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PREFACE

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

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

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

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

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

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

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

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<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
COMMERCE COMMISSION[250] Intrastate toll access, 22.14 IAB 5/25/83 ARC 3778	Commission Hearing Room First Floor Lucas State Office Building Des Moines, Iowa	July 11, 1983 10:00 a.m.
Investigations and hearings, briefs, 7.7(13)"d" IAB 6/8/83 ARC 3802	Commission Hearing Room First Floor Lucas State Office Building Des Moines, Iowa	July 15, 1983 10:00 a.m.
Gas and electric utilities, energy conservation standards for new structures, 19.2(4)"c"(24), 19.9(5), 20.2(4)"ab", 20.12 IAB 6/8/83 ARC 3804	Commission Hearing Room First Floor Lucas State Office Building Des Moines, Iowa	July 25, 1983 10:00 a.m.
ENGINEERING EXAMINERS, BOARD OF[390] Requirements for examination and references, 1.2 IAB 5/25/83 ARC 3764	West Conference Room 1209 E. Court Ave. Des Moines, Iowa	June 16, 1983 1:30 p.m.
Property surveys, 2.1, 2.3, 2.5 IAB 5/25/83 ARC 3765	West Conference Room 1209 E. Court Ave. Des Moines, Iowa	June 16, 1983 1:00 p.m.
MERIT EMPLOYMENT DEPARTMENT[570] Separations, disciplinary actions and reduction in force, ch 11 IAB 5/11/83 ARC 3739	Grimes Conference Room North Half, First Floor Grimes State Office Bldg. Des Moines, Iowa	June 9, 1983 9:00 a.m.
PLANNING AND PROGRAMMING[630] Community development block grant technical assistance program, ch 24 IAB 6/8/83 ARC 3806	Planning and Programming Conference Room 523 E. 12th Street Des Moines, Iowa	July 7, 1983 1:00 p.m.
REGENTS, BOARD OF[720] Temporary suspension, 2.36(5) IAB 5/11/83 ARC 3756	Board of Regents Office Lucas State Office Bldg. Des Moines, Iowa	June 6, 1983 1:00 p.m.
SOCIAL SERVICES DEPARTMENT[770] ADC, resources, income, 41.6, 41.7 IAB 6/8/83 ARC 3786 (See IAB 3/16/83 ARC 3633)	Sioux City District Office 2nd Floor 808 - 5th Street Sioux City, Iowa	June 30, 1983 7:00 p.m.
SOIL CONSERVATION DEPARTMENT[780] Iowa financial incentives program for soil erosion control, amendments to ch 5 IAB 5/25/83 ARC 3772	Second Floor Conference Room Wallace State Office Bldg. E. 9th and Grand Des Moines, Iowa	July 7, 1983 1:00 p.m.
TRANSPORTATION, DEPARTMENT OF [820] Procurement of equipment, materials, supplies and services, amendments to [01,B] ch 2 IAB 6/8/83 ARC 3784	Department of Transportation Complex 800 Lincoln Way Ames, Iowa	July 19, 1983

ARC 3802

COMMERCE COMMISSION[250]

NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code sections 17A.4(1), 476.1 and 476.2 the Iowa State Commerce Commission hereby gives Notice of Intended Action to amend 250—Chapter 7, "Practice and Procedure" Iowa Administrative Code. On May 20, 1983, the Commission issued an Order Commencing Rulemaking in Docket No. RMU-83-7.

The proposed amendment to Commission subrule 7.7(13) sets maximum lengths for briefs filed with the Commission. The original brief in any proceeding must not exceed ninety pages. Subsequent briefs will have a maximum length of forty pages. Waiver of these rules may be obtained from the Commission for good cause shown.

Any person interested in this matter may file a written statement of position on the proposed rule no later than July 8, 1983, by filing an original and six copies of the written statement of position, substantially complying with the form prescribed in IAC, 250—subrule 2.2(2).

An oral presentation shall be held on July 15, 1983, in the Commerce Commission Hearing Room, First Floor, Lucas State Office Building, Des Moines, Iowa 50319 at 10:00 a.m. Persons who wish to participate in this oral presentation must file a written appearance within the deadline for written comments.

All communications shall clearly indicate the author's name and address as well as a specific reference to this docket and the rule upon which comment is submitted. All communications shall be directed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319. This rulemaking proceeding shall be conducted pursuant to IAC 250—chapter 3. The proposed amendment is intended to implement Iowa Code section 476.1.

Amend subrule 7.7(13), paragraph "d" by adding the following:

Each party's initial brief shall not exceed ninety pages and each subsequent brief shall not exceed forty pages, exclusive of the table of contents and list of legal authority required by this subrule.

Upon request and for good cause shown, the commission may grant a waiver of these page limits. Waiver may be granted ex parte. A brief which exceeds these page limits shall be deemed a defective filing and may be rejected as provided in subrule 7.2(10).

ARC 3804

COMMERCE COMMISSION[250]

NOTICE OF INTENDED ACTION

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

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

The Iowa State Commerce Commission hereby gives notice, pursuant to Iowa Code section 17A.4, that on May 20, 1983, the Commission issued an order in Docket No. RMU-83-8, In Re Energy Conservation Standards for New Structures. The Commission intends to amend 250—chapters 19 and 20 of the Iowa Administrative Code.

The proposal requires an owner of a new structure to certify that the new residential dwelling or new commercial building meets the utility's minimum conservation standards before the utility may provide gas or electric service.

The purpose of this rulemaking is to keep capital expenses of Iowa utilities to a minimum by promoting energy conservation. The proposed rules will benefit all customers by preventing unnecessary waste of our limited energy resources.

Any person interested in this matter may file a written statement of position on the proposed rules no later than July 15, 1983, by filing an original and six copies of the written statement of position, substantially complying with the form prescribed in IAC, 250—subrule 2.2(2).

An oral presentation shall be held on July 25, 1983, in the Commerce Commission Hearing Room, First Floor, Lucas State Office Building, Des Moines, Iowa 50319 at 10:00 a.m. Persons who wish to participate in this oral presentation must file a written appearance within the deadline for written comments.

All communications shall clearly indicate the author's name and address as well as a specific reference to this docket and the rule upon which comment is submitted. All communications shall be directed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319. This rulemaking proceeding shall be conducted pursuant to Iowa Code chapter 17A and IAC 250—chapter 3. The proposed rules are intended to implement Iowa Code section 476.1.

ITEM 1. Amend subrule 19.2(4), paragraph "c", by adding the following new subparagraph:

(24) Rules for providing service in accordance with subrule 19.9(5).

ITEM 2. Amend rule 250—19.9(476) by adding new subrule 19.9(5) to read as follows:

COMMERCE COMMISSION[250] (cont'd)

19.9(5) Minimum conservation standards. On or before September 1, 1983, each utility providing gas service shall file as part of its tariff pursuant to subrule 19.2(4), paragraph "c", subparagraph (24), for commission approval, minimum conservation standards for new residential, commercial, or industrial structures and new equipment. Each utility's conservation standards shall be derived from a consideration of state of the art conservation technology available for use in its service territory. Each utility shall, on or before September 1, of each year thereafter, annually update its tariff setting forth new conservation standards if there have been changes in state of the art technology available for use in its service territory during the previous twelve months.

The tariff shall also provide that, before service is connected or attached to a new residential dwelling or new commercial or industrial building, the owner shall certify that the structure and equipment met the conservation standards set forth in the utility's tariff at the time construction of the structure was commenced and the purchase of the equipment was complete.

ITEM 3. Amend subrule 20.2(4) by adding the following new paragraph:

ab. Rules for providing service in accordance with rule 20.12(476).

ITEM 4. Amend chapter 20 by adding new rule 20.12(476) to read as follows:

250—20.12(476) Minimum conservation standards. On or before September 1, 1983, each utility providing electric service shall file as part of its tariff pursuant to subrule 20.2(4), paragraph "ab" for commission approval, minimum conservation standards for new residential, commercial, or industrial structures and new equipment. Each utility's conservation standards shall be derived from a consideration of state of the art conservation technology available for use in its service territory. Each utility shall, on or before September 1 of each year thereafter, annually update its tariff setting forth new conservation standards if there have been changes in state of the art technology available for use in its service territory during the previous twelve months.

The tariff shall also provide that before service is connected or attached to a new residential dwelling or new commercial or industrial building, the owner shall certify that the structure and equipment met the conservation standards set forth in the utility's tariff at the time construction of the structure was commenced and the purchase of the equipment was complete.

ARC 3803**COMMERCE COMMISSION[250]****NOTICE OF INTENDED ACTION**

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

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

The Iowa State Commerce Commission hereby gives notice that on May 20, 1983, the Commission issued an

order in Docket No. RMU-83-6, In Re: Mandatory Participation In Pilot Projects, "Order Commencing Rule-making."

Pursuant to the authority Iowa Code chapter 476, specifically sections 476.1 and 476.8, the Commission intends to consider the adoption of rules regarding mandatory participation in pilot projects conducted by utilities pursuant to Iowa Code section 476.1 and Iowa Administrative Code 250—subrule 19.9(4) and subrule 20.10(9). This proceeding is being commenced upon application by Iowa Electric Light and Power Company.

Any person interested may file written comments not later than July 13, 1983, by filing an original and six copies of such comments, substantially complying with the form prescribed in Iowa Administrative Code, 250—subrule 2.2(2). Such comments shall clearly indicate the author's name and address and shall contain a specific reference to this docket and the rule upon which comment is submitted. All comments shall be directed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319. This rulemaking proceeding shall be conducted pursuant to IAC 250—chapter 3. Pursuant to IAC, 250—subrule 3.4(4), all statements of position shall be served upon Thomas J. Pitner and John V. Ryan, Attorneys for Iowa Electric Light and Power Company, P.O. Box 351, Cedar Rapids, Iowa 52406. Iowa Electric may file counter-statements as provided in IAC 250—rule 3.5(17A, 474). Oral presentation in this matter may be requested as set forth in Iowa Code section 17A.4(1)"b", and IAC 250—rule 3.6(17A, 474).

ITEM 1. Amend subrule 19.9(4) by striking unnumbered paragraph 3.

ITEM 2. Amend subrule 20.10(9) by striking unnumbered paragraph 3.

ARC 3787**HEALTH DEPARTMENT[470]****MEDICAL EXAMINERS****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code sections 147.36, 147.53 and 147.76, the Iowa Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 135, "Medical Examiners", Iowa Administrative Code.

These changes would more clearly define actions which would be taken by the board in the event of subversion of the medical licensing examination. They also define what constitutes such subversions. The rules would allow senior medical students from the University of Iowa College of Medicine and the University of Osteopathic Medicine and Health Sciences to take the federation licensing examination (FLEX). One portion of the proposed rules adjusts the fee for certification of FLEX grades to other states.

HEALTH DEPARTMENT[470] (cont'd)

Any interested person may make written comments or suggestions on these proposed rules prior to June 28, 1983. Written materials should be directed to Ronald V. Saf, Executive Director, Iowa Board of Medical Examiners, Executive Hills West, Capitol Complex, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact Ronald V. Saf at 515-281-5171 or in the offices at Executive Hills West.

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

The following amendments are proposed.

ITEM 1. Subrule 135.102(5) is amended to read as follows.

135.102(5) To be eligible to take the examination for a license to practice medicine and surgery or osteopathic medicine and surgery, a person must be *a senior medical student expecting to graduate from the University of Iowa, College of Medicine, Iowa City, Iowa or the University of Osteopathic Medicine and Health Sciences, Des Moines, Iowa or be a graduate of a college of medicine and surgery or college of osteopathic medicine and surgery approved by the board, or present other evidence of equivalent medical education approved by the board.* For the purpose of taking the examination, the board may accept all of the following evidence as equivalent medical education in lieu of graduation from a college of medicine and surgery or college of osteopathic medicine and surgery approved by the board:

a. A diploma issued by a medical college which has been neither approved nor disapproved by the board; and

b. The recommendation of the Educational Council for Foreign Medical Graduates, Inc. or similar accrediting agency.

ITEM 2. 135.102 is amended by adding a new subrule as follows:

135.102(8) Any individual who subverts or attempts to subvert the medical licensing examination process may, at the discretion of the board, have his or her examination scores declared invalid for the purpose of licensure in Iowa, be barred from medical licensing examinations in Iowa, and be subject to the imposition of other appropriate sanctions.

Conduct which subverts or attempts to subvert the medical licensing examination process includes, but is not limited to:

a. Conduct which violates the security of the examination materials, such as removing from the examination room any of the examination materials; reproducing or reconstructing any portion of the licensing examination; aiding by any means in the reproduction or reconstruction of any portion of the licensing examination; selling, distributing, buying, receiving or having unauthorized possession of any portion of a future, current or previously administered licensing examination.

b. Conduct which violates the standard of test administration, such as communicating with any other examinee during the administration of the licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee during the administration of the licensing examination; having in one's possession during the administration of the licensing examination any books, notes, written or printed materials or data of any kind, other than the examination materials distributed.

c. Conduct which violates the credential process, such as falsifying or misrepresenting educational credentials

or other information required for admission to the licensing examination; impersonating an examinee or having an impersonator take the licensing examination on one's behalf.

Renumber existing subrule 135.102(8) as 135.102(9).

ITEM 3. Subrule 470—135.108(4) is amended to read as follows:

135.108(4) For a certified statement that a licensee is licensed in this state, ~~ten~~ twenty dollars.

These rules are intended to implement Iowa Code sections 147.2, 147.29, 147.54, 147.82, 147.102, 148.4 and 150A.7.

ARC 3806

PLANNING AND PROGRAMMING[630] NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 7A.3, the Office of Planning and Programming hereby gives Notice of Intended Action to adopt a new Chapter 24, "Community Development Block Grant Technical Assistance Program", Iowa Administrative Code.

The substance of this rule has been submitted as an emergency rule, ARC 3805.

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

Any interested person may make written suggestions or comments on this proposed rule to the Division of Local Government Affairs, Office for Planning and Programming, 523 E. 12th Street, Des Moines, Iowa 50319, no later than June 30, 1983. A public hearing on these rules will be held on Thursday, July 7, 1983 at 1:00 p.m. in the Office for Planning and Programming conference room. Any person attending the hearing and wishing to comment on the rules will be given the opportunity to do so.

This rule is intended to implement Iowa Code section 7A.3.

ARC 3786

SOCIAL SERVICES DEPARTMENT[770]

AMENDED NOTICE OF INTENDED ACTION

The Notice of Intended Action published in the March 16, 1983 IAB as ARC 3633 under the authority of Iowa Code section 239.18 proposing amendments to rules relating to aid to dependent children (chapter 41) is amended by adding notice of oral presentations. The proposed rules

SOCIAL SERVICES DEPARTMENT[770] (cont'd)

will allow for the reduction of a recipient's ineligibility period by reducing countable earned and unearned income by allowing recipients receiving nonrecurring lump sum income to expend moneys for necessary expenses in life threatening circumstances.

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

Sioux City — June 30, 1983 @ 7:00 p.m.
Department of Social Services
Sioux City District Office
2nd Floor
808 — 5th Street
Sioux City, Iowa 51101

ARC 3780

**SOCIAL SERVICES
DEPARTMENT[770]
TERMINATION OF NOTICE**

Notice is hereby given that the Department of Social Services is terminating further rulemaking proceedings under the provisions of Iowa Code section 17A.4(1)"b" for proposed rules on medical assistance (chapters 77, 78, and 79). The rule amendments changed the method by which recipients would receive eyeglasses from an optometrist or optician. Eyeglasses would have been ordered from one laboratory for a set price. Notice of Intended Action was published in the IAB January 5, 1983 as ARC 3501 and January 19, 1983 as ARC 3510. The department has decided that more alternatives to purchasing eyeglasses need to be studied before making a decision. It plans to publish another Notice of Intended Action on this subject in the near future.

ARC 3784

**TRANSPORTATION,
DEPARTMENT OF[820]**

**01 DEPARTMENT GENERAL DIVISION
NOTICE OF INTENDED ACTION**

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

On July 19, 1983, at their regular meeting at the Department of Transportation Complex, 800 Lincoln Way, Ames, Iowa, the Transportation Commission shall consider for adoption the administrative rules as described herein. This action shall be in accord with the Iowa administrative procedure Act, Iowa Code chapter 17A, and Department of Transportation rules 820—[01,B] chapter 1, "Administrative Rules".

Written comments concerning these proposed rules or written requests to make an oral presentation at the

above specified commission meeting shall be addressed to the Department of Transportation, Office of Financial/Operational Analysis, 800 Lincoln Way, Ames, Iowa 50010. Written comments or written requests to make an oral presentation may be accepted if received by the Department of Transportation on or before July 5, 1983.

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

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

Pursuant to the authority of Iowa Code section 307.10, the Department of Transportation hereby gives Notice of Intended Action to amend 820—[01,B] chapter 2 entitled "Procurement".

The current chapter of rules consists of rules 2.1, "Policy"; 2.2, "Definitions"; and 2.8, "Negotiation—architectural, engineering and related professional and technical services".

These amendments strike rules 2.1 and 2.2 of the current chapter and adopt new rules 2.1, "Scope of chapter"; 2.2, "Definitions"; 2.3, "Procurement policy"; and 2.4, "Formal advertising procedures and requirements". Also, rule 2.8 of the current chapter is being amended. Following is a synopsis of the substantive changes made to this chapter as reflected in new rules 2.1 to 2.4 and amended rule 2.8.

Rule 2.1, "Scope of chapter", is new.

Rule 2.2, "Definitions", is a rewrite of the current rule on definitions. Definitions for "contracting authority", "offered compensation", and "services" found in the current rule are not included in the new rule. The definition of "competition" has been changed to increase the number of parties from two to three. The other definitions have been reworded for clarity.

Rule 2.3, "Procurement policy", corresponds to the current rule on policy. The three subrules of the new rule are more definitive as to when the various methods of procurement will be used. However, the listing of instances where negotiation may be used, which is found in subrule 2.3(3), has been reworded only for clarity.

It should be noted that both the current and new rules on definitions and policy contain language similar to that found in the federal procurement regulations.

Rule 2.4, "Formal advertising procedures and requirements", is new. This rule details the procedures and requirements applicable when the department holds a formal "letting" for equipment, materials, supplies or services. Included are subrules regarding bidders lists, requests for proposals and solicitation of bids, instructions to bidders, public opening of bids, consideration of bids, contract award, and contract execution and performance.

Rule 2.8, "Negotiation — architectural, landscape architectural, engineering and related professional and technical services", is basically being amended to add selection committee functions, and to "clean up" or clarify the language of the rule, correct ambiguous or conflicting statements and present the subject matter more concisely when possible. In particular, this entailed a rewrite of the

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

prequalification provisions in order to arrange them in a more logical sequence. Also, the following areas have been expanded upon or added with regard to prequalification: The application forms have been explained in more detail. The reasons for denial or cancellation of prequalification have been set out more clearly. Procedures have been added to allow firms to expand or amend their prequalification status at any time (this has always been allowed, but was never spelled out in the rule). A paragraph has been added stating that the descriptions of the categories of work for which firms may be designated as prequalified and the minimum qualification standards for each category will be sent to applicant firms when they request application forms (this has always been done, but again, was never spelled out in the rule).

