b. The applicant, when appearing with the vehicle for the examination, shall submit to the department the certificate of title, the invoices or other records of expenses incurred, and an examination fee of one hundred dollars. If the department disapproves the vehicle for titling and registration and the reasons for disapproval are corrected by the applicant, the vehicle shall be re-examined at no charge to the applicant.

**11.17(4) Approval.** If the department determines that the motor vehicle is a remanufactured vehicle as defined in Iowa Code subsection 321.1(82), that the vehicle is in safe operating condition, that the integral parts and components have been identified as to ownership, that the diesel engine and tires have not been previously put into service and carry manufacturer's warranties, and that the application forms have been properly completed:

a. The department shall affix to the vehicle an assigned identification number plate with a distinguishing number, and the vehicle shall thereafter be identified by that number.

b. The department shall complete, date and sign those parts of the application forms reserved for departmental approval. This approval shall constitute authorization by the department to have the motor vehicle titled and registered under Iowa Code section 321.23.

c. The department shall return the application forms and exhibits, certificate of title, invoices and other records of expenses incurred to the applicant. The applicant shall keep a copy of the invoices and other records of expenses incurred for three years. These documents shall be made available to peace officers upon request.

d. The applicant shall have the vehicle inspected at an official motor vehicle inspection station and submit the approved inspection certificate to the county treasurer.

e. The applicant shall submit the application forms, exhibits, and the certificate of title for the vehicle to the county treasurer within fifteen days after the date of approval by the department.

f. The county treasurer shall then issue a certificate of title and registration receipt for the vehicle upon payment of the appropriate fees.

**11.17(5) Disapproval.** If the department determines that the vehicle does not meet the definition of a remanufactured vehicle under Iowa Code subsection 321.1(82), that the vehicle is not in safe operating condition, that the integral parts or components have not been properly identified as to ownership, that the diesel engine or any tire of the vehicle has been previously put into service or is not under a manufacturer's warranty, or that the application forms have not been properly completed, then the department shall not approve the vehicle for titling and registration.

This rule is intended to implement Iowa Code sections 321.1 and 321.23 and 1983 Iowa Acts, chapter 9, sections 3 and 4.

**ITEM 7.** Rule [07,D]11.51(321) is amended as follows: Amend paragraph 11.51(1)"b" as shown:

b. The vehicle has had a cab, body, or frame change and the replacement cab, body, or frame is within the

manufacturer's interchangeability parts specifications catalog and is compatible with the make, model, and year of the vehicle. If the replacement cab, body, or frame change is not within the manufacturer's interchangeability parts specifications catalog or is not compatible with the make, year, and model of the vehicle, the vehicle shall be considered reconstructed and subject to the provisions of subrule 11.3(6) herein rule 11.16(321) of this chapter.

Amend paragraph 11.51(2)"c" as shown:

c. Specially constructed or reconstructed vehicle. If the application for an assigned identification number refers to a specially constructed or reconstructed vehicle, the procedure as outlined in subrule 11.3(6) herein rule 11.16(321) of this chapter shall be followed.

[Filed 12/23/83, effective 2/22/84]

[Published 1/18/84]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/18/84.

**ARC 4406**

## TRANSPORTATION, DEPARTMENT OF[820]

### 07 MOTOR VEHICLE DIVISION

Pursuant to the authority of Iowa Code section 307.10 and 1983 Iowa Acts, Chapter 125, the Transportation Commission, on December 20, 1983, adopted an amendment to 820—[07,E] Chapter 1 entitled "Motor Vehicle Lighting Devices and Other Safety Equipment".

A Notice of Intended Action for this rule amendment was published in the November 9, 1983 Iowa Administrative Bulletin as ARC 4219.

The amendment adds a new rule which establishes a means of measurement for excessively dark or reflective front windshields, front side windows and front side-wings. This new rule is required by and is intended to implement 1983 Iowa Acts, Chapter 125, section 5.

This rule amendment is identical to the one published under notice except for the following: The words "during daylight hours" were added at the end of the second paragraph of the new rule.

This rule amendment is to be published as adopted in the January 18, 1984 Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective February 22, 1984.

### 07 MOTOR VEHICLE DIVISION

Pursuant to the authority of Iowa Code section 307.10 and 1983 Iowa Acts, Chapter 125, rules 820—[07,E] chapter 1 entitled "Motor Vehicle Lighting Devices and Other Safety Equipment" are hereby amended.

[07,E] chapter 1 is amended by adding rule [07, E]1.7(321) as follows:

**820—[07,E]1.7(321) Windshields, windows and side-wings.** No person shall operate upon a public highway a motor vehicle that has a front windshield, a front side window (a side window to the immediate right or left of the driver), or a front side wing (a side wing forward of and to the left or right of the driver) which is excessively dark or reflective.

## TRANSPORTATION DEPARTMENT[820] (cont'd)

Excessively dark or reflective means that less than thirty percent of the available light is able to enter the vehicle through the front windshield, front side window, or front sidewing. This situation prevents a person outside the vehicle looking through the front windshield, front side window, or front sidewing from readily identifying the vehicle occupants from a distance of twenty-five feet during daylight hours.

This rule is intended to implement Iowa Code section 321.438, as amended by 1983 Iowa Acts, chapter 125, section 5.

[Filed 12/23/83, effective 2/22/84]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 1/18/84.

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA  
FILED - December 21, 1983

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

No. 83-110. IN RE MARRIAGE OF McMORROW.

