IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published in pamphlet form biweekly pursuant to Chapter 17A, Code of Iowa as amended by Sixty-seventh General Assembly, H.F. 2099, section 3, 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 of the Code as amended by 67 GA, H.F. 2099 and S.F. 244. 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
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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, 1979, to June 30, 1980	$52.00 plus $1.56 tax
Second quarter	October 1, 1979, to June 30, 1980	$39.00 plus $1.17 tax
Third quarter	January 1, 1980, to June 30, 1980	$26.00 plus $0.78 tax
Fourth quarter	April 1, 1980, to June 30, 1980	$13.00 plus $0.39 tax

Single copies may be purchased for $2.00 plus $0.06 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

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

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

Iowa Administrative Code - $434.00 plus $13.02 tax
(Price includes Volumes I through XI, five supplement binders and a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin.)

Iowa Administrative Code Supplement & Bulletin - $120.00 plus $3.60 tax
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All checks should be made payable to the Iowa State Printing Division. Send all inquiries and subscription orders to:

Iowa State Printing Division
Grimes State Office Building
Des Moines, IA 50319
Phone: (515) 281-6298

ARC 0363

COMPTROLLER, STATE[270]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of section 8.6(16) of the Code, the state comptroller has filed emergency rules as ARC 0362* which amend **chapter 1** of their rules relating to auditing claims.

While those rules are effective July 1, 1979, the state comptroller is interested in securing public comment on them. Thus, this filing is made for the purpose of placing the subject matter of ARC 0362 under notice. In substance, those rules implement benefits for employees similar to those covered by a collective bargaining contract. They will allow employees who travel within the state to apply for a permanent in-state travel advance, and to increase the daily in-state meal reimbursements from $10.00 to $12.00 per day. Meal limits for breakfast and dinner are increased.

Interested persons may submit their views in writing to Ronald F. Mosher, State Comptroller, State Capitol, Des Moines, Iowa 50319 no later than July 31, 1979.

*See Page 25 herein.

ARC 0368

COMPTROLLER, STATE[270]

NOTICE OF INTENDED ACTION

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

Pursuant to the authority of section 8.6(16) of the Code, the State Comptroller proposes to add the following additional rules to Chapter 5—1:

Interested persons may submit written comments or request a public hearing on this intended action on or before July 31, 1979, if qualified under 17A.4(1)"b" of the Code to the State Comptroller, State Capitol Building, Des Moines, Iowa 50319.

270—5.3(68A) Access to official records and information.

5.3(1) Definitions. "Proprietary records" means all records in the possession of the state comptroller which are generated by and are for the primary use of the state comptroller's office. "Nonproprietary records" means those records which are in the possession of the state comptroller's office but which are generated for the purposes of other units of government.

5.3(2) Availability. Unless prohibited by the Code, the state comptroller's office will provide, upon request, any records in any existing form. The state comptroller may require the submission of a written request specifying the records requested. The state comptroller's office will endeavor to supply all requests for records in a timely fashion. In the event that a request cannot be fulfilled within a reasonable time, the requester will be so notified and an estimated completion date will be provided. For nonproprietary records, the state comptroller's office is only a repository and is not the "lawful custodian" of the records under the meaning of chapter 68A of the Code of Iowa. Nonproprietary records shall be provided only to the unit of state government which is the lawful custodian of such records under chapter 68A of the Code of Iowa.

5.3(3) Cost. Records will be provided at the cost to the state of producing or reproducing the records, including an appropriate administrative charge. Payment will be accepted only for records which can be provided at the time of the request. A deposit may be required in advance of actual production.

For nonautomated records, there will be a charge of twenty cents per copy whenever a copy machine is used. A maximum of five copies of each original document will be allowed to be made on the state comptroller's copy machine. The copy machine will not be used for documents secured from other than the state comptroller's records. The records may not be altered, damaged, resequenced or otherwise disturbed in the process of copying.

The examination of such records and the use of the copy machine to make copies of these records shall be available for public use during customary business hours (Monday through Friday, 8:00 a.m. to 4:30 p.m., except legal holidays). Such examination and the use of the copy machine shall be done under the supervision of an employee designated by the director of the appropriate division.

5.3(4) New records. Requests for records which cannot be reproduced without new programming are considered requests for new records. It may not be possible to honor such records on a timely basis. If, however, there are existing records which contain the information requested, the requester will be advised of the existence of such records.

Where such records are provided to the lawful custodian to fulfill the request of a third party, the unit of state government which is the lawful custodian of the records shall reimburse the state comptroller's office for the cost of producing or reproducing the records including an appropriate administrative charge. The lawful custodian must inform the state comptroller's office that a request is being processed for a third party.

Rule 5.3(68A) is intended to implement section 68A.3 of the Code as it pertains to the state comptroller's office.

ARC 0395

ENERGY POLICY COUNCIL[380]

NOTICE OF INTENDED ACTION

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

Pursuant to the authority of section 93.7(8) and (10) of the Code of Iowa, the Energy Policy Council intends to promulgate rules on the subjects listed below which concern the operation of the class A energy auditor program. A basic question in this area is whether qualifications and training requirements for class A energy auditors should differ from those used for energy auditors under the proposed rules for the schools and hospitals energy audit program, found in proposed chapter 5.

The energy policy council will hold a public hearing on the proposed rules at 7:00 p.m. on July 31, 1979, in the Third Floor Conference Room, Lucas State Office Building, East 12th and Walnut Streets, Des Moines, Iowa 50319. Any interested person may make a presentation on the proposed rules at that time. Any interested person may also submit written comments on the proposed rules to the Energy Policy Council, Capitol Complex, Des Moines, Iowa 50319, on or before August 7, 1979.

CHAPTER 4
CLASS A ENERGY AUDITORS

380—4.1(93) General. The class A auditor program is designed to furnish a pool of trained and tested persons to audit the energy consumption of various buildings in Iowa, analyze the results of these audits, and evaluate this data in order to advise the building owner or operator of procedures that will lower the energy consumption of the building. Part of the funding for this program will be awarded by the United States Department of Energy pursuant to the Energy Conservation and Production Act of 1975 (P.L. 94-385), and regulations published in §450.1-.23 of Title ten (10) of the federal regulations. This chapter applies only to audits conducted pursuant to the above-cited federal law.

4.1(1) Qualifications. The following criteria are among those to be considered by the council in determining what, if any, qualifications should be required before persons can apply for the auditor training course and certification procedure:

a. Educational background. In terms of what educational requirements should be imposed, the major issues are whether to require completion of major fields of study in engineering, architecture, or energy related fields, and whether advanced degrees should be required.

b. Previous work experience. In terms of what work experience requirements should be imposed, the major issues are whether the person has been working as a trained professional, the length of time the person has been employed, and whether the applicant has been employed in a state other than Iowa.

c. Professional associations. In the area of professional associations, the major issues are whether only registered engineers or architects should apply, and whether all applicants should be required to carry professional liability insurance or be bonded.

d. Conflict of interest. The major issue is how the council will insure that the applicant will be able to comply with state of Iowa rules concerning the conduct of registered professionals, and the rules and regulations pertaining to the energy audit procedures of the U.S. Department of Energy as published in the Federal Register, Wednesday, June 29, 1977, §450.22(3), (e) and (f); also at 10 CFR p. 534.

4.1(2) Examination of qualified applicants. The state of Iowa, in conjunction with Iowa State University, has designed a procedure to certify applicants for class A auditors. Applicants must attend the course of energy auditing approved by the council and pass a certification test. The state seeks to make this procedure the state-approved class A auditor training program described in P.L. 94-385 and CFR 10, 450.1—.23. The major issues in this area are:

a. What should be the basic areas covered in the course work;

b. What should be the qualifications for instructors of this course;

c. What should the examinations consist of, and who should administer them;

d. Are appeal procedures necessary and appropriate for applicants who fail the examinations; and

e. What is an appropriate fee for the course.

4.1(3) Certification of class A auditors. In this area, the major issues are:

a. Whether to allow all persons who pass the exam to be certified as auditors.

b. Whether reciprocity will be given persons who passed a similar course and examination in another state.

c. If all persons who meet the qualifications and passed a similar test previously conducted under the authority of the council will be automatically certified upon promulgation of these rules.

d. Are appeal procedures necessary for those persons who apply for certification and are denied it.

4.1(4) Fee schedule. In regard to the fee schedule for class A auditors, the issues are:

a. Whether the council should use the United States Department of Energy fee limits for audits conducted under a supplemental plan as found in 10 CFR 450.14. These fee limits require that the cost of an energy audit be less than:

(1) Ten percent of the building's or industrial plant's total energy costs for the preceding twelve months, when such energy costs were less than $40,000;

(2) $4,000 or five percent of the building's or industrial plant's total energy costs for the preceding twelve months, whichever is greater, when such energy costs were equal to or greater than $40,000 but less than $1,000,000; or

(3) $50,000 or 2.5 percent of the building's or industrial plant's total energy costs for the preceding twelve months, whichever is greater, when such energy costs were equal to or greater than $1,000,000.

b. Whether the council should establish procedures to permit audit costs to exceed the above-mentioned limits, by following the exemption rules of the United States Department of Energy at 10 CFR 450.14, which allow exemptions due to unique or complex energy use problems.

c. Whether the council should establish its own criteria to determine the appropriate cost of class A energy audits.

ARC 0394

ENERGY POLICY COUNCIL[380]

NOTICE OF INTENDED ACTION

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

Pursuant to the authority of section 93.7(8) and (10) of the Code of Iowa, the energy policy council intends to promulgate rules on the subjects listed below which concern the operation of the federal energy measures and energy audit grant programs for schools and hospitals, and for buildings owned by units of local government and public care institutions. The proposed rules are concerned with only the first phase of a three-phase program. At a later date the council will promulgate rules for phase two, which involves grants for technical analysis, and for phase three, grants for energy conservation measures for schools and hospitals. The council is advising the public of these later grant programs at this time to encourage public comments and submissions. Further information concerning these phases can be found in 44 Federal Register 19340, which is available upon request from the Energy Policy Council, Capitol Complex, Des Moines, Iowa. At this time, the council would especially appreciate suggestions in regard to the discretionary aspects of phase one of the program. The areas of the program that require the state to exercise the most discretion are found in rule 5.5, energy auditor qualifications, rule 5.6 auditor training, and rule 5.7 criteria for selecting eligible buildings. The United States Department of Energy (DOE) requires an advisory council to be formed to aid in this program. This council consists of representatives of the organizations listed in rule 5.2 identification of eligible institutions. It has approved the council's proposal to the DOE for this program, and agrees with the criteria in rule 5.7 criteria for selection of eligible buildings.

Other factors considered were geographical distribution of funds within Iowa, duplicability of projects, and distribution of funds among schools and hospitals, public care facilities and local government, as well as state schools (universities) and local schools. Setting a funding limit was also considered.

The energy policy council will hold a public hearing on the proposed rules at 7:00 p.m. on July 31, 1979, in the third floor conference room, Lucas State Office Building, East 12th and Walnut Streets, Des Moines, Iowa 50319. Any interested person may make a presentation on the proposed rules at that time. Any interested person may also submit written comments on the proposed rules to the Energy Policy Council, Capitol Complex, Des Moines, Iowa 50319, on or before August 7, 1979.

CHAPTER 5

ENERGY MEASURES AND ENERGY AUDITS GRANT PROGRAMS FOR SCHOOLS AND HOSPITALS AND BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

380—5.1(93) General. The energy audit grant program was established to reduce consumption, and associated costs, of conventional energy resources in schools and hospitals, and buildings owned by units of local government and public care institutions. This objective is to be accomplished through several means, including:

1. Identifying improved operating and maintenance programs.
2. Identifying energy conservation measures, including solar energy or renewable resource measures.
3. Implementation, in the case of schools and hospitals, of selected energy conservation measures, including solar energy or renewable resource measures.

5.1(1) Purpose and scope. This chapter establishes requirements for the conduct of preliminary energy audits and energy audits, the qualifications of persons conducting them and allowable costs of energy audits. Preliminary energy audits and energy audits are required in the program of financial assistance for schools and hospitals and the program of financial assistance for units of local government and public care institutions, as provided under subpart B, part 455, chapter II of Title 10, Code of federal regulations.

5.1(2) Definitions. The definitions used in this subpart will be those found in 44 Federal Register 19351, available from the energy policy council office.

380—5.2(93) Identification of eligible institutions. In identifying eligible institutions and distributing the preliminary energy audits the council will seek assistance from statewide organizations or agencies that represent or regulate the affected eligible institutions. The school organizations include the state department of public instruction, the Iowa association of school administrators, the Iowa association of school boards, the Iowa association of nonpublic school administrators, the Iowa association of private colleges and universities, and the state board of regents. Hospitals are represented by the following organizations: The Iowa department of health, the Iowa health care association, the Iowa association of homes for the aging, the Iowa hospital association and the state department of social services. Local governments are represented by the league of Iowa municipalities and the Iowa state association of counties.

380—5.3(93) Preliminary energy audits. Preliminary energy audits will be conducted by mailing questionnaires to all eligible institutions in Iowa. The contents of the preliminary energy audits is mandated by the United States Department of Energy regulations, 44 Federal Register at 19352.

380—5.4(93) Energy audits. Energy audits will be performed on some institutions for which preliminary energy audits were returned, if the owner or operators agree to the cost-sharing requirements of subrule 5.9(1), and a determination has been made that such a building is eligible, under rule 5.7(93), for further auditing. The contents of an energy audit are mandated by the United States Department of Energy regulations, 44 Federal Register at 19353.

380—5.5(93) Energy auditor qualifications. Among the issues to be considered in this area are:

1. Whether to allow all state class A auditors (see proposed chapter 4 of energy policy council rules) to automatically qualify as energy auditors for the purposes of this program.
2. Whether to require completion of major fields of study in engineering, architecture or energy related fields.

ENERGY POLICY COUNCIL[380] *(cont'd)*

3. Whether to require work experience as a trained professional for a given number of years.
4. Whether to limit applicants to registered engineers or architects.
5. Whether all applicants should be required to carry professional liability insurance or provide bonding.
6. Whether out of state professionals should come under separate requirements.
7. Whether the applicants must be prepared to comply with the conflict of interest requirement of the United States Department of Energy, found at 10 CFR 450.22.
8. What procedures are necessary to assure that the auditors are persons other than the day to day operators of the building being audited.
9. Whether special auditor qualifications should be made for the different types of institutions being audited.

380—5.6(93) Auditor training. See Federal Register §455.15(b)(3), which says that, at a minimum, instructions must be given by architects and engineers with practical experience in energy auditing. Among the issues on which the council solicits comment:
1. What basic areas should be covered in auditor training;
2. What qualifications should be required for instructors of this course;
3. Whether class A auditors qualify as instructors;
4. What the training should consist of;
5. Whether there will be an examination required, and if so, what will be its contents;
6. What appeal procedures are necessary and appropriate for applicants who fail the exam; and
7. Whether persons who attended similar training sessions in other states will be exempt from these training sessions.

380—5.7(93) Criteria for selection of eligible buildings.

5.7(1) Of the total funds allocated to the eligible school and hospital facilities for preliminary energy audits and energy audits, thirty percent will initially be allocated to school facilities and thirty percent to hospital facilities. These funds will be allocated to those schools and hospitals that returned the preliminary energy audits, agree to the cost sharing provision in subrule 5.9(1), and achieve the highest number of points on the four factors listed in subrule 5.7(2). Once this initial sixty percent of funding is allocated, the schools and hospitals that remain will all be placed in a single category, and they will be allocated the remaining forty percent of the funding on the basis of the same four criteria listed in 5.7(2).

All of the funds granted to the local government and public care institutions for preliminary energy audits and energy audits will be distributed to the eligible institutions prioritized according to the number of points attained on the four criteria listed in 5.7(2).

5.7(2) Factors to be considered in allocating funds:

a. A building energy management index shall be constructed for each building type for eligible institutions participating in the program. The building energy management index (BEMI) will compute the Btu's/ft²/man-hour occupancy (patient days in the case of hospitals)/year consumed by the buildings within a particular functional group. Energy excessive buildings within the group will thereby be identified. This technique will also estimate the annual energy savings possible by bringing the energy consumption of an energy excessive building to the norm (median) for the group. Based on the annual energy savings possible to achieve by bringing the excessive building in line with the median of other buildings in the group, the building will be given a certain number of points.

(A further explanation of the BEMI analysis can be found in an abstract by professor of mechanical engineering James E. Woods and associate dean of engineering Paul W. Peterson of Iowa State University. It is available from the energy policy council upon request.)

Buildings identified in the building energy management index which are the excessive category shall be given points according to the following percentile ranking:

80 or above	50 points
60-79	40 points
40-59	30 points
20-39	20 points
Below 19	10 points

b. Type of fuel consumed: (primary heating fuel)

oil	15 points
LPG	12 points
natural gas	10 points
electricity	10 points
coal or other	5 points

c. Cost of fuel consumed (dollars expended/unit energy):

80	10 points
60-79	8 points
40-59	6 points
20-39	4 points
below 19	2 points

d. Projected useful life of the building:

over 20	25 points
10-20	15 points
5-10	10 points

380—5.8(93) Audit reports. This area is mandated by United States Department of Energy regulations, found at 44 Federal Register 19354.

380—5.9(93) Cost of energy audits.

5.9(1) Amounts made available from the United States Department of Energy under this chapter together with any other amounts made available from other federal sources, may not be used to pay more than fifty percent of the costs of a preliminary energy audit or an energy audit. The institution being audited can calculate its fifty percent share of the audit costs based on cash and in-kind services directed toward the energy audits. For purposes of the subrule in-kind services shall mean the value of noncash contributions provided by the grantee, and other nonfederal parties. In-kind contributions may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefiting and specifically identifiable to the project or program.

5.9(2) Cost of energy audits. The United States Department of Energy has a funding formula to calculate the maximum federal share of an energy audit. This information can be found at 44 Federal Register 19354, which is available from the energy policy council office.

ARC 0382

ENVIRONMENTAL QUALITY DEPARTMENT[400]

SOLID WASTE DISPOSAL COMMISSION

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of sections 455B.78 and 455B.87 of the Code, the Solid Waste Disposal Commission intends to take action on the rules described below. The proposed rules [IAC, Title IV] would relate to a petition for rulemaking filed by two citizens' groups concerning the transportation of radioactive materials. The Commission has granted the petition and has scheduled a public hearing on these proposed rules. The public hearing will be held at 10:00 a.m. on September 20, 1979, in the Main Auditorium of the Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa. Any interested person may make an oral presentation at that time. Any interested person may make an oral presentation at that time. Any interested person may also submit written comments on the proposed rules to the Executive Director, Department of Environmental Quality, Henry A. Wallace Building, 900 E. Grand Avenue, Des Moines, Iowa 50319 on or before October 1, 1979.

The issues surrounding advance notification or approval that the Commission intends to consider in this rulemaking are as follows:

What are the public health and safety benefits associated with advance notification or approval of shipments of radioactive materials passing thorugh Iowa? What are the costs associated with such regulation? Since the prime reason for such notification is to enable the state to obtain the necessary information to respond to emergencies, what other methods exist for the state to obtain promptly such information? The Commission also solicits data regarding the types and quantities of radioactive materials presently transported through Iowa.

If advance notification or approval is found to be necessary, what shipments should be subject to such regulation? The Commission specifically solicits comments regarding the types and quantities of shipments that should be subject to these regulations. The petitioners suggested that the following shipments be subject to regulation:

1. Plutonium isotopes in any quantity and form exceeding two grams or whose activity exceeds twenty curies, whichever is less;
2. Uranium enriched in the isotope U-235 exceeding twenty-five atomic percent of the total uranium content in quantities where the U-235 content exceeds one kilogram;
3. Any element with atomic number eighty-nine (89) or greater, the activity of which exceeds twenty curies;
4. Spent reactor fuel elements or mixed fission products associated with such fuel elements the activity of which exceeds twenty curies;
5. Any quantity, arrangement, and packaging combination of fissile material specified by the United States Nuclear Regulatory Commission as a "Fissile Class III" shipment in 10 CFR Section 171.4(d)(3).

The petitioners also suggested that the rules not apply to radioactive materials shipped or transported by or for the United States Government for military or security purposes or which are related to national defense or to the transportation, handling, or storage of radioactive material by licensed physicians and surgeons or licensed osteopathic physicians and surgeons within the scope of their practice or by qualified employees of licensed hospitals within the scope of their duties.

The Commission also invites comments as to whether only transportation by motor vehicles should be subject to the regulations or whether other modes of transportation should also be included.

Should a permit be required, or would advance notification be sufficient? What time limit should be placed on receipt of the permit application or the advance notification? The petitioners suggested that a permit be required and that applications be submitted to the Department of Environmental Quality during normal working hours, Monday through Friday; holidays excluded. The petitioners further suggested that applications be accepted no less than two hours and no more than one working day in advance of the scheduled move with the Commission reserving the right to waive the advance requirement when it is in the best interest of the public health and safety. The Commission invites comments on these suggestions.

What information should be required in the application or notification? The petitioners suggested the following:

1. Name of the shipper.
2. Name and mail address of the carrier.
3. Type of major isotopes, quantity (in curies) and type of label.
4. Date and time of shipment.
5. Origin, scheduled route, and destination. (All routing shall be via limited access highways and the shortest practicable route to and from them.)
6. Year, make, color, state of registration, and plate number of both the tractor and trailer.
7. Driver's name.
8. A written statement from the shipper certifying that the articles described in the shipping papers are properly classified, described, packaged, marked, and labeled that the articles are in proper condition for transportation, according to the applicable provisions of the Nuclear Regulatory Commission and the Federal Department of Transportation.
9. A written statement from the carrier certifying that the packaged radioactive material has been loaded, blocked, and properly secured onto the transport vehicle. The certification shall also state that the vehicle and load are in compliance with the applicable motor carrier safety regulations of the Federal Department of Transportation.

Comments on this suggestion are solicited.

What further restrictions should be placed on subject shipments? The petitioners suggested the following as additional requirements:

1. All routes will be determined by the Iowa Department of Environmental Quality.
2. All shipments are to be made during daylight hours.
3. The permit is void on Saturdays, Sundays and holidays.

4. The permit or a confirmation of it must be in the possession of the operator of the vehicle while transporting the radioactive material over Iowa highways.

5. All applicable federal regulations shall be deemed conditions of the permit.

The Commission solicits public comments regarding the need for escorting shipments of radioactive materials through Iowa. What are the benefits accruing the state from such escorts? What are the costs and burdens associated with the escorts? What kinds of shipments should require escorts? What are the best methods for providing the escorts?

The Commission also invites comments on the issue of federal preemption of State regulations requiring advance notification or permit. Are the proposed areas of rulemaking preempted by federal law? If so, what are the options available to the Commission in regard to this petition? Which option is the most desirable and why?

ARC 0390

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 §17A.4(1)"b" of Code.

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

Iowa Merit Employment Department, pursuant to the authority of section 19A.9 of the Code, has heretofore amended **chapter 4** of these rules appearing in the IAC relating to overtime, pay increase eligibility by an emergency filing designated as ARC 0365, 0366* which rules were effective June 22, 1979.

The department desires to solicit public comment on these rules as filed and thus hereby places the subject matter of these rules under notice.

Interested persons may submit their views in writing to W. L. Keating, Director, Iowa Merit Employment Department, Grimes State Office Building, East Fourteenth and Grand Avenue, Des Moines, Iowa 50319 not later than August 1, 1979.

*See Page 31 and 32 herein.

ARC 0393

PUBLIC EMPLOYMENT RELATIONS BOARD[660]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of sections 17A.3 and 20.6(5) of the Code, the Public Employment Relations Board hereby gives notice of intended action to amend its rules.

A public hearing for oral presentations will be conducted at the offices of the Public Employment Relations Board, 507 10th Street, Des Moines, Iowa 50309 at 1:30 p.m. on August 8, 1979. Consideration will be given to written data, views or arguments concerning this intended action received by the Public Employment Relations Board by that date.

Chapter 4 is amended as follows:

ITEM 1. Amend first paragraph of subrule 4.6(1) as follows:

4.6(1) Petition. A petition for amendment of a board determined bargaining unit or amendment of a certification with respect thereto may be filed by the public employer or the certified employee organization. Such petition ~~must be in the absence of a question of representation and~~ shall contain:

ITEM 2. Add a new subrule 4.6(3) as follows:

4.6(3) Elections; when required. Where a question of representation is found to exist, no unit or certification shall be amended unless a majority of the employees sought to be added to the unit have chosen to be represented pursuant to a board-conducted election under chapter 5 of these rules.