The appendix to rule 2.8, which currently contains the work category descriptions and minimum qualification standards, is being amended by dropping the work category descriptions and retaining only the minimum qualification standards.

These rule amendments are intended to implement Iowa Code chapter 307.

Proposed rulemaking actions:

01 DEPARTMENT GENERAL DIVISION

Pursuant to the authority of Iowa Code section 307.10, rules 820—[01,B] chapter 2 entitled "Procurement" are hereby amended.

ITEM 1. The title of this chapter of rules is amended to read as follows:

PROCUREMENT OF EQUIPMENT, MATERIALS, SUPPLIES AND SERVICES.

ITEM 2. Strike rules [01,B]2.1(307) and [01,B]2.2(307) and insert in lieu thereof the following:

820—[01,B]2.1(307) Scope of chapter. Unless otherwise provided herein, this chapter of rules pertains only to the procurement of equipment, materials, supplies and services by the Iowa department of transportation with funds from the department's operating budget or from the materials and equipment revolving fund established in Iowa Code section 307A.7. Also, this chapter applies only to procurement from firms, as defined in subrule 2.2(2) herein.

820—[01,B]2.2(307) Definitions. As used in this chapter, unless the context otherwise requires:

2.2(1) "Department" means the Iowa department of transportation.

2.2(2) "Firm" means any bona fide contracting entity including individuals and educational institutions. Except for educational institutions, the term shall not include governmental agencies or political subdivisions.

2.2(3) "Competition" means the efforts of three or more parties acting independently to secure a contract with the department to provide equipment, materials, supplies or services to the department by offering or being in a position to offer the most favorable terms.

"Favorable terms" includes, but is not limited to: Price, speed of execution, anticipated quality of the product to be provided judged according to the expertise and experience of the provider, or ability to produce a desired result or to provide a desired commodity.

2.2(4) Methods of procurement.

a. "Formal advertising" means procurement by competitive bids and awards involving the following basic steps:

(1) Preparing a request for proposals, describing the requirements of the department clearly, accurately and completely, but avoiding unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders. The term "request for proposals" means the complete assembly of related documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of bidding.

(2) Publicizing the request for proposals by distributing it to prospective bidders, advertising in appropriate publications, and by other appropriate means, in sufficient time to enable prospective bidders to prepare and submit bids before the time set for public opening of bids.

(3) Receiving bids submitted by prospective contractors.

(4) Awarding the contract, after bids are publicly opened, to that responsible bidder whose bid conforms to the request for proposals and is the most advantageous to the department, price and other factors considered.

b. "Limited solicitation" means procurement by obtaining a sufficient number of quotations from qualified sources:

(1) As is deemed necessary to assure that the procurement is fair to the department, price and other factors considered, including the administrative costs of the procurement.

(2) As is consistent with the nature and requirements of the particular procurement.

c. "Negotiation" means any method of procurement other than formal advertising or limited solicitation.

ITEM 3. [01,B] chapter 2 is amended by adding rules [01,B]2.3(307) and [01,B]2.4(307) as follows:

820—[01,B]2.3(307) Procurement policy. It is the policy of the department to procure equipment, materials, supplies and services in the most efficient and economical manner possible. It is also the policy of the department that procurement shall be competitive to the maximum practicable extent.

2.3(1) Formal advertising. The formal advertising method of procurement shall be used whenever this method is feasible and practicable under the existing conditions and circumstances. When feasible and practicable, formal advertising shall be used for the procurement of equipment, materials or supplies if the aggregate amount of the purchase exceeds \$5,000.

2.3(2) Limited solicitation. The limited solicitation method of procurement may be used if formal advertising is not feasible or practicable, or for the procurement of equipment, materials or supplies if the aggregate amount of the purchase is \$5,000 or less.

2.3(3) Negotiation. The negotiation method of procurement may be used if formal advertising or limited solicitation is not feasible or practicable, or in any of the following instances:

a. Procurement by negotiation is determined to be necessary and in the public interest during a period of man-made or natural disaster or emergency.

b. The aggregate amount of the purchase is less than \$500.

c. The procurement is for architectural, landscape architectural, engineering, or related professional or technical services.

d. The procurement is for other professional or personal services.

e. The procurement is for services to be rendered by an educational institution.

f. It is impracticable to secure competition through formal advertising or limited solicitation, such as when:

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(1) Equipment, materials, supplies or services can be obtained from only one source.

(2) Competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw materials, or similar circumstances.

(3) Bids or quotations have been solicited, and no responsive bids or quotations have been received.

(4) Bids or quotations have been solicited, and the responsive bids or quotations do not cover the quantity requirements of the solicitation. In this case, negotiation is permitted for the remaining quantity requirements.

(5) The procurement is for electrical power or energy, natural or manufactured gas, water or other utility services, or the procurement is for construction of a part of a utility system or railroad and it would not be practicable to allow a contractor other than the utility or railroad company to perform the work.

(6) The procurement is for technical or professional services in connection with the assembly, installation or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature.

(7) The procurement involves maintenance, repair, alteration or inspection, and the exact nature or amount of work to be done is not known.

(8) The procurement is for commercial transportation.

(9) It is impossible to draft adequate specifications or any other adequately detailed description of the item or services to be procured.

(10) The procurement is for a part or component being procured as a replacement in support of equipment specially designed by the manufacturer, and the data available is not adequate to assure that the part or component supplied by another manufacturer will perform the same function as the part or component it is to replace.

(11) The procurement involves construction where a contractor or group of contractors is already at work on the site, and either it would not be practicable to allow another contractor or an additional contractor to work on the same site or the amount of work involved is too small to interest other contractors to mobilize and demobilize.

g. The procurement is for experimental, developmental or research work or for the manufacture or furnishing of property for experimentation, development, research or testing.

h. It is determined that the bids or quotations received are not reasonable or have not been independently arrived at.

i. Procurement by negotiation is otherwise authorized by law.

820—[01,B]2.4(307) Formal advertising procedures and requirements.

2.4(1) Bidders lists. The department's purchasing office shall maintain current bidders lists by commodity classification.

a. These lists are developed using available sources such as technical publications, telephone books, trade journals, commercial vendor registers and advertising literature.

b. Any firm legally doing business in Iowa may be placed on an appropriate bidders list or lists by submitting a written request to: DOT Purchasing Manager, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

c. A bidder's name may be removed from a bidders list or lists for any of the following reasons:

(1) When the bidder has failed to respond to three consecutive requests for proposals.

(2) When the bidder has failed to meet the performance requirements of a previous procurement.

(3) When the bidder has attempted to improperly influence the decision of any state employee involved in the procurement process.

(4) When there are reasonable grounds to believe that there is a collusive effort by bidders to restrain competition by any means.

(5) Where there is a determination by the civil rights commission that the bidder conducts discriminatory employment practices.

d. A bidder may appeal removal from a bidders list or lists by submitting the appeal in writing to the department at the address given in paragraph 2.4(1)"b" above.

2.4(2) Request for proposals and solicitation of bids. The department shall prepare a request for proposals complete with bidding documents, specifications and instructions to bidders and send (or deliver) the request for proposals to prospective bidders for the purpose of bidding.

a. In special situations (e.g., the procurement of new model equipment), the request for proposals may be marked "preliminary" and sent to prospective bidders requesting their review of the proposal to determine their ability to bid, meeting the requirements of the procurement. The "preliminary" proposal process involves the following steps:

(1) A vendor's conference may be held to discuss the "preliminary" proposal when the item in question is a new acquisition for the department.

(2) Written requests for variations, deviations or approved equal substitutions to the proposal shall be accepted, evaluated and answered by the department.

(3) The proposal may be amended by the department to incorporate approved changes.

(4) A final request for proposals shall be sent to prospective bidders for the purpose of bidding.

b. The method to be used by the department in evaluating bids received shall be disclosed in the request for proposals.

c. The request for proposals shall be sent to a sufficient number of prospective bidders so as to promote adequate competition commensurate with the dollar value of the procurement.

(1) Generally, the request for proposals shall be sent to all bidders listed on the appropriate bidders list for the item to be procured.

(2) However, where the number of names on a bidders list is considered excessive in relation to a specific procurement, the list may be reduced for that procurement by any method consistent with paragraph 2.4(2)"c" above.

(3) The fact that less than an entire bidders list is used shall not in itself preclude the furnishing of requests for proposals to others upon request, or the consideration of bids received from bidders who were not invited to bid.

d. The department shall publicize the procurement by advertising in appropriate publications, giving the date and time of bid opening, a general description of the item to be procured, and the name and address of the person to contact to obtain a copy of the request for proposals.

e. Minority and small business enterprises shall be encouraged to participate in the bidding process.

2.4(3) Instructions to bidders. Each bidder shall prepare the bidding documents in the manner as prescribed and furnish all information and samples as may be requested in the request for proposals. The following shall be adhered to by all bidders when preparing and submitting bids:

a. Bid preparation. Bids shall be signed and prepared in ink or typewritten on the bidding documents provided. Telegraphic or telephonic bids shall not be considered.

b. Information to be provided by bidder. In the space provided, the bidder shall denote brand name, manufacturer's name, model number and any other required information

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to assist in identifying each item the bidder proposes to supply.

c. New merchandise. Unless otherwise specified, all items bid shall be new, of the latest model or manufacture, and shall be at least equal in quality to that specified.

d. Bid price. Where requested, the unit and total price for each separate item, and the total price for all items, shall be provided on the bidding documents. Alternate prices may be submitted by attaching an addendum to the bidding documents. In case of error, the unit price shall prevail. If unit price is not requested on the bidding documents, the total price per item shall prevail.

e. Discounts. Bidders shall quote net discount price. No other discounts shall be considered in making the award.

f. Time of acceptance. The bidder shall hold the bid open for action by the department at least thirty days past the bid opening date.

g. Escalator clauses. Unless specifically provided for in the request for proposals, a bid containing an escalator clause shall not be considered.

h. Federal and state taxes. Except for fuels and specific items that will be noted in the request for proposals, the department is exempt from payment of federal and state taxes. These taxes shall not be included in the bid price. Exemption certificates shall be furnished to bidders upon request.

i. Delivery dates. In the space provided, the bidder shall show the earliest date on which delivery can be made. When the request for proposals shows the acceptable delivery date for an item, the proposed delivery date may be used as a factor in determining the successful bidder.

j. Ties and reservations. No ties or reservations by the bidder are permitted. Any tie or reservation stipulated by the bidder shall be sufficient grounds for rejection of the bid.

k. Changes and additions. No changes in or additions to the request for proposals shall be permitted unless: A written request for a change or an addition is submitted to the department's purchasing office, and the change or addition is approved by the purchasing office at least five days prior to bid opening. The purchasing office shall notify all bidders of approved changes or additions.

Any unauthorized change in or addition to the request for proposals shall be sufficient grounds for rejection of the bid.

l. Submission of bids. All bids shall be submitted in sufficient time to reach the department's purchasing office prior to the time set for the opening of bids. Any bid received after the time set for bid opening shall be returned to the bidder unopened. Bids received shall be dated and time-stamped by the purchasing office showing the date and hour received. By submitting a bid, the bidder:

(1) Agrees that the contents of the bid will become part of the contract if the bidder receives the award.

(2) Shall be assumed to have become familiar with the contents and requirements of the request for proposals.

m. Proposal guaranty. A proposal guaranty may be required as security that the bidder will execute the contract if awarded to the bidder. If required, each bid shall be supported by a proposal guaranty in the form and amount prescribed in the request for proposals. Bids not so supported shall not be read.

n. Modification or withdrawal of bids. Bids may be modified or withdrawn prior to the time set for the opening of bids. After opening, no bid may be modified or withdrawn.

2.4(4) Public opening of bids. Bids shall be opened publicly and read aloud at the time stipulated in the request for proposals.

2.4(5) Consideration of bids. The department reserves the right to accept or reject any or all bids. Individual bids may be rejected for any of the following reasons:

a. Noncompliance with the requirements of this rule or of the request for proposals.

b. Financial insolvency of the bidder.

c. Evidence of unfair bidding practices.

d. For any other reason stated in this rule.

2.4(6) Contract award.

a. Time frame. Unless otherwise specified by the department in the request for proposals, an award shall be made within thirty days after bid opening if it is in the best interests of the state. If an award is not made within the applicable time frame, the procurement shall be canceled unless an extension of time is mutually agreed to by the department and the apparent successful bidder.

b. Tie bids. Bids which are equal in all respects and are tied in price shall be resolved as follows:

(1) If one of the tied bidders had a contract the previous year for the same item at the same location, and the contract was performed satisfactorily, the prior contractor shall receive the award.

(2) If the preceding subparagraph does not apply, the award shall be determined by lot in the presence of the tied bidders. Any tied bidder may appoint a representative to witness the determination by lot.

However, if the tie involves both Iowa and out-of-state bidders, the contract shall be awarded to the Iowa bidder. If there are two or more Iowa bidders, the award shall be determined by lot among the Iowa bidders.

c. Tabulation of bids. A tabulation of bids with an award recommendation shall be sent to all interested parties including bidders at least ten days prior to contract award.

d. Protests. Any protest of the recommended contract award shall be submitted in writing to: Director of Purchasing, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010. A written protest must be received by the director of purchasing at least three days prior to contract award.

e. Return of proposal guaranty. Unsuccessful bidders' proposal guaranties shall be promptly returned by the department after award is made. The proposed guaranty of the successful bidder shall be returned in accordance with subrule 2.4(7) below.

2.4(7) Contract execution and performance.

a. Execution. The successful bidder shall enter into (execute) a formal contract with the department within fifteen days after award.

b. Performance bond and certificate of insurance. A performance bond or certificate of liability and property damage insurance, or both, may be required for those contracts involving services or specially constructed equipment. If required, the performance bond and certificate of insurance shall be filed with the department within fifteen days after award.

c. Return of proposal guaranty. The proposal guaranty of the successful bidder shall be returned following execution of the contract. However, if the successful bidder fails to execute the contract and file an acceptable performance bond and certificate of insurance (if they are required) within fifteen days after award, or fails to comply with Iowa Code chapter 494 or 496A, the award may be annulled and the proposal guaranty forfeited.

d. Assignment of contract. The contractor may not assign the contract to another party without written authorization from the department's purchasing office.

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e. Strikes, lockouts or acts of God. If the contractor's business or source of supply has been disrupted by a strike, lockout or act of God, the contractor shall promptly advise the department's purchasing office. The department may elect to cancel the contract without penalty to either the contractor or the department.

f. Removal of trade-ins. If the procurement involves old equipment to be traded in for new equipment, the contractor shall be responsible for removing the old equipment from departmental storage facilities within thirty days after the department's acceptance of the new equipment. The department shall bill the contractor for all costs associated with the return of the trade-in equipment after the thirty-day grace period.

g. Payment. Unless otherwise stated in the contract, payment terms shall be net following the department's receipt and acceptance of the item(s) procured and receipt of an original invoice.

h. Liquidated damages. The contract terms may provide for liquidated damages to be assessed if the contractor fails to complete the contract within the contract period.

2.4(8) Additional requirements.

a. The standard specifications as referenced and adopted in rule 820—[06,G]1.1(307A), IAC, where applicable and not in conflict with this rule or with the requirements of a particular procurement, shall apply to formal advertising procurement activities.

b. If there are federal funds involved in a particular procurement, and the federal procurement regulations conflict with this rule, then the federal procurement regulations shall apply.

ITEM 4. Strike the catchwords and the first unnumbered paragraph of rule[01,B]2.8(307) and insert in lieu thereof the following:

820—[01,B]2.8(307) Negotiation—architectural, landscape architectural, engineering and related professional and technical services. This rule prescribes procedures for the procurement of architectural, landscape architectural, engineering and related professional and technical services by negotiation.

ITEM 5. Strike subrules 2.8(1), 2.8(2) and 2.8(3) and insert in lieu thereof the following:

2.8(1) Prequalification. When procuring any of these services, the department shall consider for contract award only those firms who are prequalified with the department in the category of work to be contracted for except when sole source or emergency selection and negotiation is approved.

Also, when another party (e.g., a political subdivision), under agreement with the department or as prescribed by law, must obtain the department's approval of a contract between the party and a firm for provision of any of these services, the firm to be awarded the contract must be prequalified with the department in the category of work to be contracted.

a. Application forms. Firms wishing to prequalify with the department in one or more categories of work shall complete and submit Form 102111, "Architect, Engineer and Related Services Questionnaire and Application", and Form 102113, "Architect, Engineer and Related Services Questionnaire and Application — Detail Supplement".

Blank forms may be obtained from, and completed forms shall be returned to: Purchasing Office, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

b. Work categories and minimum qualification standards. Descriptions of the categories of work for which firms may be designated as prequalified and the minimum qualification standards for each category shall be sent to the appli-

cant firm when the firm requests blank application forms from the purchasing office. The minimum qualification standards used for prequalification are also set forth in the appendix to this rule.

c. Preparation of application forms.

(1) On Form 102111, the applicant firm shall provide general information regarding the firm and shall list all categories of work for which the firm is applying for prequalification.

(2) On Form 102113, the applicant firm shall provide detailed information regarding the firm's qualifications to perform a specific category of work. A separate Form 102113 must be completed and submitted for each work category the firm has listed on Form 102111.

(3) The firm shall support its application for prequalification for a particular category of work on the basis of adequacy and expertise of personnel, specialized experience in the field or fields required, performance records and the minimum qualification standards set forth for the category.

(4) The department shall not recognize joint ventures for the purpose of prequalification. Each firm shall be prequalified in terms of its own capabilities. A firm may consider itself qualified in a particular work category when the major, significant aspects of the work can be accomplished using the firm's own personnel and equipment.

This shall not preclude consideration during the department's selection process of joint ventures or firms in the practice of contracting for specialized services required for the accomplishment of work in a particular category. Therefore, the applicant firm shall indicate on Form 102113 those aspects of the work category for which the firm is not itself equipped to perform. The means by which the firm proposes to accomplish those aspects and the anticipated sources of additional expertise, specialists or equipment required for accomplishment shall also be indicated by reference to the other firms with which the applicant firm associates through joint ventures or other forms of agreement.

d. Initial prequalification.

(1) The department shall evaluate the application forms submitted by a firm in terms of the minimum qualification standards for the work categories applied for and, if applicable, the past performance of the firm on contracts with the department for work falling within the particular categories.

(2) If, for a particular category of work, the firm meets the minimum qualification standards and past performance was acceptable, the department shall issue a written statement of acceptability to the firm indicating that the firm is prequalified in this category. If several statements of acceptability are to be issued to a firm at the same time, the department may combine them into one document for the purpose of issuance.