Appeal from the Iowa District Court for Appanoose County, Richard J. Vogel, Judge. Reversed and remanded with directions. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Schultz, and Wolle, JJ. Opinion by Reynoldson, C.J.

(10 pages \$4.00)

Wife appeals from the denial of her request for a declaratory judgment that her former husband's alleged homestead was subject to execution for delinquent child support payments. OPINION HOLDS: I. In view of our resolution of another issue we are not required to decide whether all or part of the apartment building into which the former husband moved was a homestead. II. The apartment building was subject to judicial sale to pay delinquent child support payments ordered under a dissolution decree predating acquisition of its alleged homestead character.

No. 83-1110. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT  
v. FREED.

On review of the report of the Grievance Commission. License suspended. Considered en banc. Opinion by Reynoldson, C.J.

(6 pages \$2.40)

This is an attorney disciplinary proceeding. OPINION HOLDS: We agree with the grievance commission's conclusion that Freed's conduct in ignoring a default notice and failing to prosecute his client's appeal after accepting a retainer violated DR 1-102(A)(1), (4), (5) and (6); EC 2-33; EC 6-4; DR 6-101(A)(3); DR 7-101(A)(2) and (3); and EC 9-6 of the Iowa Code of Professional Responsibility for Lawyers, and Iowa Code section 610.24; Freed's license to practice law shall be suspended indefinitely with no possibility of reinstatement for six months.

No. 67967. STATE v. MARTIN.

On review from Iowa Court of Appeals. Appeal from the Iowa District Court for Cerro Gordo County, B. C. Sullivan, Judge. Decision of court of appeals affirmed; remanded to district court with direction. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, McCormick, and McGiverin, JJ. Opinion by Reynoldson, C.J.

(8 pages \$3.20)

The State was granted further review of a court of appeals decision reversing the defendant's conviction for false use of a financial instrument, a violation of Iowa Code section 715.6. OPINION HOLDS: I. The State did not prove beyond a reasonable doubt the knowledge element of the crime of false use of a financial instrument, namely that the defendant knew either (a) that the instrument bore a forged endorsement and therefore was not what it purported to be, or (b) that he was not "the person or authorized agent of the person who, as shown on the instrument, [had] the right to so use the instrument." II. The evidentiary deficiency in this case is not resolved by the State's argument that the defendant was not an authorized user of the check because he was not in a position to pass along an implied warranty of title pursuant to section 554.3417(1)(a) of the Iowa Commercial Code; the implied warranties in question may support a civil action, but they cannot be employed to supply missing proof in a criminal case, shift the burden of proof in a criminal case, or delete an element of a crime defined in the criminal code.

No. 69019. STATE v. SEILER.

Appeal from the Iowa District Court for Hancock County, B. C. Sullivan, Judge. Affirmed. Considered en banc. Opinion by Reynoldson, C.J. Dissent by McCormick, J. (12 pages \$4.80)

Defendant appeals from conviction and subsequent sentence for the crime of murder in the first degree, a violation of Iowa Code section 707.2. During a burglary, a billiard parlor owner was killed by blows to the head with a meat cleaver. OPINION HOLDS: I. The search warrant application provided sufficient facts to enable the magistrate to determine for himself there was probable cause to link defendant with the crime; the district court committed no error in admitting the evidence seized under this warrant. II. A jury instruction erroneously broadened the potential for a felony-murder conviction by eliminating the physical injury requirement of first-degree burglary; however, an error in instructing the jury does not necessitate reversal unless it is prejudicial; the jury could not have failed to find intentional infliction of physical injury, which would necessarily trigger a finding of first-degree burglary; the erroneous jury instruction thus did not constitute reversible error. DISSENT ASSERTS: This court's holding is the equivalent of a directed verdict for the State on an issue the State was obliged to prove beyond a reasonable doubt; I would reverse and remand for new trial.

No. 68574. IOWA CITY COMMUNITY SCHOOL DISTRICT V. IOWA CITY EDUCATION ASSOCIATION.

On review from Iowa Court of Appeals. Appeal from the Iowa District Court for Johnson County, Paul J. Kilburg, Judge. Decision of court of appeals vacated; district court affirmed. Considered en banc. Opinion by McCormick, J. Dissent by Reynoldson, C.J. (33 pages \$13.20)

Defendant association was granted further review of the court of appeals decision reversing the district court and vacating an arbitrator's award in favor of a teacher denied a salary increase. OPINION HOLDS: I. The issue of the teacher's alleged unsatisfactory performance was arbitrable under the terms of the collective bargaining agreement. II. The arbitrator's salary increase award drew its essence from the collective bargaining agreement. III. Allowing the parties to permit an arbitrator to decide what constitutes unsatisfactory teaching performance is not contrary to public policy. DISSENT ASSERTS: I. Under Iowa Code section 20.17(6) neither this collective bargaining agreement as construed by the district court nor the arbitrator's decision is valid and enforceable because each would substantially impair or limit the school district in the performance of its statutory duty under subsection 20.7(3). II. The arbitrator's salary increase award did not draw its essence from the collective bargaining agreement. III. Permitting an arbitrator to decide that a teacher's past satisfactory performance will excuse his present pedagogical deficiencies is contrary to the public policy of this state.

No. 68619. STATE v. PARKER.