Chapter 6 is amended as follows:

ITEM 3. Amend subrule 6.3(2) as follows:

6.3(2) Expedited resolution. In the event that a negotiability dispute arises between the employer and the certified employee organization, either party may petition the board for expedited resolution of the dispute. Such petition shall set forth the material facts of the dispute, ~~and~~ the precise question of negotiability submitted for resolution, *and certificate of service upon the other party.* In the event a negotiability dispute arises at the fact-finding ~~or arbitration~~ stage of impasse procedures, the parties shall present evidence on all issues to the fact-finder, ~~or arbitrator,~~ who shall immediately thereafter petition the board for expedited resolution of the negotiability dispute. *In the event a negotiability dispute arises at the arbitration stage of impasse procedures, either party may petition the board for expedited resolution, which petition shall be filed no later than five days following the exchange of final offers; failure to file such a petition on or before the fifth day after the exchange of final offers shall constitute waiver of any objection on negotiability grounds and the arbitrator shall give full consideration to said issues.* ~~The petition shall be given priority by the board and representatives of the parties shall meet with or submit position statements to the board as soon as practicable. If deemed necessary by~~

~~the board, the petition may be set for hearing or argument.~~

ITEM 4. Add a new subrule 6.3(3) as follows:

6.3(3) Decisions. The petition filed pursuant to section 6.3(2) shall be given priority by the board. If deemed necessary by the board, the petition may be set for hearing or argument.

ITEM 5. Rule 660—6.4(20) is amended to read as follows:

660—6.4(20) Acceptance of proposed agreement. Where the parties have reached *tentative* agreement on a proposed collective bargaining agreement, the terms of said agreement shall be made public, and the employee organization shall give reasonable notice of the date, time and place of a ratification election on the proposed agreement to the public employees; provided, however, that such notice shall be at least twenty-four hours prior to said election, *and that said election shall be within seven days of the date of the tentative agreement.* The vote shall be by secret ballot and only members of the employee organization shall be entitled to vote*; provided, however, that the employee organization may, pursuant to its internal procedures, extend voting rights to nonmember bargaining unit employees.* ~~If a majority of those voting ratify the proposed agreement,~~ The employee organization shall *within twenty-four hours* notify the public employer *whether the proposed agreement has been ratified.* ~~If the proposed agreement is not ratified, the employee organization shall likewise notify the public employer. The public employer shall~~ *If the proposed agreement is ratified by the employee organization, the public employer shall, within seven days of such notice, meet to accept or reject the proposed agreement, and shall within twenty-four hours* serve notice on the employee organization of its acceptance or rejection of the proposed agreement. *The above timelimits shall not apply to proposed agreements between the state and any bargaining unit of state employees.*

Chapter 7 is amended as follows:

ITEM 6. Renumber the present rule 660—7.1(20) to subrule 7.1(1) and change the catchword "General" to "Applicability". Add a new rule heading 660—7.1(20) as follows:

660—7.1(20) General.

ITEM 7. Insert a new subrule 7.1(2) as follows:

7.1(2) *Stays of impasse procedures. Notwithstanding the provisions of rule 2.19(20), no stay of impasse procedures will be granted during the pendency of any negotiability dispute, declaratory ruling request, or prohibited practice complaint, except by written consent of both parties. Such consent shall also provide a timetable for completion of impasse procedures prior to budget certification or a waiver of the budget certification deadline.*

ITEM 8. Subrule 7.3(5) is amended to read as follows:

7.3(5) Mediation proceedings. The mediator may hold separate or joint meetings with the parties or their representatives, and such meetings shall not be public. Mediation meetings shall be conducted at such time and place as designated by the mediator, *and shall whenever possible be scheduled during regular work hours.* If an impasse exists ten days after the effective date of the appointment of a mediator, the mediator shall so notify the director.

ITEM 9. Amend subrule 7.5(8) as follows:

7.5(8) Report of the arbitration panel. Within fifteen days after its first meeting, the arbitration panel shall ~~announce~~ *issue* its decision, ~~pursuant to the Act~~ *including any concurrences or dissents.* The panel shall serve each party and the director with a copy of its decision. *In reaching the panel decision, the chairperson may communicate telephonically, by mail, or may meet individually or collectively with the other panel members.*

ITEM 10. Subrule 7.5(9) is renumbered as 7.5(10) and the new subrule 7.5(9) will read as follows:

7.5(9) Dismissal of panel. In the event of a failure of the arbitration panel to reach a majority decision on one or more of the impasse items, or the failure of the panel to issue its award within fifteen days of its first meeting, the chairman of the arbitration panel shall notify the director and the parties of such failure. Either party may thereafter request a new arbitration panel. In the absence of agreement between the parties, the procedures set forth in subrules 7.5(1) through 7.5(5) of the Act shall apply; provided, however, that all members of the original arbitration panel shall be ineligible to serve on the new panel. No arbitration panel shall issue a partial award except by mutual consent of the parties.

ITEM 11. Renumber rule 660—7.6(20) to 660—7.7(20) and insert the following new rule as 660—7.6(20).

660—7.6(20) Impasse procedures after budget certification.

7.6(1) Objections. Any objection by a party to the conduct of arbitration proceedings which will not be completed by the budget certification date shall be filed with the board and served upon the other party no later than seven days after receipt of a request for arbitration. Filing of an objection before the budget certification date shall not affect the obligation of each party to comply with subrules 7.5(4) and 7.5(5). Failure to file such objection in a timely manner shall constitute waiver of such objection and the budget certification deadline shall not apply. In determining whether arbitration may be completed prior budget certification deadline shall not apply. In filed, no party shall be required to waive or shorten any statutory time periods which apply to that party; the board may, however, overrule such objection without hearing where it determines that an arbitration award will be rendered on or before the employer's budget certification date.

7.6(2) Response to objection. The party which requested arbitration may within seven days file a response to the objection, asserting that, because of deliberate delay on the part of the objecting party, or unavoidable casualty, misfortune or other events beyond the parties' control, the budget certification deadline should not apply. In the event that such a response is not filed within ten days of receipt of the objection, the board shall issue an order terminating further impasse procedures.

7.6(3) Hearing procedures. Upon receipt of a response by the party seeking arbitration, the board may conduct a hearing. Such hearing shall be, insofar as is applicable, conducted pursuant to chapter 2 of these rules. The party seeking arbitration shall proceed first and shall have the burden to show that arbitration should not be terminated. The board shall thereafter issue a final order, finding that further impasse procedures should be either terminated or completed.

PUBLIC EMPLOYMENT RELATIONS BOARD[660](cont'd)

Chapter 9 is amended as follows:

ITEM 12. Rule 660—9.1(20) is amended to read as follows:

660—9.1(20) Final decisions. When a quorum of the members of the board presides at initial hearing on any matter, the decision entered thereon is a final decision of the agency. When the hearing is presided over by other than a quorum of the members of the board, the hearing officer shall render a proposed decision, which shall become the final decision of the agency unless within ~~ten~~ *twenty* days of the filing of such decision:

ARC 0385

REVENUE DEPARTMENT[730]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of section 17A.3(1)"b" of the Code, the Iowa Department of Revenue hereby gives Notice of Intended Action to amend rules relating to forms developed by the Department of Revenue and used by taxpayers.

Any interested persons may submit their views in writing on these proposed rules on or before August 10, 1979, to the Property Tax Administrator, Property Tax Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319. Requests for a public hearing must be received by August 3, 1979.

Persons who want to orally convey their views should contact the Administrator, Property Tax Division at 515/281-5731 or at the division offices on the fourth floor of the Hoover State Office Building.

Here follows the substance of the intended action.

Pursuant to the authority of section 17A.3(1)"b" of the Code, the following rule pertaining to forms developed by the Department of Revenue and used by taxpayers is hereby amended.

Subrule **8.1(7)** is amended by adding the following form.

FORM NUMBER	DESCRIPTION
54127	Iowa Disabled and Senior Citizens Property Tax Credit Claim. Filed by September 30 of each year with County Treasurers by elderly and disabled persons as a claim for a property tax credit. 2 pages.

This amendment is intended to implement section 425.25 of the Code as amended by the Sixty-eighth General Assembly, First Session, S.F. 495.

ARC 0384

REVENUE DEPARTMENT[730]

NOTICE TERMINATED

The Department of Revenue hereby withdraws the proposed change to rule 18.7(422,423) which was filed under Notice and published in the Iowa Administrative Bulletin on December 13, 1978.

ARC 0386

REVENUE DEPARTMENT[730]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of section 428A.11 of the Code, the Iowa Department of Revenue hereby gives Notice of Intended Action to adopt new rules relating to real estate transfer tax and declarations of value.

Any interested persons may submit their views in writing on these proposed rules on or before August 10, 1979, to the Property Tax Administrator, Property Tax Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319. Requests for a public hearing must be received by August 3, 1979.

Persons who want to orally convey their views should contact the Administrator, Property Tax Division at 515/281-5731 or at the division offices on the fourth floor of the Hoover State Office Building.

Here follows the substance of the intended action.

Pursuant to the authority of section 428A.11 of the Code, the following new rules are adopted.

CHAPTER 79
REAL ESTATE TRANSFER TAX AND DECLARATIONS OF VALUE

730—79.1(428A) Real estate transfer tax: Responsibility of county recorders.

79.1(1) Materials and equipment. County recorders shall use only materials, forms and equipment provided by the department of revenue for the issuance of real estate transfer tax stamps and the recording and reporting of such tax stamp sales.

79.1(2) Monthly reports. County recorders shall submit a report to the department of revenue on or before the tenth day of each month enumerating real estate transfer tax stamp issuance and collection information for the preceding month. This report shall be submitted on forms prescribed by the department of revenue and shall contain such information as is deemed necessary by the department.

79.1(3) Equipment repair and maintenance. The county recorder shall report promptly to the department of revenue the need for any repair or maintenance of real estate transfer tax equipment and machinery furnished by the department. Upon the completion of such service, the county recorder shall notify the department of the

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

nature of the work performed and the cost of such work. The department of revenue shall pay the costs of real estate transfer tax equipment repair and maintenance for the equipment furnished to the county recorder by the department of revenue.

79.1(4) Recording refused. The county recorder shall refuse to record any deed, instrument, or writing regardless of any statement by the grantor, grantee, or their agents that the transaction is exempt pursuant to section 428A.2 of the Code, if in the recorder's judgment, additional facts are necessary to clarify the taxable status of the transfer, or determine the full consideration paid for the property. The county recorder may request from the grantor, grantee, or their agents, any information necessary to determine the taxable status of the transfer or the full amount of consideration in the transaction. County recorders under no circumstance shall record any deed or instrument of conveyance upon which the proper amount of real estate transfer tax stamps has not been affixed. This shall apply to the affixing of stamps showing tax paid in excess of the amount due for the actual amount of consideration as well as situations in which an insufficient amount of stamps have been affixed.

79.1(5) Canceling stamps. County recorders shall not record any deed or instrument of conveyance upon which real estate transfer tax stamps have been affixed until such stamps have been defaced as required by section 428A.6 of the Code.

79.1(6) Refunds. County recorders shall not refund any overpayment of a real estate transfer tax liability. The grantor of the real property for which the real estate transfer tax has been overpaid shall petition the state appeal board for a refund of seventy-five percent of the overpayment amount. A refund of the remaining twenty-five percent of the overpayment shall be petitioned from the board of supervisors of the county in which the tax was paid.

This rule is intended to implement chapter 428A of the Code.

730—79.2 Taxable status of real estate transfers.

79.2(1) Federal rules and regulations. In factual situations not covered by these rules and involving those portions of Iowa law which are consistent with the former federal statutes (26USCA 4361) that imposed a real estate transfer tax, the department of revenue and county recorders shall follow the federal rules and regulations in administering the provisions of chapter 428A. (1968 O.A.G. 643)

79.2(2) Transfer of realty to a corporation in exchange for capital stock. Capital stock received in exchange for real property constitutes consideration which is subject to the real estate transfer tax. Where the value of the capital stock is definite or may be definitely determined in a dollar amount, the specific dollar amount is subject to the tax. Where the value of the capital stock is not definitely measurable in a dollar amount, the tax imposed is to be calculated on the fair market value of the realty transferred. For purposes of this rule, fair market value shall be defined in section 441.21 of the Code. (1976 O.A.G. 776)

There is no exception to this rule for a real estate conveyance in which an individual is incorporating his or her farm or business, and is the sole or majority stockholder of the newly created corporation.

79.2(3) Trades of real estate. Real estate transfers involving the exchange of one piece of real property for another are transfers subject to the real estate transfer tax. Each grantor of the real estate is liable for the tax based on the fair market value of the property received in the trade as well as other consideration including but not limited to cash and assumption of debt. (1972 O.A.G. 654)

For purposes of this rule, fair market value shall be as defined in section 441.21 of the Code.

79.2(4) Conveyance to the United States government or the state of Iowa. Any person or organization not exempt from the real estate transfer tax pursuant to section 428A.2 of the Code, who transfers property to the United States or any agency or instrumentality thereof or to the state of Iowa or any agency, instrumentality, or political subdivision thereof is subject to the real estate transfer tax. (1968 O.A.G. 579) An exception to this rule is any conveyance to the United States Department of Agriculture, Farmers Home Administration, which is specifically exempted by federal law.

79.2(5) Conveyance of property on leased land. The transfer of buildings or other structures located on leased land are subject to the real estate transfer tax. The fact that the person who owns a building or other structure does not own the land upon which his or her property is located does not exempt this type of conveyance from the real estate transfer tax. (1972 O.A.G. 318)

79.2(6) Mortgage default. In the factual situation where a defaulting mortgagor issues a deed or other conveyance instrument to the mortgagee as satisfaction of the mortgage debt, the transaction is subject to the real estate transfer tax. The consideration upon which the tax is calculated is the outstanding unsatisfied mortgage debt. (Federal rule)

79.2(7) Completion of contract. A deed or other conveyance instrument given at the time of completion of a real estate contract is subject to the real estate transfer tax. The tax is to be computed on the full amount of the purchase price as stated in the contract and not solely on the last installment payment made prior to the issuance of the deed or other conveyance instrument. (Federal rule)

79.2(8) Assignments of contract. Assignments of real estate contracts by contract sellers and contract buyers are not subject to the real estate transfer tax. (1970 O.A.G. 605)

79.2(9) Easements. The conveyance of an interest in property through a perpetual easement is a transfer subject to the real estate tax (Griger to Anderson, 8-15-77).

79.2(10) Corporate liquidation. A conveyance of realty by a corporation in liquidation or in dissolution to its shareholders subject to the debts of the corporation, is a conveyance subject to the real estate transfer tax. However, if there are no corporate debts and the conveyance is made solely for the cancellation and retirement of the capital stock, the tax does not apply. (Federal rule)

79.2(11) Security instruments. Any deed or instrument given exclusively to secure a loan or debt is not subject to the real estate transfer tax. (Federal Rule)

This rule is intended to implement sections 428A.1 and 428A.2 of the Code.

730—79.3(428A) Declarations of value: Responsibility of county recorders and city and county assessors.

79.3(1) Forms and procedures. County recorders and county and city assessors shall use only the forms and procedures prescribed and provided by the director of

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

revenue for reporting real estate transfer-declarations of value.

79.3(2) Report of sales. County recorders and city and county assessors shall complete the appropriate portions of the real estate transfer-declaration of value form for each real estate transfer requiring completion of such form by the affected buyer, seller, or their agents. The completion of the real estate transfer-declaration of value forms for such transfers shall constitute the preparation of a quarterly sales report to the director of revenue as required by section 421.17(6) of the Code.

79.3(3) Transmittal of forms. Real estate transfer-declaration of value forms filed with the county recorder shall be transmitted promptly to the appropriate assessor. City and county assessors shall transmit to the department of revenue within sixty days of the end of each calendar quarter all real estate transfer-declaration of value forms received from the county recorder during that calendar quarter. Under no circumstances shall the assessor retain any real estate transfer-declaration of value form longer than herein designated.

79.3(4) Completion of forms. County recorders and city and county assessors shall complete declaration of value forms to the best of their knowledge and in accordance with instructions issued by the department. The assessed values entered on the forms are to be the final values established as of January 1 of the year in which the transfer occurred.

This rule is intended to implement section 428A.1 of the Code.

730—79.4(428A) Certain transfers of agricultural realty.

79.4(1) In determining whether agricultural realty is purchased by a corporation, limited partnership, trust, alien, or nonresident alien for purposes of providing information required for such transfers by section 428A.1 of the Code, the definitions contained in this rule shall apply.

79.4(2) Corporation defined. Corporation means a domestic or foreign corporation and includes a nonprofit corporation and cooperatives.

74.4(3) Limited partnership defined. Limited partnership means a partnership as defined in section 545.1 of the Code and which owns or leases agricultural land or is engaged in farming.

79.4(4) Trust defined. Trust means a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. A trust includes a legal entity holding property as a trustee, agent, escrow agent, attorney-in-fact, and in any similar capacity.

Trust does not include a person acting in a fiduciary capacity as an executor, administrator, personal representative, guardian, conservator or receiver.

79.4(5) Alien defined. Alien means a person born out of the United States and unnaturalized under the Constitution and laws of the United States. (Breuer v. Beery, 189 N.W. 714, 194 Iowa 243, 244 (1922).)

79.4(6) Nonresident alien defined. Nonresident alien means an alien as defined in subrule 79.4(5) who is not a resident of the state of Iowa.

This rule is intended to implement section 428A.1 of the Code.

730—79.5(428A) Form completion and filing requirements.

79.5(1) A real estate transfer-declaration of value form shall be completed for any deed, contract, instrument or writing that grants, assigns, transfers or otherwise conveys real property except those specifically exempted by law if the document presented for recording clearly states on the face of such document that it is a document exempt from the reporting requirements as enumerated in section 428A.2, subsections 2 through 13 of the Code, or is a deed given in fulfillment of a previously recorded real estate contract. A real estate transfer-declaration of value form shall not be completed by the buyer, seller, or either's agent or the county recorder for any transaction that does not grant, assign, transfer or convey real property.

79.5(2) Real estate transfer-declaration of value real estate transfer tax. Requirements for completing real estate transfer-declaration of value forms or exceptions from filing such forms shall not be construed to alter the liability for the real estate transfer tax or the amount of such tax as provided in chapter 428A of the Code.

79.5(3) Agent defined. As used in section 428A.1 of the Code, an agent is defined as any person designated or approved by the buyer or seller to act in his or her behalf in the real estate transfer transaction.

79.5(4) Easements. Easements of a perpetual nature are considered property conveyances. Consequently, perpetual easements shall be subject to the real estate transfer-declaration of value filing requirement.

79.5(5) Government agency filing requirements. The real estate transfer-declaration of value form does not have to be completed by the buyer, seller or either's agent or the county recorder for any real estate transfer document in which the United States or any agency, instrumentality thereof, or the state of Iowa or any agency, instrumentality or governmental or political subdivision thereof is the grantor, assignor, transferor or conveyor; and any transfer in which any such unit of government is the grantee or assignee where there is no consideration. However, any transfer, including eminent domain land acquisitions, in which any such unit of government is the grantee or assignee where there is consideration is subject to the real estate transfer-declaration of value filing requirements. (Donahue to Kassel, 4-20-79) An exception to this rule is any conveyance to the United States Department of Agriculture, Farmers Home Administration, which is specifically exempted by federal law.

79.5(6) Recording refused. The county recorder shall refuse to record any document for which a real estate transfer-declaration of value is required if such form is not completed accurately and completely by the buyer or seller or either's agent.

This rule is intended to implement sections 428A.1, 428A.2, and 428A.4 of the Code.

730—79.6 Confidentiality of declarations of value.

79.6(1) Information concerning real estate transfer transactions obtained from sources not confidential by statute by any person prior to the filing of declarations of value for such transactions, as well as information obtained after the filing of declarations of value from public records including but not limited to real estate deeds and contracts recorded in the office of the county recorder is not considered confidential information.

79.6(2) Tax officials and courts. Federal, state, county, city and other local tax officials as well as courts

and court appointed representatives may examine declarations of value and information obtained from declarations of value in the exercise of their official duties. Tax officials and courts and court appointed representatives who are not employees of the department of revenue do not have to be authorized by the director of revenue to have access to such information.

79.6(3) Employees of a conference board. Appraisal companies or other technical or expert personnel employed by a conference board to assist in the valuation of property in accordance with section 441.50 of the Code may examine declarations of value and information obtained from declarations of value in the exercise of their duties to assist in the valuation of property while employed by a conference board. Such persons shall not divulge any information obtained from declarations of value to any unauthorized persons as provided in section 428A.15 of the Code and are subject to the penalty for unauthorized disclosures as provided by law.

79.6(4) Protest proceedings. Persons requesting information from real estate transfer-declaration of value forms for protest purposes pursuant to sections 441.37 and 441.48 of the Iowa Code shall obtain only that information which is necessary and reasonable for their protest proceedings. It shall be the duty of the assessor to ensure that persons requesting such information from the assessor be provided with only the real estate transfer-declaration of value forms or information taken therefrom that is pertinent to the specific protest action.

This rule is intended to implement section 428A.15 of the Code.

ARC 0380

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 217.6 of the Code, proposes the adoption of the following rules relating to records of the department.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before August 3, 1979.

Pursuant to the authority of section 217.6 of the Code, rules of the department of social services appearing in the IAC relating to records of the department (chapter 9) are hereby amended.

Rule 770—9.3(217) is amended to read as follows, new subrule 9.3(1) is added, and subrules 9.3(1) through 9.3(4) are renumbered 9.3(2) through 9.3(5) respectively.

770—9.3(217) Contested administrative cases. When a client has filed an administrative appeal from a decision of the department of social services in accordance with chapter 17A of the Code, the department shall release the record to the client to examine the contents of such client's case record plus all documents and records to be used by the department at the hearing at reasonable time before the date of the hearing as well as during the hearing. ~~The~~ *When the appeal is filed under title IV-A, XVI, or XIX of the Social Security Act the* client shall have access to the contents of such client's entire case record. ~~when an administrative~~ *When the* appeal is filed ~~with the following exceptions.~~ *under a program administered by the department, but such program is not part of the Social Security Act as set forth above, the client's file shall be released as follows:*

9.3(1) *Records to be used at the hearing. The household or its representative must be given adequate opportunity to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing. When requested by the household or its representative, the department shall provide a free copy of the portions of the case file that are relevant to the hearing.*

ARC 0379

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 239.18 of the Code, proposed the adoption of the following rules relating to aid to dependent children.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before August 3, 1979.

Pursuant to the authority of section 239.18 of the Code, rules of the department of social services appearing in the IAC relating to aid to dependent children (chapter 40) are hereby amended.

ITEM 1. Rule 770—40.1(239) is amended by adding the following subrule:

40.1(3) Whenever "child" is used in this title, it shall include the unborn child in the last trimester of pregnancy.

ITEM 2. Rule 770—40.5(239) is amended to read as follows:

770—40.5(239) Time limit for decision. The applicant shall receive a money payment or a written notice of denial within thirty days from the date of application. Such time standard shall apply except in unusual circumstances, such as when the local office cannot reach a decision because of failure or delay on the part of the applicant or an examining physician, or because of some administrative or other emergency that could not be controlled by the county. ~~When eligibility is dependent upon the birth of a child the time limit may be extended while awaiting the birth of the child.~~

ITEM 3. Subrule **40.7(4)**, paragraph "a" is amended by adding the following subparagraph:

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

(7) Termination of pregnancy.

ITEM 4. Subrule **40.7(4)**, paragraph "b" is amended by adding the following subparagraph:

(7) The date the pregnancy terminates.

ARC 0378

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 239.18 of the Code, proposed the adoption of the following rules relating to aid to dependent children.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before August 3, 1979.

Pursuant to the authority of section 239.18 of the Code, rules of the department of social services appearing in the IAC relating to aid to dependent children (chapter 41) are hereby amended.

ITEM 1. Subrule **41.4(1)**, paragraph "e" is amended to read as follows:

e. A mother or other eligible caretaker relative of a child under the age of six who is caring for the child. *A pregnant applicant or recipient in the last trimester of pregnancy is considered to be the mother of a child under the age of six.*

ITEM 2. Subrule 41.8(2) is amended to read as follows and new paragraph *"l"* added:

41.8(2) Basic needs. The schedule of basic needs is used to determine the basic needs of those persons whose needs are included in and are eligible for an aid to dependent children grant, *except for the unborn child in the last trimester of pregnancy.* The eligible group is considered a separate and distinct group without regard to the presence in the home of other persons, regardless of relationship to or whether they have a liability to support members of the eligible group. The schedule of basic needs is also used to determine the needs of persons not included in the assistance grant, but who may have an obligation to contribute their income over and above their needs to the persons in the eligible group. The schedule of basic need represents one hundred percent of basic needs.

l. A payment of $10 per month shall be made for an unborn child in the last trimester of pregnancy. The pregnancy shall be verified in writing by a licensed physician. The verification shall attest to the fact of pregnancy and project an expected date of delivery. When an examination is required and other medical resources are not available to meet the expense of the examination, the physician shall be authorized to make the examination and submit the claim for payment. Each pregnancy shall be considered for assistance purposes as involving only one child, even though the physician's statement may indicate a possibility of multiple births.