(3) Statements of acceptability shall be effective during the calendar year of issuance and for one year thereafter, to expire on December 31.

e. Reapplication and renewal.

(1) Firms who wish to maintain their prequalification status shall, within two months prior to the date prequalification expires, submit amended Forms 102111 and 102113. When making reapplication, it shall be necessary to submit only those pages of Forms 102111 and 102113 which contain information different from that on the prior application.

(2) In addition, the reapplication shall include a separate statement listing all factors, conditions and events which may indicate an increase or decrease in prequalification status.

(3) The department shall process reapplications and issue renewals in the same manner as for initial prequalification.

f. Expansion or amendment of prequalification.

(1) At any time, a firm may make application to expand or amend the categories of work for which it is prequalified

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by following the procedures indicated herein for reapplication and renewal.

(2) The department shall process applications for expansion or amendment of prequalification in the same manner as for initial prequalification. This processing shall be considered a renewal of prequalification.

g. Denial or cancellation of prequalification.

(1) Prequalification in a particular category of work may be denied or canceled if the firm fails to meet the minimum qualification standards for the category, or if the firm's performance on a contract with the department for work falling within the category was unacceptable.

(2) Prequalification may also be denied or canceled for good cause including, but not limited to, omissions or misstatements of material fact on the application forms which could affect the prequalification status of the firm.

(3) The department shall notify the firm in writing of denial or cancellation, the reason(s) therefor, and the person to contact in writing to protest the department's action.

h. Encouragement of firms to prequalify.

(1) It is the policy of the department to encourage firms which have not previously provided services to the department to prequalify.

(2) It is also the policy of the department to encourage minority business enterprises and firms with approved affirmative action programs to prequalify.

2.8(2) Reserved.

2.8(3) Reserved.

ITEM 6. Paragraph 2.8(4)"a" is amended to read as follows:

a. When the use of outside services *as described in this rule* is considered necessary, the office to be responsible for administration of ~~a the contract (administering office) for work or services as described in this rule~~ shall prepare and submit the following to the responsible division director for approval to initiate selection:

(1) A statement of necessity supporting the determination to utilize outside services. ~~In addition, if the request for proposals is to be submitted to a single source such determination shall be fully supported.~~

(2) A description of the project, problem to be solved, *services required* or proposed work including its purpose and objectives; ~~and.~~

(3) ~~The time frame within which the contracted services must be performed.~~

(3)(4) An estimate of the total contract amount.

ITEM 7. Strike paragraph 2.8(4)"c".

ITEM 8. The first unnumbered paragraph of subrule 2.8(5) is amended to read as follows:

2.8(5) Selection. ~~The administering office shall select a firm considered best qualified to perform the desired work or services. A firm with which to initiate negotiations shall be selected according to the following provisions:~~

ITEM 9. Paragraph 2.8(5)"a" is amended to read as follows:

a. Preliminary selection. The administering office shall *review the qualification data of the firms prequalified in the category or categories of work required and identify from those firms which are listed in all the classes of work required, those considered to be well qualified to provide the desired services.* Factors to be considered in this process are as follows:

(1) The number and qualifications of professional and technical staff;

(2) Performance records for timeliness, quality of work and project management;

(3) Proximity or accessibility to the work location where appropriate; and

(4) Specialized experience or expertise which would enhance the ability to perform the services or work required.

ITEM 10. Paragraph 2.8(5)"b" is amended to read as follows:

b. ~~Pre negotiations conferences discussions.~~ The administering office may hold discussions with ~~the firms chosen through the preliminary selection process~~ *prequalified firms as necessary to* and shall evaluate recent changes in qualifications and performance, current and projected workload, willingness to meet time requirements and approach to the project.

ITEM 11. Strike paragraphs 2.8(5)"d" and "e" including all subparagraphs therein, and insert in lieu thereof the following:

d. Selection committee—highway division. The department's highway division selection procedures shall conform to the previous paragraphs of this subrule, except that the functions identified in these paragraphs as being performed by the administering office shall be performed for the highway division by a selection committee appointed for the particular selection process. The director of the highway division shall appoint the selection committee, which shall be composed of three to five members. The committee shall consist of:

(1) An engineer from the administering office who will not be directly involved with the contract. If more than one office will be using the contracted services, each shall be represented.

(2) A person from one of the financial offices of the department's administration division.

(3) The highway division's consultant contract co-ordinator (nonvoting member).

(4) One or more engineers from the highway division's operations bureau or district staff (optional).

e. Selection committee—other divisions. Other divisions of the department shall use a selection committee if the estimated cost of the contract is in excess of \$10,000. Two-thirds of the selection committee shall not be responsible for contract administration.

ITEM 12. The first unnumbered paragraph of subrule 2.8(6) is amended to read as follows:

2.8(6) Negotiations. Negotiations shall lead to the development of ~~an agreement or a contract~~ mutually satisfactory to the ~~contracting authority department and the selected firm.~~ The administering office shall use the services of technical, legal, auditing, and other specialists in the department to the extent deemed appropriate.

ITEM 13. The third unnumbered paragraph of paragraph 2.8(6)"c" and subparagraphs 2.8(6)"c"(1) and (2) are amended to read as follows:

In the event a mutually satisfactory contract cannot be negotiated with any of the three preferred firms, the administering office, upon approval of the responsible division director, ~~to continue seeking the services of an architectural, engineering or related services firm;~~ shall either:

(1) Select one or more additional *prequalified* firms with which to negotiate ~~in accordance with the procedures of subrule 2.8(6); or~~

(2) Redefine the scope of the project or work and select firms with which to negotiate in accordance with the procedures of subrule ~~2.8(6)~~ 2.8(5) *herein*. All firms (including those with which negotiations were previously conducted) which are *prequalified* shall be considered for selection.

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ITEM 14. Subrule 2.8(7) is amended to read as follows:

2.8(7) Contract required. *Following successful negotiations, A formal agreement or contract shall be executed developed for all projects or work for which the contractor is selected through the procedures of this rule. Each The contract shall clearly define the work or design required, services to be performed, method, time and amount of payment, completion schedules, and other requirements and conditions unique to each the particular project.*

a. The contract ~~or agreement~~, where appropriate, shall specify the process by which extra work orders or supplemental agreements are negotiated. The contract ~~or agreement~~ shall include a provision that the contractor agrees that additional work not clearly required by the contract shall not be undertaken without the prior approval of the department.

b. The contract ~~or agreement~~ shall provide for periodic reports indicating the total estimated work accomplished by the contractor during the reporting period. Progress reports shall correspond to the progress as indicated by the contractor's billing to the department for that period.

ITEM 15. Strike subrule 2.8(8) and insert in lieu thereof the following:

2.8(8) Sole source and emergency selection and negotiation. An administering office may select a single specified firm with which to negotiate immediately upon approval to do so from the responsible division director. The selected firm need not be prequalified. The justification for use of sole

source or emergency selection and negotiation and the basis on which a particular firm is selected shall be fully documented and made a part of the contract file.

a. Sole source selection and negotiation may be justified when one of the following conditions exists:

(1) Only a single firm is determined qualified or eligible to perform the contemplated services or is eminently more qualified than other firms.

(2) The work is of a specialized character or related to a specific geographical location such that a single firm by virtue of specialized experience and expertise or familiarity with the location could most satisfactorily complete the work.

(3) The product of the work to be accomplished shall ultimately be maintained by the firm to be negotiated with.

b. Emergency selection and negotiation may be justified when it is determined that normal selection and negotiation procedures would unduly delay the initiation of critically needed work.

ITEM 16. **[01,B] chapter 2** is amended by adding the following implementation clause at the end of the chapter:

These rules are intended to implement Iowa Code sections 307.10 and 307.21.

ITEM 17. **[01,B] chapter 2** is amended by striking the appendix (consisting of twenty pages) which currently appears at the end of this chapter and by inserting in lieu thereof the following appendix:

APPENDIX TO RULE 820--[01,B]2.8(307)

MINIMUM QUALIFICATION STANDARDS

FOR

ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING
AND RELATED PROFESSIONAL AND TECHNICAL SERVICES

Each category of work for which firms may be designated as prequalified references one of the statements shown below.

Statement A. Professional status in the category of work shall be demonstrated on Form 102113 by reference to resumes and personal experience histories of the firm's principals or key personnel. Other professional and technical personnel supporting prequalification in the category shall also be referenced on Form 102113. Satisfactory experience in the category shall be demonstrated on Form 102113 by reference to completed projects. When specialized equipment is necessary for satisfactory performance of the work, firms shall list on Form 102113 the type, make and model of subject equipment owned by the firm.

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Statement B. Professional status in the category of work shall be demonstrated on Form 102113 by reference to at least one person registered by the Iowa state board of engineering examiners as a professional engineer. Resumes of personnel so referenced shall indicate the extent and nature of experience in the category of work. Other personnel supporting prequalification in the category shall be referenced on Form 102113. Satisfactory experience in the category shall be demonstrated on Form 102113 by reference to completed projects.

Firms may designate one or more individuals, holding a certificate of registration granted by the Iowa state board of engineering examiners as a professional engineer, as responsible for the practice of engineering in Iowa by the firm. The designated individual or individuals shall have full authority to make all final engineering decisions on behalf of the firm with respect to the work performed by the firm. This designation shall not relieve the firm of any responsibility or liability imposed upon it by law or by contract.

Statement C. All requirements expressed in Standard "B" above shall apply with the exception that in lieu of registration as a professional engineer, registration as a land surveyor is required.

Statement D. All requirements expressed in Standard "B" above shall apply with the exception that in lieu of registration as a professional engineer, the applicant may be registered as an architect with the Iowa board of architectural examiners.

Statement E. All requirements expressed in Standard "B" above shall apply with the exception that in lieu of registration as a professional engineer, registration as a landscape architect by the Iowa board of landscape architectural examiners is required.

ARC 3785**HEALTH DEPARTMENT[470]****PUBLIC HEALTH PROGRAMS**

Pursuant to the authority of Iowa Code section 135.11(15), the Department of Health adopts and implements on an emergency basis an amendment to rule 470—73.2(135), Iowa Administrative Code.

Rule 470—73.2(135) adopts the federal regulations governing the operation of the Iowa Women, Infants and Children (WIC) program. The WIC program is a federal program operated by the state of Iowa upon agreement with the Food and Nutrition Service of the Department of Agriculture. The program is funded entirely by federal funds. In order to receive federal funds, the Iowa WIC program must comply with federal law and regulations.

The filed rule changes the effective date "January 1, 1982" to "June 1, 1983."

Pursuant to the authority of Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary since this change results in the adoption by reference of recent federal regulations with which the Department must comply in order to receive federal funding for the WIC program.

Pursuant to Iowa Code section 17A.5(2)"b", the Department also finds that this change shall become effective May 31, 1983, insofar as compliance with federal regulations is required for the continued receipt of WIC funding and the WIC program in Iowa confers important benefits upon thousands of people in the state of Iowa.

This amendment shall become effective on May 31, 1983. The Board of Health approved this rule on May 11, 1983. The Commissioner of Public Health adopted this rule on May 13, 1983.

This amendment is intended to implement 42 U.S.C. section 1786 and Iowa Code section 135.11(1).

Rule 470—73.2(135) is deleted and the following inserted:

470—73.2(135)Adoption by reference. Federal regulations found at 7 C.F.R. Part 246 (effective as of June 1, 1983) shall be the rules governing the Iowa WIC program and are incorporated by reference herein.

[Filed emergency 5/16/83, effective 5/31/83]

[Published 6/8/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/8/83.

The amendment allows the Iowa Family Farm Development Authority to publish notifications of public hearings in the Soil Conservation Loan Program printed in a newspaper of general circulation in the county where the project is to be located rather than limiting the printing to a newspaper published in the county.

In compliance with Iowa Code section 17A.5(2)"b"(2), the authority seeks to waive the normal effective date of this rule thirty-five days after publication and the amendment made effective upon filing with the Administrative Rules Coordinator on May 20, 1983. This amendment provides more flexibility to the Iowa Family Farm Development Authority in making publication and notification deadlines. The amendment will ultimately provide for a shorter time period from the time of application to final approval for the loans designed to control soil erosion. It, therefore, confers a benefit on the public to insure speedy and uniform compliance with the Authority's legislative mandate.

This amendment implements Iowa Code chapter 175.

Rule 523—4.4 (69GA, ch1243), first paragraph, is amended to read as follows:

523—4.4 (69GA, ch1243 175) Issuance of bond. The authority will not issue a bond for the purpose of financing a project for a specific landowner(s) or operator(s) unless, prior to the issuance, the authority has conducted a public hearing conforming to the applicable requirements of the United States Internal Revenue Code of 1954 and the regulations promulgated thereunder. Upon receipt of a completed application, in a form prescribed by the authority, the secretary or executive administrator of the authority may set a date, time and place for hearing. The hearing shall be preceded by a notice thereof published at least fourteen days prior to the date of the hearing in a newspaper published and of general circulation in the county where the project is located. The notice shall include, but not be limited to, the date, time and place of the hearing, the name of the landowner(s) or operator(s), a general description of the project, and the right of individuals to request a local hearing.

[Filed emergency after notice 5/20/83, effective 5/20/83]

[Published 6/8/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/8/83.

ARC 3805**PLANNING AND PROGRAMMING[630]**

Pursuant to the authority of Iowa Code section 7A.3, the Office for Planning and Programming emergency adopts and implements a new Chapter 24 containing rules relating to the Community Development Block Grant Technical Assistance Program, Section 107 of the Housing and Community Development Act of 1974, as amended, which provides for technical assistance to communities eligible to receive Community Development Block Grant Nonentitlement funds within the state of Iowa.

The Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) allows states to administer the Community Development Block Grant Nonentitlement Program. In the

ARC 3791**IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523]**

Pursuant to the authority of Iowa Code section 175.6(14), the Iowa Family Farm Development Authority adopts and emergency implements an amendment to Chapter 4, "Soil Conservation Loan Program." This amendment was adopted by the Iowa Family Farm Development Authority on May 18, 1983.

Notice of Intended Action was published in IAB, March 16, 1983, as ARC 3609.

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

PLANNING AND PROGRAMMING[630] (cont'd)

past the program was administered in Iowa by the United States Department of Housing and Urban Development (HUD), Omaha Area Office. Cities under 50,000 in population and counties are eligible under the Nonentitlement Program.

In taking over the Nonentitlement Program, the state of Iowa received technical assistance funds from the United States Department of Housing and Urban Development. These funds are to be used to provide technical assistance in the areas of community development and related issues.

The Office for Planning and Programming has received approval from HUD to use up to \$80,000 of these funds in FY 1983 to administer a Technical Assistance Grant Program. A city or county that is eligible to receive Community Development Block Grant (CDBG) funds under the Nonentitlement Program, but is not a current recipient of such a grant is eligible to receive a technical assistance grant. Such grants will be limited to a maximum of \$5,000 each.

The Office for Planning and Programming emergency adopted and implemented rules for this program in FY 1982 on September 29, 1982, ARC 3228. Those rules expired on February 28, 1983. The rules submitted here will be applicable to this year's (FY 1983) technical assistance program.

The Office for Planning and Programming now intends to adopt rules through the emergency rulemaking procedure. The rules describe the procedures which shall be followed by communities that apply for funds under this program in FY 1983 as well as the procedures the Office for Planning and Programming will follow in administering the program.

Activities which are eligible include any study or plan relating to projects eligible for CDBG funding. Such activities include conducting a study on potential commercial development, developing strategies for local economic development, design work associated with a main-street revitalization or housing rehabilitation project, preliminary plans for application under the Urban Development Action Grant Program (but not including the actual preparation of a UDAG application) and certain other community development activities.

The Office for Planning and Programming intends to accept applications for funds on a competitive basis between June 15 and July 8, 1983. The review and selection process will require approximately three weeks, and grant awards will be made by August 1, 1983. This timetable must be adhered to so that the projects funded may be completed by December 1, 1983, when it is anticipated that communities may apply for FY 1984 CDBG funds.

Pursuant to the provisions of Iowa Code section 17A.5(2)"b"(2), the Office for Planning and Programming finds that these provisions confer a benefit upon the communities of Iowa, and the people therein, by ensuring sufficient time for proper utilization of these funds. These funds have been provided to the state of Iowa with the express intent of helping communities to more effectively utilize and administer Community Development Block Grants. However, unless the funds are utilized by December 1, 1983, they will be of no benefit in helping those communities to apply for CDBG funds. In order to allow communities adequate time to plan for, apply for, and effectively use these funds, the availability of funds and rules governing the program must be announced immediately. Therefore, these provisions shall be effective immediately upon filing with the Administrative Rules Coordinator on May 23, 1983.

Pursuant to the provisions of Iowa Code section 17A.4(2), the Office for Planning and Programming also finds that notice and public participation would be impractical because any delay in the implementation of the Technical Assistance Grant Program would jeopardize the effective use of funds by communities in designing community development-related projects. Notice and public participation on these rules will be provided in the Notice of Intended Action, filed concurrently as ARC 3806.

This emergency adoption and implementation is intended to implement Iowa Code section 7A.3 and Public Law 97-35.

These rules shall be effective upon filing on May 23, 1983 and shall expire on December 31, 1983, unless amended following public participation solicited in the Notice of Intended Action.

The following new chapter is added:

CHAPTER 24**COMMUNITY DEVELOPMENT BLOCK GRANT
TECHNICAL ASSISTANCE PROGRAM**

630—24.1(7A, PL 97-35) Purpose. Pursuant to Iowa Code section 7A.3, the Community Development Block Grant Technical Assistance Program of the Division of Local Government Affairs (DLGA), Office for Planning and Programming (OPP) was established.

24.1(1) The purposes of the technical assistance grant program are:

a. To administer Housing and Urban Development funds under section 107 of the Housing and Community Development Act of 1974, as amended, for technical assistance to eligible cities and counties to carry out community development related projects.

b. To encourage and assist local governments that are not current recipients of CDBG funds to conduct studies or plans relating to projects eligible for CDBG funding.

24.1(2) Those parties interested in information on the technical assistance grant program should write Division of Local Government Affairs, Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319, or phone (515)281-3746.

630—24.2(7A, PL 97-35) Eligibility requirements. The following eligibility requirements shall apply:

24.2(1) Any nonentitlement CDBG-eligible community (city or county) that did not receive CDBG funds in FY 1982 or FY 1983 is eligible.

24.2(2) A city or county may apply on behalf of a non-profit or for-profit organization that will carry out an eligible activity.

630—24.3(7A, PL 97-35) Eligible activities. Eligible activities shall include the following types of projects:

1. Studies conducted by an engineer or other appropriate party relating to the community's water, sewer, street, or other public works systems,

2. Studies on potential commercial development, including identification of federal, state, and local funding sources,

3. Development of strategies for local economic development, including preliminary plans for application under the Urban Development Action Grant (UDAG) program, but not including the actual preparation of applications,

4. Design work associated with a mainstreet revitalization project, community center, fire station, or any other CDBG-eligible project.