Appeal from the Iowa District Court for Pottawattamie County, Keith E. Burgett, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Schultz, and Wolle, JJ. Opinion by Reynoldson, C.J. (11 pages \$4.40)

Defendant appeals from judgments of conviction and sentence for second-degree theft of a diesel cab-over truck tractor, a violation of Iowa Code subsections 714.1(2) and 714.2(2) (1981), and a first-degree theft of a refrigerated trailer, a violation of Iowa Code subsections 714.1(2) and 714.2(1) (1981). OPINION HOLDS: I. Where defendant was not rearraigned after his trial information was amended and where he attacked the amendment in court within forty days, there was good cause for his delayed challenge, and the State's waiver argument was inapplicable. II. Because each of the charged offenses required proof of facts which the other did not, the trial court did not err in permitting defendant to be tried and convicted on both of them, even though both occurred as part of a single incident.



No. 83-902. COMMITTEE ON PROFESSIONAL ETHICS AND CONDUCT  
v. J. PATRICK RYAN.

On review of the report of the grievance commission.  
License revoked. Considered en banc. Opinion by Harris, J.  
(5 pages \$2.00)

This is an attorney disciplinary proceeding. OPINION HOLDS: I. The evidence establishes, and Ryan does not dispute, that in some fourteen separate instances Ryan accepted employment, failed to perform the legal work, including failing to file petitions and letting statutes of limitations run in many instances, and then deceived his clients by telling them their cases had not yet been tried, were on appeal, or were being settled; Ryan's conduct was fraudulent and deceitful in violation of Iowa Code of Professional Responsibility for Lawyers DR 1-202(A)(4), and reflected adversely on his fitness to practice law in violation of DR 1-202(A)(6); we are not persuaded that Ryan's problems with alcohol are an explanation of his misconduct.

No. 68627. IN RE MARRIAGE OF PAYNE.

Appeal from the Iowa District Court for Pottawattamie County, Paul R. Sulhoff, Judge. Affirmed. Considered by Uhlenhopp, P.J., and Harris, McGiverin, Larson and Carter, JJ. Opinion by Harris, J. (8 pages \$3.20)

This is a challenge to an order modifying a dissolution of marriage decree raising issues regarding personal jurisdiction and appointment of a guardian ad litem for a prisoner under Iowa Rule of Civil Procedure 13. OPINION HOLDS: I. A judgment entered against a prisoner without appointment of a guardian ad litem is merely voidable under rule 13 if the prisoner was actually represented by an attorney or court-appointed guardian; the judgment is void only if the prisoner received no such representation; before trial court ruled on respondent's request for appointment of a guardian ad litem, respondent, who is incarcerated in Nebraska, retained counsel who represented him throughout the modification proceeding. II. Respondent is not entitled to appointment of a guardian ad litem on appeal. III. Personal jurisdiction plainly appears from respondent's pro se requests for visitation rights with his children and from his subsequent "Special Appearance" prepared by counsel, which amounted to a request for affirmative relief and was in fact a general appearance. IV. We have examined respondent's other assignments and find them without merit; we approve and adopt as our own the trial court's grant of expanded visitation rights for respondent, requirement that he pay child support, and award of attorney's fees to his ex-wife.

No. 83-250. FISCHER AND COMPANY, INC. V. HAYES.

Appeal from the Iowa District Court for Dubuque County, Thomas H. Nelson, Judge. Reversed. Considered by Reynoldson, C.J., Uhlenhopp, McCormick, Schultz and Wolle, JJ. Per curiam. (2 pages \$.80)

Plaintiffs appeal from an order sustaining defendant's motion to dismiss their petition for declaratory judgment that Dubuque County was required to follow statutory bidding requirements before entering a lease for county office space. OPINION HOLDS: When a motion to dismiss a declaratory judgment petition is filed, the issue is whether the plaintiff has stated a claim for declaratory relief, not whether the plaintiff has stated a claim upon which a favorable declaratory judgment could be obtained; the petition here meets that test; therefore the trial court erred in dismissing the action.

No. 69504. STATE V. LORD.

Appeal from the Iowa District Court for Polk County, Gene L. Needles, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Schultz and Wolle, JJ. Opinion by McCormick, J. (7 pages \$2.80)

Defendant appeals from his conviction by jury and sentence for first-degree murder in violation of Iowa Code section 707.2(2) (1981). OPINION HOLDS: Two opinions expressed by a police officer at trial did not exceed the scope of the minutes of testimony.

No. 68708. STATE V. OLIVER.

Appeal from the Iowa District Court for Polk County, Louis A. Lavorato, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Schultz and Wolle, JJ. Opinion by McCormick, J. (9 pages \$3.60)

Defendant appeals from his conviction of first-degree murder in violation of Iowa Code sections 707.1 and 707.2 OPINION HOLDS: I. All elements of the plain view doctrine were established, and trial court therefore did not err in overruling defendant's motion to suppress certain magazines found under a rug in defendant's apartment. II. We find no abuse of trial court discretion in admitting, over defendant's foundation objection, expert opinion testimony regarding comparison between a bloody shoe print found on a piece of paper in the victim's apartment and the sole of defendant's tennis shoe. III. Trial court's marshalling instruction on felony murder, when read together with the instruction on first and second degree murder, was not unclear regarding the element of malice aforethought. IV. Application of the felony murder statute in this case did not deny defendant due process; although Iowa Code section 707.2(2) allows malice aforethought to be inferred from the acts constituting a felony, the jury in this case was instructed separately on the elements of murder and the elements of robbery, and defendant therefore could not be convicted of murder under these instructions without a finding of malice aforethought. V. Because it is supported by substantial evidence, we are bound by trial court's finding that alleged contacts between jurors and members of the victim's family did not occur. VI. We do not approve of raising ineffective assistance of counsel claims on appeal by incorporating by reference and arguing generally ineffective assistance claims raised in a motion for new trial; without deciding whether those claims should be deemed waived, however, we reject them on the merits, adopting in each instance the reasoning of the trial court; there is no factual basis for defendant's new ineffective assistant claim regarding counsel's allegedly untimely notification of possible juror misconduct.