ARC 0376

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 239.18 of the Code, proposes the adoption of the following rules relating to aid to dependent children.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before August 3, 1979.

Pursuant to the authority of section 239.18 of the Code, rules of the department of social services appearing in the IAC relating to aid to dependent children (chapter 41) are hereby amended.

Subrule **41.8(3)**, paragraph "f", is amended to read as follows:

f. Personal services. An allowance for personal services may be allowed only when the physical or mental condition of the adult recipient prevents the performance of those tasks necessary to daily living or because of lack of skill needs assistance in household maintenance or management. No allowance shall be made for those services only indirectly related to the individual's welfare such as yard work, snow shoveling, errands and seasonal or irregular housecleaning. No payment shall be made to a member of the eligible group to provide such services. When required, an allowance may also be made to cover the employer's share of the social security tax. The payment for personal services shall be the actual charge, not to exceed ~~$69~~ *$73* a month for each member of the eligible group or a grant total of ~~$276~~ *$292*. Need for the personal services allowance shall be established only under the following conditions:

ARC 0377

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 239.18 of the Code, proposes the adoption of the following rules relating to aid to dependent children.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before August 3, 1979.

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

Pursuant to the authority of section 239.18 of the Code, rules of the department of social services appearing in the IAC relating to aid to dependent children (chapter 41) are hereby amended.

Subrule 41.8(5), paragraph "c", is amended to read as follows:

c. When the transportation between the foster care facility and the child's home is not included in the service payment to the foster home, the actual cost, not to exceed ~~fifteen cents per mile~~ *the current rate paid to state employees for mileage,* shall be allowed in the aid to dependent children grant.

ARC 0375

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 217.6 and chapter 249 of the Code, proposes the adoption of the following rules relating to state supplementary assistance.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before August 3, 1979.

Pursuant to the authority of section 217.6 and chapter 249 of the Code, rules of the department of social services appearing in the IAC relating to state supplementary assistance (chapter 54) are hereby amended.

ITEM 1. Rule 770—54.1(249) is amended to read as follows:

770—54.1(249) Application and contract agreement. Each facility desiring to participate in the state supplementary assistance program must enter into a contract with the department of social services and agree to the provisions as enumerated in form PA-1108-6, Application and Contract Agreement for Residential Care Facilities. *The effective date of the contract shall be the first of the month that the Application and Contract Agreement for Residential Care Facilities, signed by the administrator of the facility, is received by the department. No payment shall be made for care provided before the effective date of the contract.* The contract shall be for a term of twelve months, subject to renewal; or until the department ceases to participate in the program; or until either party gives sixty days notice of termination in writing to the other party.

ITEM 2. Rule 770—54.3(249) is amended by adding the following subrule:

54.3(15) *The cost-related per diem rate is calculated by computing the per diem allowable costs from the financial and statistical report, adding five percent to all costs except interest to adjust for inflation, and adding an incentive factor of fifty-two cents for nonprofit facilities and seventy cents for proprietary facilities.*

ARC 0374

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 249A.4 of the Code, proposes the adoption of the following rules relating to medical services.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before August 3, 1979.

Pursuant to the authority of section 249A.4 of the Code, rules of the department of social services appearing in the IAC relating to medical services (chapter 78) are hereby amended.

Subrules 78.18(1), 78.18(3), 78.18(4), and 78.18(5) are amended to read as follows:

78.18(1) Payment will be made for immunizations *only when* provided by the screening center on the same date as the screening examination.

78.18(3) Payment will be approved for ~~only one screening examination in each twelve month period~~ *four screenings in the first year of life, two screenings between ages one and two, one screening between ages two and three, one screening between ages three and four, one screening between ages four and six (recommended for preschool physical), one screening between ages six and nine, one screening between ages nine and thirteen, one screening between ages thirteen and seventeen, and one screening between ages seventeen and twenty-one.*

78.18(4) When it is established *by the periodicity schedule in 78.18(3)* that an individual is in need of ~~health~~ screening ~~service, the local office of the department of social services will send the screening center a copy of form MA-2119-0, Referral for Screening. The original copy will be presented to the screening center at the time of the appointment~~ *the individual will receive a notice that screening is due.*

78.18(5) When an individual is screened, *a member of the screening center shall complete* a medical history ~~shall be completed by a staff member of the screening center. It may be recorded on form XIX (SCR-1), Brief Medical History, or the screening center may use its own form~~. The medical history shall become part of the individual's medical record.

ARC 0372

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 249A.4 of the Code, proposes the adoption of the following rules relating to medical assistance.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before August 3, 1979.

Pursuant to the authority of section 249A.4 of the Code, rules of the department of social services appearing in the IAC relating to medical assistance (chapter 79) are hereby amended.

Rule 770—79.1(249A) is amended by adding the following subrule:

79.1(3) Reasonable charges for services, supplies, and equipment. For selected medical services, supplies, and equipment, including equipment servicing, which in the judgment of the secretary of the department of health, education, and welfare generally do not vary significantly in quality from one provider to another, the upper limits for payments shall be the lowest charges which such devices are widely and consistently available in a locality. For those selected services and items furnished under part B of Medicare and Medicaid, the upper limits shall be the lowest charge levels recognized under Medicare. For those selected services and items furnished only under Medicaid, the upper limits shall be the lowest charge levels determined by the department according to the Medicare reimbursement method.

a. For any noninstitutional item or service furnished under both Medicare and Medicaid, the department shall pay no more than the reasonable charge established for that item or service by the part B Medicare carrier serving part or all of Iowa. Noninstitutional services do not include practitioner's services, such as physicians, pharmacies, or out-patient hospital services.

b. For all other noninstitutional items or services furnished only under Medicaid, the department shall pay no more than the customary charge for a provider or the prevailing charges in the locality for comparable items or services under comparable circumstances, whichever is lower.

ARC 0373

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

The department of social services, under the authority of section 249A.4 of the Code, proposes the adoption of the following rules relating to early and periodic screening, diagnosis, and treatment.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before August 3, 1979.

Pursuant to the authority of section 249A.4 of the Code, rules of the department of social services appearing in the IAC relating to early and periodic screening, diagnosis, and treatment (chapter 84) are hereby amended.

Subrule 84.4(2) is amended to read as follows:

84.4(2) Screening shall be offered to each eligible individual *according to the periodicity schedule in subrule 78.18(3) when screening has been accepted, or* on at least an annual basis *when screening has been rejected.*

ARC 0371

SOCIAL SERVICES DEPARTMENT[770]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of section 249A.4 of the Code, the department of social services proposes to adopt rules to Title VIII relating to inpatient psychiatric services for individuals over age sixty-five and under age twenty-one. Following are the areas in which the department is developing rules.

Consideration will be given to written data, views, or arguments thereto, received by the ACT Unit, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before August 3, 1979.

Oral presentations on the proposed rules may be made at:

August 1, 1979, 1:00 p.m.
Social Services District Office
3619½ Douglas
Des Moines, Iowa

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

1. Background.

Individuals under age 21 and over age 65 who are residents in institutions for mental diseases are optional coverage groups under the Title XIX program. If a state elects to cover such individuals under Title XIX, federal financial participation is available in payments to the institutions and for all other medical and health services within the scope of the state's program. Inasmuch as chapter 249A of the Code (the Title XIX enabling statute) specifies the groups of persons that can be covered by the program and the priority order in which they can be included, an amendment of this statute was required in order to cover these two categories of persons. House File 677 enacted by the 1979 legislature fulfilled this purpose.

The principal advantage of implementation of this provision will be savings to the counties who currently are financing 80% of the cost of care of individuals from the respective counties who are receiving care in the four state mental health institutes. No federal funds are currently being received by the state for the care of such individuals. Through implementation of this provision federal financial participation in the amount of 56% would be available in expenditures for institutional care and other medical and health services within the scope of the Title XIX program for these individuals.

Federal regulations specify a number of requirements which must be met that are not addressed in House File 677, in order to qualify for federal financial participation. In order to implement this provision certain amendments to the Iowa Administrative Code will be necessary. Following are the principal matters which we will be covering in the proposed rules.

2. Inpatient psychiatric facility.

This is a psychiatric establishment that is accredited by the Joint Commission on the Accreditation of Hospitals to provide inpatient psychiatric care. A psychiatric unit of a general hospital cannot participate as a psychiatric facility for the purpose of providing payable services under this program.

3. Age.

Eligibility is limited to individuals under age 21 except if treatment in a facility is provided immediately preceding the individual's 21st birthday coverage continues to be available until the 22nd birthday or until service is no longer required whichever is earlier.

4. Period of eligibility.

The individual may be considered to be an inpatient until he is unconditionally discharged or, if earlier, the date the individual attains age 22. While on inpatient status the eligible individual will be entitled to the full scope of Title XIX benefits.

5. Certificate of need for care for individuals under 21 by independent team.

A preadmission evaluation must be performed by an "independent team" in a community mental health center or by a team consisting of a physician and a social worker from the local office of the Department of Social Services. This independent team must certify that inpatient services can be reasonably expected to improve the individual's condition or prevent further regression so that services will no longer be required. The preadmission evaluation must have been performed within 45 days of the proposed date for admission to the facility. The evaluation must be submitted to the institution involved on or prior to the date of the patient's admission.

6. Maintenance of records by hospitals

Each hospital must maintain records that clearly indicate that the patient is involved in an active treatment program that has as its goal the return of the patient to a higher level of social and emotional functioning or the prevention of further regression. Documentation in the record shall substantiate the following:

a. That a complete physical examination was done within 24 hours after admission.

b. That a psychiatric evaluation was performed including a history of psychological problem areas, previous psychiatric treatment, direct psychological observations and behavioral appraisal and when indicated, intellectual projective and personality testing, evaluation of language cognition, self-help, social-effective and visual motor functioning.

c. With respect to children and adolescents, the psychiatric evaluation shall also include an assessment of the developmental/chronological age of the patient, including a developmental history from the prenatal period to the present, the rate of progress, developmental milestones, developmental problems and an evaluation of the patient's strengths as well as problems.

d. There shall be a social assessment which includes information relating to environment and home, religion, childhood history, military service history, financial status, evaluation of the patient's family circumstances and evaluation of the expectations of the family regarding the patient's treatment, the degree to which they expect to be involved and the expectations regarding the length of time and type of treatment required.

e. The psychiatric evaluation and social assessment shall be done as soon as possible but in no case later than 30 days after payments are initiated for care provided.

f. Progress shall be reviewed regularly at multidisciplinary case conferences that are oriented toward evaluation of the individual patient's treatment plan as well as evaluation of the patient's progress in meeting the state treatment goals. Results of these reviews shall be entered in the patient's record. The review of the treatment plan must be done at least quarterly and shall clearly indicate that all appropriate measures are being used for the treatment of the patient and that continued treatment in the hospital is necessary.

7. Comprehensive plan for after-care.

A comprehensive plan for after-care shall be developed for each patient. The plan shall reflect the full utilization of appropriate community resources. Such discharge planning will normally begin soon after the admission of the patient to the hospital. Discharge planning and after-care services will be closely co-ordinated with other community services. With the necessary consents for release of information, the hospital will supply appropriate clinical information to the referral agencies.

8. Additional requirements applicable to individuals under age 21.

a. Active treatment - Inpatient psychiatric services must involve "active treatment" which means implementation of a professionally developed and supervised individual plan of care that is developed and implemented by an interdisciplinary team no later than fourteen days after admission and is designed to achieve the recipient's discharge from inpatient status at the earliest possible time.

b. Individual plan of care - "Individual plan of care" means a written plan developed for each recipient by an interdisciplinary team designed to improve his condition to the extent that inpatient care is no longer necessary.

c. Interdisciplinary team - The team must include as a minimum either a board-eligible or board-certified

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

psychiatrist or a clinical psychologist who has a doctoral degree and a physician licensed to practice medicine or osteopathy. The team must also include one of the following:

(1) A psychiatric social worker

(2) A registered nurse with specialized training or one year's experience in treating mentally ill individuals

(3) An occupational therapist who is licensed and who has specialized training or one year of experience in treating mentally ill individuals; or

(4) A psychologist who has a master's degree in clinical psychology or has been licensed in the state of Iowa.

ARC 0369

TRANSPORTATION, DEPARTMENT OF[820]

06 HIGHWAY DIVISION

AMENDMENT TO NOTICE OF INTENDED ACTION

A notice of intended action proposing an amendment to rule 820—[06,K]2.1(321) was published in the May 30, 1979, Iowa Administrative Bulletin [ARC 0263]. This notice of intended action is hereby amended as follows:

ITEM 1. The first paragraph of the notice is amended as follows:

On ~~July 10, 1979~~ *August 7, 1979*, at their regular meeting at the Department of Transportation Complex, 800 Lincoln Way, Ames, Iowa, the transportation commission shall consider for adoption the following administrative rules as described herein. Such action shall be in accord with the Iowa administrative procedures Act, chapter 17A of the Code, and department of transportation rules 820—[01,B] chapter 1 "Administrative Rules".

ITEM 2. The third paragraph of the notice is amended to read as follows:

Written comments or written requests to make an oral presentation at the above specified commission meeting concerning these proposed rules may be accepted if received by the department of transportation on or before ~~June 25, 1979~~ *July 24, 1979*.

ARC 0370

TRANSPORTATION, DEPARTMENT OF[820]

06 HIGHWAY DIVISION

ECONOMIC IMPACT STATEMENT

Pursuant to the authority of section 17A.4(1)"c" of the Code, the Administrative Rules Review Committee at their June 6, 1979, meeting requested an economic impact statement on the proposed amendment to rule 820—[06,K]2.1(321), which was published under notice on May 30, 1979, in the Iowa Administrative Bulletin. Specifically, the Administrative Rules Review Committee requested the economic impact of the proposed amendment on local entities; i.e., cities and counties. The department of transportation hereby publishes the requested economic impact statement:

The 1978 Manual on Uniform Traffic Control Devices being adopted by this amended rule is not radically different than the 1971 edition now effective. One purpose in rewriting the manual was to incorporate many official rulings on requests for interpretations, changes and experimentation which have been prepared by the National Advisory Committee on Uniform Traffic Control Devices and approved by the Federal Highway Administration. These rulings have been published in eight separate volumes over the past seven years and became effective when issued as revisions to the existing manual. Publication of the 1978 manual eliminates the need for users to cross reference over 100 changes which have been made. In addition, two new parts on "Traffic Control Systems for Railroad-Highway Crossings" and "Traffic Controls for Bicycle Facilities" have been added. This material was consolidated into the new manual from separate publications which were available on these two subjects.

Over one-half of the changes made have been in the six sections which cover signs. The trend set in the current manual toward broader use of symbol signs has been continued. Over 30 new symbol signs have been added since the 1971 edition was published. Use of symbol signs remains optional in most cases with equivalent word message signs still being permitted. In describing the application of symbol signs, the text contains many permissive type phrases such as "may be used", "permits the use of" and "as a substitute for".

Specific mandatory changes in the 1978 manual which will have an economic impact on cities and counties include the following:

1. The word message sign "Center Lane Left Turn Only" has been changed to a symbol sign for use where a lane in the center of a street or highway is reserved for exclusive use by left turning vehicles in either direction. This is a relatively new concept which has not been used to any major extent in Iowa. Affected would be some arterial streets in major urban areas. An estimate of this conversion cost to cities is $10,000.

2. Iowa law permits a right turn on red at signalized intersections, or a left turn on red in the case of a one-way street, unless signs are in place prohibiting such movements. The sign previously used for this purpose carried the message, "No Right (or Left) Turn on Red" while the prescribed sign in the 1978 manual is "No Turns on Red". Conversion of signs to correct this minor change by cities who have such prohibitions is estimated at $12,000.

3. The 1978 manual requires that all destination and mileage signs have a white message on a green background. The former manual permitted a black on white alternate. This change was actually made by an official ruling approved on August 10, 1976, giving a 5-year conversion period with a compliance date of July 1, 1981. Use of these signs is predominantly rural thereby affecting counties more than cities. All new and replacement signs installed subsequent to the official ruling date will comply, therefore, a relatively small number of nonconforming signs need replacing. An estimate of cost for counties to comply is $70,000.

4. Part 3 on pavement markings now specifies a gap ratio for broken lines on rural highways of 10-foot segments separated by 30-foot gaps. Formerly, the ratio

was 15-foot segments separated by 25-foot gaps. Research has shown that this new pattern serves traffic just as well, while saving approximately 30% on paint. This results in a positive benefit to cities and counties rather than an additional cost. An estimate of this benefit for one application of pavement markings is $100,000.

5. Delineators prescribed in the 1978 manual must conform to the color of edge lines, i.e., delineators on the right side of the roadway must be white and those on the left side of one-way roadways and ramps must be yellow. Available information on compliance with this requirement is too incomplete to make an estimate, however, it would not be considered a costly conversion to change delineator buttons where necessary.

6. All permanent road closure barricades are required by the 1978 manual to be red and white. Previously, it was permissible to use black and white barricades for this purpose. This change will have limited impact on both cities and counties. An estimate of the cost for this conversion is $77,000.

The above figures provide estimates on mandatory changes which will be required by the 1978 manual. The additional $169,000 in sign costs estimated in items 1, 2, 3 and 6 above will be partially offset by the estimated savings of $100,000 in reduced pavement markings described in item 4. Other optional changes are desirable, but will be at the discretion of city and county authorities. Adoption and implementation of the 1978 manual will promote uniformity of traffic control devices nationwide and allow cities and counties to upgrade their systems as a contribution toward that goal.

ARC 0359

TRANSPORTATION, DEPARTMENT OF[820]

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 August 21, 1979, at their regular meeting at the Department of Transportation Complex, 800 Lincoln Way, Ames, Iowa, the transportation commission shall consider for adoption the following administrative rules as described herein. Such action shall be in accord with the Iowa administrative procedures Act, chapter 17A of the Code, and department of transportation rules 820—(01,B) chapter 1 "Administrative Rules".

Comments and requests to make an oral presentation shall be addressed to the Department of Transportation, in care of the Office of Administrative Services, 800 Lincoln Way, Ames, Iowa 50010.

Written comments or written requests to make an oral presentation at the above specified commission meeting concerning these proposed rules may be accepted if received by the department of transportation on or before August 7, 1979.

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

1. The name, address and phone number of 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, subparagraph, and line as appropriate.)
3. With regard to requests to make an oral presentation, the general content shall be indicated.

Proposed rulemaking actions:

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of section 307.10 of the Code, rules 820—[07,D] chapter 10 entitled "Motor Vehicle Dealers, Manufacturers and Distributors" are hereby amended.

ITEM 1. Subrule 10.1(7) is amended to read as follows:

10.1(7) "Extension" means a supplemental location for the sale of used motor vehicles within the same city or township as the dealer's principal place ~~or~~ *of* business.

ITEM 2. Subrule 10.1(8) is amended to read as follows:

10.1(8) "Facility for reconditioning and repairing" means a repair shop, with minimum space to repair and recondition one or more motor vehicles, with adequate access, equipment and tools for repairing and reconditioning motor vehicles sold by the dealer. The ~~repair shop shall not be located within or attached to a building or structure used for any purpose other than a repair shop unless separated by walls or partitions, floors or floor ceiling assemblies having a fire resistance rating of not less than two hours,~~ *interior walls and ceilings separating the repair shop from any area used as a salesroom, display area or office shall be of a type required by any city or county fire code in effect at the place where the facility is located. If there is no fire code or if the fire code does not specify a fire resistance rating, such interior walls and ceilings shall have a fire resistance rating of not less than one hour* and *shall be* constructed in such a manner as to resist the passage of smoke, vehicle exhaust gases and odors from the repair shop ~~to any area occupied for salesrooms, display areas or offices~~. Minimum space for repair of motorcycles *or motorized bicycles* shall be no less than ten feet by fifteen feet. Minimum space for repair of other motor vehicles shall be no less than eighteen feet by thirty feet.

ITEM 3. Subrule **10.4(1)** is amended by adding the following new paragraph "e".

e. Persons engaged in the business of selling special equipment body units which have been or will be installed on vehicle chassis not owned by such person, solely for the purpose of delivering, testing and demonstrating the special equipment body and the motor vehicle. Such plates shall display the words "limited use" thereon.

ITEM 4. [07,D] chapter 10 is amended by adding rule [07,D]10.9(321) as follows:

820—[07,D]10.9(321) Dealer list of vehicles. Dealers registered under the provisions of chapter 321 of the Code shall submit registration receipts to the county treasurer for those vehicles listed under the provisions of section 321.70 of the Code, which have been previously registered in this state. The registration receipts shall be submitted with the list and the county treasurer shall, upon receipt thereof, make a notation on the face of the registration receipt which shall state "Dealer list", the name of the

TRANSPORTATION, DEPARTMENT OF[820] *(cont'd)*

county where the dealer is licensed, the dealer's registration number, the date the list was filed with the county treasurer, the name of the county treasurer and the signature of the person making the notation. After the notation has been made the registration receipt shall be returned to the dealer. A registration receipt with the notation thereon shall be accepted by any county treasurer as evidence that the vehicle described thereon has been listed on the dealer list as provided in section 321.70 of the Code.

This rule is intended to implement section 321.70 of the Code.

ITEM 5. [07,D] chapter 10 is amended by adding rule [07,D]10.10(321) as follows:

820—[07,D]10.10(321) Motor home systems. Permanently installed systems on motor homes as specified and defined in section 321.1 of the Code as amended by Sixty-eighth General Assembly, Senate File 101, section 2, shall comply with the American National Standards Institute Standard as follows: ANSI A119.2 (NFPA/ANSI-501C). A copy of this standard is on file in the Special Services Section, Office of Vehicle Registration, Iowa Department of Transportation, Lucas State Office Building, Des Moines, Iowa 50319. A motor home manufacturer shall, as a condition of licensing under chapter 322 of the Code, certify that every motor home manufactured for distribution to a retail dealer in this state complies with the standards specified in this rule.

This rule is intended to implement section 321.1 of the Code as amended by Sixty-eighth General Assembly, Senate File 101, section 2.

ITEM 6. [07,D] chapter 10 is amended by adding rule [07,D]10.11(321) as follows:

820—[07,D]10.11(321) Motor home standards seal. Motor home manufacturers shall affix a standards seal to every motor home manufactured for distribution to a retail dealer in this state, signifying compliance with the standards specified in rule 820—[07,D]10.10(321). The seal shall be between two and three inches in height and width and shall signify compliance with the standards substantially as illustrated below. The standards seal issued by the Recreation Vehicle Industry Association shall be acceptable.

The seal shall be affixed to a motor home in a prominent location within the vehicle.

This rule is intended to implement section 321.1 of the Code as amended by Sixty-eighth General Assembly, Senate File 101, section 2.

ARC 0360

TRANSPORTATION, DEPARTMENT OF[820]

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 August 21, 1979, at their regular meeting at the Department of Transportation Complex, 800 Lincoln Way, Ames, Iowa, the transportation commission shall consider for adoption the following administrative rules as described herein. Such action shall be in accord with the Iowa administrative procedures Act, chapter 17A of the Code, and department of transportation rules 820—(01,B) chapter 1 "Administrative Rules".

Comments and requests to make an oral presentation shall be addressed to the Department of Transportation, in care of the Office of Administrative Services, 800 Lincoln Way, Ames, Iowa 50010.

Written comments or written requests to make an oral presentation at the above specified commission meeting concerning these proposed rules may be accepted if received by the department of transportation on or before August 7, 1979.

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

1. The name, address and phone number of 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, subparagraph, and line as appropriate.)
3. With regard to requests to make an oral presentation, the general content shall be indicated.

Proposed rulemaking actions:

07 MOTOR VEHICLE DIVISION

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

ITEM 1. Rescind subrule **11.1(6)**.