PLANNING AND PROGRAMMING[630] (cont'd)

630—24.4(7A, PL 97-35) Distribution of funds.

24.4(1) Technical assistance grant funds will be distributed on a competitive basis to eligible local governments.

24.4(2) Technical assistance grants will be awarded in sums no greater than five thousand dollars per grantee.

24.4(3) Payment to grantees will be on a cost reimbursement basis and will be subject to submission to and approval by OPP of the following reports:

a. Progress report with corresponding expenditure report;

b. Final report with corresponding expenditure report.

The format of these reports and dates of submission shall be established by OPP.

630—24.5(7A, PL 97-35) Grant application submission.

24.5(1) The division of local government affairs will notify eligible applicants by direct mail, explaining the program and establishing an application deadline.

24.5(2) The local government shall complete an application which is available upon request from the Division of Local Government Affairs, Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319.

630—24.6(7A, PL 97-35) Project review and selection.

24.6(1) A review and selection committee, hereinafter referred to as the committee, shall be composed of three staff members of the division of local government affairs.

24.6(2) Upon submission of an application, a number shall be assigned and the name of the community shall be removed, so as to assure anonymity as it is reviewed by the committee.

24.6(3) The committee shall not consider further any application in which false information is discovered.

24.6(4) The committee shall apply the following rating system, based on a point system, to each grant application considered:

a. The communitywide factors based on data derived during the 1983 CDBG application process and supplied by OPP;

(1) Percentage of the community below the poverty level as defined by the Department of Housing and Urban Development. (200 points)

(2) City or county mill rate. (100 points)

b. The community commitment as demonstrated by local financial support, previous unsuccessful applications for funding or community survey on the project. (200 points)

c. Potential benefit to low- and moderate-income persons. (200 points)

These rules are intended to implement Iowa Code section 7A.3 and Public Law 97-35.

[Filed emergency 5/23/83, effective 5/23/83]

[Published 6/8/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/8/83.

ARC 3796

**SOCIAL SERVICES
DEPARTMENT[770]**

Pursuant to the authority of Iowa Code section 239.18 rules of the Department of Social Services appearing in

the IAC relating to ADC granting assistance (chapter 41) are hereby amended.

These rules exempt as countable income support received for a month of suspension or for the first month following termination whether paid during the month or at a later date.

The Department of Social Services finds that notice and public participation are impracticable and contrary to the public interest. By exempting the support payments from future consideration as income it allows additional funds to meet the recipient's needs and could reduce requests for county general assistance. Therefore, these rules are filed pursuant to Iowa Code section 17A.4(2).

The Department of Social Services finds the rules confer a benefit on the public by allowing additional funds to meet recipient's needs. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Social Services adopted the rules May 18, 1983.

These rules are intended to implement Iowa Code section 239.3. These rules shall become effective June 1 1983.

ITEM 1. Subrule 41.2(6), paragraph "b", subparagraph (4) is amended as follows:

(4) Paying to the department any *nonexempt* cash support payments received after the application for assistance has been approved.

ITEM 2. Subrule 41.2(7) is amended by adding a new paragraph as follows:

a. *The support assignment shall remain in effect during the month of suspension. However, the monthly support entitlement or the support collected for a month of suspension, whichever is less, shall be refunded to the client by the child support recovery unit at the earliest possible date.*

ITEM 3. Subrule 41.7(7) is amended as follows:

Amend paragraph "o" and add new paragraphs as follows:

o. Payment(s) from a passenger(s) in a car pool.

p. *Support refunded by the child support recovery unit for the first month of termination of eligibility and the family does not receive aid to dependent children.*

q. *Support refunded by the child support recovery unit or otherwise paid to or for the recipient for a month of suspension. The maximum exempt payment shall be the amount of the monthly support entitlement. The payment shall never exceed the amount of support collected for the month of suspension.*

ITEM 4. Subrule 41.7(9) paragraph "f" is amended as follows:

f. Suspension. The local office shall suspend assistance retrospectively when income or circumstances in the budget month cause ineligibility and the local office has knowledge or reason to believe that ineligibility will exist for only one month. ~~Individuals in suspended status shall be considered recipients for the purposes of child support collections.~~

[Filed emergency 5/20/83, effective 6/1/83]

[Published 6/8/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/8/83.

ARC 3798**SOCIAL SERVICES
DEPARTMENT[770]**

Pursuant to the authority of Iowa Code section 234.6(7) rules of the Department of Social Services appearing in the IAC relating to the food stamp program (chapter 65) are hereby amended.

These rules implement Food Stamp regulations, 7 CFR Parts 272, 273, 276 and 277 (Amdt. No. 242), Final Rule dated February 15, 1983. A waiver has been requested on the portion of these regulations [273.18(g)(3)] that required implementation of allotment reduction for households that have an outstanding inadvertent household error claim. If the waiver is approved, automatic allotment reduction (reducing a household's monthly food stamp issuance by ten percent or ten dollars, whichever is greater) will be delayed until the Automated Budgeting System is active statewide. This is anticipated to be February 1, 1984. If the waiver is not approved, households that have received more stamps than they were entitled to because the household forgot to report or inadvertently reported a change incorrectly may have their monthly allotment reduced to pay back the overissuance (unless they have made other arrangements to pay back the overissuance).

These rules correct a conflict in previous federal regulations by establishing two types of individuals that are not members of a food stamp household. The first type relates to nonhousehold members. These individuals may be a part of the food stamp household if required to be household members such as parent, child, or spouse under current rules. If an individual is a nonhousehold member, that individual's income and resources will not affect the eligibility or benefit level of the food stamp household. The other type is an excluded household member. These are individuals who are ineligible aliens or disqualified for intentional program violation or disqualified for failure or refusal to provide a social security number. Excluded household members are not a part of the food stamp household, but their resources, income and expenses are counted as available to the food stamp household.

Previously, overissuances because of a household error were categorized as either fraud or nonfraud errors. A determination of fraud was made only by administrative fraud disqualification hearing or court order. Under these rules, if an administrative hearing or court determines that the household erred intentionally, an individual is considered to have committed an intentional program violation. An individual may admit guilt by waiving an administrative hearing.

When an individual is found to have committed intentional program violation, the individual is disqualified from receiving program benefits for a period of time. The first violation disqualifies the individual for six months, the second violation for twelve months and the third violation disqualifies the individual permanently.

The criteria for the time period for which a claim (resulting from an overissuance) can be established and collected has been revised.

These rules require reports to the USDA regarding individuals disqualified for intentional program violation and use of national information on these disqualified individuals provided by USDA.

The option to reinstate claims previously suspended was chosen so all claims would be treated consistently due to the changes in suspension criteria.

The option to establish a claim when more than twelve months have elapsed between the date of overissuance and the date of discovery and the option to recalculate the amount of the claim back to the month the error occurred (limit of three years) was chosen so the entire overissuance could be considered and overissuances that occurred over long periods of time could be considered in the same manner as those occurring over a twelve-month period or less. The length of time is limited by the agency's ability to accurately document and determine the correct basis of issuance for each of the months the overissuance occurred.

The option to apply restorations of lost benefits against suspended claims was chosen to treat households entitled to restorations consistently. Since suspended claims can be taken out of suspension, this option allows for the repayment of the suspended claim in the same manner as active claims.

The Department of Social Services finds that notice and public participation is impracticable and contrary to the public interest. The rule eliminates a conflict in the regulations which has resulted in inequitable treatment of disqualified individuals and confusion for clients and staff. Therefore, this rule is filed pursuant to Iowa Code section 17A.4(2).

The Department of Social Services finds these rules confer a benefit on the public by eliminating conflicting regulations affecting program recipients, therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Social Services adopted these rules May 18, 1983. These rules are intended to implement Iowa Code section 234.12. The effective date of these rules is June 1, 1983.

ITEM 1. Rule 770—65.3(234) is amended to read as follows:

770 —65.3(234) Administration of program. The food stamp program shall be administered in accordance with the Food Stamp Act of 1977 and in accordance with federal regulation, Title 7, Parts 270 through 282 as amended to ~~December 28, 1982~~ February 15, 1983.

A copy of such federal law and regulations may be obtained at no more than the actual cost of reproduction by contacting the Director of Food Programs, Department of Social Services, Hoover State Office Building, Des Moines, Iowa 50319, 515/281-3573.

ITEM 2. Chapter 65 is amended by adding a new rule as follows:

770—65.21(234) Claims.

65.21(1) Time period. Claims shall be calculated back to the month the error originally occurred to a maximum of three years prior to month of discovery of the overissuance.

65.21(2) Suspension status. Claims suspended under rules effective prior to June 1, 1983, that do not meet the criteria for suspension under rules effective June 1, 1983, shall be transferred to an active status.

65.21(3) Application of restorations. Restoration of lost benefits shall first be applied to any claims (including a suspended claim) prior to any remaining entitlement being issued to a household.

[Filed emergency 5/20/83, effective 6/1/83]

[Published 6/8/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/8/83.

ARC 3799**SOCIAL SERVICES
DEPARTMENT[770]**

Pursuant to the authority of Iowa Code section 234.6, the Department of Social Services adopts a new Chapter 72 relating to the "Emergency Food and Shelter Program." The program was authorized by PL 98-8. The Federal Emergency Management Agency did not adopt federal regulations but did develop an Emergency Food and Shelter Program Plan which outlines the federal guidelines and directives.

The Emergency Food and Shelter Program Plan directs the state to identify and select target areas for assistance, identify and select local recipient organizations, receive and disburse funds, monitor assistance, report on program activities, and assure audits.

The rules describe the criterion used to identify the target areas and allocated funding for each area, and the criterion used to identify and select the recipient organizations. In addition, the rules require the selected recipient agencies to sign an agreement with the department in order to receive funding for emergency food and housing. The agreement describes the conditions under which the money is to be spent.

Target Areas

In order to allocate the newly available federal funds from the Federal Emergency Management Agency to those counties where it will benefit the most people consistent with the guidelines of the federal work plan, Iowa followed four general criteria and developed guidelines within these criteria. The intent of both the criteria and the guidelines was to allocate funds to areas of greatest need and so as to affect the largest number of persons.

Criterion 1 and Selected Counties

The first criterion was unemployment. The 1982 unemployment rates by county were provided by Job Service of Iowa (Labor Force Summary - Iowa CPS, DTD March 18, 1983). In an attempt to target the available dollars to those with the greatest need, the twelve counties with an unemployment rate higher than 12% were selected. The counties selected were: Floyd, Appanoose, Dubuque, Monroe, Jackson, Benton, Des Moines, Emmet, Wapello, Clinton, Black Hawk, and Lee.

Criterion 2 and Selected Counties

The second criterion was poverty. The 1980 United States Census, which listed the poverty rate by county, was the source for this data Census of Population and Housing, 1980: Summary Tape File 3A Iowa (Machine Readable Data file. Prepared by the Bureau of Census, Washington, D.C. 1982). Again, to target the dollars, the twelve counties with a poverty rate of 15% or more were selected. (Appanoose, which was seventh on the list, was dropped as it was included in the first section.) The counties selected were: Ringgold, Davis, Van Buren, Decatur, Wayne, Taylor, Adair, Fremont, Clarke, Lucas, Harrison, and Monona.

Criterion 3 and Selected Counties

The third criterion was to combine the indicators of poverty and unemployment population numbers. The measure was the sum of the number of unemployed by county added to the number of poverty by county. Whereas the first two sections used a rate or percentage as the selection criteria, this section uses the actual number of people who are unemployed or in poverty. This method allows Iowa to target the funds to those counties where the most people will benefit. The criterion included all coun-

ties with a combined total (unemployed and poverty) greater than five thousand people. Seventeen counties met this criterion, but six of the counties (Black Hawk, Dubuque, Clinton, Des Moines, Lee and Wapello) also met the criterion of unemployment and were included under that indicator. The counties selected were: Polk, Scott, Linn, Woodbury, Johnson, Pottawattamie, Story, Cerro Gordo, Webster, Muscatine, and Marshall.

When a target area met more than one of the criteria shown above, it was included in the first eligible group and removed from other criterion groups. As the four criteria were weighed equally for the distribution of FEMA funds, any bias related to the order of applying each criterion was eliminated.

Criterion 4 and Selected Target Area

The fourth criterion was a high concentration of Native Americans (greater than 1% of total county population) and not served through a county already selected. The Mesquakie Indian Settlement was the only group that met this criterion.

Allocation of Funds to Target Areas

The distribution of the funds to the selected target areas was based upon the combined count of the unemployed and poverty populations. Each selected target area was allotted a dollar amount equal to the area's percentage of the total unemployed and poverty populations within the thirty-six selected target areas.

The state does reserve the right to reallocate funds from one target area to another if the pattern of expenditure by the recipient agency(s) within a target area indicates the recipient agency(s) is not likely to expend the allocation by September 30, 1983.

Local Recipient Organization

Local recipient organizations selected may be private, nonprofit voluntary organizations (including churches, United Way, shelter facilities which service homeless, emergency feeding programs) or local units of government.

Requirements

The local recipient organization must sign an agreement with the department of social services which specifies the conditions of the grants. The department has not completed its review of applicable federal and state guidelines to cite an inclusive list of agreement requirements. Conditions imposed on the state by the Federal Emergency Management Program will be incorporated in the agreement between the state and local recipient organizations.

Identification of Local Recipient Organizations

The department will inform the public of the availability of funding for emergency housing and feeding by providing a news release to the newspaper of record serving a target area. A copy of the news release will also be provided to radio and television stations which are believed to serve the target areas. In addition, the central office will cause a copy of the news release to be posted in all district offices in which there is a target area(s).

Organizations which contact the department will be provided with a copy of the administrative rules, an application, and a draft copy of the agreement. In addition potential applicants will be invited to an informational meeting to review the program, application, and program requirements. A final copy of the agreement will be distributed at the informational meeting. It is the intent of the department to receive completed applications by June 15, 1983.

Criterion for Selection

The completed applications will be reviewed by a central office team. The criterion to be used is:

SOCIAL SERVICES DEPARTMENT[770] (cont'd)

a. The applicants' statement of a policy of non-discrimination.

b. The applicants' statement that the organization has an accounting system which provides effective control over and accountability for all funds, property, and assets.

c. A brief narrative describing the organization requesting funding.

d. A brief description of other services provided by the organization.

e. A statement of unmet needs to be addressed by the services, including supporting statistics when available.

f. A description of the services for which funding is being requested which includes but is not limited to the target population to be served, any service eligibility requirements which will be established by the organization, the anticipated source of referrals for the service(s), the anticipated number of clients to be served for the service(s), and a statement of measurable outcomes of the service provision and the means of determining the outcomes.

g. The proposed budget for the service.

h. The applicant's statement of cooperation and coordination with existing service programs to avoid duplication and share resources.

i. Applicants' statement that grant award request, if approved, will be expended by September 30, 1983.

j. Applicants' certification that the organization meets the definition of a local recipient organization.

Selection will be made by the Commissioner.

There is an appeal procedure.

The department of social services finds that notice and public participation would be impracticable and contrary to the public interest. Federal funds for the program became available on May 6, 1983, and must be expended by September 30, 1983. Therefore, these rules are filed pursuant to Iowa Code section 17A.4(2).

The department of social services finds these rules confer a benefit on the public by allowing the provision of new services to the homeless and hungry. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Social Services adopted these rules on May 18, 1983. These rules are intended to implement Iowa Code section 234.12. These rules shall become effective June 1, 1983. Information on the program may be obtained by contacting Charles Palmer, Organizational Planning Director, Department of Social Services, Fifth Floor, Hoover State Office Building, Des Moines, Iowa 50319. The telephone number is 515/281-6003.

CHAPTER 72**EMERGENCY FOOD AND SHELTER PROGRAM****770—72.1(234) Definitions.**

72.1(1) "Commissioner" shall mean the commissioner of the department of social services or successor agency.

72.1(2) "Department" shall mean the department of social services or successor agency.

72.1(3) "Central office" shall mean the central office of the department of social services or successor agency.

72.1(4) "District" shall mean one of the department of social services' or successor agency's districts.

72.1(5) "District administrator" shall mean administrator of the district office.

72.1(6) "District office" shall mean one of the department of social services' or successor agency's district offices.

72.1(7) "Local recipient organization" shall mean private, nonprofit voluntary organizations including churches, local units of government, and tribal councils which receive a grant award to administer emergency food and shelter assistance.

72.1(8) "State agency" shall mean the agency which receives a federal grant award to administer emergency food and shelter programs.

72.1(9) "Target areas" shall mean the counties or native American Indian settlement in Iowa designated to receive emergency food and shelter assistance.

72.1(10) "Federal emergency management agency" (FEMA) shall mean the federal agency having program responsibility for the emergency food and shelter assistance.

72.1(11) "Agreement" shall mean the document the state agency and the local agency sign which specifies the conditions of the grant award.

770—72.2(234) Criterion for identification and selection of target areas.**72.2(1) Identification of target areas.**

a. Unemployment. Counties with an unemployment rate of twelve percent or more as listed on the Job Service of Iowa, Labor Force Summary - Iowa CPS, DTD, March 18, 1983.

b. Poverty. Counties with a poverty rate greater than fifteen percent as listed by the Census of Population and Housing, 1980: Summary Tape File 3A Iowa (machine readable file which was prepared by the Bureau of Census, Washington, D.C. 1982).

c. Combination of poverty and unemployment populations counties with a combined total of 5,000 or more persons who were unemployed.

d. The fourth criterion was a high concentration of native Americans (greater than one percent of total county population) and not served through a county already selected.

72.2(2) Selection criteria.

a. All target areas which meet any of the criterion described in 72.2(1) were included in the selected group eligible for funding.

b. Any target area which met more than one criteria was included in the first criterion for which it qualified.

770—72.3(234) Allocation of funds to selected target areas.

72.3(1) Initial allocation of funds to target areas. Each selected target area is eligible for a dollar amount equal to its percentage of the total unemployed and poverty population of the combined target area population of poverty and unemployed.

Target area's poverty and unemployed population	=	Target area's initial allocation of money
Total target areas poverty and population		Total dollars available for initial allocation

72.3(2) Reallocation of funds to target areas will be computed in the event that a target area appears to be unable to expend any part of the initial allocation prior to September 30, 1983.

770—72.4(234) Identification of local recipient organizations.

72.4(1) The department will inform the public of the availability of funding for emergency housing and feeding by providing a news release to the newspaper of

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record serving a target area. A copy of the news release will also be provided to radio and television stations which are believed to serve the target areas. In addition, the central office will cause a copy of the news release to be posted in all district offices in which there is a target office.

72.4(2) Organizations which contact the department will be provided with a copy of the administrative rules, an application, and a draft copy of the agreement. In addition, potential applicants will be invited to an informational meeting to review the program, application, and program requirements. A final copy of the agreement will be distributed at the informational meeting. It is the intent of the department to receive completed applications by June 15, 1983.