No. 69570. IN THE INTEREST OF ROUSSELOW.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge. Reversed. Considered by Uhlenhopp, P.J., and Harris, McGiverin, Larson and Carter, JJ. Opinion by McGiverin, J. Dissent by Carter, J. (11 pages \$4.40)

Juvenile appeals from an adjudication of delinquency. Following an adjudicatory hearing, the juvenile court found that the juvenile had committed a delinquent act, but is withheld entry of an order of adjudication of delinquency pending a dispositional hearing. At the subsequent dispositional hearing, the court denied on timeliness grounds the juvenile's motion for a consent decree under Iowa Code section 232.46(1). OPINION HOLDS: I. Even though the juvenile's case has been dismissed, we conclude that his principal claim on appeal regarding the timeliness of his motion for a consent decree remains a justiciable controversy; the juvenile's claim that the court erred in ordering dispositional terms unauthorized by the disposition statute, section 232.52, is moot. II. We hold that under sections 232.47(1), 232.48(2), and 232.50(1), an order of adjudication of delinquency may be entered at the outset of a dispositional hearing provided that (1) a separate adjudicatory hearing has been previously held, (2) the juvenile court made a finding during the adjudicatory hearing that the juvenile had engaged in delinquent conduct, and (3) an order of adjudication of delinquency has been withheld to permit the preparation and examination of the predisposition report; the juvenile court committed prejudicial error by denying the juvenile's motion for a consent decree on the basis of untimeliness. III. Because this juvenile case subsequently was dismissed and the juvenile is therefore no longer amenable to the jurisdiction of the juvenile court, we reverse the juvenile court's oral ruling denying the motion for a consent decree and vacate the order of adjudication of delinquency. DISSENT ASSERTS: The dispositional hearing is beyond the point in the proceedings when a consent decree should be considered; the entry directing the withholding of the order of adjudication in the present case was expressly conditioned on advancing the proceeding directly to the dispositional hearing -- a circumstance which should preclude any entitlement to a consent decree.

No. 69322. DEPARTMENT OF TRANSPORTATION V. IOWA DEPARTMENT OF JOB SERVICE.  
Appeal from the Iowa District Court for Woodbury County, James P. Kelley, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Schultz and Wolle, JJ. Opinion by McCormick, J.  
(6 pages \$2.40)

The petitioner, Department of Transportation, Federal Aviation Commission, appeals the district court's sustention of special appearances by Iowa Department of Job Service and unemployment benefits claimants contesting jurisdiction of the district court to review the department's decisions upholding the claimants' rights to unemployment compensation. OPINION HOLDS: An "attorney of record in the proceeding before the agency" for purposes of service of a petition for judicial review under Iowa Code section 17A.19(2) (1983) means "attorney-at-law"; the petitioner did not substantially comply with the notice requirements of section 17A.19(2) by mailing copies of the petitions to the department and the non-lawyer who represented the claimants before the department; because petitioner did not comply with the jurisdictional prerequisite to district court review, the district court did not acquire jurisdiction of the case.

No. 68847. RODGERS V. BAUGHMAN.  
Appeal from the Iowa District Court for Davis County, James P. Rielly, Judge. Reversed and remanded. Considered en banc. Opinion by McCormick, J. Dissent by Uhlenhopp, J.  
(17 pages \$6.80)

Plaintiff appeals from dismissal of his claim for a real estate commission. OPINION HOLDS: I. A rule of the real estate commission requires listing agreements to "properly" identify the property, and to contain "the signatures of all parties concerned . . ."; the commission rule is analogous to a statute of frauds; a description properly identifies the property "where it furnishes a sufficient foundation for the admission of extrinsic evidence to apply the description and by means of such evidence the particular tract of land which is the subject matter of the agreement may be identified and located to the exclusion of all others"; under that standard the identification was sufficient in this case; the term "all parties concerned" as used in rule 700-1.23 merely requires the listing to be signed by or in behalf of all persons the broker seeks to hold responsible for the listing agreement. II. It is well established that a party may waive a condition precedent; the waiver issue was sufficiently raised; the fact finder could find the potential buyer waived the condition by writing defendants that he was ready, willing and able to complete the purchase; the trial court erred in dismissing the action on this ground. III. Iowa Code section 496A.76, which requires majority shareholder approval of sales of corporate assets that occur other than in the regular course of business, may not be asserted by the corporation itself to invalidate the transaction; substantial evidence of actual and apparent authority to bind the corporation exists; the trial court should not have sustained defendants' motion on the ground of noncompliance with section 496A.76. DISSENT ASSERTS: I. As to the clause in the rule that a listing shall be "in writing . . . containing . . . the signatures of all parties concerned," this listing contained only the signatures of the realtor and "Harold C. Baughman" -- although three owners existed; "all" in this context means "everybody"; the plain wording of the rule requires that the writing contain the signatures of the other two owners, but it does not. II. While I do not think the writing need describe the property with the punctilio of a deed, I do believe the present listing is entirely inadequate as a "writing, properly identifying the property." III. A loose construction of the rule will not further the commission's aim of tightening up listings; I would affirm the judgment on the ground that the listing does not meet the signatures and identification requirements of the rule and is therefore unenforceable.