ITEM 2. Subrule 11.3(5) is amended to read as follows:

11.3(5) Dealer certification. If the vehicle described on the application form is a new vehicle and such vehicle has been sold to the applicant by a dealer ~~licensed under the provisions of chapter 322~~ *as defined in section 321.1(38) of the Code*, such dealer shall certify, in the space provided therefor on the application form, the sale price of the vehicle, the amount allowed for property traded in, the tax price, the date that a "Registration Applied For" card was issued, if applicable, or the word "none" if such card was not issued, the date of the certification, the dealer number assigned to such dealer, *if applicable*, and the name of the dealer. The certification shall be signed in ink by the dealer or the authorized representative of such dealer.

TRANSPORTATION, DEPARTMENT OF[820] *(cont'd)*

ITEM 3. Subparagraph **11.3(6)**"a"(9) is amended to read as follows:

(9) If the vehicle described on the application for title and registration is a passenger-type vehicle, the investigator shall determine the weight and value of the vehicle. ~~and such~~ *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 section 321.162 of the Code. The* weight and value shall constitute the basis for determining the annual registration fee under the formula set forth in section 321.109 of the Code.

ITEM 4. Subrule 11.3(7) is amended by striking the subrule and inserting in lieu thereof the following:

11.3(7) Statement pertaining to registration plates. The applicant shall list on the application form the registration plate number of the registration plates which have been assigned to the applicant, that have been affixed to the vehicle. If the applicant does not have registration plates that have been affixed to the vehicle the word "none" shall be listed on the application form. The registration plate number or the word "none" shall be listed in the upper left-hand corner of the application form or in the space provided therefor, if such space is on the application form.

ITEM 5. Rule [07,D]11.3(321) is amended by adding the following subrule:

11.3(8) Signature of applicant. The application form shall bear the signature of the owner written in ink. If the vehicle described on the application form is owned by two or more persons each person shall sign the application. If the vehicle described on the application form is owned by a partnership, corporation, association, governmental subdivision or private organization, the application shall bear the name of the owner and shall also bear the signature of the authorized representative of the owner, written in ink.

ITEM 6. Subrule **11.4(5)** is amended by adding the following new paragraph "l":

l. If a motor home, whether a Class A, B or C, as follows:

(1) Class A to be designated as "MHA".
(2) Class B to be designated as "MHB".
(3) Class C to be designated as "MHC".

ITEM 7. The first three lines of subrule 11.6(7) are amended to read as follows:

11.6(7) A restricted certificate of title shall be issued on a motor vehicle providing the registration fee is not delinquent, ~~as provided in section 321.51~~ *if the motor vehicle was obtained or brought into this state for the purpose of restoring, rebuilding or repairing,* except under the following conditions.

ITEM 8. Subrule **11.7(1)** is amended by adding the following new paragraph "e".

e. If the vehicle is a motor home the original manufacturer's statement of origin shall be submitted. If the motor home has been manufactured by a person other than the original manufacturer the final manufacturer's statement of origin shall also be submitted. Assignments or reassignments of ownership of a motor home shall be made on the final manufacturer's statement of origin, when applicable, and the original manufacturer's statement of origin shall bear on the face thereof, in bold type, the following statement: "Final manufacturer's MSO has been issued on this vehicle". The final manufacturer's statement of origin shall bear thereon the original manufacturer's vehicle identification number or derivative thereof. The provisions of this paragraph shall apply to 1980 and subsequent year model motor homes.

ITEM 9. [07,D] chapter 11 is amended by adding rule [07,D]11.18(321) as follows:

820—[07,D]11.18(321) Towing permit. A person may purchase from the department towing permit forms, for which a fee of two dollars per permit shall be paid at the time of purchase. The towing permit form, when validated by the person to whom issued, shall authorize that person to tow a motor vehicle for which current registration plates have not been issued from one location to another in this state. The permit shall be displayed in the left rear window of the towed vehicle.

11.18(1) The permit shall be at least six inches by eight inches in dimension, and shall contain a preprinted number in two-inch bold type and the words "Iowa Towing Permit".

11.18(2) The permit shall be validated by the person to whom issued by listing the following information on the permit in the space provided therefor:

a. The name and address of the owner of the vehicle being towed.
b. The last registration number issued to the vehicle.
c. The address of the location from which the vehicle is being towed.
d. The address of the location to which the vehicle is being towed.
e. The name and address of the person to whom the department issued the permit.
f. The registration number of the towing vehicle.
g. The date the permit is validated by the person to whom issued.

11.18(3) The permit shall be void three days after validation. This rule is intended to implement section 321.309 of the Code.

ITEM 10. Paragraph **11.42(3)**"a" is amended to read as follows:

a. The personalized plates ~~and registration receipt~~ shall be surrendered to the county treasurer ~~in exchange for regular registration plates and registration receipt.~~ *within thirty days of the date of transfer of the vehicle, or;*

ITEM 11. Paragraph **11.42(3)**"b" is amended to read as follows:

b. The personalized plates may be assigned to another motor vehicle which is currently registered in the owner's name, *if application is made* within thirty days from the date the ~~plates are surrendered to the county treasurer~~ *vehicle for which the plates were assigned was transferred. If the personalized plates are not assigned as provided in this paragraph, the department may assign that combination of characters to any other person.*

ITEM 12. Rescind paragraph 11.42(3)"c".

ITEM 13. Subrule 11.50(3) is amended to read as follows:

11.50(3) When the registration of a motor vehicle which is currently registered is renewed for the following year during the month of December and a claim for refund of the registration fee which has been paid for the following year is based on the provisions of section 321.126, the amount of the refund shall be the full amount of the annual registration fee, if the registration plates are returned to the agency from which they were obtained prior to January 1 of the following year and a claim for refund is filed within thirty days from the date the plates were returned *unless the registration plates are*

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retained and properly attached to another vehicle, in which event the refund claim shall be filed prior to January 1 of the following year.

ITEM 14. Subrule 11.50(4) is amended to read as follows:

11.50(4) If a claim for refund is not filed within thirty days from the date the plates were returned to the county treasurer or department, as provided in section 321.126(1), *or if the registration plates are retained and properly attached to another vehicle and the claim for refund is not filed within thirty days from the date the original vehicle was destroyed by fire or accident, or junked and its identity entirely eliminated, or removed and continuously used beyond the boundaries of this state,* the applicant shall not be entitled to a refund for the quarter of the year next following but shall be entitled to a refund for any remaining quarters of the year, under the formula provided in section 321.127.

ITEM 15. Subrule 11.50(6) is amended to read as follows:

11.50(6) When the first semiannual installment of a registration fee has been paid for a truck, truck tractor or road tractor, under the provisions of section 321.134, and the provisions of section 321.126 are complied with, the department may authorize payment of a refund based on one-fourth of the annual registration fee multiplied by the remaining half of the semiannual period, providing the registration plates are surrendered to the agency from which they were obtained prior to April 1 and the claim for refund is filed within thirty days from the date that the plates have been surrendered *unless the registration plates are retained and properly attached to another vehicle. If the registration plates have been attached to another vehicle and the original vehicle was destroyed by fire or accident, or junked and its identity entirely eliminated, or removed and continuously used beyond the boundaries of this state and such event occurred prior to April 1 the refund claim shall be filed within thirty days from the date of such destruction, junking or removal.*

ITEM 16. Subrule 11.50(7) is amended to read as follows:

11.50(7) When the registration plates have been lost or stolen, *replacement plates have not been obtained for another vehicle in lieu of the lost or stolen plates* and the provisions of section 321.126 are applicable, the claimant for refund shall make application for a duplicate plate or plates, whichever the case may be, on the form provided for that purpose which may be obtained from the county treasurer or department and shall make payment of the appropriate fee for a duplicate plate or plates. Such application shall be accepted in lieu of surrender of the plates. If the motor vehicle has been destroyed by fire or accident and the plates have also been destroyed as a result of the fire or accident, an application for duplicate plates shall not be required provided the following statement is made on the reverse side of the refund claim form and such statement is dated and signed by the claimant; "I hereby certify that the registration plate(s) for the vehicle described upon the reverse side hereof have been completely destroyed by accident or fire and are therefore not available for surrender".

ARC 0361

TRANSPORTATION, DEPARTMENT OF[820]

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 August 21, 1979, at their regular meeting at the Department of Transportation Complex, 800 Lincoln Way, Ames, Iowa, the transportation commission shall consider for adoption the following administrative rules as described herein. Such action shall be in accord with the Iowa administrative procedures Act, chapter 17A of the Code, and department of transportation rules 820—(01,B) chapter 1 "Administrative Rules".

Comments and requests to make an oral presentation shall be addressed to the Department of Transportation, in care of the Office of Administrative Services, 800 Lincoln Way, Ames, Iowa 50010.

Written comments or written requests to make an oral presentation at the above specified commission meeting concerning these proposed rules may be accepted if received by the department of transportation on or before August 7, 1979.

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

1. The name, address and phone number of 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, subparagraph, and line as appropriate.)
3. With regard to requests to make an oral presentation, the general content shall be indicated.

Proposed rulemaking actions:

07 MOTOR VEHICLE DIVISION

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

ITEM 1. The first three lines of rule [07,D]11.34(321) are amended to read as follows:

820—[07,D]11.34(321) Multipurpose vehicle registration fee. The registration fee for multipurpose vehicles *including van type vehicles* shall be ~~based on vehicle weight and list price as provided in section 321.109.~~ *applicable subject to the following provisions:*

ITEM 2. Subrule 11.34(3) is amended to read as follows:

11.34(3) The owner of a multipurpose vehicle that is registered ~~under the weight and list price formula as provided in section 321.109 of the Code~~ *as such* may operate or move the vehicle with or without the vehicle being equipped with rear seats.

ITEM 3. Rule [07,D]11.34(321) is amended by adding the following new subrule:

11.34(4) A van type multipurpose vehicle shall not include a van equipped to transport more than ten

TRANSPORTATION, DEPARTMENT OF[820] *(cont'd)*

persons nor a van equipped with one bench seat or two individual seats with all floor space behind said seat or seats reserved exclusively for the transportation of property, except as provided in subrule 11.34(3).

ITEM 4. Rescind rule **[07,D]11.35(321).**

ITEM 5. Strike all of rule [07,D]11.37(321) and insert in lieu thereof the following:

820—[07,D]11.37(321) Motorcycle primarily designed or converted to transport property. A motorcycle primarily designed or converted to transport less than one thousand pounds of property shall be registered as a motorcycle. A motorcycle primarily designed or converted to transport one thousand pounds of property or more shall be registered as a motor truck.

NOTICE - USURY

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

July 30, 1978	- September 30, 1978	10.25%
October 1, 1978	- December 31, 1978	10.50%
January 1, 1979	- March 31, 1979	10.75%
April 1, 1979	- April 30, 1979	11.00%
May 1, 1979	- May 31, 1979	11.00%
June 1, 1979	- June 30, 1979	11.25%
July 1, 1979	- July 31, 1979	11.25%

ARC 0392

BANKING DEPARTMENT[140]

Pursuant to Acts of the Sixty-eighth General Assembly, 1979, House File 649, section 14, rules 140—8.1(524) through 8.6(524) are hereby rescinded in their entirety.

[Filed emergency 6/22/79, effective 7/1/79]

The superintendent of banking finds that notice and public participation in a hearing to consider the above action is unnecessary and would be contrary to the public interest inasmuch as authority for the promulgation of rules 140—8.1(524) through 8.6(524) was removed with the passage of House File 649 and any delay in implementation of the foregoing changes would penalize depositors doing business with state chartered banks. Therefore, these changes are filed without notice and public participation pursuant to section 17A.4(2) of the Code of Iowa, 1979.

These changes, which the superintendent of banking finds removes restrictions on the rates of interest a state chartered bank may pay its depositors on various types of time and savings deposits and are necessary because of a recent change in section 524.805(2) of the Code of Iowa, shall become effective on July 1, 1979, as provided in section 17A.5(2)"b"(1) of the Code of Iowa.

The foregoing changes are intended to implement a recent change in the provisions of section 524.805(2) of the Code as amended by Acts of the Sixty-eighth General Assembly, House File 649, effective July 1, 1979.

[Published 7/11/79]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/11/79.

ARC 0364

COLLEGE AID COMMISSION[245]

Pursuant to the authority of section 261.37, subsection 5, of the Code, the Iowa College Aid Commission hereby adopts new rules in reference to the Iowa Guaranteed Student Loan Program, chapter 10.

Pursuant to the authority of section 17A.6, subsection 2, of the Code, the complete set of administrative rules and procedures summarized below are available for inspection in the office of the Administrative Rules Co-ordinator. Copies also may be obtained from the College Aid Commission for a fee of $4.50.

These rules implement section 261.35 of the Code and are intended to become effective upon filing with the Administrative Rules Co-ordinator pursuant to the authority of section 17A.5(2)"b" in that it confers a benefit upon the public by making the terms of the Iowa Guaranteed Student Loan Program effective by the scheduled date of implementation of the program.

Notice of intended action regarding these rules was published in IAB on March 7, 1979.

CHAPTER 10
IOWA GUARANTEED STUDENT LOAN PROGRAM

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- Appendix F Tables
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The following corrections should be made in the complete set of administrative rules and procedures:

Section II.A,1(d)(i) a resident of Iowa attending an ~~Iowa~~ eligible institution, or

Section IV.A.5 For purposes only of purchasing and holding loans made by other lenders under this part, the Student Loan Marketing Association or any agency of ~~any~~ the State of Iowa functioning as a secondary market, or

[Filed emergency after notice 6/18/79, effective 6/18/79]

[Published 7/11/79]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/11/79.

ARC 0362

COMPTROLLER, STATE[270]

Pursuant to the authority of section 8.6(16) of the Code, rules of the state comptroller appearing in the Iowa Administrative Code relating to auditing claims (Chapter 1) are hereby amended.

ITEM 1. Amend **1.2(1)**, by striking the last sentence and substituting in lieu thereof "See subrules 1.2(3) and 1.2(4) regarding travel advances."

ITEM 2. Amend 1.2(4) by renumbering 1.2(4) as 1.2(5) and by adding a new subrule as follows:

1.2(4) Permanent in-state travel advance. State employees who are not covered by collective bargaining agreements negotiated under the provisions of chapter 20 of the Code may be eligible for a permanent in-state travel advance if they meet and agree to the following conditions:

a. Employees whose in-state travel expense reimbursements average between $100.00 and $150.00 per month for the preceding twelve months shall receive upon written request a permanent travel allowance of $100.00.

b. Employees whose in-state travel expense reimbursements average over $150.00 per month for the preceding twelve months shall receive upon written request a permanent travel allowance of $150.00.

c. The state comptroller shall have authority to deduct the permanent travel advance from the employees' last paychecks upon separation from state service.

d. The state comptroller and employing agency reserve the right to review the employee's monthly travel expenses and should the employee fail to meet the above requirements, or become ineligible due to a change in duties or job assignment, the advance will be withdrawn (through payroll deduction) following proper notification.

ITEM 3. Amend **1.6(2)**"a", by striking the first sentence and substitute in lieu thereof "Lodging. The State Comptroller shall establish reasonable maximum lodging reimbursements through the authority of 8.14(5) of the Code."

ITEM 4. Amend **1.6(2)**"a"(2) by striking the subparagraph.

ITEM 5. Amend **1.6(2)**"b", by striking "$10.00" and inserting in lieu thereof "$12.00."

ITEM 6. Amend **1.6(2)**"b"(1), by striking "$10.00" and inserting in lieu thereof "$12.00."

ITEM 7. Amend **1.6(2)**"b"(2) by striking the entire sentence and substituting in lieu thereof "Those traveling on state business who are required to depart before 7:00 a.m. and return prior to lunch may be reimbursed a maximum of $2.50 for breakfast."

ITEM 8. Amend **1.6(2)**"b"(3), by striking the entire sentence and substituting in lieu thereof "Those traveling on state business who are required to depart before 7:00 a.m. and return after lunch but prior to 6:00 p.m. may be reimbursed a maximum of $5.00 for breakfast and lunch."

ITEM 9. Amend **1.6(2)**"b"(5), by renumbering 1.6(2)"b"(5) as 1.6(2)"b"(7) and by adding a new subparagraph as follows:

5. Those traveling on state business who depart after 7:00 a.m. but prior to lunch and are required to return after 6:00 p.m. may be reimbursed a maximum of $9.50 per day for lunch and dinner.

ITEM 10. Amend **1.6(2)**"b"(6) by renumbering 1.6(2)"b"(6) as 1.6(2)"b"(8) and by adding a new subparagraph as follows:

6. Those traveling on state business who depart after lunch and return after 6:00 p.m. may be reimbursed a maximum of $7.00 for dinner.

[Filed emergency 6/22/79, effective 7/1/79]

The state comptroller finds that notice and public participation would be contrary to the public interest inasmuch as a delay in implementation of these new rules would result in substantially different benefits for similar classes of employees; that there was not sufficient time between enactment of legislation and its effective date to allow for normal rule making procedures; that public participation will be received as the identical rule is being placed under notice as ARC 0363*. Therefore, for good cause shown, these rules are filed without notice pursuant to section 17A.4(2) of the Code.

These rules shall be effective July 1, 1979, as permitted by section 17A.5(2)"b"(2) of the Code pursuant to a finding by the state comptroller that these rules confer a benefit on state employees who represent a significant portion of the public and that delay would be contrary to public and legislative intent as provided in Senate File 499.

The state comptroller finds that his rules confer a benefit on the public inasmuch as it makes available increased travel reimbursements and permanent in-state travel advances for state employees. These rules shall become effective July 1, 1979, as provided in section 17A.5(2)"b"(2) of the Code.

These rules are published under notice of intended action herein.

[Published 7/11/79]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/11/79.

*See Page 3 herein.

ARC 0387

EMPLOYMENT SECURITY[370]

(DEPARTMENT OF JOB SERVICE)

The Iowa Department of Job Service, pursuant to the authority of sections 96.11(1) and 17A.3 of the Iowa Code, is amending existing rules appearing in the Iowa Administrative Code for the purpose of implementing Senate File 373, as adopted by the Sixty-eighth General Assembly.

Pursuant to said authority, rule 370—1.7(96) relating to disclosure of official records and information is amended as follows:

ITEM 1. Amend subrule **1.7(1)**, paragraph "c" by adding the following new subparagraphs (1), (2) and (3):

(1) Information obtained from an employing unit or individual in the course of administering this chapter may be made available to the following agencies, bureaus or departments, provided the conditions of this rule have been met:

EMPLOYMENT SECURITY[370] *(cont'd)*

A state or federal agency responsible for the administration of an unemployment compensation law or the maintenance of a system of public employment offices.

The bureau of Internal Revenue of the United States.

The Iowa Department of Revenue.

The Social Security Administration of the United States.

A state or federal agency responsible for the administration of public works or public assistance to unemployed workers.

(2) A state or federal agency, bureau or department which administers a program of public assistance which by law is required to impose safeguards for the confidentiality of information at least as effective as those required under this section, provided the conditions of this rule have been met, shall be provided the following information, if available:

Whether an individual has received, or is receiving, or has made application to receive unemployment compensation benefits.

The period during which unemployment compensation was payable and the weekly rate of compensation.

The individual's most recent address.

Whether an individual has refused an offer of employment and if so, the date of the refusal and a description of the employment refused, including duties, conditions of employment, and rate of pay.

The agency, bureau or department requesting such information may be required to provide payment for the cost of furnishing such information.

(3) No information subject to the confidentiality of this rule shall be made available until the conditions of subrule 1.7(2) have been met.

This is intended to implement Acts of the Sixty-eighth General Assembly, Senate File 373.

ITEM 2. Amend subrule **1.7(1)**, paragraph "e" by adding new unnumbered paragraph 2 as follows:

Information obtained from employing units and individuals may be made available to colleges, universities, and public agencies of this state for use in research of a public nature, consistent with the purposes of chapter 96 of the Code, provided the identity of any individual or employing unit is not revealed.

This is intended to implement Acts of the Sixty-eighth General Assembly, Senate File 373.

ITEM 3. Rule 370—1.7(96) is amended by adding the following new subrule:

1.7(2) Information subject to the confidentiality of this rule shall not be made available to any authorized agency, bureau or department prior to written notification to the individual involved, except in criminal investigations. Claimants will be given written notice at the time they make applications for benefits. Employers will also be given written notice advising them that such information may be given to authorized agencies. Information regarding individuals who are not claimants or employers shall be made available only after prior written notification to such individuals. The agency requesting such information may be required to provide the address of the individual and reimbursement for cost of securing the address and notifying the individual, as well as the other costs involved in furnishing such information. Such information shall not be made available if no mailing address is provided by the agency and is not contained in the records of the department.

This is intended to implement Acts of the Sixty-eighth General Assembly, Senate File 373.

[Filed emergency 6/22/79, effective 7/1/79]

The Iowa department of job service finds that it is impractical to follow the procedures for rule adoption, as specified in 17A.4(1) of the Code for these particular rules. Senate File 373 requires that certain matters contained herein be determined effective July 1, 1979. Senate File 373 was signed into law, by the governor, on June 8, 1979.

The effective date of these rules is reduced from the statutory 35 days after filing as required in 17A.5(2) of the Code to July 1, 1979, pursuant to 17A.4 and 17A.5(2). These rules confer benefits on the public by delineating what information and to whom information may be released concerning individuals and companies.

These rules are effective no more than 180 days or upon adoption of permanent rules which have heretofore been placed under notice (ARC #0353) in the June 27, 1979, Iowa Administrative Bulletin.

[Published 7/11/79]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/11/79.

ARC 0388

EMPLOYMENT SECURITY[370]

(JOB SERVICE)

The Iowa Department of Job Service, pursuant to the authority of sections 96.11(1) and 17A.3 of the Code adopts amendments to Chapter 3 of their rules appearing in the Iowa Administrative Code relating to employer's contributions and charges.

ITEM 1. Rule **370—3.4(96)** is amended by adding the following new subrules:

3.4(1) If an individual received benefits for a period of unemployment and subsequently receives a back pay award for the same period the benefits shall be recovered by the department.

3.4(2) The department, in its discretion, may reach an agreement with the individual and the employer to allow the employer to deduct an amount equal to the job insurance payments made during this period from the back pay award and pay a sum equal to that amount into the unemployment trust fund. The balance of the back pay award shall then be paid to the individual.

3.4(3) If benefits are recovered by the employer for the unemployment trust fund by deducting them from an individual's back pay award the employer shall still be required to report the entire amount of the award to the department as total and taxable wages in the calendar quarter in which the amount was actually paid to the individual or credited to the individual's account.

3.4(4) If the employer or the individual decline to enter into an agreement to have job insurance benefits deducted from a back pay award then the department shall proceed to either deduct the amount from any future benefits the individual may become entitled to or have the individual pay the department a sum equal to that amount.