770—72.5(234) Criterion for selection.

72.5(1) The completed applications will be reviewed by a central office team. The criterion to be used is:

a. The applicant's statement of a policy of non-discrimination.

b. The applicant's statement that the organization has an accounting system which provides effective control over and accountability for all funds, property, and assets.

c. A brief narrative describing the organization requesting funding.

d. A brief description of other services provided by the organization.

e. A statement of unmet needs to be addressed by the services, including supporting statistics when available.

f. A description of the services for which funding is being requested which includes but is not limited to the target population to be served, any service eligibility requirements which will be established by the organization, the anticipated source of referrals for the service(s), the anticipated number of clients to be served for the service(s), and a statement of measurable outcomes of the service provision and the means of determining the outcomes.

g. The proposed budget for the service

h. The applicant's statement of cooperation and coordination with existing service programs to avoid duplication and share resources.

i. Applicant's statement that grant award request, if approved, will be expended by September 30, 1983.

j. Applicant's certification that the organization meets the definition of a local recipient organization.

72.5(2) In the event that two or more local recipient organizations make application for funds and are assessed as capable of delivering emergency food and shelter services, the following six criteria will be used as the basis for the recommendation by the central office committee to select the organization(s):

a. Evidence of experience in administering food and shelter programs.

b. Capacity of serving the total population of individuals in the target county who may need emergency food and shelter. Some local organizations may have resources to serve local community or city effectively, but would not have outreach capabilities to serve an entire target area.

c. Amount of staff time committed to the program.

d. Physical facilities. The size and number of buildings, kitchen space for congregate meals, and space available for shelter and living areas on an emergency basis.

e. Twenty-four-hour availability of services and facilities.

72.5(3) In the event that more than one organization is thought to be capable of providing service(s), the department may elect to offer a grant to more than one local organization in the target area.

770—72.6(234) Grant applications — decision. The commissioner shall make the final decision on the grant applications.

770—72.7(234) Agreement. The local recipient organization will sign an agreement which incorporates the federal emergency management agency requirements of the state and local recipient organization.

770—72.8(234) Termination of agreement.

72.8(1) The local recipient organization may terminate the agreement at any time during the agreement contract period by giving thirty days' notice to the department.

72.8(2) The department may terminate the agreement by giving thirty days' notice to the local recipient organization.

72.8(3) The department may terminate the agreement upon ten days' notice when the local recipient organization fails to comply with the terms of the agreement.

770—72.9(234) Appeals. Protests regarding the awarding of funds shall be referred to commissioner within one week of the grant award. The commissioner's decision will be final.

[Filed emergency 5/20/83, effective 6/1/83]

[Published 6/8/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/8/83.

ARC 3800

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of Iowa Code section 249A.4 rules of the Department of Social Services appearing in the IAC relating to procedure and method of payment for medical assistance (chapter 80) are hereby amended.

This rule change returns the time limit for submission of claims to 365 days. The time limit was previously reduced to 150 days to facilitate cash flow and accounting procedure, however, the department has found that in many cases of retroactive eligibility the department's notification of eligibility is exceeding 150 days.

SOCIAL SERVICES DEPARTMENT[770] (cont'd)

The Department of Social Services finds that notice and public participation is impracticable and contrary to the public interest. The rule will expedite payments to providers and reduce the demands on clerical staff. Therefore, this rule is filed pursuant to Iowa Code section 17A.4(2).

The Department of Social Services finds this rule confers a benefit on the public by eliminating confusion and delay in payment to providers. Therefore, this rule is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Social Services adopted this rule May 18, 1983. This rule is intended to implement Iowa Code section 249A.4.

The effective date of this rule is June 1, 1983.

Subrule 80.4(1) is rescinded and the following inserted in lieu thereof:

80.4(1) Submission of claims. Payment will not be made on any claim where the amount of time that has elapsed between the date the service was rendered and the date the initial claim is received by the fiscal agent exceeds three hundred sixty-five days except that payment for claims submitted beyond the three hundred sixty-five day limit shall be considered if retroactive eligibility on newly approved cases is made which exceeds three hundred sixty-five days or if attempts to collect from a third party payer delay the submission of a claim.

[Filed emergency 5/20/83, effective 6/1/83]

[Published 6/8/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/8/83.

ARC 3801

COMMERCE COMMISSION[250]

The Iowa State Commerce Commission hereby gives notice, pursuant to Iowa Code section 17A.4, that on May 20, 1983, the Commission issued an order in Docket No. RMU-82-20, In Re: Adoption of Rules to Implement a Program for the Continuous Review of Operations of Rate-Regulated Public Utilities, "Order Adopting Rules," amending 250—Chapter 1, "Organization and Operation," Chapter 18, "Utility Records," and Chapter 23, "Annual Report."

The amendments would establish guidelines and powers of the operations review division to provide for the efficient functioning of that division. The amendments also include a redefinition of the utilities division to eliminate any overlapping in responsibilities of these two divisions.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 13, 1983, as ARC 3694. The changes from the Notice of Intended Action were made in response to comments of the general public received by the Commission. The specific changes include (1) increasing the amount of time utilities have to comply with formal information requests from ten days to thirty days and (2) clarifying the deadline for the filing of lists identifying (a) documents filed with federal agencies, (b) the aggregate measures of service quality and cost efficiency utilized by the utilities' chief operating officers and (c) the reports concerning these aggregate measures utilized by the utilities' chief operating officers. The changes are more fully discussed in the Commission's "Order Adopting Rules," issued May 20, 1983, in Docket No. RMU-82-20.

These rules are intended to implement Iowa Code section 476.31. The adopted rules will be effective July 13, 1983.

ITEM 1. Amend subrule 1.5(3) as follows:

1.5(3) The public utilities division. This division is responsible for the administrative and technical work with respect to the regulation of public utilities, pipelines and underground gas storage within the jurisdiction of the commission. The utilities division *provides analysis and* advises the commission on matters of ~~accounting, engineering, construction, safety, rates, and services rates, tariffs, licensing, and safety~~ of regulated public utilities.

ITEM 2. Amend 250—1.5(17A,474) by adding a new subrule 1.5(6) as follows:

1.5(6) The operations review division. This division is responsible for the administrative and technical work with respect to the continuous review of utility operations for efficiency and provide quality. The operations review division provides analysis and advises the commission on matters of accounting, management performance, least cost alternatives for utility operations and system development, service quality and performance incentives.

ITEM 3. Amend 250—18.3(476) by adding the following paragraph at the end of the existing rule:

Upon receipt by a utility of a formal request in writing from the commission or its authorized representatives for records or information pertaining to records required by any rule of the commission or necessary for the administration thereof, the utility shall comply with the request within thirty days from the receipt of the written request unless the request is objected to in writing, with concisely stated grounds for relief, within ten days of receipt.

ITEM 4. Amend 250—23.2(467) by renumbering subrule 23.2(8) as new 23.2(9) and amending it to read as follows and inserting the following as new 23.2(8):

23.2(8) *The respondent shall file as part of its annual report filed with the commission (a) a list (by title, author, and date) of any financial, statistical, technical or operational reviews or reports that a company may prepare for distribution to stockholders, bondholders, utility organizations or associations or other interested parties, (b) a list (by form number and title) of all financial, statistical, technical and operational review-related documents filed with an agency of the federal government, (c) a list identifying the aggregate measures of service quality and cost efficiency utilized by the president or chief operating officer for the utility's Iowa operations, and (d) a list identifying the report(s) utilized by the president or chief operating officer for the utility's Iowa operations containing the most recent value for each measure identified in "c".*

~~23.2(8)~~ **23.2(9)** In addition to the above-mentioned reports, the respondent shall ~~also~~ file with the commission, immediately upon publication, two copies of any financial, or statistical ~~or operational reviews or reports~~ that a company may prepare for distribution to stockholders, bondholders, or any other interested parties.

[Filed 5/20/83, effective 7/13/83]

[Published 6/8/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/8/83.

ARC 3789

COMPTROLLER, STATE[270]

Pursuant to the authority of Iowa Code section 8.6, the State Comptroller hereby adopts the following amendments to amend chapter 4, Iowa Administrative Code. Chapter 509A provides for the deferred compensation program for state employees.

These amendments change the rules so agreement is reached with Chapter 457 of the Internal Revenue Service Code. These amendments delete the Secretary of State from membership on the Financial Hardship Committee, establish normal retirement dates for the state's participating employees, provide for new open enrollment periods, change the section number of the Internal Revenue Code that is applicable to this program, change the section on the maximum amount that can be deferred, change the date of the annual report from the insurance companies, change the section on options available to retiring or terminating employees, delete "disability" as a reason for making early withdrawal for a participating employee, revise the definition of what constitutes a financial hardship, limit transfer of ownership of a terminating employee's contract, require the insurance carrier to make benefit payments direct to the terminated employee and act as the state's agent for withholding tax purposes, and limit the date the state accepts applications for new participating employees during the open enrollment period.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on April 13, 1983, under ARC 3666. The State Comptroller adopted these amendments on May 19, 1983, after considering any comments received. The adopted amendments are identical to the

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Notice of Intended Action, except that subrule 4.4(2) was amended to delete the word "disability" and subrules 4.2(10), 4.8(3), and 4.8(5) were revised to better express the genders involved.

These rules are intended to implement Iowa Code section 509A.12, and the amendments will be effective on July 13, 1983.

The following amendments are adopted:

ITEM 1. Subrule 4.2(2) is amended to read as follows:

4.2(2) "Financial hardship and disability committee" as used in these rules shall mean the committee made up of the secretary of state, insurance commissioner, state comptroller, and the industrial commissioner that rules on the "disability" and "financial hardship" claims of participating employees.

ITEM 2. Rule 4.2(8) is amended by adding the following subrule:

4.2(10) "Normal retirement age" for a participating employee shall be that age where the employee can retire from state of Iowa service without reduction of retirement income because of age. The range shall be from fifty-five years of age for police officers, sixty-five years of age for those people in IPERS, to seventy-five years of age for judges.

ITEM 3. Subrules 4.4(1) and 4.4(2) are amended to read as follows:

4.4(1) Open enrollment. An open Open enrollment periods will be held each year for those employees who desire to participate in the plan and did not enroll at the time the plan was implemented. This The open enrollment periods will be from November 1 until November 30 of each year August 1 until August 31 and February 1 until February 28 of each year. All completed forms, including but not limited to signed agreement and authorization to deduct from earnings, must be received by the employer on or before December 1 the fifteenth of the month, following the open enrollment period. Any forms not received by that date will not be processed and must be resubmitted during the next open enrollment period if the employee desires to participate in the plan. The policies will become effective February 1 of the following year on the first day of the third month following open enrollment and the premiums will be deducted from the paychecks received by the participating employees during the month of January beginning with the second month following open enrollment. Enrollment is permitted for elective officials-elect and members-elect of the general assembly, during the enrollment period, to the same extent as if they were otherwise eligible to enroll as employees.

4.4(2) Termination. A participating employee may terminate his participation in the plan by giving not less than thirty days' prior written notice to the employer. If participation is terminated, the withdrawal of funds will be made only in accordance with the terms of the agreement, that is death, retirement or approval of a disability or financial hardship claim. All requests will be made on forms provided by the employer.

ITEM 4. Subrule 4.5(2) is amended to read as follows:

4.5(2) Federal and state income taxes. The amount of earned compensation deferred under the agreement is exempt from federal and state income taxes as provided in section 461 457 Internal Revenue Code of 1954 as amended. The six states adjoining Iowa have agreed to allow their residents who are employees of the state of Iowa to defer compensation for state income tax purposes.

ITEM 5. Subrules 4.6(2) and 4.6(3) are amended to read as follows:

4.6(2) Change in amounts. A participating Participating employees may increase or decrease this their participation in the plan as of the first day of the next succeeding calendar year second month following open enrollment by giving not less than thirty days' prior written notice thereof to the employer.

4.6(3) Amount allowed to be deferred. After making provisions for the amounts to be deducted from FICA, IPERS, voluntary deductions and the withholding tax on FICA, IPERS, and voluntary deductions, the balance of earned compensation Compensation may be deferred up to a maximum of twenty-five percent of the employee's base salary not to exceed \$7,500 per year. A participating employee may elect to catch up during the employee's last three tax years before reaching normal retirement age. This catchup, which could be in addition to the maximum amount that is allowed by the twenty-five percent — \$7,500 rule above could amount to the lesser of the following: (a) \$7,500, (b) twenty-five percent of the employee's previous year's base salary less the amount actually deferred during that employee's previous taxable year. During this catchup period, the participating employee must have participated for twelve months during the employee's previous tax year. If the participating employee does not utilize this catchup provision during the first of the three catchup years the "lost" catchup amount cannot be added to either the second or third year of this catchup period. If the participating employee does not utilize this catchup provision during the first two years of the catchup period, this "lost" catchup amount cannot be added to the third year of the catchup period. The amount to be deferred must remain constant for one calendar year from one open enrollment period to the next and may not in any case exceed the amount of net pay to be received by the participating employee. This cannot be changed to permit additional deferral from people who are terminating and are collecting vacation or sick leave payouts.

ITEM 6. Subrule 4.7(3) is amended to read as follows:

4.7(3) Annual status report. An annual status report of each participating employee's policy must be provided by each company to both the participating employee and the employer as of June 30 of each year. This must be continued to be done after a participating employee terminates employment or cancels participation and there are no current payments being made. These annual reports are required as long as a balance exists in the contract or activity occurred during the year.

ITEM 7. Subrule 4.8(3) is amended to read as follows:

4.8(3) Retirement or termination. When a participating employee desires to retire, he the employee will notify the employer in writing no less than thirty days prior to anticipated retirement date of his the intention to retire on a form provided by the employer. The retiring employee, upon reaching normal retirement age, will state on the form when and what option in the contract that the employee wishes these funds paid. This is an irrevocable decision, but payments to the retiring employee must begin by the time the employee has reached seventy and one-half years of age. If there is any question as to whether the participating employee is actually retiring, final determination will be made by the employer as provided in the agreement. Upon determination the participating employee is actually retiring, the employer will take the necessary steps to see that the proceeds of the policy will be disbursed by the company according to the agreement.

COMPTROLLER, STATE[270] (cont'd)

A terminated employee can draw these funds under any option available in the contract. Indication will be made of the employee's desire on the form that is provided by the employer. If these funds are not drawn or payments commenced by the time this former employee reaches normal retirement age, as determined by the pension plan the employee was in while working for the state, the terminated employee must indicate on a form provided by the employer of when and under what option within the contract the employee wishes these funds paid. This must be done within sixty days of the employee reaching normal retirement date or these funds will be totally drawn by the plan administrator and paid to the former employee. If an employee works beyond normal retirement date the employee must notify the plan administrator of the selected retirement option within sixty days beyond the termination date or the funds will be fully drawn and paid to the terminating employee. Payments must begin by the time this employee reaches seventy and one-half years of age. This decision of the former employee is irrevocable once made and sent to the employer. The amount drawn each year must exceed fifty percent of the maximum amount that would have been available as defined by the mortality tables of the life insurance carrier.

ITEM 8. Subrule 4.8(4) and paragraphs "b" and "c" are amended to read as follows:

4.8(4) Disability and financial hardship. A committee, as defined in these rules, will have final determination as to whether a participating employee meets the definition of "total disabled" or "suffers a serious financial hardship" under the terms of the agreement.

b. Duties of the committee. The committee shall rule, within thirty days of receipt, in writing, by the recording secretary, requests from a participating employee to cause the employer to surrender to the company the policy of the participating employee for a cash refund in the case the participating employee becomes total disabled or suffers has a serious financial hardship, according to the terms of the agreement.

c. Definitions:

(1) "Serious financial hardship" as used in this rule will include the following: Bankruptcy or impending bankruptcy, unexpected or unreimbursed major expenses resulting from illness to person or accident to person or property and other types of unexpected and unreimbursed expenses of a major nature that would not normally be budgetable. Serious financial hardship shall not include the need for foreseeable expenditures normally budgetable such as down payments on a home, purchase of vehicle or college expenses; must result from a sudden and unexpected illness or accident of the participant or of a dependent of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The circumstances that will constitute an unforeseeable emergency will depend upon the facts of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise, by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the plan.

(2) "Total disabled" as used in this rule means the complete inability of the employee, due to accidental bodily injury or sickness, or both, to perform any and every duty pertaining to his/her occupation and to engage in

any work or occupation for which he is reasonably fitted by education, training, or experience.

ITEM 9. Subrules 4.8(5) and 4.8(6) are amended to read as follows:

4.8(5) Transfer to new employer. The transfer of ownership of a policy in this program for a terminating employee can only be done to an entity within the state of Iowa who is eligible to conduct a deferred compensation program. A request by a participating employee to transfer a policy to a new employer must be in writing. It is the responsibility of the participating employee and the new employer to provide the Internal Revenue Service with the necessary details of transfer and copies of all pertinent documents as provided in the agreement for determination as to the continued exemption from taxes: employer with a letter from the new employer of acceptance of this contract and an assurance that the payout of these funds to the employee will not commence until the employee separates from service with the new employer. Upon receipt in writing of approval by the Internal Revenue Service the acceptance and assurance from the new employer of the proposed transfer, the employer will transfer the policy to the new employer and notify the insurance company of change of ownership.

4.8(6) Method of payment. For convenience in making payments under the agreement, the employer may shall require the insurance company to make payments directly to the employee or his/her the employee's beneficiary, as an agent for the state of Iowa, for withholding tax purposes, in satisfaction of the employer's continuing obligation but any such request shall not give the employee any right to demand payment from the insurance company.

ITEM 10. Subrule 4.10(3) is amended to read as follows:

4.10(3) Number of companies. All life insurance companies licensed to do business in Iowa may sell policies under the plan. Each participating employee will be limited to participation with only one company at any given time. If a participating employee desires to change companies, the only way that this can be accomplished is to terminate their participation with the original company, effective after the payroll reductions have been made totally for any calendar month. The employee must also submit the proper forms so that participation with the new company will be effective with the payroll reductions to be effective with the next succeeding calendar month. The new policy shall be effective the first of the month following the initial month of payroll reduction. The total funds accumulated under the old policy may be transferred in total to the new policy upon approval by the employer. Company changes can be made by any employee only once in the time between the open enrollment periods. The amount of payroll reduction for the new company must be the same as for the old when this is done at a time other than during open enrollment. There can be no break in the reduction of compensation, and both sets of forms must be submitted at the same time and properly filled out. The employer will hold the original policy until such time as the proceeds may be disbursed under the terms of the agreement, that is death, retirement or approval of a claim for disability or financial hardship.