No. 69573. STATE V. LINK  
Appeal from Iowa District Court for Wright County, Newt Draheim, Judge. Sentence vacated; case remanded. Considered by McGiverin, P.J., and Larson, Schultz, Carter and Wolle, JJ. Opinion by Larson, J.  
(7 pages \$2.80)

State challenges via discretionary review defendant's 120-day jail sentence following revocation of probation in a Class-C felony case. OPINION HOLDS: Because the underlying offense of second-degree burglary was a Class-C felony,

a jail term was not one of the sentencing options available to the court at the original sentencing; Iowa Code section 908.11, authorizing a court upon revocation of probation to "require the defendant to serve the sentence imposed or any lesser sentence," does not expand sentencing options in probation revocation cases beyond those prescribed for an original sentencing; accordingly, we vacate the sentence and remand.

No. 83-512. ROZEVINK v. FARIS.

Appeal from the Iowa District Court for Hardin County, David R. Hansen, Judge. Affirmed. Considered en banc. Opinion by Wolle, J. Dissent by Uhlenhopp, J.

(16 pages \$6.40)

Defendants responsible for 17% of injury-producing negligence appeal from judgment holding them jointly and severally responsible with other defendant for entire damage award. OPINION HOLDS: I. Defendants Farises' contention that Iowa code section 516A discloses an intent to require plaintiffs rather than defendant to bear the risk that one of several defendants will be insolvent is incorrect. II. Iowa's joint and several liability doctrine is unaffected by our adoption of pure comparative negligence. DISSENT ASSERTS: We have adopted "pure" comparative negligence -- "proportionate responsibility for fault"; applying that concept when the incident involves two actors but not applying it when the incident involves more than two actors seems fundamentally incongruous to me; this is a simple case of three actors without immunities, and I would apply "proportionate responsibility for fault" to all of them.

No. 83-04. GREENE V. DISTRICT COURT.

Certiorari to the Iowa District Court for Polk County, Louis A. Lavorato, Judge. Writ sustained. Considered en banc. Opinion by Schultz, J. Concurrence in part and dissent in part by Carter, J.

(12 pages \$4.80)

In this original certiorari action plaintiff challenges an ex parte district court order committing him to jail. This order enforced a previous contempt judgment and jail sentence entered against him for failure to pay child support. Confinement upon the sentence was withheld pending his satisfaction of certain conditions, notably payment of a portion of the delinquent child support arrearage. OPINION HOLDS: I. Whenever the district court withholds commitment on an adjudication of contempt subject to certain conditions, due process requires notice and hearing before commitment can be ordered for failure to comply with those conditions; where commitment is withheld in contempt proceedings under Iowa Code section 598.23, a subsequent issue of commitment is not proper absent findings that the offending person is responsible for his failure to comply or that alternative procedures are inadequate to meet the court's interest in punishment and deterrence. II. Punishment for contempt is not improper after child support payments stop accruing. III. Imprisonment for child support arrearages does not constitute imprisonment for debt. IV. In the circumstances of this case, plaintiff's partial compliance with a previous court order did not purge him of contempt; we do not condone or approve the lengthy delay before commitment to jail was sought but the delay did not render the previous order unenforceable. CONCURRENCE IN PART AND DISSENT IN PART ASSERTS: Plaintiff should have been accorded notice and opportunity to be heard on the issue of whether he failed to comply with the conditions under which his commitment to jail had previously been withheld, but such a due process hearing does not require a reexamination of his ability to pay.

No. 83-311. STATE V. OHNMACHT.

Appeal from the Iowa District Court for Fremont County, Leo Connolly, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Schultz and Wolle, JJ. Opinion by Schultz, J.

(14 pages \$5.60)

The State was granted discretionary review from the district court's denial of the State's motion to correct defendant's sentence. The court, allegedly acting in accordance with an "appeal bargain," gave defendant a lighter sentence than allowed by statute. OPINION HOLDS: I. The Attorney General acted within the purview of his statutory authority; we disavow any dictum in our prior cases suggesting otherwise. II. A court has no authority to mitigate punishment by providing for a sentence not authorized by statute; the sentence in this case is void; the State did not waive its right to challenge the sentence simply because the county attorney failed to seek timely discretionary review of the district court's actions. III. Our own review of the record does not reveal any evidence, other than the district court's own pronouncements, supporting the existence of an appeal bargain; a defendant cannot be allowed to rely on an illegal sentence imposed through the court's conscious disregard for the law; we find no merit in defendant's contentions that the doctrine of estoppel or due process prohibit the imposition of a valid sentence.

No. 69638. SIEG V. CIVIL SERVICE COMMISSION.

Appeal from the Iowa District Court for Polk County, Luther T. Glanton, Judge. Reversed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Schultz and Wolle, JJ. Opinion by Schultz, J.

(15 pages \$6.00)

The Civil Service Commission appeals from a district court judgment reversing the Commission's decision to terminate the employment of David Sieg, a West Des Moines police officer. Although the trial court determined that Sieg was guilty of misconduct, it concluded that termination was too harsh. OPINION HOLDS: I. In an appeal under Iowa Code section 400.27 from an adjudicatory decision, rather than an executive decision, involving the expertise of the Commission, the district court must try the case anew and give no weight or presumption of regularity to the findings of the Commission; because the Commission was acting in an adjudicatory capacity here, there is no merit to the Commission's contention that its action must be upheld if there are fair and reasonable grounds to sustain it; Sieg violated departmental rules by making profane, derogatory and intimidating remarks to fellow officers; taking the record as a whole, we cannot agree with the trial court's conclusion that Sieg's misconduct was not detrimental to the public service; Sieg's actions and words show a complete lack of self discipline and control and indicate an unwillingness to follow instructions or respect authority; we conclude under the circumstances his dismissal was warranted.