3.4(5) Any amount of benefits recovered from a back pay award as the result of an agreement between the employer and the employee or through any other manner of recovery shall be credited to the employer's account in the calendar quarter in which the amount was recovered and the individual's job insurance claim shall reflect the recovery.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 2. Rescind all of rule **370—3.42(96)** and reserve the number.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 3. Subrule **3.43(2)** paragraph "a", is amended to read as follows:

a. Wage credits in the most recent quarter of the base period will be used first and when wage credits in this quarter are exhausted, wage credits for the next most recent quarter will be used until each of the four quarters in the base period is exhausted or until the claimant is paid an amount not to exceed ~~thirty-nine times his weekly benefit amount.~~ *the claimant's maximum benefit amount.*

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 4. Amend subrule **3.43(8)** to read as follows:

3.43(8) ~~Six consecutive weeks~~ *Ten times the weekly benefit amount* in insured work requalification.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 5. Rescind all of subrule **3.43(8)**, paragraph "a" and insert in lieu thereof the following:

a. In order to meet the ten times the weekly benefit amount in insured work requalification provision, the following criteria must be met:

(1) Subsequent to the leaving the individual shall have worked in and been paid wages for equal to ten times the claimant's weekly benefit amount.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 6. Amend subrule **3.43(8)**, paragraph "b" to read as follows:

b. An employer's account shall not be charged with benefit payments to an eligible claimant who quit such employment but shall be charged to the account of the next succeeding covered employer with whom the individual worked and received wages in insured employment ~~for not less than six consecutive weeks.~~ *equal to ten times the claimant's weekly benefit amount.*

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 7. Amend subrule **3.43(8)**, paragraph "e" to read as follows:

e. Periods of insured employment with separate employers may be joined to collectively equal ~~the period of not less than six consecutive weeks~~ *ten times the individual's weekly benefit amount* when requalification cannot be accomplished by an individual insured employer. The employer ~~that was quit~~ *from whom the individual left work* will not accrue any charges and ~~the~~ subsequent ~~group of~~ employers will not receive charges because none of ~~the~~ *such* employers ~~in the group~~ provided the required minimum of not less than ~~six consecutive weeks of work~~ *ten times the individual's weekly benefit amount* in insured employment~~.~~ *except that an employer who is required by law or by election to reimburse the trust fund shall be charged with the benefits paid.*

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 8. Amend subrule **3.43(8)**, paragraph "f", subparagraph (1) to read as follows:

(1) An employment verification form, IESC 1583, ~~will be~~ *is* an affidavit prepared in duplicate stating; the insured employer's name, mailing address, the ~~period worked~~ *starting date of employment,* and ~~each week for which~~ wages ~~were payable.~~ *paid subsequent to that date.* The ~~affidavit~~ *form* must be signed by the claimant alleging that the facts ~~contained therein~~ are ~~true and~~ correct. Any misrepresentation in the ~~affidavit~~ *form* may result in overpayment, ~~and~~ fraud charges *and* administrative penalty. ~~or both~~ A copy of the ~~claimant's affidavit~~ *form* must be mailed to the employer or employers for verification. The employer should review the information ~~of~~ *on* the form and certify that it is either ~~true or~~ correct or in error. If the information is incorrect, the employer should give the proper information. If the employer fails to return the ~~employment verification~~ form within five days of date mailed, the information on the form will be ~~deemed~~ *presumed* to be ~~true and~~ correct.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 9. Amend subrule **3.43(11)**, paragraph "a" to read as follows:

a. Whenever the state or federal extended benefit trigger is in an "on" condition in compliance with sections ~~96.19(27)~~ *96.19(26)* and ~~96.19(29)~~ *96.19(28),* the federal government will pay fifty per cent of all charges on all benefit payments on claims that exceed payments in excess of twenty-six times the weekly benefit amount~~:~~ *except government contributory or reimbursable employers.* ~~(Reference is secretary of labor standard 615.1.)~~

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 10. Rule **370—3.43(96)** is amended by adding the following new subrule:

3.43(15) Relief of charges to employer on transfer of wage credits. Charging of ten weeks of benefit payments to the balancing account. An amount equal to ten times the individual's weekly benefit amount will be used when ten weeks of benefit payments are to be noncharged to the succeeding employer on wage credit transfers involved in voluntary quit and misconduct requalifications.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 11. Rescind all of subrule **3.73(3)** and insert in lieu thereof the following:

3.73(3) If an amount due from a governmental entity of this state remains due and unpaid for a period of one hundred twenty days after the due date, the director shall take action as necessary to collect the amount and shall levy against any funds due the governmental entity from the state treasurer, director of the department of revenue, or any other official or agency of this state or against an account established by the entity in any bank. The official, agency or bank shall deduct the amount certified by the director from any accounts or deposits or any funds due the delinquent governmental entity without regard to any prior claim and shall promptly forward the amount to the director for the fund. However, the director

shall notify the delinquent entity of the director's intent to file a levy by certified mail at least ten days prior to filing the levy on any funds due the entity from any state official or agency.

This paragraph is an exact quote from Senate File 373. It is being used as a rule because it conflicts with the preceding paragraph in chapter 96. The preceding paragraph in section 96.14(3) states delinquency as a period exceeding two calendar quarters. The above period of one hundred twenty days is the most recent expression of the legislature.

[Filed emergency 6/22/79, effective 7/1/79]

The Iowa department of job service finds that it is impractical to follow the procedures for rule adoption, as specified in 17A.4(1) of the Code for these particular rules. Senate File 373 requires that certain matters contained herein be determined effective July 1, 1979. Senate File 373 was signed into law, by the governor, on June 8, 1979.

The effective date of these rules is reduced from the thirty-five days required by 17A.5(2) of the Code to July 1, 1979, pursuant to 17A.4(2) and 17A.5(2)"b" of the Code. These rules confer benefits upon the public in the areas of noncharging of employers in voluntary quit and misconduct requalifications.

These rules are effective no more than 180 days or upon adoption of permanent rules which have heretofore been placed under notice (ARC #0355) in the June 27, 1979, Administrative Rules Bulletin.

[Published 7/11/79]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/11/79.

ARC 0389

EMPLOYMENT SECURITY[370]

(JOB SERVICE)

The Iowa Department of Job Service, pursuant to the authority of sections 96.11(1) and 17A.3 of the Code, adopts amendments to Chapter 4 of their rules appearing in the Iowa Administrative Code relating to claims and benefits.

ITEM 1. Amend subrule **4.2(1)**, paragraph "b", by rescinding all of subparagraph (8) and inserting in lieu thereof the following:

(8) Number, name and relationship of any dependents claimed.

Further, by adding new subparagraph (9) as follows:

(9) Such other information as required by the form.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 2. Amend subrule **4.2(2)**, paragraph "a", to read as follows:

a. A claimant may file a claim for total unemployment benefits by ~~filling out~~ *completing form* IESC 201, initial claim for unemployment, at ~~an area claims~~ *a job service* office. The carbon copies of the form ~~IESC 201~~ will be used as the claimant's registration for work form *(*IESC 550*)*, and notification of filing a claim to the claimant's last employer form *(*IESC 423*)*. The form shall then be transmitted to the claims department for processing. Notification of filing for a claim will be sent to each base period employer on record by ~~IESC 201A,~~ notice of claim filing *(IESC 201A)*. If the last employer is not a base period employer, ~~it~~ *the employer* shall be notified by form IESC 423. If the employer wishes to protest a claim or has any information which would affect the claimant's eligibility for job insurance benefits the employer may so indicate on forms IESC 423 or IESC 201A and return it to the administrative office within ~~seven~~ *ten* days from the date of notification as shown by the postmark date on the form. ~~The seven-day protest period will be determined by the postmark on the envelope which contains the form IESC 423 of IESC 201A which is returned from the employer.~~ In the event the ~~seventh~~ *tenth* day falls on a Saturday, Sunday, or holiday, the protest period is extended to the next working day of the department.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 3. Amend subrule **4.8(1)**, paragraphs "a", "b", and "d" to read as follows:

a. The most recent employing unit and all base period covered employers who receive a notice of the first claim filed by a claimant following separation from employment must within ~~seven~~ *ten* days of the date of the notice, submit to the department of job service any facts that affect the claimant's rights to benefits, including any facts which disclose the claimant separated from employment voluntarily and without good cause attributable to the employer, or was discharged for misconduct in connection with employment.

b. The most recent employing unit and any base period covered employer may protest the payment of benefits. ~~if the~~ *The* protest ~~is filed~~ *must be received by the department* within ~~seven~~ *ten* days of the date of the notice of claim filing. If the employing unit has filed a timely report of facts that might adversely affect the claimant's benefit rights, the report will be considered as a protest to the payment of benefits.

d. Any other employing unit that paid wages to the claimant in the base period of the claim will be notified of the first claim filed which results in a determination that the claimant is an insured worker. The base period employer so notified must within ~~seven~~ *ten* days submit any facts disclosing whether the claimant separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment for any deliberate act not in the best interest of the employer. The department shall issue the employer a decision as to the cause of termination of the claimant's employment.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 4. Amend subrule **4.13(1)**, paragraph "g" to read as follows:

g. Wages in lieu of notice~~.~~, *separation allowance, severance pay and dismissal pay.* Job insurance payments for any such weeks due under the law shall be reduced by the amount of such remuneration.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 5. Amend subrule **4.13(1)**, paragraph "o" to read as follows:

o. Federal, old-age benefits (OAB) under Title II and including disability and survivor payment. Job insurance

payments for any ~~such~~ weeks due under the law shall be reduced by ~~one-half of~~ the amount of such remuneration.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 6. Amend subrule **4.13(1)** by adding the following new paragraph:

r. Military retirement pay.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 7. Amend subrule **4.13(2)** by rescinding all of paragraph "b" and reserve for future use.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly..

ITEM 8. Amend subrule **4.13(2)** by rescinding all of paragraph "c" and reserve for future use.

This is intended to implement the recent Supreme Court of Iowa case, Hiserote Homes, Inc., vs. Karen K. Riedeman and the Iowa Department of Job Service, Supreme Court of Iowa, Case No. 62267, filed April 25, 1979.

ITEM 9. Amend subrule **4.13(2)**, paragraph "m", to read as follows:

m. ~~Military retirement pay or~~ e*C*ompensation for service connected disability.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 10. Rescind all of subrule **4.16(3).**

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 11. Rule **370—4.18(96)** is amended to read as follows:

370—4.18(96) Wage-earnings limitation. A claimant who is partially unemployed may earn *weekly*, at odd jobs, ~~an amount~~ *a sum* equal to the claimant's weekly benefit amount plus fifteen dollars before being disqualified for excessive earnings. If such claimant earns at odd jobs less than the claimant's weekly benefit amount plus fifteen dollars, the formula for wage deduction shall be ~~the claimant's weekly benefit amount minus fifty per cent of the amount of wages earned in excess of fifteen dollars.~~ *a sum equal to the claimant's weekly benefit amount less that part of wages payable to the claimant with respect to that week in excess of one-fourth of the claimant's weekly benefit amount.*

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 12. Amend subrule **4.22(1)**, paragraph "v", by renumbering subparagraphs ~~(2)~~ *(3)* and ~~(3)~~ *(4)* and adding new subparagraph (2) as follows:

(2) The claimants whose records indicate they are not earnestly and actively seeking work will be called in to the job service office and given a form IESC 1689, employer verification of application. The claimant will present the form to the designated job placement office which will, if possible, furnish the claimant with the names of employers who are seeking employees. The claimant will apply to and obtain the signatures of the employers so designated on the form provided, unless the employers refuse to sign the form. The individual shall return the form to the area claims center within seven days from the date of issuance. The claimant's failure to obtain the signatures of designated employers, who have not refused to sign the form, shall disqualify the claimant from further benefits until requalified.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 13. Rule **370—4.22(96)** is amended by adding the following new subrule:

4.22(4) Going out of business—factory, establishment, or other premises. Whenever an employer at a factory, establishment, or other premises goes out of business at which the claimant was last employed and is laid off, the claimant's account will be credited with one-half, instead of one-third, of the wages for insured work paid to the claimant during the claimant's base period.

a. Going out of business—definition. Any factory, establishment, or other premises that is in the process of closing or has ceased to function as a business will be considered as having gone out of business.

b. Verification of discontinuance of business. Any time the claimant, employer, or the department is informed or has knowledge of a business being discontinued or having been discontinued, the department will initiate a form IESC 1688, verification of business closing, to the business. The claimant will sign the form and the department will complete the remainder of the form, which will then be mailed to the business.

c. Notification of time allowed to return form IESC 1688. The business will be allowed seven days in which to return the form to the department verifying, in fact, that the employer at the factory, establishment, or other premises is in the process of closing or has ceased to function as a business. The form will also inform the business that the claimant's verification of discontinuance of business will be used in those instances where the form is not returned timely.

d. In the event that a claim is initially established by crediting the individual account with one-third of the individual base period wage not to exceed twenty-six times the weekly benefit amount and it is later determined during the current benefit year that the business had met the definition of 4.22(4)"a", but the information was erroneously received or willfully withheld, the claim may be recalculated using one-half of the individual base period wage not to exceed thirty-nine times the weekly benefit amount.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 14. Rule **370—4.24(96)** is amended to read as follows:

370—4.24(96)Failure to accept work and failure to apply for suitable work. A disqualification for failure to accept or apply for suitable work shall be removed when the ~~claimant is re-established in the labor market by accepting employment of a permanent nature.~~ *individual shall have worked in and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.*

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 15. Amend subrule **4.24(2)**, paragraph "b", to read as follows:

b. If such claimant, separated for lack of work, fails to accept work offered by the employer on recall or fails to apply for work when directed by a representative of the department, such failure shall constitute a refusal of suitable work. In such a situation said claimant shall be disqualified for failure to apply for or accept an offer of work until such time as the ~~claimant is re-established in the labor market by accepting employment of a permanent nature.~~ *individual shall have worked in and*

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been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 16. Subrule **4.24(2)** is amended by rescinding all of paragraph "c".

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 17. Rescind all of subrule **4.24(15)** and insert in lieu thereof the following:

4.24(15) Gross pay. A job offer shall be deemed as not suitable unless gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

a. One hundred percent, if the work is offered during the first five weeks of unemployment.

b. Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

c. Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

d. Sixty-five percent, if the work is offered after the eighteenth week of unemployment. However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 18. Amend subrule **4.26(15)**, paragraph "b" to read as follows:

b. If ~~the six consecutive week~~ requalification, *ten times the individual's weekly benefit amount,* ~~period~~ involved two or more insured employers and requalification cannot be accomplished by employment with any one individual employer then the restored wages shall be transferred to the ~~pool fund~~ *balancing account* and ~~none of~~ the involved employers' accounts shall *not* be charged~~.~~ *except that employers who are required by law or by election to reimburse the trust fund shall not be relieved of benefit charges.*

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 19. Amend subrule **4.27(1)**, paragraph "b" to read as follows:

b. Once the claimant meets the requalification requirements of Code section 96.5(1)"g" relating to the supplemental employment separation, the supplemental wage credits will be restored for benefit payment purposes. The wage credits from the supplemental employer will then be transferred to the account of the employer from whom the requalifying wages were earned. If the claimant worked for more than one employer subsequent to the supplemental employment and ~~did not have at least six consecutive weeks of employment~~ *was not paid wages equal to ten times the claimant's weekly benefit amount* in insured work with any one employer, the supplemental wage credits will be restored but no employer's account shall be charged with the benefits paid on such credits~~.~~, *except that any employer who is required by law or by election to reimburse the trust fund shall not be relieved of benefit charges.*

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 20. Subrule **4.28(1)** is amended to read as follows:

4.28(1) The claimant shall be eligible for benefits even though having voluntarily left employment, if subsequent to leaving such employment, the claimant worked in and was paid wages for insured work ~~for not less than six consecutive weeks.~~ *equal to ten times the claimant's weekly benefit amount.*

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 21. Subrule **4.28(2)** is amended to read as follows:

4.28(2) The claimant shall be eligible for benefits even though having been previously disqualified from benefits due to a voluntary quit, if subsequent to said disqualification, the claimant worked in and was paid wages for insured work ~~for not less than six consecutive weeks.~~ *equal to ten times the claimant's weekly benefit amount.*

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 22. Rule **370—4.31(96)** is amended to read as follows:

370—4.31(96) ~~**Two hundred dollar condition.**~~ ***Subsequent benefit year condition.***

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 23. Subrule **4.31(2)** is amended to read as follows:

4.31(2) If the *claimant has the* qualifying wages ~~($400 and $200)~~ *of one and one-quarter times the wages paid during that quarter of the base period in which wages were the highest with a minimum of $400 and $200, which* were earned prior to filing of the previous claim, the claimant ~~will need to have an additional $200 wages in insured work~~ *must, during or* subsequent to ~~the claim date~~ *that year, have worked in and have been paid wages for insured work, totaling at least ten times the weekly amount,* to fulfill the condition to be eligible for benefits on a new claim. Vacation pay is *not* considered as wages~~.~~ *for second benefit year requalification purposes.*

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 24. Subrule **4.31(5)** is amended to read as follows:

4.31(5) The ~~$200~~ *amount equal to ten times the weekly benefit amount* need not be in addition to the $400 and $200 of the base period of the subsequent claim provided that the ~~$200 of this~~ *amount equal to ten times the weekly benefit* amount has been *earned and* paid at any time after the effective date of the previous claim for which the individual received benefits.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 25. Subrule **4.31(6)** is amended to read as follows:

4.31(6) Disqualification for lack of the ~~conditional $200~~ *ten times the weekly benefit amount condition* shall be removed upon the verification that the claimant ~~was paid $200~~ *worked in and has been paid wages* for insured work *totaling ten times the weekly benefit amount* during or subsequent to the previous benefit year.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

EMPLOYMENT SECURITY[370] *(cont'd)*

ITEM 26. Amend subrule **4.32(1)**, paragraph "b" to read as follows:

b. Any individual who has been discharged or suspended for misconduct connected with work is disqualified for benefits ~~for the duration of the disqualification period and forfeits an amount of benefits equal to the number of weeks for which individual was disqualified.~~ *until the individual has worked in and been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.*

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

ITEM 27. Rescind all of subrule **4.32(2)** and reserve for future use.

This is intended to implement Senate File 373, Acts of the Sixty-eighth General Assembly.

[Filed emergency 6/22/79, effective 7/1/79]

The Iowa department of job service finds that it is impractical to follow the procedures for rule adoption, as specified in 17A.4(1) of the Code for these particular rules. Senate File 373 requires that certain matters contained herein be determined effective July 1, 1979. Senate File 373 was signed into law, by the Governor, on June 8, 1979.

The effective date of the rules is reduced from the 35 days after filing as required in 17A.5(2) of the Code to July 1, 1979. These rules confer benefits on the public such as: (1) Extension of appeal time limits; (2) Addition of dependents to the benefit formulae; and (3) Extension of the payment of benefits to 39 weeks for individuals out of work because a business is closing or has closed. These rules are therefore effective July 1, 1979.

These rules are effective no more than 180 days or upon adoption of permanent rules which have heretofore been placed under notice (ARC #0354) in the June 27, 1979, Administrative Rules Bulletin.

[Published 7/11/79]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/11/79.

ARC 0366

MERIT EMPLOYMENT DEPARTMENT[570]

Pursuant to the authority of section 19A.9 of the Code, Chapter 4 of the merit rules appearing in Chapter 4, p. 4, IAC, is amended by revision of **4.5(2)**"b" and "c" as follows:

b. Pay increase eligibility. Permanent, full or part-time, classified employees shall be eligible for and may be given consideration by the appointing authority for a one-step pay increase at the beginning of the pay period following the satisfactory completion of the prescribed minimum periods of service set forth below. The minimum periods of service shall be exclusive of time spent on educational leave (except as required by the appointing authority) or, leave without pay which exceeds thirty days, and periods during which service job performance was determined to be less than satisfactory as reflected by the official performance rating(s). Periods of minimum satisfactory job performance are:

(1) Progression from 1st to 2nd ~~and 2nd to 3rd~~ steps - twenty-six weeks.

(2) Progression from *2nd to 3rd*, 3rd to 4th *and* 4th to 5th ~~and 5th to 6th~~ steps - fifty-two weeks.

(3) Progression from *5th to 6th and* 6th to 7th ~~and 7th to 8th~~ steps - one hundred and four weeks.

(4) Salary Schedule II: 1st to 2nd steps - twenty-six weeks; 2nd and 3rd steps - seventy-eight weeks.

(5) Progression for steps below the 1st step of a pay grade shall be twenty-six weeks.

(6) Salary Schedule III:

Progression from 1st to 2nd and 2nd to 3rd - twenty-six weeks.

Progression from 3rd to 4th, 4th to 5th, 5th to 6th - fifty-two weeks.

Progression from 6th to 7th, 7th to 8th - one hundred four weeks.

c. The commission may approve, subject to the comptroller's certification of the availability of funds, the reduction of the time interval under 4.5(2)"b"(2) *and 4.5(2)"b"(3)* to ~~twenty-six weeks~~ *one-half of the stated minimum period of service* for a specific class for a period not to exceed one year. Provided there is agency showing of unusual recruitment and retention in that class because of economic problems or technological changes. Classes crossing agency lines shall require that all agencies using the class agree before the time interval reduction will be approved.

[Filed emergency 6/22/79, effective 6/22/79]

The director sees the public participation under 17A.4 of the Code in the formulation of these rules as impracticable and that good cause exists for the immediate adoption of these rules. The reason that there is not sufficient time for regular rules adoption procedures is these rules must be effective June 22, 1979, the beginning of the pay period for the ensuing fiscal year. The director further sees that these rules confer benefits upon state employees not covered by collective bargaining agreements as it will conform to their benefits as those negotiated by those agreements and that they shall be effective June 22, 1979, in compliance with section 17A.5(2)"b"(2). Also these rules are being placed under notice [ARC 0390]* to solicit comment from the public by a separate filing.

[Published 7/11/79]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/11/79.

*See Page 8 herein.

ARC 0365

MERIT EMPLOYMENT DEPARTMENT[570]

Pursuant to the authority of section 19A.9 of the Code, Chapter 4 of the merit rules appearing in Chapter 4, p. 8, IAC, is amended by revision of 4.6(19A) as follows:

570—4.6(19A) Overtime. Covered classified employees shall receive ~~overtime~~ credit for *actual* time worked in excess of their standard work period of forty hours *or for actual time worked in excess of eight hours in a work day. Except any classified employee working a compressed work period, flexible work schedule or variable work schedule shall earn overtime credit only for actual work in excess of their regularly scheduled day. Nothing in this section shall be interpreted as requiring a duplication or pyramiding of holiday, weekend, Sunday, daily or weekly overtime payments involving the same hours worked.*

Overtime shall be compensated at a premium rate of one and one-half times the employee's regular hourly salary rate or as an hourly equivalent in compensatory time off. Cash overtime payment ~~shall be made only when authorized by the state comptroller's office~~ *may be required by the appointing authority, otherwise the election decision shall rest with the employee.*

Compensatory leave shall be cumulative to a maximum of ninety hours and any excess amount shall be paid in cash as accrued. Accrued compensatory leave shall not be carried forward into a new fiscal year, but shall be paid in cash. Compensatory time accrued by any covered classified employee may, at the appointing authority's discretion, be required to be used by the employee as compensatory leave provided the employee is notified five working days prior to the time designated to be utilized by the appointing authority.

A period other than the state's normal fiscal period may be utilized by an appointing authority if authorized by the state comptroller's office. All affected employees shall be notified of the approved compensatory period.

Upon separation from state employment, or transfer to a different appointing authority, all accrued compensatory time shall be paid in cash to the employee.

Classified employees within a collective bargaining agreement shall be governed by the terms of their particular contract.

[Filed emergency 6/22/79, effective 6/22/79]

The director sees the public participation under 17A.4 of the Code in the formulation of these rules as impracticable and that good cause exists for the immediate adoption of these rules. The reason that there is not sufficient time for regular rules adoption procedures is these rules must be effective June 22, 1979, the beginning of the pay period for the ensuing fiscal year. The director further sees that these rules confer benefits upon state employees not covered by collective bargaining agreements as it will conform to their benefits as those negotiated by those agreements and that they shall be effective June 22, 1979, in compliance with section 17A.5(2)"b"(2). Also these rules are being placed under notice [ARC 0390]* to solicit comment from the public by a separate filing.

[Published 7/11/79]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/11/79.

*See Page 8 herein.

ARC 0381

TRANSPORTATION, DEPARTMENT OF[820]

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of section 307.10 of the Code rules 820—[07,F] chapter 2 entitled "Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight" are hereby amended.

ITEM 1. Rule [07,F]2.3(321E) is amended by adding the following new subrule:

2.3(4) An emergency condition presently exists in Iowa because of the shortage of diesel fuel. Due to this emergency condition, the Iowa transportation commission is authorizing issuance of special overweight permits to commercial vehicles. The following procedures shall be followed in obtaining and using the permits.

a. Applications are to be obtained from the Office of Operating Authority, 300 Fourth Street, Des Moines, Iowa 50319; 515-281-5664. Upon receipt of a completed application and correct fees, operating authority shall issue the appropriate permits.

b. The original permits shall be carried in the vehicle and made available for inspection to any peace officer.

c. No permit shall authorize loads exceeding 80,000 pounds combined gross weight, 20,000 pounds single axle weight or 34,000 pounds tandem axle weight. The federal modified bridge law shall apply.

d. Permits shall be revoked for vehicles in violation of any condition or provision of the permit, including axle weight, gross weight, speed, embargoes or length. Any person whose permit has been revoked may request a hearing before an appointed hearing officer of the department of transportation. Such hearing request shall be directed in writing to the director of the office of operating authority within ten days of the revocation of the permit.

e. Additional special permit insurance requirements pursuant to section 321E.13 of the Code are waived.

f. Individual permit fees shall be:

(1) $40.00 for the privilege of operating at higher axle load limits or greater lengths; and

(2) Consistent with the fee schedule established in section 321.122 of the Code for increased registration weight.

g. The permits shall be valid for a period of sixty days: June 15, 1979, to August 13, 1979.

This subrule is intended to implement section 321E.29 of the Code.

[Filed emergency 6/21/79, effective 6/21/79]

This subrule was adopted on June 18, 1979, by the transportation commission and shall become effective on

June 21, 1979, upon filing with the administrative rules co-ordinator. This subrule is filed in reliance upon the provisions of 17A.4(2) and 17A.5(2)"b"(2) of the Code for the reasons as stated below.