ITEM 11. Subrule 4.11(7) is amended to read as follows:

4.11(7) Unnumbered form, application for policy for new participating employees. This form will be supplied by the insurance company with whom the participating employee desires to defer compensation. The completed form must be approved by the state comptroller, or his designee, prior to completion of any other form described

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in these rules. The completed form will show that the owner and beneficiary of the policy is the state of Iowa and that the relationship of the state of Iowa to the participating employee is employer. The completed form will be forwarded to the State Comptroller, Deferred Compensation Program, State Capitol Hoover State Office Building, Des Moines, Iowa 50319 with a self-addressed, stamped envelope to be used in returning the approved completed form. All forms postmarked after ~~November 30th~~ the last day of the open enrollment month will not be approved.

[Filed 5/19/83, effective 7/13/83]

[Published 6/8/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/8/83.

ARC 3781**HEALTH DEPARTMENT[470]****BOARD OF CHIROPRACTIC EXAMINERS**

Pursuant to the authority of Iowa Code section 147.76, the Chiropractic Board of Examiners hereby adopts amendments to Chapter 141 of their rules appearing in the Iowa Administrative Code.

These rule changes reflect the latest update of the standards and bylaws set by the Council on Chiropractic Education.

Notice of Intended Action was published in the IAB, Vol. V, No. 19, March 16, 1983, as ARC 3606 and was adopted at their April 23, 1983 board meeting.

The adopted rules are identical to those proposed in the Notice of Intended Action.

These rule amendments shall become effective on July 13, 1983.

These rules are intended to implement Iowa Code section 151.4.

ITEM 1. Subrule 141.11(1) is amended to read as follows:

141.11(1) Rules pertaining to the practice of chiropractic at a chiropractic college clinic shall be equal to the standards established by the Council on Chiropractic Education existing as of ~~May 1, 1982~~ July 1, 1982 or one that meets equivalent standards thereof.

ITEM 2. Subrule 141.11(2) is amended to read as follows:

141.11(2) All chiropractic colleges in order to be approved by the board of chiropractic examiners shall first have status with the Commission on Accreditation of the Council on Chiropractic Education as recognized by the U.S. Office of Education existing as of ~~May 1, 1982~~ July 1, 1982 or one that meets equivalent standards thereof.

ITEM 3. Subrule **141.11(3)** paragraph "a" is amended to read as follows:

a. Standards. The standards against which the institution will be evaluated shall be equivalent to, or exceeding those published and utilized by the Council on Chiropractic Education existing as of ~~May 1, 1982~~ July 1, 1982.

ITEM 4. Subrule 141.13(6) is amended to read as follows:

141.13(6) All applicants matriculating after October 1, 1975 will be graduated from a college having status with the C.C.E. (Council on Chiropractic Education) or its successor, or from a college which meets or exceeds equivalent standards thereof existing as of ~~May 1, 1982~~ July 1, 1982.

[Filed 5/13/83, effective 7/13/83]

[Published 6/8/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/8/83.

ARC 3790**LABOR, BUREAU OF[530]**

The Labor Commissioner, pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), hereby amends a rule relating to occupational safety and health rules for general industry. The amendments relate to respirator fit testing for lead exposure (correction) and occupational noise exposure (hearing conservation amendment).

Notice of the intent to adopt these rules was published in the April 13, 1983, IAB, ARC 3678. A public hearing was held on May 11, 1983, to receive comments on the noticed rules. All comments received related to issues of interpretation and enforcement of the rules. Iowa Code section 88.5 requires the Labor Commissioner to adopt no rule unless the same has been adopted by the U.S. Secretary of Labor. Comments received will be transmitted to the Secretary of Labor for consideration in future amendments to the federal standards.

These amendments are intended to implement Iowa Code section 88.5.

These amendments will become effective July 15, 1983.

Rule **530-10.20(88)** is amended by adding at the end thereof the words:

48 Fed. Reg. 9641 (March 8, 1983)

48 Fed. Reg. 9776 (March 8, 1983)

[Filed 5/20/83, effective 7/15/83]

[Published 6/8/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/8/83.

ARC 3788**NURSING, BOARD OF[590]**

Pursuant to the authority of Iowa Code sections 17A.3, 147.76, and 152.1, the Iowa Board of Nursing adopts a fee section to appear in Chapter 7, "Advanced Registered Nurse Practitioners" of the Iowa Administrative Code.

This subrule relates to the fees to be charged for registration as an advanced registered nurse practitioner. [The fee schedule was not included in 9/1/82 Notice and the ARRC voted an objection to the 3/2/83 Adopted version.]

A second Notice of Intended Action was published in IAB, volume v, number 21, April 13, 1983, as ARC 3684. Change from such notice is as follows:

NURSING, BOARD OF[590]

Subrule 7.1(8), paragraph "d" reads as follows:

d. For advanced registered nurse practitioner late renewal, \$10.00 plus the renewal fee as specified in paragraph "a" of this subrule.

This subrule implements Iowa Code sections 17A.3, 147.76, and 152.1.

This subrule will become effective on July 13, 1983.

Subrule 7.1(8) is adopted as follows:

7.1(8) Fees. Fees mean those fees collected which are based upon the cost of sustaining the board. The fees set by the board are as follows:

a. For a license or renewal to practice as an advanced registered nurse practitioner, \$12.00 per year or any period thereof.

b. For a certified statement that an advanced registered nurse practitioner is licensed in this state, \$30.00.

c. For a duplicate license/original certificate to practice as an advanced registered nurse practitioner, \$15.00.

d. For advanced registered nurse practitioner late renewal, \$10.00 plus the renewal fee as specified in paragraph "a" of this subrule.

e. For advanced registered nurse practitioner delinquent license fee, \$50.00 plus all renewal fees to date due.

f. For a check returned for any reason, \$20.00.

[Filed 5/18/83, effective 7/13/83]

[Published 6/8/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/8/83.

PUBLIC SAFETY DEPARTMENT[680]

Tables 5A and 5B in Fire Marshal's Rule 5.105 were not included with ARC 3711, IAB 4/27/83 but have been published in the IAC [5/11/83 Supp.].

At the request of the Administrative Rules Review Committee, the Tables are reproduced herein.

TABLE NO. 5 — A—MINIMUM EGRESS AND ACCESS REQUIREMENTS

USE	MINIMUM OF TWO EXITS OTHER THAN ELEVATORS ARE REQUIRED WHERE NUMBER OF OCCUPANTS IS AT LEAST	OCCUPANT LOAD FACTOR
1. Aircraft Hangars (no repair)	10	500
2. Auction Rooms	30	7
3. Assembly Areas, Concentrated Use (without fixed seats) Auditoriums Bowling Alleys (Assembly areas) Churches and Chapels Dance Floors Lodge Rooms Reviewing Stands Stadiums	50	7
4. Assembly Areas, Less-concentrated Use Conference Rooms Dining Rooms Drinking Establishments Exhibit Rooms Gymnasiums Lounges Stages	50	15
5. Children's Homes and Homes for the Aged	6	80
6. Classrooms	50	20
7. Dormitories	10	50
8. Dwellings	10	300
9. Garage, Parking	30	200
10. Hospitals and Sanitariums — Nursing Homes	6	80
11. Hotels and Apartments	10	200
12. Kitchen — Commercial	30	200
13. Library Reading Room	50	50
14. Locker Rooms	30	50
15. Mechanical Equipment Room	30	300
16. Nurseries for Children (Day-care)	7	35
17. Offices	30	100
18. School Shops and Vocational Rooms	50	50
19. Skating Rinks	50	50 on the skating area; 15 on the deck
20. Stores — Retail Sales Rooms Basement Ground Floor Upper Floors	7 50 10	20 30 50
21. Swimming Pools	50	50 for the pool area; 15 on the deck
22. Warehouses	30	300
23. Lobby Accessory to Assembly Occupancy	50	7
24. Malls	50	30
25. All others	50	100

PUBLIC SAFETY DEPARTMENT[680] (cont'd)

TABLE NO.5 -B. TYPES OF CONSTRUCTION — FIRE-RESISTIVE REQUIREMENTS
(In Hours)
For Details see Chapters under Occupancy and Types of Construction

BUILDING ELEMENT	TYPE I	TYPE II				TYPE III		TYPE IV	TYPE V	
	NONCOMBUSTIBLE					COMBUSTIBLE				
	Fire-Resistive	Fire-Resistive	1-Hr.	N		1-Hr.	N	H.T.	1-Hr	N
Exterior Bearing Walls	4	4	1	N		4	4	4	1	N
Interior Bearing Walls	3	2	1	N		1	N	1	1	N
Exterior Nonbearing Walls	4	4	1	N		4	4	4	1	N
Structural Frame ¹	3	2	1	N		1	N	1 or H.T.	1	N
Partitions — Permanent	1 ²	1 ²	1 ²	N		1	N	1 or H.T.	1	N
Shaft Enclosures	2	2	1	1		1	1	1	1	1
Floors	2	2	1	N		1	N	H.T.	1	N
Roofs	2	1	1	N		1	N	H.T.	1	N

N—No general requirements for fire resistance

H.T.—Heavy Timber

¹Structural frame elements in the exterior wall shall be protected against external fire exposure as required for exterior bearing walls or the structural frame, whichever is greater.

²Fire retardant treated wood may be used in the assembly, provided fire-resistance requirements are maintained.

workers, physicians, and nurse practitioners employed or on contract with the center. Payment will be made on a fee-for-service basis which will include all prenatal and post partum care.

Services provided by maternal health centers shall be performed under the direct personal supervision of a physician.

Direct personal supervision in the center setting does not mean that the physician must be present in the same room with the professional, however, the physician must be present on the site and immediately available to provide assistance and direction throughout the time services are being provided.

ITEM 3. Subrule 79.1(2) is amended by adding the following to the list of noninstitutional providers:

18. Maternal health centers Fixed fee

These rules are intended to implement Iowa Code section 249A.4.

[Filed 5/20/83, effective 8/1/83]

[Published 6/8/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 6/8/83.

ARC 3792

SOCIAL SERVICES
DEPARTMENT[770]

Pursuant to the authority of Iowa Code section 249A.4 rules of the Department of Social Services appearing in the IAC relating to medical assistance (chapters 77, 78 and 79) are hereby amended. The Council of Social Services adopted these rules May 18, 1983.

Notice of Intended Action regarding these rules was published in the IAB March 30, 1983, as ARC 3664. With these rules reimbursement to maternal health centers is being added to Medicaid to expand the availability of Title XIX funds to Title V agencies which serve Medicaid recipients. It is expected to increase Medicaid expenditures by about \$165,000 per year.

These rules are identical to those published under notice.

These rules are intended to implement Iowa Code section 249A.4.

These rules shall become effective August 1, 1983.

ITEM 1. 770—Chapter 77 is amended by adding a new rule.

770—77.23(249A) Maternal health centers. A maternal health center is eligible to participate when it is a local nonprofit agency receiving supervision, approval and financial support from the Iowa state department of health. The maternal health centers are approved by the Iowa state department of health when the adopted standards of 1974 ambulatory care standards for obstetrics are met.

ITEM 2. 770—Chapter 78 is amended by adding a new rule.

770—78.25(249A) Maternal health centers. Payment will be made for prenatal and post partum care to include nutrition counseling and social services provided by bachelor's degree nutritionists, bachelor's degree social

ARC 3793

SOCIAL SERVICES
DEPARTMENT[770]

Pursuant to the authority of Iowa Code section 249A.4 rules of the Department of Social Services appearing in the IAC relating to amount, duration and scope of medical and remedial services (chapter 78) are hereby amended. The Council on Social Services adopted these rules May 18, 1983.

Notices of Intended Action regarding these rules were published in the IAB April 13, 1983 as ARC 3672 and ARC 3673.

ARC 3672 specifies the criteria of ineffective or less than effective drugs as defined by the Secretary of Health and Human Services. These drugs will not be approved for payment by Medicaid. This brings the department's rules into compliance with the Omnibus Reconciliation Act of 1981 implemented in October 1982. The Iowa Pharmacists Association has approved this amendment.

ARC 3673 adds acid etch anterior bridgework procedure as an acceptable, less expensive alternative for fixed bridgework in some situations. This procedure requires prior approval. This amendment also specifies that fixed prosthetics for missing posterior teeth are not a covered benefit.

These rules are identical to those published under notice.

These rules are intended to implement Iowa Code section 249A.4.

These rules shall become effective August 1, 1983.

ITEM 1. Subrule 78.1(2), paragraph "a", subparagraph (3) is rescinded and the following inserted in lieu thereof:

(3) Payment will not be made for drugs determined to be ineffective or less than effective by the Secretary of Health and Human Services.

SOCIAL SERVICES DEPARTMENT[770] (cont'd)

Unless the Secretary has determined there is a compelling justification for medical need, payment will not be made for those drugs and any other drug which is identical, related, or similar and placed under notice by the Secretary pursuant to section 505(e) of the Federal Food, Drug and Cosmetic Act.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 2. Subrule 78.4(1), paragraph "g", subparagraph (2) is revised as follows:

(2) Fixed ~~prosthetics~~ *bridgework* for missing anterior teeth ~~may~~ shall be utilized on a limited basis *with prior approval by the fiscal agent's dental consultant. Acid etch anterior bridgework requires prior approval. Fixed prosthetics for missing posterior teeth are not a covered benefit.*

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[Published 6/8/83]

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ARC 3794

SOCIAL SERVICES
DEPARTMENT[770]

Pursuant to the authority of Iowa Code section 249A.4 rules of the Department of Social Services appearing in the IAC relating to intermediate care facilities (chapter 81) and intermediate care facilities for the mentally retarded (chapter 82) are hereby amended. The Council on Social Services adopted these rules May 18, 1983.

Notice of Intended Action regarding these rule amendments was published in the IAB April 13, 1983, as ARC 3674. These subrules bring the department rules into compliance with Iowa Code and current practice. These subrules allow the new rates of payments for ICF and ICFMR facilities to become effective as of the first of the month in which the financial and statistical report is postmarked or, if personally delivered, in which the report is received by the department.

These subrules are identical to those placed under notice.

These rules are intended to implement Iowa Code section 249A.16 and shall become effective August 1, 1983.

ITEM 1. Subrule 81.6(4) is amended as follows:

81.6(4) Payment at the new rate. When a new rate is established, payment at the new rate shall be effective with services rendered as of the first day of the month in which the report is *postmarked, or if the report was personally delivered, the first day of the month in which the report was received by the department of social services.* Adjustments shall be included in the payment the third month after the receipt of the report.

Item 2. Subrule 82.5(4) is amended as follows:

82.5(4) Payment at new rate. When a new rate is established, payment at the new rate shall be effective with services rendered as of the first day of the month in which the report is *postmarked, or if the report was personally delivered, the first day of the month in which the report was received by the department of social services.*

Adjustments shall be included in the payment the third month after the receipt of the report.

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[Published 6/8/83]

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ARC 3795

SOCIAL SERVICES
DEPARTMENT[770]

Pursuant to the authority of Iowa Code section 217.6, the Department of Social Services adopted a new chapter 166 of rules relating to juvenile community-based grants. The Council on Social Services adopted these rules May 19, 1983.

Notice of Intended Action regarding these rules was published in the IAB March 16, 1983, as ARC 3631.

These rules include definitions of terms used in the rules, provide for district administrators and the commissioner to designate grant review committees, identify that amount of funds available depends upon the legislative appropriation, specify who can apply for funds, establish methods for the distribution of the requests for proposals, outline information required from the applicants, the submission process, selection process, applicant notification and contracting procedures, records and reporting requirements, time frame for evaluations, method of contract termination and provide for reallocation of unexpended funds.

166.1, 166.5(4), 166.5(7) were corrected and reworded.

166.5(8) and (9) were combined and reworded.

166.5(10) was renumbered.

166.6(1) was reworded.

166.6(3), (4) and 166.7 were deleted and subsequent rules were renumbered accordingly.

Renumbered 166.7(6) was deleted.

Renumbered 166.8 was reworded.

These rules are intended to implement 1981 Iowa Acts, chapter 7, section 3, subsection 10, paragraph "a", and chapter 11, section 2, subsection 2.

These rules shall become effective August 1, 1983.

CHAPTER 166

JUVENILE COMMUNITY-BASED GRANTS

770—166.1(69 GA,chs7,11) Definitions.

166.1(1) "Commissioner" means the commissioner of the department of social services or successor agency.

166.1(2) "District" means one of the department of social services or successor districts.

166.1(3) The "district review committee" means the group of individuals designated by the district administrator to review juvenile community-based grant applications. The juvenile court, juvenile probation, public schools, consumer groups, local service providers, and other relevant groups shall be represented on this committee. No individual employed by an agency applying for a grant or on the board of directors of such agency shall serve on the district review committee. The district

SOCIAL SERVICES DEPARTMENT[770] (cont'd)

administrator may designate a subgroup of the district's human service planning council or representatives of regional human service planning councils to serve as a district review committee.

166.1(4) "District administrator" means administrator of the district office.

166.1(5) "District office" means one of department of social services or successor agency district offices.

166.1(6) "Grantee" means the recipient of a juvenile community-based grant.

166.1(7) "Juvenile community-based grants" means those grants of state appropriated funds to private agencies or units of local government to develop or improve selected services to children and their families.

166.1(8) The "state review committee" means a group of individuals with knowledge and experience in the development and delivery of services to juveniles who are designated by the commissioner to review juvenile community-based grant applications.

770—166.2(69 GA,chs7,11) Availability of grants.

166.2(1) In any year in which the legislature appropriates funds for juvenile community-based grants, the department shall provide start-up and continuation moneys for selected services. The amount of the money granted shall be contingent upon the funds available. The type of services selected for funding shall be in compliance with the legislative appropriation and intent language.

166.2(2) The department shall utilize these funds to develop or expand direct services provided by the department only when private agencies and units of local government are unwilling or unable to develop the selected services in the targeted areas.

770—166.3(69 GA,chs7,11) Who can apply. Applicants must be an incorporated agency or a unit of local government.

770—166.4(69 GA,chs7,11) Request for proposals.

166.4(1) The department shall distribute "request for proposals" (RFP's) no later than April 1 prior to the fiscal year for which state appropriated funds are available or are anticipated to become available for juvenile community-based grants.

166.4(2) The department shall distribute these RFP's through the following individuals, groups and agencies:

- a. Iowa department of public instruction
- b. Iowa juvenile laws committee
- c. Iowa juvenile probation officers association
- d. Iowa state association of county governments
- e. Juvenile justice advisory council
- f. Office for planning and programming
- g. Youth services advisory council
- h. Relevant public and private provider associations
- i. Community mental health centers
- j. Department district and local offices
- k. All applicants for funding from the previous year.

166.4(3) The request for proposal shall:

- a. Specify the geographical area(s) of the state that is being targeted.
- b. Specify the service(s) which is being targeted for development or provision.
- c. Explain where and how application materials may be obtained.
- d. Inform potential applicants that district offices of the department will provide consultation regarding the following:

- (1) Determination of the need for particular services.
- (2) Definition of service components, measurable impacts and evaluation techniques.
- (3) Completion of the application form.