No. 83-266 HY-VEE FOOD STORES, INC. V. IOWA DEPARTMENT OF JOB SERVICE.

Appeal from the Iowa District Court for Lucas County, Jack D. Levin, Judge. Reversed and remanded. Considered by Uhlenhopp, P.J., and Harris, McGiverin, Larson and Carter, JJ. Per curiam.

(2 pages \$.80)

Petitioner employer appeals from the district court's dismissal of its petition for judicial review. OPINION HOLDS: A notice of appeal from a claims deputy's decision that was mailed to agency within ten days of the decision was timely and the department and district court had jurisdiction in subsequent proceedings.

No. 83-265 HY-VEE FOOD STORES, INC. V. IOWA DEPARTMENT OF JOB SERVICE.  
Appeal from the Iowa District Court for Lucas County, Jack D. Levin, Judge. Reversed and remanded. Considered by Uhlenhopp, P.J., and Harris, McGiverin, Larson and Carter, JJ. Per curiam.  
(2 pages \$ .80)

Petitioner employer appeals from the district court's dismissal of its petition for judicial review. OPINION HOLDS: A notice of appeal from a claims deputy's decision that was mailed to the agency within ten days of the decision was timely and the department and district court had jurisdiction in subsequent proceedings.

No. 83-543 HY-VEE FOOD STORES, INC. V. IOWA DEPARTMENT OF JOB SERVICE.  
Appeal from the Iowa District Court for Lucas County, Thomas S. Brown, Judge. Reversed and remanded. Considered by Uhlenhopp, P.J., and Harris, McGiverin, Larson and Carter, JJ. Per curiam.  
(2 pages \$ .80)

Petitioner employer appeals from the district court's sustaining of a special appearance by respondent agency to its petition for judicial review. OPINION HOLDS: A notice of appeal from a claims deputy's decision that was mailed to the agency within ten days of the decision was timely and the department and district court had jurisdiction in subsequent proceedings.

No. 68839 STATE OF IOWA V. HATTER.  
Appeal from the Iowa District Court for Linn County, Paul J. Kilburg and Harold J. Swailes, Judges. Reversed and remanded. Considered by Uhlenhopp, P.J., and Harris, McGiverin, Larson and Carter, JJ. Opinion by McGiverin, J.  
(12 pages \$4.80)

Defendant appeals from his conviction of first-degree kidnapping in violation of Iowa Code sections 710.1-.2 (1981). OPINION HOLDS: The warrantless arrest of defendant in his home was improper due to the nonconsensual entry of the arresting officers and the absence of exigent circumstances to otherwise justify entry without consent; there did not exist any intervening events of significance which would purge the taint of the unlawful entry; defendant's contentions that Iowa Code sections 710.1-.2 (1981) are unconstitutionally vague on their face and as applied, that he was unfairly prejudiced by the jury instructions, and that there was insufficient evidence for a conviction of first-degree kidnapping are without merit.

No. 69268. STATE v. WILLIAMS.  
Appeal from the Iowa District Court for Polk County, M.J.V. Hayden, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Schultz, and Wolle, JJ.  
Opinion by Wolle, J. (8 pages \$3.20)

Defendant appeals from his conviction for robbery in the first degree. OPINION HOLDS: I. Defendant has not shown that his absence when his attorney, without authority, waived speedy trial violated his right to due process, as implemented by Iowa R. Crim. P. 25(1), but we do not thereby express approval of the filing by counsel of an unauthorized waiver of defendant's speedy trial right; on these facts defendant before trial was provided and exercised his right to be present, give testimony, and thereby aid the court in deciding whether his speedy trial right had been violated. II. Since the record before us does not show that defendant was absent when the trial court received and responded to an inquiry from the jury during its deliberations, there is no basis for us to conclude that defendant's due process right to be present was violated; even if defendant was not present, the error was harmless beyond a reasonable doubt because the communication from the court was not an instruction on the law and had no bearing on the evidence the jurors were to consider. III. Defendant was in no way harmed by his counsel's filing of an unauthorized waiver of speedy trial because the court found good cause for the continuance that was granted; defendant has not shown that his attorney failed to perform an essential duty when he did not take separate depositions of the three victims and has not shown that he was prejudiced by the alleged error of his attorney.

No. 69285. STATE v. GOFF.

Appeal from the Iowa District Court for Lee County, David B. Hendrickson, Judge. Affirmed in part, reversed in part. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Schultz, and Wolle, JJ. Opinion by Uhlenhopp, J. (16 pages \$6.40)

Defendant appeals from convictions on two counts of second-degree kidnapping and two counts of assault while participating in a felony. OPINION HOLDS: I. Assault while participating in a felony (kidnapping) is not legally a lesser included offense of second-degree kidnapping, because it is possible to commit second-degree kidnapping as charged here without committing an assault; therefore the State was entitled to prosecute the defendant for both crimes in a trial arising from a single incident. II. We decline the defendant's invitation to adopt the "evidentiary" basis of applying the legal test for lesser included offenses. III. The trial court's instructions erroneously failed to tell the jury that the kidnapping charges required the State to prove specific intent to use the victims as shields or hostages; the defendant's trial attorney rendered ineffective assistance by failing to object to the instructions on this ground; therefore the defendant is entitled to a new trial on the kidnapping charges; the assault convictions stand.