The department finds it would be impracticable and contrary to the public interest to delay implementation of this subrule for the following reasons. The governor of Iowa on June 14, 1979, issued a proclamation of disaster emergency authorizing the department to issue special permits for the movement of overweight loads for a period of sixty days. The department was further directed to develop and implement rules necessary for the issuance of these special permits. In the proclamation, the governor listed several reasons for taking emergency action; these reasons are summarized as follows: The state of Iowa is experiencing a significant shortfall of gasoline and diesel fuel, which shows no sign of remedy in the near future. This shortage limits the ability of the trucking industry to transport raw materials and commodities to Iowa citizens and businesses; the lack of these products and transportation creates unfavorable immediate and long term economic consequences which would threaten the health and safety of the people of Iowa. A temporary waiver of current statutory weight limitations will assist in ameliorating the current transportation fuel shortage experienced in Iowa.

This rule is considered to confer a benefit on the public for the reasons mentioned in the preceding paragraph.

[Published 7/11/79]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/11/79.

ARC 0367

VETERANS AFFAIRS, DEPARTMENT OF[841]

Pursuant to the authority of sections 17A.3(1), 35.6 and 35A.6(5) of the Code, the rules of the Iowa Commission of Veterans Affairs relating to forms and rules of practice appearing in 841—1.2(35A) and 841—chapter 4 of the Iowa Administrative Code, are hereby amended.

ITEM 1. Subrule 1.2(2) is amended to read as follows:

1.2(2) Duties of the commission. It shall be the duty of the commission to administer the provisions of chapters 35 and 35A of the Code and to examine all applications and approve or disapprove the same and make any investigation necessary to establish facts. A quorum *and affirmative vote* of four members shall be necessary for passage of any action.

ITEM 2. Subrule 1.2(4) is amended to read as follows:

1.2(4) Meetings. Regular meetings of the commission shall be held on the first Monday of the uneven months starting with the first Monday of July. All meetings will be held at the office of the department. Notice *of time, place and tentative agenda* of all meetings will be posted on the bulletin board located at the office of the governor, twenty-four hours prior. Special meetings shall be held pursuant to call by the chairman. Notice of time and place will be posted in the same manner as a regular meeting.

ITEM 3. Chapter 4 is amended as follows:

Rescind all of chapter 4 entitled "Disability Bonus" and reserve this chapter for future use.

[Filed emergency 6/19/79, effective 8/8/79]

Public notice and participation pursuant to sections 17A.4(2), of the Code, is unnecessary in that this rule merely clarifies the existing rules as to the voting requirement for commission business and to place the rules in compliance with section 28A.4(1) relating to the posting of a tentative agenda.

The commission further finds that such changes are technical in nature and confer a benefit on the public in that they clarify the nature of the conduct of business and will insure public notice in matters to be taken up by the commission in their business meeting and that the same should be effective for meetings of the commission at the earliest possible date, all in compliance with section 17A.5(2)"b"(2).

These amendments shall become effective August 8, 1979.

[Published 7/11/79]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/11/79.

ARC 0391

COMMERCE COMMISSION[250]

Pursuant to the authority of sections 476.2 and 478A.3 of the Code, the commission adopts a new chapter 26 in the Iowa Administrative Code.

CHAPTER 26
CERTIFICATION OF GAS APPLIANCES

250—26.1(478A) General provisions.

26.1(1) Purpose. The purpose of this chapter is to develop the specifications for certification of appliances equipped with intermittent type ignition devices and to prohibit continuously burning pilot lights on selected new residential and commercial gas appliances sold in Iowa in order to conserve gaseous fuel.

26.1(2) Application and scope. The provisions of this chapter are applicable to the following types of gas appliances; except that the provisions of this chapter shall not apply to the sale and installation of a gas appliance for use in a residence that does not have a 120 volt electric A.C. power supply:

a. All gas-fired gravity and forced air central furnaces.

b. All direct vent central furnaces.

c. All gas-fired absorption summer air conditioning appliances.

d. All gas clothes dryers.

e. All household cooking gas appliances.

26.1(3) Prohibition of distribution, sales and installation. No person shall cause to be distributed, sold or installed in this state a newly produced gas appliance which has not been certified by the commission. This prohibition shall not take effect for any particular type of gas appliance until twenty-four months after at least one model of that type of appliance has been certified by the commission. Every appliance equipped with an intermittent ignition which has been design certified by an accepted laboratory in accordance with the standards set forth in this chapter shall be deemed certified by the commission as of the effective date of this chapter.

26.1(4) Certification provisions.

a. Every gas appliance certified by the commission shall bear a marking such as, "This appliance is equipped with an intermittent ignition device" displayed in a conspicuous location.

b. Every gas-fired appliance equipped with an intermittent ignition device in accordance with the provisions of this chapter shall bear the seal of the accepted laboratory in which it was tested, and such seal shall be notice that the commission has certified the appliance so designated.

c. The accepted laboratory which has tested the gas-fired appliance equipped with an intermittent ignition device in accordance with the provisions of this chapter shall periodically publish the name of the manufacturer and the model number of said appliance, and publication of such information shall be notice that the commission has certified the appliance so designated.

250—26.2(478A) Definitions. For the purpose of this chapter and unless otherwise indicated, the following definitions shall apply.

26.2(1) "Absorption summer air conditioner" means a self-contained gas-burning appliance designed to supply conditioned air, chilled liquid or refrigerant to spaces remote from, or adjacent to, the location of the appliance.

26.2(2) "Accepted laboratory" means any testing laboratory approved by the commission for testing of a particular type of appliance, which conducts an appliance testing program, which conducts periodic factory inspections, and which periodically publishes a list of appliances which are in compliance with that laboratory's rules.

26.2(3) "Central furnace" means self-contained gas-burning appliance for heating air by transfer of heat of combustion through metal to the air, and designed to supply heated air through ducts to spaces remote from or adjacent to the appliance location.

26.2(4) "Clothes dryer" means a self-contained gas appliance designed for drying clothes by heated air.

26.2(5) "Direct vent central furnace" means a central furnace constructed so that all air for combustion is derived from the outside atmosphere and all flue gases are discharged to the outside atmosphere.

26.2(6) "Forced air central furnace" means a central furnace equipped with a fan or blower which provides the primary means for circulation of air.

26.2(7) "Gravity central furnace" means a central furnace depending primarily on circulation of air by gravity.

26.2(8) "Household cooking gas appliance" means a gas appliance for domestic food preparation, providing at least one function of top or surface cooking, oven cooking, or broiling.

26.2(9) "Intermittent type ignition device" means any ignition system on a gas appliance which is not a continuously burning gas pilot light.

26.2(10) "Newly produced" means not previously used for the purpose for which designed or any other related purpose and constructed entirely of new unused parts and materials.

250—26.3(478A) Furnaces.

26.3(1) Standards for certification. Every gas-fired gravity and forced air central furnace shall be equipped with an intermittent ignition device, shall be tested by an accepted laboratory and shall be deemed certified by the commission if it complies with the following standards approved by the American National Standards Institute, Inc.:

a. ANSI Z21.47-1978, "Gas-fired Gravity and Forced Air Central Furnaces."

b. ANSI Z21.20-1975, "Automatic Gas Ignition Systems and Components" and addenda ANSI Z21.20a-1977 and addenda ANSI Z21.20b - 1978.

c. ANSI Z21.21-1974, "Automatic Valves For Gas Appliances" and addenda ANSI Z21.21a - 1977.

26.3(2) Standards for certification. Every direct vent central furnace shall be equipped with an intermittent ignition device, shall be tested by an accepted laboratory and shall be deemed certified by the commission if it complies with the following standards approved by the American National Standards Institute, Inc.:

a. ANSI Z21.64-1978, "Direct Vent Central Furnaces."

b. ANSI Z21.20-1975, "Automatic Gas Ignition Systems and Components" and addenda ANSI Z21.20a-1977 and addenda ANSI Z21.20b - 1978.

c. ANSI Z21.21-1974, "Automatic Valves For Gas Appliances" and addenda ANSI Z21.21a - 1977.

250—26.4(478A) Absorption summer air conditioning appliances.

26.4(1) Standards for certification. Every gas-fired absorption summer air conditioning appliance shall be

equipped with an intermittent ignition device, shall be tested by an accepted laboratory and shall be deemed certified by the commission if it complies with the following standards approved by the American National Standards Institute, Inc.:

a. ANSI Z21.40.1 - 1973, "Gas-Fired Absorption Summer Air Conditioning Appliances" and addenda ANSI Z21.40.1a - 1974.

b. ANSI Z21.20 - 1975, "Automatic Gas Ignition Systems and Components" and addenda ANSI Z21.20a - 1977 and addenda ANSI Z21.20b - 1978.

c. ANSI Z21.21 - 1974, "Automatic Valves For Gas Appliances" and addenda ANSI Z21.21a - 1977.

250—26.5(478A) Clothes dryers.

26.5(1) Standards for certification. Every gas clothes dryer shall be equipped with an intermittent ignition device, shall be tested by an accepted laboratory and shall be deemed certified by the commission if it complies with the following standards approved by the American National Standards Institute, Inc.:

a. Either ANSI Z21.5.1 - 1975, "Vol. I, Type 1, Clothes Dryers" and addenda ANSI Z21.5.1a - 1977 and addenda ANSI Z21.5.1b - 1978; or ANSI Z21.5.2 - 1977, "Vol. II, Type 2, Clothes Dryers" and addenda ANSI Z21.5.2a - 1978.

b. ANSI Z21.20 - 1975, "Automatic Gas Ignition Systems and Components" and addenda ANSI Z21.20a - 1977 and addenda ANSI Z21.20b - 1978.

c. ANSI Z21.21 - 1974, "Automatic Valves For Gas Appliances" and addenda ANSI Z21.21a - 1977.

250—26.6(478A) Cooking appliances.

26.6(1) Standards for certification. Every household cooking gas appliance shall be equipped with an intermittent ignition device, shall be tested by an accepted laboratory and shall be deemed certified by the commission if it complies with the following standards approved by the American National Standards Institute, Inc.:

a. ANSI Z21.1 - 1978, "Household Cooking Appliances."

b. ANSI Z21.20-1975, "Automatic Gas Ignition Systems and Components" and addenda ANSI Z21.20a - 1977 and addenda ANSI Z21.20b - 1978.

c. ANSI Z21.21 - 1974, "Automatic Valves For Gas Appliances" and addenda ANSI Z21.21a - 1977.

These rules are intended to implement sections 478A.2 to 478A.5 of the Code.

[Filed 6/22/79, effective 8/15/79]

These rules were published under Notice of Intended Action in the April 4, 1979, IAB and will become effective August 15, 1979.

[Published 7/11/79]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/11/79.

ARC 0383

REVENUE DEPARTMENT[730]

Pursuant to the authority of section 17A.3(1)"b" of the Code, the following rules pertaining to forms developed by the Department of Revenue and used by taxpayers are hereby amended.

ITEM 1. Subrule **8.1(6)** is amended by adding the following new paragraph:

e. Hotel motel tax section

FORM NUMBER	DESCRIPTION
36-001	Combined Hotel/Motel and Retailers Sales Tax Quarterly Return. Filed quarterly by persons subject to the local option hotel motel tax and state sales tax. 2 pages.

ITEM 2. Subrule **8.1(6)**"a" is amended by inserting after Form 35-021 the following new form:

36-001	Combined Hotel/Motel and Retailers Sales Tax Quarterly Return. Filed quarterly by persons subject to the local option hotel motel tax and state sales tax. 2 pages.

These rules are intended to implement section 422A.1 of the Code.

[Filed 6/22/79, effective 8/15/79]

A Notice of Intended Action was published in the May 16, 1979, Administrative Bulletin. These rules are identical to those published under Notice and will become effective August 15, 1979, after filing with the Rules Coordinator and publication in the Iowa Administrative Bulletin.

[Published 7/11/79]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 7/11/79.

SUMMARY OF OPINIONS FROM THE OFFICE OF

ATTORNEY GENERAL THOMAS J. MILLER

April, 1979

ADMINISTRATIVE LAW

Practice of Chiropractic. §§17A.4, 17A.8, 17A.19, 151.1, Code of Iowa (1979). Proposed rules 141.1(6) and 141.1(17), published in 1 Iowa Administrative Bulletin, No. 19 (21 Feb. 1979), exceed the rule-making authority of the Board of Chiropractic Examiners (Schantz to Iowa Administrative Rules Review Committee, 4/26/79) #79-4-29

CIVIL SERVICE

Sheriffs and Deputies; Elections. §341A.18, Code of Iowa (1979); §365.29, Code of Iowa (1971); §400.29(4), Code of Iowa (1979). A candidate for elective office is required to take a thirty-day leave of absence before both a primary and general election. (Salmons to Jensen, 4/26/79) #79-4-28

COUNTIES

Compensation of County Engineer pursuant to Chapter 28E agreement between county and cities. Article III, Section 31, Iowa Constitution; Chapter 28E and §309.18, Code of Iowa (1979). Pursuant to the Chapter 28E agreement between Kossuth County and several cities in Kossuth County, the money which is reimbursed to the Kossuth County Secondary Road Fund by the cities is a portion of the Kossuth County Engineer's total salary set by the Kossuth County Board of Supervisors, not in addition thereto. The overpayment to the county engineer could be legalized by the legislature. (Condon to Soldat, Kossuth County Attorney, 4/17/79) #79-4-17

Cost of Treatment of Substance Abuser. §§125.2(11), 125.47, 125.33, 204.409(2), 321.281, Code of Iowa (1979). A county is not obligated to pay for treatment of a substance abuser who has not established residence within the county even though a court ordered the substance abuse treatment as part of a sentence in a criminal case. The Department of Substance Abuse should pay for the cost of care in this event. (Robinson to Robbins, 4/24/79) #79-4-24

County Assessors. §§441.5, 441.8, Code of Iowa (1979). County assessors whose terms expire prior to December 31, 1979, need not take examination and obtain certification under §441.5 of Code in order to be reappointed for a six-year term commencing January 1, 1980, (Hagen to Bair, 4-6-79) #79-4-8

County Board of Supervisors' duty in setting compensation of county elected officials' deputies' salaries and permissibility of Board members using county cars. Article III (Sec. 39A) of the Constitution; §§331.22, 332.3(18), 340.4, and 340.8 (1979). Section 340.4 requires the county board of supervisors to certify to the county auditor the salaries of the elcted officials' deputies as long as the salaries do not exceed the maximum fixed in Section 340.4. The board member may use county cars in the performance of their official duties, (Condon to Soldat, Kossuth County Attorney, 4/11/79) #79-4-12

County Home Rule Amendment. General import of said amendment on State-County legal relationship and its effect on pending legislation. Ch. 1206, Acts of the 67th General Assembly (1978), Article III [Sec. 39A] of the Iowa Constitution; H.F. 121; H.F. 58, §558.52, Code of Iowa (1979). With the passage and adoption of the County Home Rule Amendment, Article III (§39A) of the Iowa Constitution, the counties have been emancipated from the restrictions of the Dillon Rule as of November 7, 1978, and are now free to exercise and determine their local affairs and government without the necessity of express state legislation. The County Home Rule Amendment contains four basic limitations within itself. First, counties have no power whatsoever to levy any tax unless expressly authorized by the General Assembly. Second, in the event the power or authority of a county conflicts with that of a municipal corporation, a municipal corporation's power and authority prevails within its jurisdiction. Third, the home rule power exercised by a county cannot be "inconsistent with the laws of the General Assembly." Fourth, home rule power can only be exercised for local or county affairs and not state affairs. Based on the language of the County Home Rule Amendment and the Iowa Supreme Court's review of the similar Municipal Home Rule Amendment, the four limitations should be narrowly construed. Conversely, county's powers should be broadly construed and subject to liberal interpretation absent express statutory conflict. The Iowa Legislature may, in its own discretion, promulgate a county home rule act or county code similar to the city home rule act or city code, whereby it defines and restructures its relationship with counties. (Miller and Hagen to Representatives Danker, Binneboese, Hullinger and Hansen, 4/6/79) #79-4-7.

Incompatibility. §§137.4, 137.6, 137.20, 174.13, 174.14, 174.15, 174.17 and 174.19, the Code, 1979. A member of a county board of supervisors cannot simultaneously occupy the position of member of the county board of health or county fair board. (Blumberg to Frisk, Harrison County Attorney, 4/3/79) #79-4-4

Iowa State Association of Counties: Statutory Restrictions on Collection of "Regular Membership Dues" and "Service Fee." §332.3(27), Code of Iowa (1979). A collection once each year of "regular membership dues" and "service fees" in a "membership fees statement for 1979," by the Iowa State Association of Counties is in violation of §332.3(27) of the 1979 Code of Iowa, if the total assessment collected from all member counties is in excess of $75,000 per annum. (Hagen to Richard Johnson, Auditor of State, 4/11/79) #79-4-13

Publication of notices. Sections 618.3, 618.7, Code of Iowa (1979). To be eligible for designation by county officers as a newspaper to publish county notices, a newspaper must have complied with the United States postal laws regarding paid circulation for at least two years. (Condon to Neas, Audubon County Attorney, 4/25/79) #79-4-25

COURTS

Witness Fees for Police Officers. Section 622.71, the Code, 1979. Where a police officer is paid by the city for testifying during off-duty hours, the officer is not entitled to witness fees. (Blumberg to Miller, State Senator, 4/26/79) #79-4-30

CRIMINAL LAW

Deducting court costs from cash bond. Chapter 765, Code of Iowa (1977); Chapter 811, Code of Iowa (1979). Prior to the 1978 criminal code revision, court costs incurred during criminal trial and on appeal could be deducted from a cash bond on deposit at the time of judgment, whether or not so ordered by the court. As of the effective date of Chapter 811, Code of Iowa (1979), court costs can no longer be deducted from a cash bond posted by a defendant or third party, irrespective of whether the costs were incurred at trial or upon appeal. (Dallyn to Wilson, Marion County Attorney, 4/27/79) #79-4-36

Bribery: Gifts and Gratuities: Public Officials. Section 722.1, 2, Code of Iowa, 1979. Where value of business gift is very small, is given to a large group of people and not exclusively to public employees, and has obvious advertising benefits, it is unlikely that a jury or judge would find the required intent necessary to obtain a conviction under Iowa's bribery statutes. (Appel to Thompson, 4/25/79) #79-4-27

Disposition of seized property. Section 809.2, Supplement to the Code 1977. A notice of forfeiture hearing must be issued by the clerk of court, although not necessarily served or published. within forty-eight consecutive hours, excluding those falling on a Sunday, after the last official act of possession completing a seizure of the property. At a minimum, service upon known persons must be by mailing; service upon unknown persons must be by publication pursuant to the Iowa Rules of Civil Procedure. (Dallyn to Poffenberger, State Representative, 4/12/79) #79-4-14

HIGHWAYS

Primary Road Funds: Constitutional Law. Article VII, §8, Const. of Iowa; §312.2, Code of Iowa, 1977; H.F. 491, 67th G.A. 2d. A proposed statutory amendment to authorize expenditure of road use tax funds "for the lease or other use of land intended for the planning or maintenance of wind erosion control barriers designed to reduce wind erosion interfering

with maintenance of highways in the state or the safe operation of vehicles thereon" is constitutional. O.A.G. Turner to Drake and Van Gilst (5-5-78, #78-5-3) holding §312.2 violative of Art. VII, §8 of the Iowa Constitution is overruled. (Miller and Appel to Scott, 4-26-79) #79-4-31

HOUSING

Chapter 413: Housing Law. Sections 413.3(1), 413.4, 413.5, 413.9, 413.10, 413.11, 413.105, 413.125, 103A.3(4), 103A.10, 103A.22(1), 562A.14, 562A.15, Code of Iowa, 1979. The term "hereafter erected" as used in Chapter 413 of the Code refers to construction put in place after passage of that chapter. Unless a governmental subdivision has accepted the state building code as a lawful local building code, it may adopt or enact any building regulations, but such regulations must still comply with those provisions of the state building code which have statewide effect and with Chapter 413 of the Code. The House Law, Chapter 413, has been enforceable since 1919. There is no statutory provision in the Code which requires a city to adopt a building code. The Uniform Residential Landlord and Tenant Law requires that at the commencement of a rental term the landlord deliver premises in compliance with applicable building and housing codes materially affecting health and safety. The Housing Law requires that no rent shall be received by the owner of lawfully occupied premises in violation of section 413.105 of the Code. (Johnson to Schnekloth, State Representative, 4/24/79) #79-4-23

IOWA CONSTITUTION

Retirement dinner. Art. III, §31; Iowa Code Sections 740.20 (1975); 721.2(1,5), (1979). A retirement dinner sponsored by and paid for by a municipal utility may, depending upon the circumstances, be for a "public purpose" and thus not violative of Iowa Constitution, Art. III, Section 31. (Salmons to Miller, State Senator, 4/25/79) #79-4-26

JUDICIAL MAGISTRATES

Ipers. Iowa Code Sections 97B.41(3)(b)(6); 97B.42; 97B.45; 97B.46; 97B.47; 97B.52; 97B.53(1),(2),(7); 602.50; 602.58; House File 582, 67th G.A., §§5,6. A judicial magistrate choosing IPERS membership may not voluntarily withdraw from IPERS for personal reasons. (Salmons to Longnecker, Administrator, State Retirement Systems, 4/3/79) #79-4-5

MENTAL HEALTH

Unauthorized Departure of Involuntarily Hospitalized Mental Patients From Local Facilities. Chapters 226 and 229, 1979 Code of Iowa, §§222.9, 226.16, 227.11, 227.13, 229.1(2), 229.1(10), 229.1(8)(a), 229.1(8)(c), 229.13, 229.14, 229.14(2), 229.14(4), 229.15(4), 229.16, 230.31. An individual who is transferred to an alternative placement facility from a state mental health institute is still under the constructive jurisdiction and custody of the mental health institute. The superintendent of the mental health institute has the authority to issue an order to any peace officer to place the patient in protective custody and return him/her to either the alternative placement facility or the mental health institute. If an individual who is involuntarily hospitalized in a

local facility and who has never been confined in a state mental health institute should depart the facility without authority, such person's return to the facility should be upon orders issued by the court which ordered the initial commitment. (Fortney to Preisser, Commissioner, Department of Social Services, 4/9/79) #79-4-9

MUNICIPALITIES

Antitrust. Chapter 73, Code of Iowa, 1979. The holding of the United States Supreme Court in the case of City of Lafayette v. Louisiana Power and Light Company, 435 U.S. 387, 55L.Ed.2d 364, 98 S.Ct. 1123 (1978), does not prevent compliance by municipalities with the preference for Iowa products, produce, coal and labor statutorily required by Chapter 73. (Heintz to Rush, State Senator, 4/17/79) #79-4-16

Rural Subdivisions. Sections 306.3(1), 306.21, 409.4, 409.5, 409.14, and 558.65, the Code, 1979. Cities have authority to impose requirements on certain rural subdivisions pursuant to §306.21, Chapter 409 and §558.65, the Code. (Blumberg to Barry, Assistant Muscatine County Attorney, 4/21/79) #79-4-21

Pensions. §410.6, the Code, 1979. When a pension, pursuant to Chapter 410 of the Code, is recomputed and there is an increase in benefits, the increase is equal to one-half the difference between the old pension and the recomputed pension. (Blumberg to Priebe, State Senator, 4/11/79) #79-4-11

OPEN MEETINGS

Public Records. Sections 28A.3, 28A.4, 68A.2 and 68A.3, Iowa Code (1979). Section 28A.4 requires that a news agency which has filed a request with a governmental body be provided notification of the date, time, place and tentative agenda of an upcoming meeting of the body. The governmental body is responsible for the necessary costs involved with providing such notification.

The minutes of open meetings of governmental bodies are "public records." A member of the public at large is entitled to examine and obtain copies of such minutes. The record's custodian must provide copies of the minutes only upon payment of the expenses, including the fees for postage, incurred to provide copies. (Cook to Menke, State Representative, 4/20/79) #79-4-19

Public notification of meetings. Section 28A.4, Iowa Code (1979). The notice provisions of §28A.4 are intended to provide the public at large with timely, adequate notice of the pendency of government's business. The section imposes minimal measures concerning the contents, manner, and time of notice, and does not prevent a governmental body from providing the public with more notice than is statutorily required.