770—166.5(69 GA,chs7,11) Application materials. Application for Juvenile Community-based Grants, Form SS-1116-0, shall be available through the district offices of the department by April 1 and shall require at least the following information:

166.5(1) A brief narrative describing the agency or unit of local government requesting funding.

166.5(2) If an agency, a brief description of other services provided by the agency.

166.5(3) A statement of the unmet needs to be addressed by the services, including supporting statistics as available.

166.5(4) A description of the services for which department funding is being requested which includes but is not limited to the following:

- a. The geographical area to be served.
- b. The target population to be served.
- c. Eligibility requirements.
- d. The anticipated source of referrals for the services.
- e. The anticipated number of clients to be served.
- f. A description of the components of the service(s).
- g. A discussion of how the components of service(s) will meet the unmet need identified in 166.5(3).

166.5(5) A statement of the anticipated measurable outcomes of the service provision and the means of determining these outcomes.

166.5(6) Job descriptions and requirements for any new positions.

166.5(7) The proposed budget for the services, results of previous efforts to secure funding for this service, other sources of income, plans for future funding of the service, including written commitments, if possible.

166.5(8) Statement of co-operation and co-ordination from relevant professionals, such as juvenile judges, juvenile probation officers, department staff, other providers of service, consumers, etc., to demonstrate community support, involvement and utilization of the program to avoid duplication and to share the resources.

166.5(9) The table of organization and articles of incorporation, if a newly formed agency.

770—166.6(69 GA,chs7,11) Submission process.

166.6(1) All applicants shall submit three copies of the completed application Form SS-1116-0, as discussed in 166.5 (69 GA,chs7,11) to the department. One copy of the application shall be supplied to the district office in the geographical area to be served and two copies supplied to the commissioner or designee. In order to be included in the review process and considered for possible funding, applications shall be postmarked by midnight, May 10. Applications may be delivered to the department during regular business hours any time prior to the deadline.

166.6(2) If proposed projects will serve more than one district, a copy of the application shall be submitted to each district to be served.

770—166.7(69 GA,chs7,11) Selection process.

166.7(1) All proposals submitted to a district shall be reviewed by the district review committee who shall make funding recommendations to the district administrator.

SOCIAL SERVICES DEPARTMENT[770] (cont'd)

166.7(2) The district administrator or designees shall review all proposals submitted to the district and the recommendations of the district review committee. The district administrator shall make funding recommendations to the commissioner. The district administrator shall also forward the district review committee's recommendations to the commissioner.

166.7(3) The state review committee shall review all proposals and submit funding recommendations to the commissioner.

166.7(4) The commissioner or designees shall review all proposals and the recommendations of the district review committee, the district administrators and the state review committee. The commissioner shall make the final funding decisions.

166.7(5) The following factors will be considered in selecting proposals:

a. The demonstrated need for the service in the geographical area served.

b. The community support demonstrated and the co-operation and co-ordination with existing agencies.

c. The efforts of the program to secure other funding.

d. The general program structure including but not limited to, how well goals can be met, how realistic the objectives are, the administration of funds, stability of the organization, the overall quality in comparison to other proposals and services offered.

e. The extent to which the utilization of the funds will expand or improve the continuum of services available to children in the district and meet the unmet need.

770—166.8(69 GA,chs7,11) Notification of applicants. Applicants shall be notified no later than June 15 as to whether their application has been denied or that the department is interested in negotiating a contract regarding their proposal. If the legislative appropriation for this program is signed by the governor after May 10, resulting in a delay in the selection process, all applicants shall be informed by June 15 of the delay and the date funding decisions will be announced.

770—166.9(69 GA,chs7,11) Contracts.

166.9(1) The contract shall be negotiated by the district and the applicant.

166.9(2) The applicant may be requested to modify the proposal in the negotiation process.

166.9(3) The applicant or the department may request a modification of the contract. Both parties must agree to any modification of the contract.

166.9(4) Funds are to be spent to meet the program goals as provided in the contract.

166.9(5) Expenditures will be reimbursed monthly pursuant to regular reimbursement procedures of the state of Iowa.

770—166.10(69 GA,chs7,11) Records. Grantees shall keep statistical records of services provided and any other records as required by the department and specified in the contract.

770—166.11(69 GA,chs7,11) Quarterly progress reports. All grantees shall supply the department with quarterly progress reports that include but are not limited to the following information:

1. The state grant dollars expended as they relate to each line item in the budget.

2. A list of goals and activities completed on schedule.

3. Any goals or activities not completed on schedule and the reason for the delay.

4. The number of clients served and the services provided.

5. The major goals for the next quarter.

6. Any general comments on the progress of the project.

770—166.12(69 GA,chs7,11) Evaluation. The department shall complete an evaluation of the grantee's program by April 15 to determine how well the purposes and goals of the program are being met.

770—166.13(69 GA,chs7,11) Termination of contract.

166.13(1) The contract may be terminated by the grantee at any time during contract period by giving thirty days' notice to the department.

166.13(2) The department may terminate a contract upon ten days' notice when the grantee or any of its subcontractors fails to comply with the grant award stipulations, standards, or conditions. The department may terminate a contract upon thirty days' notice when there is a reduction of funds by executive order.

166.13(3) Within forty-five days of the termination, the grantee shall supply the department with a financial statement detailing all costs up to the effective date of the termination.

770—166.14 (69 GA,chs7,11) Reallocation of funds.

166.14(1) Grantees shall immediately notify the appropriate district administrator in writing when the grantee determines that at least \$500 of the grant will not be expended.

166.14(2) The district administrator and the grantee may negotiate a revision to the contract to allow for expansion or modification of the services but shall not increase the total amount of the grant.

166.14(3) The department may request grantees to free anticipated unexpended funds so that they may be used for other projects.

166.14(4) Grantees may free anticipated unexpended funds by submitting in writing a request to the commissioner to reduce the amount of the contract.

166.14(5) Anticipated unexpended funds which have been freed may be granted to other applicants who were only partially funded or did not receive any funding. These funds may also be used to increase the contracts of grantees whose proposals were fully funded when additional funds would improve the quality or increase the quantity of services being provided. The commissioner or designee shall determine how unexpended funds are reallocated.

These rules are intended to implement 1981 Iowa Acts, chapter 7, section 3, subsection 10, paragraph "a" and chapter 11, section 2, subsection 2.

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ARC 3782

TRANSPORTATION, DEPARTMENT OF[820]

06 HIGHWAY DIVISION

Pursuant to the authority of Iowa Code section 307.10, the Transportation Commission, on May 10, 1983, rescinded 820—[06,P] Chapter 5 entitled "General Requirements for Implementing the Safer-Off-System Roads Program".

TRANSPORTATION, DEPARTMENT OF[820]

A Notice of Intended Action for this rescission was published in the March 30, 1983 Iowa Administrative Bulletin as ARC 3651.

This chapter is being rescinded because the safer-off-system roads program is currently unfunded. A future Federal-Aid Highway Act including a similar program would require new rules for implementation.

This rescission is identical to the one published under notice.

This rescission is intended to implement Iowa Code section 307A.4.

This rescission is to be published as adopted in the June 8, 1983 Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective July 13, 1983.

06 HIGHWAY DIVISION

Pursuant to the authority of Iowa Code section 307.10, rules 820—[06,P] Chapter 5 entitled "General Requirements for Implementing the Safer-Off-System Roads Program" are hereby rescinded, and the chapter reserved for future use.

[Filed 5/13/83, effective 7/13/83]

[Published 6/8/83]

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ARC 3783**TRANSPORTATION,
DEPARTMENT OF[820]****06 HIGHWAY DIVISION**

Pursuant to the authority of Iowa Code section 307.10, the Transportation Commission, on May 10, 1983, adopted amendments to Article Q, "Local Systems", of Division 06, "Highway Division".

A Notice of Intended Action for these rule amendments was published in the March 30, 1983 Iowa Administrative Bulletin as ARC 3652.

The amendments to Article Q are intended to "clean-up" the article, mainly by deleting unnecessary or out-of-date rules.

Chapters 1, 2, 3, 4, 5, and 15 of the current rules all deal with instructions to the counties. These chapters are being replaced by new chapters 1 and 2. However, the instructions referenced by these two new chapters are not being adopted as rules. After a review of the various instructions, it has been determined that they do not fall within the definition of a rule under Iowa Code subsection 17A.2(7). They fall within the exception set out in paragraph "c" of this subsection.

Chapters 6, 14, 17 and 18 are being rescinded because they deal with defunct or unfunded federal-aid programs. A new Federal-Aid Highway Act containing new programs would require new rules at that time.

These rule amendments are identical to the ones published under notice except for the following: The title of Article Q in the "pursuant to" clause has been corrected. In the title of new chapter 2, "engineers" has been changed to plural possessive.

These rule amendments are intended to implement Iowa Code chapters 307A and 309.

These rule amendments are to be published as adopted in the June 8, 1983 Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective July 13, 1983.

06 HIGHWAY DIVISION

Pursuant to the authority of Iowa Code section 307.10, Article Q, "Local Systems", of Division 06, "Highway Division", is hereby amended.

ITEM 1. Rescind Chapter 1, entitled "Availability of Instructions to County Engineers which are Listed in the Various Chapters of this Article", and adopt the following in lieu thereof:

CHAPTER 1**AVAILABILITY OF INSTRUCTIONAL
MEMORANDUMS
TO COUNTY ENGINEERS**

820—[06,Q] 1.1 (307A) Instructional memorandums to county engineers. The department shall produce a manual of instructional memorandums to county engineers regarding secondary and farm-to-market roads. The manual shall communicate instructions, requirements and guidance information to the counties.

1.1(1) The manual of instructional memorandums shall be available to all county engineers free of charge.

1.1(2) Reserved.

This rule is intended to implement Iowa Code section 307A.2.

ITEM 2. Rescind Chapter 2, entitled "Preparation of Secondary Road Budgets and Programs", and adopt the following in lieu thereof:

CHAPTER 2**PREPARATION OF SECONDARY ROAD
CONSTRUCTION PROGRAMS, BUDGETS, AND
COUNTY ENGINEERS' ANNUAL REPORTS**

820—[06,Q] 2.1 (309) County construction program. Each year the department shall distribute to the counties a set of detailed instructions for the preparation of the county construction program required by Iowa Code section 309.22. The instructions shall constitute the form, content and method of preparation acceptable to the department.

This rule is intended to implement Iowa Code section 309.22.

820—[06,Q] 2.2 (309) County secondary road budget. Each year the department shall distribute to the counties a set of detailed instructions for the preparation of the county secondary road budget required by Iowa Code section 309.93. The instructions shall constitute the form, content and method of preparation acceptable to the department.

This rule is intended to implement Iowa Code section 309.93.

820—[06,Q] 2.3 (309) County engineer's annual report. Each year the department shall distribute to the counties a set of detailed instructions for the preparation of the county engineer's annual report required by Iowa Code section 309.22. The instructions shall constitute the standard requirements which must be followed and the forms to be completed.

This rule is intended to implement Iowa Code section 309.22.

TRANSPORTATION, DEPARTMENT OF[820]

ITEM 3. Rescind Chapter 3, entitled "General Requirements for the Preparation of the County Engineer's Annual Report", and reserve for future use.

ITEM 4. Rescind Chapter 4, entitled "General Requirements for Acquiring Right of Way to Comply with the Federal Law when no Federal-Aid Funds are used to Pay for Right of Way but will be Used in Construction", and reserve for future use.

ITEM 5. Rescind Chapter 5, entitled "General Requirements for Determining the Need for Preparing an Environmental Impact Statement or a Negative Declaration on Projects on the Secondary Road System which Involves the Use of Federal Aid Funds", and reserve for future use.

ITEM 6. Rescind Chapter 6, entitled "General Requirements for the Application and Receipt of Federal Aid Safety Funds in Accord with Title 23 U.S.C. 405 for Posting Load Limits at Local Secondary Bridges", and reserve for future use.

ITEM 7. Rescind Chapter 14, entitled "General Requirements for Implementing the Safer Roads Demonstration Program", and reserve for future use.

ITEM 8. Rescind Chapter 15, entitled "Farm-to-Market Project Statements", and reserve for future use.

ITEM 9. Rescind Chapter 17, entitled "General Requirements for Implementing the Off-System Roads Program", and reserve for future use.

ITEM 10. Rescind Chapter 18, entitled "General Requirements for Implementing the Safer-Off-System Roads Program", and reserve for future use.

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SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

April ,1983

CIVIL RIGHTS

Handicapped Persons. Iowa Code Chapters 104A, 601A, 601E (1983); §§ 104A.7, 601E.9, 601E.10. Private manufacturing plant which provides more than one thousand parking spaces for exclusive use of employees would not be subject to handicapped parking provisions of §§ 104A.7, 601E.9 and .10. If the facility provides parking for employees and visitors, it is a question of fact whether facility is "used by the general public." Attorney General's office cannot decide issues of fact. Compliance with Chapter 104A does not assure compliance with civil rights law. "Sign" in § 601E.9 means mounted device. (Ewald to Hall, State Senator, 4/29/83) #83-4-10(L)

CONSTITUTIONAL LAW

Mortgages: The Iowa Mortgage Foreclosure Moratorium Statute. U.S. Const. Art. I § 10 cl. 1, Art. VI, Amend. 5, Amend. 14; Iowa Const. Art. I § 6, Art. I § 9, Art. I § 18, Art. I 21, Art. III § 1; Iowa Code Sections 467A.47, 628.3, 628.5 (1983); Iowa Code Chapter 654 (1983); 1933 Iowa Acts, chapters 179, 182; 1935 Iowa Acts chapters 110, 115; 1937 Iowa Acts chapters 78,80; 1939 Iowa Acts chapter 245; Iowa R.App.P. 4, 14(e)(5). Iowa Code § 654.15 (1983) providing for the continuation under certain circumstances of mortgage foreclosure proceedings is on its face a legitimate exercise of the state's police power and is therefore constitutionally valid. The statute does not result in an unconstitutional impairment of the contractual relationship between the parties to mortgage instruments, nor does it contravene equal protection or due process. The authority delegated to the Governor to declare an emergency premised upon a finding of depression does not violate Iowa Const. Art. III § 1 providing for the separation of legislative, executive and judicial functions. However, as to those federal lending programs where federal law encompasses the procedure for the foreclosure of such loans, federal law controls and preempts application of the Iowa moratorium statute. (Miller and Benton to Anderson, Lt. Governor, 4/7/83) #83-4-6

JUVENILE LAW

Detention Costs. §§ 232.141, 232.145, 356.3, 356.15 (1983). Costs of detention are to be assumed by the county in which the detention takes place. This cost may not be billed to the state or to the county of legal settlement. (Munns to Reagen, Social Services, 4/5/83) #83-4-3(L)

MUNICIPALITIES

Official Newspapers; Requirements. Iowa Code §§ 618.3 and 618.14 (1983). I. A newspaper, to be eligible for designation for mandatory publication of notices and reports of proceedings, must: 1) be a newspaper of general circulation that has been established and published regularly and mailed through the local post office for more than two years, and 2) have had a second class postal permit for an equal period

of time. A newspaper which does not satisfy both requirements of Iowa Code § 618.3 is ineligible for that designation. II. Optional publication of any matter of general public importance must be in a newspaper which satisfies the requirements of Iowa Code § 618.3. A newspaper having general circulation in a municipality or political subdivision, however, need not be published in the affected municipality or political subdivision to be designated for optional publications in the event there is no eligible newspaper published in the municipality or political subdivision or in the event publication in more than one newspaper is desired. (Walding to Holt, State Senator, 4/6/83) #83-4-4(L)

MILITARY

Military Leave; Health Insurance and Other Benefits. Iowa Code §§ 29A.28 and 29A.43 (1983). An employee on military leave from a position in state or local government is entitled to receive full compensation, including all health insurance benefits, for the first thirty days of that leave. After the expiration of that thirty-day period, that employee is not entitled to continue to receive compensation, including health insurance and other benefits, except to the extent allowed other employees on furlough or leave of absence. An employee on military leave is further entitled to return to his or her position of employment at the conclusion of military leave and assume the status he or she would have held as though no military leave had been taken. Thus, an employee returning from military leave is entitled to renew health insurance coverage and other benefits as though his or her period of employment had been uninterrupted. (Weeg to Martens, Emmet County Attorney, 4/21/83) #83-4-7(L)

SCHOOLS

Area Schools: Superintendents: Certification. Iowa Code ch. 260 (1983); Iowa Code §§ 280A.23, 280A.33, 260.9 (1983). Area community college and area vocational school superintendents are not required to hold teacher's certificates. (Fleming to Poncy, State Representative, 4/5/83) #83-4-2(L)

Transportation to Nonpublic Schools. The Code §§ 285.1(2), (14), (16) (1983). In order for the use of the alternative in § 285.1(16)(a) to relieve the district of residence of the duty to provide transportation to a student who attends a nonpublic school outside the district of residence, the student must be able to reach the nonpublic school from that point either because it is located close by or because transportation is provided to the nonpublic school from an accessible pickup location in the district in which the nonpublic school is located. (Osenbaugh to Connolly, State Representative, 4/27/83) #83-4-9(L)

STATE OFFICERS AND DEPARTMENTS

Law Enforcement: Policemen and Firemen: Iowa Law Enforcement Academy: Academy Certificates. §§ 80B.2 and 80B.11, Iowa Code (1981). The Iowa Law Enforcement Academy does not have the authority, upon the promulgation of appropriate rules, to revoke the certification of a law enforcement officer when subsequent information demonstrates that the officer no longer meets the minimum standards for such certification. (Hayward to Yarrington, Acting Director, Iowa Law Enforcement Academy, 4/6/83) #83-4-5(L)

Department of Substance Abuse; Funding Costs of Substance Abuse Treatment; Counties' Share. Iowa Code §§ 125.1, 125.44, 125.43, 331.401(1)(c), 331.425(13) (1983). Section 125.45(1), requiring county boards of supervisors to approve amounts in excess of five hundred dollars for one year for the treatment provided to any one substance abuser, does not give to the boards the authority to disapprove said properly-expended excess amounts. The "one year" period referred to in § 125.45(1) is directly related to the care and treatment of any one substance abuser and, thus, that twelve-month period of time runs from the date of admission of a substance abuser unable to pay the cost of his or her care and treatment into a licensed facility. (Freeman to Walters, Department of Substance Abuse, 4/21/83) #83-4-8(L)

TAXATION

Bracket System to Implement Retailer Collection of Sales Tax. Iowa Code §§ 422.48 and 422.68 (1983). The department of revenue's sales tax bracket system, as set forth in its rule 730 I.A.C. § 14.2, is established in accordance with statutory authority, is reasonable, and is designed so that, when practicable, retailers will, in averaging total sales, collect the approximate amount of tax required to be remitted to the State. In addition, the system eliminates the collection of fractions of one cent. (Griger to Priebe, State Senator, 4/5/83) #83-4-1(L)

STATUTES CONSTRUED

<u>Code, 1983</u>	<u>Opinion</u>	<u>Code, 1983</u>	<u>Opinion</u>
29A.28	83-4-7(L)	467A.47	83-4-6
29A.43	83-4-7(L)	601E.9	83-4-10(L)
80B.2	83-4-5(L)	601E.10	83-4-10(L)
80B.11	83-4-5(L)	618.3	83-4-4(L)
104A.7	83-4-10(L)	618.3	83-4-4(L)
125.1	83-4-8(L)	628.3	83-4-6
125.44	83-4-8(L)	628.5	83-4-6
125.45	83-4-8(L)	654.15	83-4-6
232.141	83-4-3(L)		
232.145	83-4-3(L)	<u>Const. of Iowa</u>	<u>Opinion</u>
260.9	83-4-2(L)		
280A.23	83-4-2(L)	Art. I, § 6	83-4-6
280A.33	83-4-2(L)	Art. I, § 9	83-4-6
285.1(2)	83-4-9(L)	Art. I, § 21	83-4-6
285.1(14)	83-4-9(L)	Art. III, § 1	83-4-6
285.1(16)	83-4-9(L)		
331.401	83-4-8(L)	<u>U.S. Const.</u>	<u>Opinion</u>
331.425(13)	83-4-8(L)		
356.3	83-4-3(L)	Art. I, § 10	83-4-6
356.15	83-4-3(L)	Art. VI, Amend. 5,14	83-4-6
422.48	83-4-1(L)		
422.68	83-4-1(L)	<u>Iowa Acts</u>	<u>Opinion</u>
		1933, 1935, 1937,	
		1939	83-4-6

SUMMARY OF DECISIONS - THE SUPREME COURT OF IOWA
FILED - May 18, 1983

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

No. 68908. LEASEAMERICA CORP. v. IOWA DEPARTMENT OF REVENUE.