No. 68601. C.F. SALES, INC. v. AMPERT, INC.

Appeal from the Iowa District Court for Clinton County, C.H. Pelton, Judge. Affirmed in part, reversed in part, and remanded. Considered by Uhlenhopp, P.J., and Harris, McGiverin, Larson and Carter, JJ. Opinion by Uhlenhopp, J. (29 pages \$11.60)

Some defendants appeal from the judgment in commercial litigation arising out of an interpleader action. OPINION HOLDS: I. The parties' various claims, cross-claims, and counterclaims were tried as ordinary proceedings; we review on errors of law and not de novo. II. The stakeholder in the interpleader action was entitled to recover from a party wrongfully reclaiming the goods at issue both storage costs and attorney fees. III. Substantial evidence supports the trial court's finding that the bankrupt company which initially purchased the goods acted as agent for another company but the original seller lost any right to indemnification for storage and other costs as a result of its wrongful reclaiming of the goods. IV. A subsequent purchaser of the goods did not breach warranty of title as a result of the wrongful reclaiming of the goods by the original seller. V. The subsequent purchaser is entitled to recover from the original seller profits lost due to the tortious interference with the contract for the sale of the goods that occurred when the original seller wrongfully reclaimed them. VI. There was no tortious interference with an intervening contract of sale that had been performed prior to the reclaiming of the goods. VII. The portions of the trial court's judgment not held erroneous in this opinion, except as to court costs, remain unchanged; upon remand the trial court shall, based upon the existing record, render findings, conclusions, and supplemental judgment in accordance with the preponderance of the evidence and this opinion; court costs shall be assessed one-half to the original seller that wrongfully reclaimed the goods and one-half to the principal for the insolvent corporation that originally purchased them.

No. 83-37. LEFEBURE CORPORATION V. IOWA DEPARTMENT OF JOB SERVICE.

Appeal from the Iowa District Court for Linn County, Larry J. Conney, Judge. Affirmed. Considered by Uhlenhopp, P.J., and Harris, McGiverin, Larson and Carter, JJ. Opinion by Carter, J. (8 pages \$3.20)

Respondent agency appeals from district court order requiring it to reduce unemployment benefits of laid off employees by the amount of advance vacation pay which they had received under the collective bargaining agreement with

petitioner employer. OPINION HOLDS: An employer required by contract to advance the vacation pay of certain employees prior to the time their vacation is taken may seek a proportionate reduction of unemployment benefits during a layoff if the period of layoff extends beyond the period when unused vacation is required to be taken.

No. 68561. STATE v. PHAMS.

On appeal from the Iowa District Court for Black Hawk County, Dennis D. Damsgaard, Judge. Affirmed. Considered en banc. Opinion by Harris, J. Dissent by Carter, J.  
(22 pages \$8.80)

Defendant appeals from his conviction on two charges of first-degree murder in violation of Iowa code section 707.2. OPINION HOLDS: I. The evidence was sufficient to support submitting jury instructions relating to first and second degree murder, manslaughter and willful injury. II. Defendant knowingly and voluntarily waived his fifth amendment rights when he testified at the separate trial of an accomplice and possessed sufficient mental capacity to understand the meaning of his actions; the trial court did not err by failing to suppress inculpatory testimony given at the trial of the accomplice. DISSENT ASSERTS: The evidence was insufficient to support a conviction on charges of first or second degree murder or manslaughter and the jury should not have been instructed on those charges.

No. 83-94. CITY OF COUNCIL BLUFFS v. CAIN.

Appeal from the Iowa District Court for Pottawattamie County, Keith Burgett, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, Harris, McCormick and McGiverin, JJ. Opinion by Harris, J. Dissent by McCormick, J.  
(19 pages \$7.60)

The district court dismissed a misdemeanor prosecution on the ground a Council Bluffs city ordinance regulating the keeping of farm animals was unconstitutional. The city has appealed. OPINION HOLDS: I. The city was not pre-empted by state law from adopting a farm animal control ordinance. II. The defendant did not meet his burden to establish that the ordinance is an arbitrary, unreasonable, and capricious deprivation of property without due process of law. III. The ordinance is, however, unconstitutionally vague in numerous particulars. IV. The ordinance's licensing requirement, which the defendant is accused of violating, cannot be severed from the unconstitutionally vague portions of the ordinance. DISSENT ASSERTS: I. I do not believe the defendant has demonstrated that any part of the ordinance is unconstitutionally vague. II. Even assuming that portions of the ordinance are unconstitutionally vague, as the majority holds, I believe the ordinance's licensing requirement is severable from the assertedly invalid portions of the ordinance.

No. 69190. RIDINGER V. STATE.

Appeal from the Iowa District Court for Muscatine County, James E. Kelley, Judge. Affirmed. Considered en banc. Opinion by Schultz, J. Dissent by Uhlenhopp, J.  
(8 pages \$3.20)

Petitioner appeals from the district court's summary dismissal of his application for postconviction relief. OPINION HOLDS: A plea bargain agreement under which the State agreed to recommend "reconsideration" of sentence did not require the State to recommend a favorable disposition at the reconsideration hearing; because the terms of the agreement were unambiguous and were not violated by the State no genuine issue of material fact was presented requiring that an evidentiary hearing be held. DISSENT ASSERTS: An evidentiary hearing should have been held in order to determine what petitioner understood the plea bargain to mean; if he understood the State's use of the term "reconsideration" to mean recommendation of a positive result he should be allowed to plead anew.