To satisfy the statutory requirements of §28A.4, a governmental body must inform the general public of a pending meeting by (1) posting the date, time, place and tentative agenda of such meeting with "on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body," or, if the governmental body has no principal office, the information must be posted at the building where the meeting is to be held, and (2) notifying news media which have filed a request for notice. If such measures have been taken, the governmental body is free to select additional means "reasonably calculated to apprise the public" of a pending meeting. (Cook to Stromer, State Representative, 4/10/79) #79-4-10

POLITICAL SUBDIVISIONS

Funds of Chapter 28E Entities. Sections 28E.2, 28E.3, 28E.7, and 453.1, the Code, 1979. Funds held by a separate entity established pursuant to Ch. 28E are not generally subject to §453.1. However, if those funds are held by any of the officials listed in §453.1, then that section is applicable. (Blumberg to Menke, State Representative, 4/2/79) #79-4-2

SCHOOLS

Teacher terminiation decisions. Chapter 68A, §279.15, §279.16, §279.17, the Code, 1977. Decisions of neutral adjudicators rendered pursuant to §279.17, the Code (1977), are personal information information in confidential personnel files and are confidential public records. (Powers to Beamer, Chairman, Public Employment Relations Board, 4/27/79) #79-4-34.

Commercial photographers on school grounds. Art. III, §31, Constitution of Iowa. §§274.1, 274.7, 279.8, Code of Iowa (1979). The school board of directors may permit commercial photographers to photograph students on school property. (Condon to Menke, State Representative, 4/27/79) #79-4-32

STATE OFFICERS AND DEPARTMENTS

Department of Substance Abuse. Chapter 204, Code of Iowa (1979); 21C.F.R. §291.505 (1978). Under both federal and Iowa law, a physician is not required to be physically on the premises of a narcotics addiction rehabilitation program when methadone is administered to an addict undergoing treatment if the physician has delegated the authority to so administer to a pharmacist, registered nurse, or licensed practical nurse, and that individual is in fact administering the methadone. Take-home dosages of methadone are permitted if dispensed pursuant to a physician's prescription and within federal guidelines. A physicial need not be on the premises when take-home dosages of methadone are dispensed if a pharmacist is present and dispensing the methadone. (Dallyn to Riedmann, Director, Iowa Department of Substance Abuse, 4/30/79) #79-4-38

ATTORNEY GENERAL *(cont'd)*

April, 1979 page 7

Revocation of a license to operate a motor vehicle. Senate File 221, 68th G.A.; Section 17A.18(3) Code of Iowa (1979). Proposed bill to require the Department of Transporation to revoke the driver's license of any person found by process of chemical analysis to have been operating his or her motor vehicle with .10% or more by weight of alcohol in the blood is constitutional. However, the administrative hearing required prior to revocation may constitutionally be held prior to a pending criminal trial for the same offense only where the licensee so consents or where an emergency exception for the protection of the public health or safety applies. (Dallyn to Gallagher, State Senator, 4/30/79) #79-4-39

Governor: Director of General Services: Authority to Execute Contract for State Building. Art. III, §§1 and 24, Constitution of Iowa, §§7.9, 8.2, 8.39, 18.6, 18.12, 18.13, 18A.1, 18A.3, 72.1 Code of Iowa (1979). Section 1, ch. 34, Acts of the 67th G.A. (1977). The Director of the Department of General Services had implied authority, as the designee of the Governor, pursuant to §§7.9 and 8.39 of the Code to contract for the construction of the new Vocational Rehabilitation Center. Funds may be transferred from departmental funds, or from the unexpended appropriation of another agency, pursuant to §8.39, to satisfy the difference between the amount of the federal grant and the contract price. Constitutional questions are raised by resort to §7.9 in these circumstances. The legislature may, if it chooses, alleviate doubts about the director's statutory authority by appropriating the balance or by retrospectively validating the contract. (Miller, Schantz and Haskins to Rush, State Senator and Anderson, State Representative, 4/30/79) #79-4-40

Board of Nursing -- Advanced Education Programs. Section 152.5, the Code, 1979). The Board only has authority to approve programs granting the initial nursing degree and advanced programs designed for nurses or which grant an advanced nursing degree. (Blumberg to Illes, Executive Director, Iowa Board of Nursing, 4/20/79) #79-4-22

Department of Revenue; decision of hearing officers. Sections 17A.15, 17A.18, 17A.19, 421.1, 422.53(5), 1979 Code of Iowa; §§730-7.17(1), 7.17(5), Iowa Administrative Code. The decision becomes final when all administrative remedies have been exhausted. The decision of the hearing officer is a proposed decision that becomes a final decision absent a timely request for an appeal. When a timely request for appeal is made, the hearing officer's decision remains a proposed decision, unenforceable as a final decision. The decision of the Director of Revenue, on appeal, is a final decision and is enforceable as such, notwithstanding the filing of a petition for judicial review, unless the Board's decision is stayed pursuant to §17A.19(5), Code of Iowa. (McDonald to Bair, 4/27/79) #79-4-37

Secretary of State and Iowa Search, Inc. Art. III, §31; 554.9407(3), §18.8, 68A.3, Code of Iowa (1979); O.A.G., 1978, #78-10-13 (Haesemeyer to Synhorst). Article III, §31, Constitution of Iowa does not require a two-thirds vote of each branch of the General Assembly for approval of the appropriation for the Secretary of State. The relationship of the office of the Secretary of State and Iowa Search, Inc. is not in violation of Constitution or law. Such relationship serves a public purpose, not a private purpose. (Schantz & McDonald to Miller, State Senator, 4/5/79) #79-4-6

Commission on the Aging and Area Agencies on the Aging, their fiscal relationship and rate of reimbursement for mileage and travel. 42 U.S.C. §3001 et. seq., 42 U.S.C. §3024; 42 U.S.C. §3045 et. seq.; 42 U.S.C. §3045a(c); 45 C.F.R. §909.42(A)(1); 45 C.F.R. §909.43; Chapter 249B, 1979 Code of Iowa; §§18.117, 25A.2(3), 1979 Code of Iowa; §20, Iowa Administrative Code. Area Agencies on Aging are subject to the direct supervision and control of the State Commission on Aging. The Commission on the Aging is vested with the authority to receive all funds on behalf of the Area Agencies. Distribution of funds to Area Agencies is solely through the Commission on the Aging, after the approval by the Commission of the Area Agency's area plan. The Area Agencies are bound by the fiscal policy as formulated by the Commission on the Aging. The Area Agencies are further bound by the uniform standards set for state employees with respect to mileage reimbursements. Area Agencies may reimburse clients for mileage for transportation services provided to conduct the "Nutrition Program for the Elderly." Such reimbursements must also conform to the uniform standards set for state employees. (McDonald to Odell McGhee, Legal Services Developer, Commission on the Aging, 4/3/79) #79-4-3

TAXATION

Personal Property Taxes -- Limit of Assessment. Section 427A.11, Code of Iowa, 1979; Ia. Const., Art. III, §30; U.S. Const. amend. 14. The operation of §429A.11 results in assessed valuations which vary among assessing jurisdictions; such disparity in assessed values in turn results in nonuniform taxation in violation of the Iowa and the United States Constitutions. (Ludwigson and Griger to Jesse, 4/27/79) #79-4-35

Declaration of Value Requirements for Eminent Domain Acquisition Contracts. Sections 528A.1, 428A.2, 428A.4, and 428A.11, Code of Iowa, 1979. Eminent domain land acquisition contracts entered into by the State of Iowa as the grantee are not expected from the value declaration requirements in Chapter 428A, Code of Iowa, 1979. Eminent domain tenant acquisition contracts are not subject to the value declaration requirements. A declaration of value must be submitted to the county recorder before an eminent domain land acquisition contract may be recorded. No declaration of value is required where a deed is given in fulfillment of a recorded eminent domain land acquisition contract where the deed contains such notation. The Department of Revenue has no statutory authority to except, by rule or order, eminent domain land acquisition contracts from declaration of value statutory requirements. (Donahue to Kassel, Director, Department of Transportation, 4/20/79) #79-4-20

Refunding Erroneous or Illegally Exacted Property Tax. Sections 441.37, 441.38, 445.60, Code of Iowa, 1979. If the assessor has the power and jurisdiction to determine whether all or any part of the property of the taxpayer is taxable, and, thereafter, the taxpayer fails to pursue his or her legal remedies provided for in §§441.37 and 441.38 for any errors or irregularities he or she believes that the assessor or board of review has made, the taxpayer waives his or her right to seek a refund for any taxes paid from the board of supervisors under the provisions of §445.60. (Kuehn to Willis, 4/19/79) #79-4-18

ATTORNEY GENERAL *(cont'd)*

April, 1979 page 9

STATE FAIR BOARD

Leasing of Fairgrounds. Chapter 173, Code of Iowa (1979). The Fair Board may lease the fairgrounds to private interests although a small part of the land was acquired by condemnation. (Condon to Connors, State Representative, 4/17/79) #79-4-15

VETERANS MEMORIAL COMMISSIONS

Method of Appointing Commissions. Section 37.10, Code of Iowa (1977). The authority of the commissioners of veterans memorial buildings and monuments selected pursuant to §37.10 has been undermined by the Iowa Supreme Court in Gamel v. Veterans Memorial Auditorium Commission. County boards of supervisors or city councils should invoke §37.14 and appoint successor commissioners after implementing fair and neutral selection procedures. (Bennett to Howell, House of Representatives, 4/2/79) #79-4-1

WAGES

Deductible losses. Section 91A.5(2)(c), Code of Iowa (1977). Employer may deduct from employees wages for loss of tools and equipment acknowledged as received by the employee; and for other losses as enumerated, whenever the employee demonstrates a willful or intentional disregard of the employer's interests. An employer may not deduct for damage to a third party's property. (Powers to Johnson, Deputy Commissioner, Bureau of Labor, 4/27/79) #79-4-33

ATTORNEY GENERAL *(cont'd)*

STATUTES CONSTRUED

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7.9	79-4-40
8.2	79-4-40
8.39	79-4-40
17A.4	79-4-29
17A.8	79-4-29
17A.15	79-4-37
17A.18	79-4-37
17A.18(3)	79-4-37
17A.19	79-4-29
17A.19	79-4-40
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18.8	79-4-40
18.12	79-4-40
18.13	79-4-40
18A.1	79-4-40
18A.3	79-4-40
18.11(7)	79-4-3
25A.2(3)	79-4-3
28A.3	79-4-19
28A.4	79-4-10
28A.4	79-4-19
28E	79-4-17
28E.2	79-4-2
28E.3	79-4-2
68A.2	79-4-19
68A.3	79-4-6
68A.3	79-4-19
72.1	79-4-40
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97B.41(3)(b)(6)	79-4-5
97B.42	79-4-5
97B.45	79-4-5
97B.46	79-4-5
97B.47	79-4-5
97B.52	79-4-5
97B.53(1)	79-4-5
97B.53(2)	79-4-5
97B.53(7)	79-4-5
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174.13	79-4-4
174.14	79-4-4
174.15	79-4-4
174.17	79-4-4
174.19	79-4-4
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226	79-4-9
226.16	79-4-9
227.11	79-4-9
227.13	79-4-9
229.1(2)	79-4-9
229.1(10)	79-4-9
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229.1(8)(c)	79-4-9
229.13	79-4-9
229.14	79-4-9
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229.14(4)	79-4-9
229.15(4)	79-4-9
229.16	79-4-9
230.31	79-4-9
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279-8	79-4-32
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306.21	79-4-21
309.18	79-4-17
321.281	79-4-24
331.22	79-4-12
332.3(18)	79-4-12
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340.8	79-4-12
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400.29(4)	79-4-28
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409.14	79-4-21
410.6	79-4-11
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428A.1	79-4-20
428A.2	79-4-20
428A.4	79-4-20
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STATUTES CONSTRUED (Continued)

Code, 1979	Opinion
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602.58	79-4-5
618.3	79-4-25
618.7	79-4-25
622.71	79-4-30
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37.10	79-4-1
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103A.22(1)	79-4-23
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279.16	79-4-34
279-17	79-4-34
312.2	79-4-31
413.3(1)	79-4-23
413.4	79-4-23
413.5	79-4-23
413.9	79-4-23
413.10	79-4-23
413.11	79-4-23
413.105	79-4-23
413.125	79-4-23
562A.14	79-4-23
562A.15	79-4-23
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809.2	79-4-14

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582, §6	79-4-5

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Art. III, §24	79-4-40
Art. III, §30	79-4-35
Art. III, §31	79-4-6
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Art. III, §31	79-4-26
Art. III, §31	79-4-32
Art. III, §39A	79-4-12
Art. VIII, §8	79-4-31

Constitution of the United States	
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Ch. 3024	79-4-3
Ch. 3045	79-4-3
Ch. 3045a(c)	79-4-3

SUMMARY OF OPINIONS FROM THE OFFICE OF ATTORNEY GENERAL THOMAS J. MILLER

May, 1979

CONSTITUTIONAL LAW

Statutes; Common Law; General Assembly; Immunities. U.S. Const., Art. I, §6, Iowa Constitution, Art. III, §10, Iowa Constitution, Art. III, §11, §§2.17, 2.18, 2.19, Code of Iowa (1979). State legislators possess a constitutional privilege from civil arrest under article III, §11 of the Iowa Constitution and are also immune from libel and slander actions arising out of any speech or debate or sessions of a standing committee. Also, the common law of Iowa seemingly provides members of the General Assembly with an immunity for all legitimate legislative activities. (McNulty to Junkins, State Senator, 5/21/79) #79-5-23

COUNTY AND COUNTY OFFICERS

Authority of County Board of Supervisors over Community Mental Health Center. Article III, Section 39A, Iowa Constitution, Chapters 230A, 504 and 504A, 1979 Code of Iowa, §§230A.1, 203A.2, 230A.3, 230A.3(1), 230A.3(2), 230A.4, 230A.5, 230A.6, 230A.10, 230A.10(2), 230A.12, 230A.13, 332.3(6), 504.14, 504A.17, 504A.18. A board of supervisors does not have authority to establish a mental health department within county government in order to provide direct services to clients through employees hired and controlled by the board. A board of supervisors does not have authority to assume control of a community mental health center established pursuant to Chapter 230A, Code of Iowa, Fortney to Wells and Horn, State Representatives, 5/3/79) #79-5-2

Brucellosis Fund Claims. Sections 164.21, 164.23, 164.27, The Code, 1979, Sections 343.10, 343.11, The Code, 1979, Section 74.1, The Code, 1979. A claimant is entitled to only that portion of his claim against the Brucellosis Fund which can be paid by moneys on hand, and a Board of Supervisors may not bind the Brucellosis Fund through successive fiscal years to make payments to one claimant. (Benton to Tullar, Sac County Attorney, 5/30/79) #79-5-32

County Employee -- Conflict of Interests. A county board of supervisors may determine pursuant to the County Home Rule Amendment, Article III (§39A) of the Iowa Constitution, if a county employee has a conflict of interests. (Condon to Junkins, State Senator, 5/23/79) #79-5-25

Licensing of food service establishments. Sections 170.2, 170A.2(5), 170A.2(8), 170A.4, and 332.23. The Secretary of Agriculture has exclusive control of the regulation, inspection, and licensing of food establishments, precluding counties from licensing the establishments as county businesses pursuant to Section 332.23. However, a county may license a business other than a food service establishment even though a food service establishment is also on the premises. (Condon to Burk, Blackhawk Assistant County Attorney, 5/14/79) #79-5-10

ATTORNEY GENERAL *(cont'd)*

May, 1979 Page 2

COUNTY AND COUNTY OFFICERS (Continued)

Licensing of food service establishments. Sections 170.2, 170A.2(5), 170A.2(8), 170A.4, and 332.23, Code of Iowa (1979). The Secretary of Agriculture has exclusive jurisdiction of the licensing of food service establishments and the county may not license the establishment as a county business pursuant to Section 332.23. However, a county may license a business other than a food service establishment even though a food service establishment is also on the premises. (Condon to Bordwell, Washington County Attorney, 5/14/79) #79-5-11

Permit Fee. Article III (Sec. 39A) of the Iowa Constitution. The county board of supervisors may issue a permit to and collect a permit fee from quarry operations pursuant to the County Home Rule Amendment, as long as the permit fee is reasonable and related to the expense of administration. However, if the purpose or the effect of the fee is to raise revenue beyond the administrative costs of permit system itself, the fee would be a tax and be in contravention of the County Home Rule Act. (Condon to Davitt, State Representative, 79-5-4) #79-5-6

Proration by Sheriff of Mileage Expenses for Service Legal Papers. Section 337.11(10), Code of Iowa (1979). The sheriff may charge full mileage for each action in which subpoenas or original notices are served, but must prorate mileage expenses for several legal papers other than original notices or subpoenas served on the same trip. (Condon to Mossman, Benton County Attorney, 5/2/79) #79-5-1

Salary limitation. Section 340.8, Code of Iowa (1979). The salary limitation of Section 340.8 does not include compensation for voluntary overtime services received by deputy sheriffs pursuant to a contract between sheriff's departments and the Corps of Engineers. (Condon to Jay, State Representative, 5/25/79) #79-5-30

County Sheriff, County Civil Service Commission. Sections 80B.2, 80B.3(3), 80B.11, 341A.6(5), 341A.6(6), 341A.6(7), 341A.8, 341A.13, 692.1(10), 692.2, 692.3, Code of Iowa (1979). County sheriffs may not provide criminal history data to the County Civil Service Commission. County sheriffs may not redisseminate history information received on an individual from the Department of Public Safety to a County Civil Service Commission even if it is the basis for rejection of that individual. (Boecker to Larson, Commissioner of Public Safety, 5/9/79) #79-5-7

Sheriff: Use of County-Owned Automobiles. Section 721.2, Code of Iowa (1979). The use of county-owned automobiles by sheriff's officers on "24-hour call" to travel between home and work does not violate section 721.2, Code of Iowa (1979). (Dallyn to Schnekloth, State Representative, 5/11/79) #79-5-9

Signature of Surveyor on Plat. Section 335.2, Iowa Code (1979). The signature of a land surveyor on a plat filed with a county recorder, must be an actual signature, and not a photocopied one. (Haskins to Hanson, Special Counsel, Board of Engineering Examiners, 5/14/79) #79-5-13

CRIMINAL LAW

Counties: Mental Health: Cost of Psychiatric Evaluation of Criminal Defendants. Ch. 230, Code of Iowa (1979). The county of an indigent criminal defendant's "legal settlement" is liable for the costs of a court-ordered psychiatric evaluation at a state hospital. (Hansen to Wickey, Assistant Woodbury County Attorney, 5/22/79) #79-5-24

CRIMINAL PROCEDURE

Rules 82 and 84 of the Iowa Rules of Civil Procedure. Rule 82 of the Iowa Rules of Civil Procedure, regarding service (notification) and filing of pleadings and other documents, is applicable to criminal proceedings. Rule 84 of the Iowa Rules of Civil Procedure, regarding copy fees taxed as costs, is not applicable to criminal proceedings, nor is it apposite to uncontested probate matters. (Dallyn to Bordwell, Washington County Attorney, 5/9/79) #79-5-8

ELECTIONS

Residency Requirements. Sections 48.2, 47.4(4), Chapter 53, Code of Iowa, 1979). Domocile, as outlined in Edmundson v. Miley Trailer Co., 211 N.W2d 269 (Iowa 1969), is sufficient to establish residency under Iowa election law. Indicia of residence include intent and actual conduct, with resolution of issue determined on case-by-case basis. Neither §48.2 or Chapter 53 of Code requires present physical presence in order to reside in jurisdiction and be qualified to vote. Declaration of voter is entitled to special consideration under Iowa law. Burden of proof rests with party challenging legality of votes case in past election. (Appel to Daggett, State Representative 5/18/79) #79-5-21

MOTOR VEHICLES

Non-exemption of Maintenance Personnel. Section 321.233, Code of Iowa (1977), does not exempt maintenance personnel hauling snow on a public highway, not officially closed, from complying with local traffic signals. (Miller to Allbee, Franklin County Attorney, 5/4/79) #79-5-5

MUNICIPALITIES

Special Assessments. Sections 384.58, 384.59, 384.60, 384.62 and 384.65, The Code, 1979. Where there is a deferred special assessment pursuant to §384.62 interest accrues on the date of the change in use of the property, withdrawal or discontinuance of the deferment. (Blumberg to Neighbor, Jasper County Attorney, 5/30/79) #79-5-33

RESIDENCY REQUIREMENTS

Public Employees. U.S. Constitution, 5th Amendment, 14th Amendment. Continuous residency requirements for public school teachers are not violative of the U.S. or Iowa Constitutions or the Code of Iowa. (Powers to Tyrrell, State Representative, 5/24/79) #79-5-28

ATTORNEY GENERAL *(cont'd)*

May, 1979 Page 4

SCHOOLS

Open Meetings Law. Sections 20.16, 20.17(3), 28A.1, 28A.2(1)(a), 28A.2(1)(c), 28A.2(2), 28A.5(1)(a)-(j), 68A.2, 68A.7(1)-(12), 68A.7(6). Neither a negotiating session between a school board and a non-certified employee organization nor a strategy session for collective bargaining with non-certified employee organizations is permitted by Chapter 20 or 28A to be closed to the public. (Powers to Wagner, President, Board of Directors, Sioux City Community School District, 5/16/79) #79-5-19

STATE OFFICERS AND DEPARTMENTS

Department of Agriculture; Disposing of Dead Animals. Section 167.3, Code of Iowa (1979). A person who collects parts of an animal for the purpose of obtaining the hide, skin or grease therefrom must obtain a license to dispose of the bodies of dead animals. (Schantz to Lounsberry, Secretary of Agriculture, 5/3/79). #79-5-3

Open Meetings Law. Sections 28A.1, 28A.2(1), 28A.2(2), 114.17, 114.19 114.21, 258A.1(1)(a), 258A.3(1), 258A.4, Iowa Code (1979); Ch. 1037, §§1, 12, Acts of the 67th G.A. (1978); §28A.1, Iowa Code (1977). A peer review committee of the board of engineering examiners which has been delegated no policy-making or decision-making authority is not a "governmental body" within the meaning of §28A.2(1)(c). (Schantz and Haskins to Hanson, Special Counsel, Board of Engineering Examiners, 5/4/79) #79-5-4

Open Meetings -- "Meeting." Sections 28A.2(1) and 28A.2(2), Iowa Code (1979). To constitute a "meeting" as defined in §28A.2(2) the following elements must be present: (1) a majority of the members of a governmental body must be involved in the particular gathering or assemblage, and (2) the acts or duties of the members involve policy-making or decision-making responsibilities. The second element encompasses the discussion and evaluative processes in arriving at a decision or policy. Ministerial acts of the members, i.e., acts which do not involve an exercise of judgment as to the propriety of an act of the body, are exempted from coverage by the open meetings law. If policy-making and decision-making duties are performed by a majority of the members, it constitutes a "meeting" under §28A.2(2) regardless of the informal setting of the gathering. (Cook to Pellett and Crabb, State Representatives, 5/16/79) #79-5-14

Open Meetings Law. Sections 28A.2(1) and 504A.17, Iowa Code (1979). A board of directors for a non-profit corporation formed under Chapter 504A is not covered by Chapter 28A because the board itself is not expressly created by statute. (Bremer to Riedman, Director, Iowa Department of Substance Abuse, 5/16/79) #79-5-15

Open Meetings Law. Sections 28A.2(1), Iowa Code (1979). A non-profit agency which otherwise is not governed by Chapter 28A is not brought under the provisions of Chapter 28A solely by receipt of State funds. (Bremer to Robert Anderson, State Representative, 5/16/79) #79-5-16

STATE OFFICERS AND DEPARTMENTS (Continued)

Open Meetings: State Educational Radio and Television Facility Board. Sections 18.144, 28A.2(1), Iowa Code (1979); Ch. 1037, §12, Acts of the 67th G.A. (1978). To the extent that the advisory committees of the State Educational Radio and Television Facility Board are not delegated policy-making or decision-making authority, they are not "governmental bodies" under Ch. 28A, the new open meetings law. (Haskins to Thole, Executive Director, State Education Radio and Television Facility Board, 5/16/79) #79-5-17

Open Meetings Law. Section 28A.2(1), Code of Iowa (1979). Hearing panels of the Faculty Judicial Commission at the University of Iowa are not "governmental bodies" subject to the Open Meetings Law both because they are not directly created by the Board of Regents and because they exercise no policy-making or decision-making authority. (Miller to Richey, Executive Secretary, State Board of Regents, 5/16/79) #79-5-18

Open Meetings Law. Sections 28A.2(1), 179.2, 184A.1(7), 184A.18, 185.3, 185C.3, Iowa Code (1979). The Iowa Crop Improvement Association, Iowa Dairy Association, Iowa Beef Producers Association, Iowa Swine Producers Association, Iowa Poultry Associations, Iowa Soybean Association, Iowa Corn Growers Association and State Horticultural Society are not "expressly created" by statute and thus are not subject to the open meetings law. The Soybean Promotion Board, Corn Growers Promotion Board, Iowa Turkey Marketing Council and the Dairy Industry Commission are subject to the Chapter 28A provisions. (Cook to Lounsberry, Secretary of Agriculture, 5/23/79) #79-5-26