No. 83-281. BARNES V. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

Certified question of law from United States District Court, Edward J. McManus, Judge. Certified questions answered. Considered by Harris, P.J., and McCormick, McGiverin, Larson, and Carter, JJ. Opinion by Larson, J. (7 pages \$2.80)

Pursuant to Iowa Code section 684.1, the United States District Court certified two legal questions involving construction of Iowa Code chapter 28E and section 403A.5. OPINION HOLDS: I. Regional housing authorities established pursuant to chapter 28E are required to submit their recommendations for housing projects to local governing bodies for majority approval under section 403A.5 in the same manner as municipalities and municipal housing agencies. II. A local governing body may not delegate or transfer its power to approve recommendations for housing projects under section 403.5 to a regional housing authority established under chapter 28E.

No. 69102. STATE V. DAVIS.

Appeal from the Iowa District Court for Woodbury County, Charles R. Wolle, Judge. Affirmed. Considered by Uhlenhopp, P.J., and Harris, McGiverin, Larson, and Carter, JJ. Per curiam. (3 pages \$1.20)

Defendant appeals from conviction for conspiracy to commit first degree robbery, Iowa Code sections 706.1, 706.3, 711.1 and 711.2 (1981). OPINION HOLDS: Viewed in the light most favorable to the State, with all legitimate inferences, the evidence adequately supported the conviction; the verdicts here are not necessarily inconsistent; the jury could have found a conspiracy completed prior to entry of the home but a lack of intent inside the house to support the substantive robbery charge.

No. 83-106. IN RE ESTATE OF BOLDT.

Appeal from the Iowa District Court for Linn County, Jerry J. Conney, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, Schultz, and Wolle, JJ. Opinion by Uhlenhopp, J. (12 pages \$4.80)

Devisee appeals from construction of will by probate court. Testatrix was survived by two daughters, Friederike and Jeanne. At the time of her death, most of testatrix's accounts at financial institutions were in joint tenancy with Friederike. The second paragraph of testatrix's will devised the residue of her estate to Friederike and Jeanne; it also purported to revoke the joint tenancies. OPINION HOLDS: I. We have no doubt that testatrix actually intended her two daughters are to share everything equally. II. This case presents a classic illustration of a required election under a will; testatrix clearly intended to devise the joint tenancies even though she had no legal power to do so; testatrix thus in effect offered Friederike two alternatives: she could accept the will as written, let the joint tenancy property become part of the estate for computing distribution, and take half of all the property, or she could refuse to accept the attempted revocation of the joint tenancies; she could not, however, accept the part of the second paragraph of the will giving her half of the assets and reject the part of that paragraph revoking the joint tenancies. III. Within thirty days from the date of procedendo, Friederike may file with the clerk of district court a written election to accept the will as written or to reject the will; if she fails to file an election within thirty days, she will be conclusively presumed to accept the will as written.

No. 68983. STRACKE v. CITY OF COUNCIL BLUFFS.

Appeal from the Iowa District Court for Pottawattamie County, J.C. Irvin, Judge. Affirmed. Considered by McGiverin, P.J., and Larson, Schultz, Carter and Wolle, JJ. Opinion by Wolle, J. (7 pages \$2.80)

City employee appeals from adverse judgment in action to recover value of health insurance benefits. OPINION HOLDS: I. Assuming without deciding that the city was obligated to provide plaintiff Stracke with notice of the adverse consequences of his withdrawal from his employer's health plan, we hold that adequate timely notice was in fact given by the city. II. Because no fundamental right or suspect class, as defined by the United States Supreme Court, is involved in this case, our task in evaluating plaintiff's equal protection claim is to determine whether a rational basis existed for the city's denial to Stracke of Blue Cross benefits or their monetary equivalent; we find that there is a rational basis to support the city's treatment of Stracke and therefore he was not denied his constitutional right of equal protection.

No. 69629 LAROSE V. CUROE.

Appeal from the Iowa District Court for Dubuque County, Carroll Engelkes, Judge. Reversed and remanded. Considered by Uhlenhopp, P.J., and Harris, McGiverin, Larson and Carter, JJ. Opinion by Larson, J. (12 pages \$4.80).

Defendant appeals from orders denying special appearance and granting summary judgment in favor of plaintiff in this action to collect two promissory notes. Some time after plaintiff brought this action and before defendant, then an Illinois resident, was served with original notice in it, defendant filed a separate action in federal court in Iowa against plaintiff's attorneys, alleging malicious and reckless conduct in their filing of the action against defendant. Defendant attended a pretrial conference in the federal action and was served with notice of this action as he entered the federal courthouse in Cedar Rapids. OPINION HOLDS: I. A non-resident is immune from service of process while attending judicial proceedings; defendant's attendance at the pretrial conference constituted participation in "judicial proceedings" for purposes of the immunity rule. II. The "related case" exception to the immunity rule does not apply here; the two actions involved here are not so closely related that the state one, in which immunity is sought, will aid the disposition of the federal one. III. We are inclined to the view that, as to the related case exception to the immunity rule, the burden shifted to plaintiff to present evidence of the claimed relationship of the cases; however, even if we assume the burden remained with defendant, an adequate showing was made by him that the exception did not apply; the district court lacked personal jurisdiction; we reverse and remand for an order sustaining defendant's special appearance.

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