Substance Abuse -- Licensure of Hospitals. Sections 125.13 and 125.21, Iowa Code (1979). Pursuant to §125.13 and §125.21, a hospital must obtain a license from the Commission on Substance Abuse to conduct or maintain a substance abuse substitute or antagonist program. (Cook to Riedmann, Director, Iowa Department of Substance Abuse, 5/30/79) #79-5-31

TAXATION

Property Tax -- Assessing Tracts of Real Property. Section 428.7, Code of Iowa, 1979. Assessors can value tracts of real property, for assessment purposes, as a unit without limitations on the size of the unit being assessed. (Kuehn to Allbee, Assistant Fayette County Attorney, 5/18/79) #79-5-22

USURY

Out-of-state Creditor. Chapter 535, 1979, Code of Iowa. An out-of-state creditor doing business with unincorporated Iowa businesses is subject to the Iowa Usury Statute. Remedies and sanctions for violations are found at §§535.4 and 535.6. The Attorney General of the State of Iowa may seek injunctive relief when the statute is openly, repeatedly, continuously, persistently, and intentionally violated. (Ormiston to Chiodo, State Representative, 5/14/79) #79-5-12

ATTORNEY GENERAL *(cont'd)*

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USURY (Continued)

Small Loans -- Interest. Chapters 535 and 536, 1979 Code of Iowa. Section 535.2, 1979 Code of Iowa, establishes the permissible rate of interest on money due on precomputed small loans that have matured. Under §535.2(1) the rate of interest is five per cent per annum in the absence of a written agreement. Section 535.2(3) permits the parties to agree in writing to a rate not to exceed two percentage points above the monthly average ten-year constant maturity interest rate of United States government notes and bonds. (Ormiston to Kingery, Department of Banking, 5/24/79) #79-5-27

WEAPONS

Manner of Conveyance. Sections 702.7, 724.4, Code of Iowa, 1979. An antique handgun may be transported to a target range without a concealed weapons permit as long as it is transported in conformance with the requirements of §724.4 of the Iowa Criminal Code. (Williams to Dunton, State Representative, 5/17/79) #79-5-20

National Guard Members. Sections 724.4(3) and 29A.1(7), Iowa Code (1979). National Guard members who carry weapons while in connection with their duties are exempt from State Weapons permits requirements. (Bremer to Calhoon, State Senator, 5/25/79) #79-5-29

STATUTES CONSTRUED

Code, 1979	Opinion
2.17	79-5-23
2.18	79-5-23
2.19	79-5-23
18.144	79-5-17
20.16	79-5-19
20.17(3)	79-5-19
28A.1	79-5-4
28A.2(1)	79-5-4
28A.2(2)	79-5-4
28A.2(1)	79-5-14
28A.2(2)	79-5-14
28.2(1)	79-5-15
28A.2(1)	79-5-16
28A.2(1)	79-5-17
28A.2(1)	79-5-18
28A.2(1)	79-5-26
28A.1	79-5-19
28A.2(1)(a)	79-5-19
28A.2(1)(c)	79-5-19
28A.2(2)	79-5-19
28A.5(1)(a)-(j)	79-5-19
29A.1(7)	79-5-29
47.4(4)	79-5-21
48.2	79-5-21
53	79-5-21
68A.7(1)-(12)	79-5-19
68A.7(6)	79-5-19
80B.2	79-5-7
80B.3(3)	79-5-7
80B.11	79-5-7
114.17	79-5-4
114.19	79-5-4
114.21	79-5-4
125.13	79-5-31
125.21	79-5-31
167.3	79-5-3
170.2	79-5-10
170A.2(5)	79-5-10
170A.2(8)	79-5-10
170A.4	79-5-10
170.2	79-5-11
170A.2(5)	79-5-11
170A.2(8)	79-5-11
170A.4	79-5-11
179.2	79-5-26
184A.1(7)	79-5-26
184A.18	79-5-26
185.3	79-5-26
185C.3	79-5-26

U. S. Constitution	
Art. I, §6	79-5-23

Code, 1979	Opinion
230	79-5-24
230A	79-5-2
258A.1(1)(a)	79-5-4
258A.3(1)	79-5-4
258A.4	79-5-4
332.23	79-5-10
332.23	79-5-11
335.2	79-5-13
337.11(10)	79-5-1
340.8	79-5-30
341A.6(5)	79-5-7
341A.7(6)	79-5-7
341A.6(7)	79-5-7
341A.8	79-5-7
341A.13	79-5-7
384.58	79-5-33
384.59	79-5-33
384.60	79-5-33
384.62	79-5-33
384.65	79-5-33
428.7	79-5-22
504	79-5-2
504A	79-5-2
504A.17	79-5-15
553	79-5-12
535	79-5-27
536	79-5-27
692.1(10)	79-5-7
692.2	79-5-7
692.3	79-5-7
702.7	79-5-20
721.2	79-5-9
724.4	79-5-20
724.4(3)	79-5-29

Code, 1977	Opinion
28A.1	79-5-4
321.233	79-5-5

67th General Assembly	
Ch. 1037, §1	79-5-4
Ch. 1037, §12	79-5-4
Ch. 1037, §12	79-5-17

Constitution of Iowa	
Art. III, §39A	79-5-6
Art. III, §39A	79-5-25
Art. III, §39A	79-5-2

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA
Filed - June 27, 1979

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

No. 62421. STATE v. HILDEBRAND.
Appeal from Scott District Court, Jack F. Broderick, District Associate Judge. Reversed and remanded for resentencing. Considered en banc. Opinion by Reynoldson, C.J. Special concurrences by Uhlenhopp and McGiverin, JJ.
(10 pages $4.00)

Defendant contends trial court abused its discretion by not deferring sentence on first-offense OMVUI. OPINION HOLDS: I. The trial court must actually apply discretion when sentencing; the trial court's personal, well-defined rule of refusing to defer sentence for OMVUI when an accident is involved precluded the exercise of its discretion in rendering judgment. II. This holding makes it unnecessary to reach defendant's contention we should adopt the ABA standards relating to appellate review of sentences. III. Nothing in section 321.281 limits trial court's discretionary authority to apply the various section 901.5 sentencing alternatives including deferring sentence. SPECIAL CONCURRENCE BY UHLENHOPP, J., ASSERTS: The legislature has evinced an intention that a person convicted of first-offense driving while intoxicated under section 321.281 must serve a jail sentence of not less than two days, so that the general progression of sentences in section 901.5 of the Code does not apply. SPECIAL CONCURRENCE BY McGIVERIN, J., ASSERTS: An accident in which an OMVUI defendant is at fault can be a very important factor in consideration of a proper sentence for the individual defendant; trial courts should not be deterred from giving appropriate weight to occurrence of an accident and its attendant circumstances when considering a sentence.

No. 62342. IN RE THE NAME OF STAROS.
Appeal from Johnson District Court, Harold J. Swailes, Judge. Affirmed. Considered by Reynoldson, C.J., and LeGrand, Rees, Harris and Allbee, JJ. Opinion by Rees, J. (6 pages $2.40)

This is an appeal by mother and next friend of minor from the trial court's order dismissing petition for change of minor's name. The district court concluded that minors and/or persons under civil disability are not authorized to petition for a change of name under existing Iowa law and that § 674.1, The Code 1977, thus did not permit the court to reach the merits of the petition. OPINION HOLDS: I. Chapter 674 does not permit an action by a minor, or the minor's guardian or next friend, for a change of name unless one parent of the minor is concomitantly petitioning for a name change. II. However sympathetic we may be to petitioner's equal protection argument regarding the limiting language of § 674.1, we will not address issues, even of constitutional magnitude, not presented to the trial court.

No. 62095. ROBERTS v. TIMMINS.
Appeal from Woodbury District Court, Lawrence W. McCormick, Judge. Reversed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin and Larson, JJ. Opinion by McGiverin, J. (9 pages $3.60)

Plaintiff appeals from the pre-trial dismissal of his tort claim petition against municipal employees due to failure to comply with notice requirements of section 613A.5, The Code 1975. OPINION HOLDS: I. Because plaintiff failed to preserve his constitutional claims for review, we give no consideration to them now. II. Because plaintiff alleged defendants acted outside the scope of their employment, sections 613A.8 and 613A.2 of The Code are ineffective to impose a 613A.5 requirement of notice to the city; neither a duty to defend nor a duty to indemnify are statutorily imposed by section 613A.8 where municipal officers, employees or agents act outside the scope of their employment; the legislative intent in adding the words "under common law" to section 613A.5 was to require notice to the municipality only for claims against municipal officers, employees and agents for acts or omissions occurring within the scope of their employment or duties; no notice is required in this case, since the suit alleges willful, malicious and unauthorized acts outside the scope of employment of the employees; defendant's motions to dismiss should have been overruled.

No. 62521. MANNING v. ENGELKES.
Certiorari to Black Hawk District Court, Carroll E. Engelkes, Judge. Writ annulled. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin and Larson, JJ. Opinion by McGiverin, J. (12 pages $4.80)

Plaintiff Manning challenges by way of writ of certiorari the defendant district court's ruling denying the state's motion to dismiss a criminal charge against him. OPINION HOLDS: I. Trial court's role in the prosecution of plaintiff's co-defendant is not sufficient ground to require recusal. II. Failure to provide hearing on the recusal issue is not a sufficient basis for sustaining the writ. III. The district court acted within its discretion under Iowa R. Crim. P. 27(1) in overruling the state's motion to dismiss the prosecution where the state presented no evidence or record in support of the motion to allow the court to find reasons to justify dismissal in the furtherance of justice.

No. 62452. STATE v. SANDS.
Appeal from Linn District Court, Robert Osmundson, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by McCormick, J. (4 pages $1.60)

Defendant appeals from conviction for driving a motor vehicle with a tandem axle overload in violation of section 321.463, The Code 1977. OPINION HOLDS: I. The twenty-five percent tolerance provided in section 321.466 for trucks carrying certain farm related products applies only to registered gross weights; defendant was prosecuted under section 321.463 for weight overloads on tandem axles two and three of his truck; the twenty-five percent tolerance of section 321.466 for gross weight overloads was not intended to establish a like tolerance for axle overloads under section 321.463.

SUPREME COURT *(cont'd)*

No. 62347. JACKSON COUNTY PUBLIC HOSPITAL v. PUBLIC EMPLOYMENT RELATIONS BOARD.

Appeal from Jackson District Court, C. H. Pelton, Judge. Affirmed. Considered en banc. Opinion by Allbee, J. Dissent by Harris, J. (16 pages $6.40).

This appeal was brought by the Public Employment Relations Board to contest a district court decree which reversed the PERB's decision that it had jurisdiction over the food service workers at petitioner hospital. The hospital has cross-appealed, contending that the district court should have reversed the PERB for more reasons that it did. OPINION HOLDS: I. The hospital's appeal to the district court was filed in a timely manner because section 17A.19 rather than section 20.11, The Code, controls; the district court was correct in applying the substantial evidence test of section 17A.19(8)(f), The Code; when this court reviews a decision of a district court rendered pursuant to section 17A.19, The Code, the sole question is whether the district court correctly applied the law. II. Federal law does not preclude PERB from exercising jurisdiction; PERB exceeded its statutory authority by asserting jurisdiction in a joint employment situation where one of the joint employers is not a public employer. DISSENT ASSERTS: I. When an appeal is taken to us under section 17A.20, we give no special deference to the district court's review of agency action. II. PERB's assumption of jurisdiction, after finding joint employment, did not exceed its authority; the question is one of fact rather than one of law.

No. 62454. STATE v. HILLSMAN.

Appeal from Linn District Court, Louis W. Schultz, Judge. Affirmed. Considered by Reynoldson, C.J., and LeGrand, Rees, Harris and Allbee, JJ. Opinion by Allbee, J. (7 pages $2.80).

Defendant appeals from conviction of delivery of a controlled substance, heroin, for the purpose of making a profit, a violation of section 204.401(1), The Code 1979. OPINION HOLDS: I. State's witness Kathleen Doyle, who purchased heroin from defendant, was not an accomplice to defendant's crime; thus a corroboration instruction would have been inappropriate. II. When the evidence is viewed in the light most favorable to the State and all fair inferences in favor of the jury's action are drawn, there is substantial evidence to find that defendant delivered the heroin for the purpose of making a profit. III. Trial court did not err in refusing to permit introduction of the minute of Doyle's testimony to impeach her; the inconsistencies in the minutes were a result of mistakes by the assistant county attorney. IV. In the absence of a showing that undisclosed exculpatory evidence existed, trial court's refusal to dismiss the prosecution was correct. V. Defendant's contention that it is unconstitutional to initiate a criminal prosecution by information rather than by grand jury indictment is without merit.

No. 62076. FARLEY v. GLANTON.

Certiorari to Polk District Court, Luther T. Glanton, Jr., Judge. Writ annulled. Considered by Reynoldson, C.J., and LeGrand, Rees, Harris, and Allbee, JJ. Opinion by Allbee, J. (7 pages $2.80).

This is a certiorari action by Jimmie Joe Farley to challenge refusal of trial judge to accept his plea of guilty. Farley sought to plead guilty to a charge of delivery of a controlled substance, marijuana, in violation of section 204.401(1), The Code 1977. During the plea colloquy, trial court asked Farley to tell what he had done to commit the crime charged. Farley asserted that he would not have delivered the marijuana but for the persuasion of the undercover agent which, in trial court's opinion, raised the possibility of an entrapment defense. The trial court refused to accept the guilty plea. OPINION HOLDS: Under Iowa R. Crim. P. 8(2)(b) trial courts have discretion to refuse to accept guilty pleas; trial court's doubts on the issue of entrapment went to the sufficiency of the factual basis of the plea; the ability of the court to entertain such a doubt demonstrates that its discretion was not abused and requires that the writ be annulled; this action does not prevent another attempt by Farley to enter a negotiated plea of guilty accompanied by a showing of an adequate factual basis.

No. 62388. DILLEHAY v. IOWA DEPARTMENT OF JOB SERVICE.
Appeal from Pottawattamie District Court, Harold L. Martin, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and LeGrand, Harris, Allbee, and Larson JJ. Opinion by Larson, J. (6 pages $2.40)

Department of Job Service appeals from the district court's judgment ordering it to increase the amount of plaintiff's IPERS retirement allowance. OPINION HOLDS: On judicial review of agency action, motions by both parties for summary judgment will be treated as an application for decision on the merits where facts are uncontroverted. Plaintiff did not have the five years of service needed to qualify for the break-in-service exception to the statute requiring cessation of participation in IPERS upon termination of public employment. Therefore, her 1962 refund of IPERS contributions was legal. This refund precludes her from augmenting her retirement allowance by buying back her years of OASIS service.

No. 62334. STATE v. FOLKENS.
Appeal from Dickinson District Court, Richard W. Cooper, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by Larson, J. (12 pages $4.80)

Defendant appeals from conviction of assault with intent to commit rape in violation of section 698.4, The Code 1977. OPINION HOLDS: I. The police officer's original entry into defendant's house and seizure of the evidence were voluntarily consented to by a person with authority to do so; thus, the legality of the warrant subsequently obtained need not be determined by us. II. Trial court properly admitted evidence of the prior similar acts defendant committed with the prosecuting witness. III. Use of a transcript of a prior statement made by a witness outside of the presence of defendant was properly allowed for impeachment when the witness was present in court and subject to cross-examination. IV. Trial court did not err in refusing to recall the prosecuting witness after she testified; the "newly discovered" letter she had written had little probative value; at most it was impeaching in nature. V. The disclosure of the exculpatory evidence the morning of trial was timely and did not deny due process. VI. Trial court must approve a request to be sentenced under the new criminal code and it refused to do so here.

No. 62546 & 62692. STATE v. KANTARIS.
Appeal from Cerro Gordo District Court, John F. Stone and J. W. Frye, Judges. Judgments vacated and cases remanded for resentencing. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by Larson, J. (6 pages $2.40)

This is a consolidated appeal of defendant's two convictions from separate trials for delivery of a controlled substance, cocaine, in violation of section 204.401, The Code 1977. OPINION HOLDS: I. By failing to aver anything but an inability to reconstruct the events of the alleged deliveries, defendant has not made the showing of actual need to require disclosure of the informant's identity. II. Defendant has not made a showing that there was an unreasonable and unjustifiable preaccusatorial delay sufficient to require dismissal of the charges; he has not shown specific prejudice caused by the delay. III. Trial court did not abuse its discretion in determining that the chain of custody foundation for admission of the cocaine into evidence was sufficient. IV. Trial court erred in imposing sentence under the new criminal code without the request of defendant and without his waiver of his right to be sentenced under the old code; we therefore vacate the sentences and remand for resentencing.

SUPREME COURT *(cont'd)*

No. 62270. WILLIAMS V. STATE.
Appeal from Polk District Court, Luther T. Glanton, Jr., Judge. Affirmed. Considered en banc. Opinion by Harris, J. (6 pages $2.40)

In this postconviction action petitioner seeks to be given credit on a previously imposed and partially served sentence for time he was later incarcerated in another state for a crime he committed while on escape from Iowa custody. OPINION HOLDS: Petitioner's Iowa sentence should not be credited for time he was incarcerated in another state following the dismissal of the Iowa escape charge against him.

No. 62210. STATE v. McGHEE.
Appeal from Pottawattamie District Court, J. L. Larson, Judge. Affirmed. Considered by LeGrand, P.J., and Rees, Uhlenhopp, McCormick, and McGiverin, JJ. Opinion by Rees, J. (13 pages $5.20)

This is an appeal by the defendant from his conviction of the crime of murder in the first degree. OPINION HOLDS: I. A child subject to the jurisdiction of the juvenile court is not held to answer within the meaning of § 795.1 until he or she is transferred to the district court for prosecution. II. The minutes of testimony adequately informed defendant of the nature of the case against him and those portions of his bill of particulars which were overruled constituted an attempt to obtain unessential allegations. III. Defendant had no statutory right to file interrogatories directed to the prosecutor. IV. The trial court did not abuse its discretion in overruling defendant's objections to the admission into evidence of photographs of the murder scene and of the decedent's body prior to autopsy. V. The right to have interrogation cease is not among those rights of which a person must be informed prior to custodial interrogation. VI. The trial court properly concluded that a new trial was not justified by the newly-discovered evidence.

No. 62177. STATE v. ZAEHRINGER.
Appeal from Scott District Court, Max R. Werling, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and LeGrand, Rees, Harris and Allbee, JJ. Opinion by Rees, J. (9 pages $3.60)

Defendant appeals from conviction and sentence for crime of rape in violation of section 698.1, The Code 1977. OPINION HOLDS: I. Defendant lacks standing to challenge Iowa's rape statute, § 698.1, The Code 1977, on the ground that it denies equal protection to males, as he is charged with the forcible rape of a female. II. Evidence concerning an offer made by the complaining witness to pose nude for photographs by the defendant should have been admitted, as it was relevant and could possibly have limited the implications which the jury may have drawn from the State's evidence; we are unable to conclude that posing nude is, *per se*, sexual conduct within the meaning of § 782.4, The Code 1977, absent a showing or implication of sexual activity of some sort accompanying the posing; trial court abused its discretion and prevented defendant from presenting his defense by excluding his explanation of the complaining witness' bruises; because some of the remaining issues may arise again on retrial, we will address them briefly. III. Information sought to be discovered by defendant was relevant to his defense and should have been made available to him. IV. Evidence as to the appearance of the defendant at the time of the incident was properly admitted; as the comment regarding the polygraph examination was unsolicited, it is not likely to recur; the proper foundational showing for the admission of photographs is that they must be verified as correct and accurate representations of the relevant observations of the witness; the court's instructions adequately informed the jury of the essential elements of the offense of rape.

SUPREME COURT *(cont'd)*

No. 61820. LAWSON v. STATE.
Appeal from Polk District Court, Gibson C. Holliday, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by Uhlenhopp, J. (10 pages $4.00)

This appeal from denial of postconviction relief questions the validity of a verdict where, without the knowledge of either party, a witness was hypnotized before testifying in the prior trial. OPINION HOLDS: This is essentially a claim of newly discovered evidence; petitioner failed to meet his burden of showing that the evidence is other than merely impeaching and that it would probably change the result if a new trial were to be granted.

No. 62411. DITTMER v. BAKER.
Appeal from Polk District Court, Theodore H. Miller, Judge. Appeal dismissed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by Uhlenhopp, J. (4 pages $1.60)

Defendants appeal from judgment for plaintiff landlord in a small claims forcible entry and detainer action. Defendants had withheld rent because of plaintiff's failure to make promised repairs and meet housing code requirements. OPINION HOLDS: When defendants vacated the premises, the controversy became moot; a substantial public interest issue is not sufficiently presented in this case and we improvidently granted discretionary review.

No. 62189. STATE v. SANDERS.
Appeal from Polk District Court, M. C. Herrick, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by Uhlenhopp, J. (6 pages $2.40)

Defendant appeals from conviction of robbery. Defendant was charged with first-degree robbery in violation of sections 711.1 and 711.2, The Code 1979. OPINION HOLDS: I. Under the legal test, accessory after the fact is a separate offense, and not a lesser included offense of robbery; aiding and abetting under section 703.3(1) contains at least one element (intent to prevent apprehension) which is dissimilar to any required for conviction of robbery under section 711.1 and 711.2; the trial court therefore correctly refused to submit defendant's requested instruction on accessory after the fact. II. Not only the offender who holds the gun but also his aiders and abettors come within section 902.7, The Code, which provides for a mandatory minimum five year term for a forcible felony committed with a firearm.

No. 62281. WILSON v. IOWA POWER & LIGHT.
Appeal from Polk District Court, A. M. Critelli, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin and Larson, JJ. Opinion by McCormick, J. (6 pages $2.40)

Plaintiff appeals from judgment on jury verdict for defendants in a wrongful death action. OPINION HOLDS: I. The legislature amended section 633.336 (wrongful death action survivorship) in 1976; nothing in the amendment purports to change section 611.20, which we have said gives a wrongful death action its survivorship character; we hold that the legislature did not change the derivative nature of a wrongful death action in amending section 633.336; as the claim for loss of services and support is derivative, decedent's contributory negligence is a defense to it; trial court did not err in so instructing the jury.

No. 62903. GROVE v. CITY OF DES MOINES.
Appeal from Polk District Court, Theodore H. Miller, Judge. Reversed and remanded. Considered by Reynoldson, C.J. and Uhlenhopp, McCormick, McGiverin, and Larson, JJ. Opinion by Uhlenhopp, J. (20 pages $8.00)

Plaintiffs appeal from dismissal of their petition seeking an injunction and a judgment declaring void proceedings for issuance of municipal revenue bonds to construct a parking facility and to refund outstanding bonds previously issued to construct other parking facilities. OPINION HOLDS: I. City revenue bond proceedings may not legally include more than one purpose: defendant city counsel's joinder of constructing a new parking facility and of refunding existing bonds impermissibly combines two purposes. II. The present notice of public hearing does not adequately state the amount of the proposed bond issue because it does not separately state the maximum amount of bonds to be used for the two separate purposes of the proposed bond issue; the present statement of purposes is minimally sufficient except as to the vicinity of the proposed new parking facility; the notice does not properly designate the city enterprise whose revenues will be used to pay the bonds. III. We do not decide whether, as plaintiffs claim, a city council would exceed its authority if it permitted objections to be presented at a public hearing but had fully prejudged the issue by committing itself in advance to approval of the proposition irrespective of objections lodged, and peremptorily rejected the objections.

No. 62137. STATE v. JONES.
Appeal from Ida District Court, David J. Blair, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McCormick, McGiverin and Larson, JJ. Opinion by Larson, J. (9 pages $3.60)

Defendant appeals from conviction of attempting to break and enter in violation of section 708.10, The Code 1977. OPINION HOLDS: I. Because Ida County's Courthouse was deemed a fire hazard and use of the courtroom forbidden, for the purpose of holding trials Ida County did not have an available courthouse at the time of the trial in this case; under the circumstances of this case the chief judge of the judicial district acted properly in designating a place other than the courthouse for defendant's trial; the temporary courtroom in the post office basement was not so grossly inadequate in size to deny public access or so lacking in proper decorum as to vitiate the proceedings; use of this "courtroom" did not deny defendant his constitutional right to a public trial. II. A defendant is "brought to trial" under § 795.2, The Code 1977, the speedy trial requirement, when the jury is impaneled and sworn. III. There was sufficient evidence from which the jury could find that there was an attempted breaking and entering and that defendant participated in it.

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