Appeal from the Iowa District Court for Linn County, Thomas L. Koehler, Judge. Reversed and remanded. Considered by Reynoldson, C.J., and Uhlenhopp, McGiverin, Larson, and Schultz, JJ. Opinion by Reynoldson, C.J. (6 pages \$2.40)

The Iowa Department of Revenue appeals from district court's dismissal of taxpayer's petition for judicial review. District court held the taxpayer was required to appeal a hearing officer's proposed decision to the director of revenue in order to exhaust its administrative remedies. OPINION HOLDS: I. The legislature provided for permissive, not mandatory, intra-agency appeals under Iowa Code section 17A.15(3); the taxpayer exhausted its administrative remedies by allowing the hearing officer's decision to become final without taking an appeal and the controversy was postured for review in district court; the district court's order dismissing the petition is reversed; the case is remanded to the district court for review on the merits. II. The taxpayer also asserts district court had no jurisdiction to make an order for remand to the agency, following its ruling it had no jurisdiction to review; our above holding moots this issue.

No. 68196. CITY OF DES MOINES v. CIVIL SERVICE COMMISSION.

Appeal from the Iowa District Court for Polk County, Richard D. Morr, Judge. Affirmed in part, reversed in part, and remanded. Considered by Reynoldson, C.J., and Harris, McCormick, Larson, and Schultz, JJ. Opinion by Reynoldson, C.J. (10 pages \$4.00)

Plaintiff city filed this certiorari action in district court, asserting that defendant commission was proceeding illegally in that it had no subject matter jurisdiction to consider the suspensions and terminations of intervenor employees. Trial court annulled the writ it had issued, and the city appealed. OPINION HOLDS: I. The employees' notices of appeal from the suspensions, signed only by counsel, substantially complied with the requirements of Iowa Code section 400.21. II. Amendments to employees' notices of appeal from their indefinite suspensions were not sufficient to give the commission jurisdiction to consider appeals from their subsequent discharges when the statutory time period for appealing from the discharges had passed.

No. 68019. DUNN V. ROSE WAY, INC.

Appeal from Iowa District Court for Polk County, Luther T. Glanton, Judge. Affirmed in part, reversed in part, and remanded with instructions. Considered en banc. Opinion by Harris, J. Dissent in part, concurrence in part by McGiverin, J. Dissent in part, concurrence in part by Larson, J. (14 pages \$5.60)

Plaintiff appeals with permission from the trial court's grant of a motion to dismiss counts of his petition which asserted claims for wrongful death of a "live, viable fetus" and for loss of consortium of the deceased fetus. OPINION HOLDS: I. The word "person" in Iowa's survival statute (Iowa Code § 611.20) excludes a viable unborn child as one for whom damages are allowable; a majority of the members of this court continue to support the majority holding to that effect in Weitl v. Moes, 311 N.W.2d 259 (Iowa 1981). II. A question not reached in Weitl was the right of a parent to recover damages from the death of an unborn child under Iowa R. Civ. P. 8, which provides: "A parent, or the parents, may sue for the expense and actual loss of services, companionship and society resulting from injury to or death of a minor child"; parents may recover damages under rule 8 for injury to or death of an unborn child; we therefore reverse the trial court's dismissal of plaintiff's claims under rule 8. CONCURRENCE IN PART, DISSENT IN PART BY MCGIVERIN, J., ASSERTS: I. I concur in the result of division I of the majority opinion. II. The initial requirement of the parent's claim under rule 8 that injury or death occur to a "minor child" is not met; the "minor child" referred to in rule 8 must be a child "born alive." CONCURRENCE IN PART, DISSENT IN PART BY LARSON, J., ASSERTS: I concur in division II; I dissent from division I because it acquiesces in the Weitl holding that a viable unborn child is not a "person" under our survival statute, Iowa Code section 611.20; from a purely legal standpoint, the Weitl rule lacks any substantial support; from a common-sense standpoint, it is absolutely indefensible; I would overrule Weitl and reverse the trial court on this issue.

No. 67340. ESCHER V. MORRISON.

Appeal from the Iowa District Court for Washington County, Richard J. Vogel, Judge. Affirmed in part, reversed in part, and remanded. Considered en banc. Per Curiam (9 pages \$3.60)

Plaintiff appeals from adverse judgments in four suits brought for violation of his claimed interest in a farm tenancy. Defendant was the conservator for a widow who was a life tenant of a family farm. Plaintiff is the son of the life tenant. OPINION HOLDS: The will of plaintiff's father gave him no more than a remainder interest in the farm property; the trial court correctly found that plaintiff failed to prove he suffered any damages as a result of not farming the land in 1978; plaintiff was not entitled to possession of the land under Iowa Code section 648.18; challenges to other rulings in the tort suit are without merit; the conservatorship at issue was properly left open following death of the ward; money paid in the mistaken belief or hope that plaintiff would have the farm for the 1978 crop year could not be appropriated by the conservatorship as setoff and must be repaid.

No. 69339. IN RE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD CO.

Certified questions of law from United States District Court, Thomas R. McMillen, Judge. Certified questions answered. Considered by Harris, P.J., and McCormick, Schultz, Carter, and Wolle, JJ. Opinion by McCormick, J. (10 pages \$4.00)

Pursuant to Iowa Code section 684.1, the United States District Court certified legal questions relating to the use of delinquent railroad property taxes to fund the Iowa Railway Finance Authority. The certified questions arise from competing claims between certain Iowa counties and the State of Iowa to delinquent property taxes of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. OPINION HOLDS: I. John Torbert, as an individual resident, property owner, and property taxpayer in Polk County, one of the counties involved, has standing under Iowa law to challenge the constitutionality of Iowa Code section 307.29, as amended (collection of delinquent railway taxes). II. The property taxes due on railroad property which have not been paid from December 20, 1977, up to and including 60 days after April 1, 1982, are "delinquent" within the meaning of Iowa Code section 445.37 (all railroad taxes which have been unpaid since the date they were due are delinquent unless certification was delayed). III. Iowa Code section 307.29 does not have retrospective application; it is prospective from its original effective date of June 2, 1980; this means it gives collection authority to the department of transportation for all property taxes owed by a railroad which became delinquent after June 2, 1980, and remained unpaid for 60 days. IV. Iowa Code section 307.29 does not violate the equal protection provision of the Iowa constitution, nor is it an unconstitutional delegation of legislative power under the Iowa constitution.

No. 68666. KING V. IOWA CIVIL RIGHTS COMMISSION.

Appeal from the Iowa District Court for Polk County, Ray Hanrahan, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McGiverin, Larson, and Schultz, JJ. Opinion by McGiverin, J. (12 pages \$4.80)

Petitioner, a special education work-study coordinator, appeals from the district court decision on judicial review affirming respondent agency's decision that intervenor school district had not intentionally discriminated against him on the basis of religion. The school district granted petitioner's request on the basis of religion. The school district granted petitioner's request for three days off to observe Jewish High Holy Days, but stated that either he must take unpaid leave for each day off, or he would have to take one day of unpaid leave and use his two days of paid personal leave. OPINION HOLDS: Petitioner established a prima facie case by establishing that his religious beliefs conflicted with his employment requirements, that he informed the employer of the conflict, and that he was penalized for adhering to those beliefs; substantial evidence supports the conclusion that the employer reasonably accommodated his beliefs; petitioner failed to show that the accommodations made for his beliefs were merely a pretext which veiled intentional religious discrimination.

No. 68337. STATE V. CARPENTER.

Appeal from the Iowa District Court for Scott County, J. Hobart Darbyshire, Judge. Affirmed. Considered by Harris, P.J., and McCormick, Schultz, Carter, and Wolle, JJ. Opinion by McCormick, J. (10 pages \$4.00)

Defendant appeals from his conviction of failing to render reasonable assistance to a person injured in an accident in which he was involved, in violation of Iowa Code § 321.261 (1981), as amended. While intoxicated, Sue Hannon, defendant's girlfriend, jumped from the truck defendant was driving, hitting her head on the pavement. Defendant stopped and picked Hannon up, but did not take her to a hospital or call an ambulance. Hannon died of her injuries. OPINION HOLDS: I. The terms "accident," and "involved" as used in Iowa Code sections 321.261 and 321.263 and the terms "reasonable assistance" and "if it is apparent that such treatment is necessary" in section 321.263 are not unconstitutionally vague under the due process clause of the federal constitution as applied to defendant. II. We find no abuse of discretion in the trial court's admission of a photograph of the dead body of Sue Hannon lying on the floor of defendant's apartment. III. The evidence was sufficient to support the jury's verdict. IV. The trial court did not err in refusing defendant's requested instructions; under the court's instruction, if the evidence did not show defendant could be charged with knowledge of Hannon's injury, the jury could not find a breach of his duty to provide reasonable assistance; the court was not obliged to express this concept in defendant's words so long as it was adequately conveyed to the jury; defendant's second requested instruction was contrary to the statute, which does not require that the driver's conduct be a proximate cause of the accident.

No. 68569. LOCAL UNION NO. 90, INTERNATIONAL BROTHERHOOD OF TEAMSTERS V. WHITE.

Appeal from the Iowa District Court for Polk County, Ray Hanrahan, Judge. Affirmed. Considered by Harris, P.J., and McCormick, Schultz, Carter, and Wolle, JJ. Opinion by Harris, J. (3 pages \$1.20)

Plaintiffs appeal from dismissal of suit as barred by statute of limitations. The question here is whether plaintiffs' claim for unpaid vacation benefits should be categorized as one for wages (subject to a two-year period of limitations under Iowa Code section 614.1(8)), a breach of oral contract (subject to a five-year limitation under section 614.1(4)), or a breach of written contract (subject to a ten-year period of limitation under section 614.1(5)). OPINION HOLDS: The timeliness of suits by labor organizations for labor contract violations are to be determined, as a matter of federal law, by reference to the appropriate state statute of limitations; considering the nature of the federal claim and the federal policy favoring rapid disposition of labor disputes, we conclude that the shorter statute of limitations for wages must apply rather than the general statute of limitations for written contracts.

No. 68390. IN INTEREST OF DUGAN.

Appeal from the Iowa District Court for Fayette County, C. W. Antes, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McGiverin, Larson, and Schultz, JJ. Opinion by McGiverin, J. (14 pages \$5.60)

Juvenile appeals the juvenile court's adjudication that he committed the delinquent acts of second-degree burglary, as defined in Iowa Code sections 713.1 and 713.2, and second degree theft as defined in Iowa Code sections 714.1(1) and 714.2(2). OPINION HOLDS: I. We conclude that the legislature intended the "rehearing" provided in Iowa Code section 231.3 of a proceeding heard by a juvenile referee to be rehearing on the record made before the referee rather than de novo with evidence taken anew; this conclusion is mandated by the wording of the statute and the Iowa Code section 4.4 presumption that a statute is intended to be constitutional. II. Corroboration of accomplice testimony is necessary to ensure that juvenile proceedings comport with the essentials of due process and fair treatment; the juvenile court found that the testimony of appellant's accomplice was sufficiently corroborated and we agree. III. Appellant's argument that the minutes of testimony required in criminal trials by Iowa Rule of Criminal Procedure 5(3), are "rules of evidence" and therefore under Iowa Code section 232.47(5) (only evidence which is admissible under the rules of evidence applicable to criminal trial shall be admitted in juvenile hearings) are applicable to juvenile hearings is without merit; rule 5(3) is a rule of notice. IV. Because appellant raises for the first time on appeal the argument that due process and equal protection require that minutes of testimony be attached to the delinquency petition, it is not properly before this court, and we do not consider it. V. Appellant's contention that the finding that he committed second-degree theft by taking and second-degree burglary subjects him to double jeopardy because theft is a lesser included offense in burglary is without merit; burglary does not require that a theft by taking or a theft by exercising control over property actually occur, so theft, in this case, is not a lesser included offense in burglary.

No. 68580. IN RE GUARDIANSHIP AND CONSERVATORSHIP OF CAVIN.

Appeal from the Iowa District Court for Cass County, Keith E. Burgett, Judge. Reversed and remanded. Considered by Harris, P.J., and McCormick, Schultz, Carter, and Wolle, JJ. Opinion by McCormick, J. (5 pages \$2.00)

Wards appeal from an order overruling their motion for summary judgment for an accounting in conservatorship proceedings. OPINION HOLDS: Social security benefits payable to the wards are conservatorship assets that must be accounted for by the conservators; the trial court's decision to allow additional time for the filing of an affidavit in resistance to motion for summary judgment was not an abuse of discretion; the conservators' recitals in an affidavit were not specific enough to constitute a sufficient accounting.

No. 68123. GERE v. COUNCIL BLUFFS COMMUNITY SCHOOL DISTRICT.

Appeal from the Iowa District Court for Pottawattamie County, Leo F. Connolly, Judge. Reversed. Considered by Reynoldson, C.J., and Uhlenhopp, McGiverin, Larson, and Schultz, JJ. Opinion by Uhlenhopp, J. (10 pages \$4.00)

School district appeals from judgment that school principal's employment contract for the 1981-82 school year was breached by assignment of attendance officer duties to the principal. OPINION HOLDS: I. This case is not moot because matters of public importance are presented and the issues are likely to recur; however, the specific issues regarding Gere's allegations of unconscionability, unequal bargaining power and untimeliness in assigning the attendance officer duties are truly moot because the 1981-82 school year had passed. II. Iowa Code section 279.21 (Principals) and Gere's employment contract both provide that the principal shall perform such "other duties" as may be assigned by the superintendent, but the power to assign "other duties" is not unlimited; the decision between "other duties" which may be assigned and which may not be assigned should be in the discretion of the school authorities, with intervention by the courts only in instances which transcend the bounds of discretion; construing "other duties" in the contract and statute, we hold that the school district did not exceed its discretion in assigning attendance officer duties to Gere; we do not deal with the question of what duties may be combined in an initial contract, or in a new contract after a continuing contract has been lawfully terminated.

No. 67322. FARMERS GRAIN DEALERS ASSOCIATION v. WOODWARD.

On review from Iowa Court of Appeals. Appeal from the Iowa District Court for Polk County, Louis A. Lavorato, Judge. Decision of court of appeals vacated; judgment of district court affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McGiverin, Larson, and Schultz, JJ. Opinion by Uhlenhopp, J. (12 pages \$4.80)

Taxpayer appeals from the adverse judgment on petition for writ of mandamus seeking to recover claimed overpayment of real estate taxes for the tax years 1972, 1973, and 1974. We transferred the case to the court of appeals, which reversed, and then granted the county's application for further review. OPINION HOLDS: I. Taxpayer's ground of resistance to further review that the county's service of the application was too late is overruled. II. Each tax year is separate. III. Iowa Code chapter 441 (1971) provided an annual protest procedure for challenging a property tax assessment; this court's 1978 valuation of property for 1971 in Farmers Grain Dealers Association v. Sather, 267 N.W.2d 58 (Iowa 1978), in regard to taxpayer's protest and appeal for that year did not change the uncontested valuations which had become final for 1972, 1973, and 1974. IV. The result is not altered by section 445.60 of the 1971 Code which provides for refunds of any taxes "erroneously or legally exacted or paid" since the taxes resulting from the valuation affixed for those years were the correct and legal taxes as taxpayer did not protest in 1972, 1973, and 1974; we thus reinstate the judgment of the district court.

No. 68051. ARMOUR-DIAL, INC. v. LODGE & SHIPLEY CO.

Appeal from the Iowa District Court for Lee County, Harlan W. Bainter, Judge. Affirmed in part; reversed in part and remanded. Considered by Reynoldson, C.J., and Uhlenhopp, McGiverin, Larson, and Schultz, JJ. Opinion by Schultz, J. (10 pages \$4.00)

Defendants in separate suits appeal from the rulings that sustained the common plaintiff's motions for summary judgment in two suits for reimbursement for workers' compensation payments. The employee, defendant Colwell, sued a third party tortfeasor, defendant Lodge & Shipley; Colwell settled with Lodge & Shipley, and her employer sued her for indemnification for workers' compensation payments from the settlement proceeds and sued the tortfeasor on a claim based on subrogation. OPINION HOLDS: I. The employer's failure to file a timely lien under section 85.22(1) did not terminate its right to indemnification under section 85.22(1); failure of the lien does not prevent recovery on the obligation, here the right of indemnification, since it may exist without the security the lien provides. II. Under Iowa workers' compensation law an employer's right to subrogation to an employee's claim against a third party tortfeasor is created specifically in subsection 2 of section 85.22; without the employer's ninety day demand for the employee to commence suit required by section 85.22(2) there is no subrogation of the rights of the employee to maintain an action; we affirm the district court ruling on the motion for summary judgment against Colwell and reverse its ruling on the motion for summary judgment against L & S and remand for entry in accordance with this opinion.

No. 68889. MUCHMORE EQUIPMENT, INC., v. GROVER.

Appeal from the Iowa District Court for Buchanan County, Forest E. Eastman, Judge. Modified; affirmed as modified; and remanded. Considered by Reynoldson, C.J., and Uhlenhopp, McGiverin, Larson, and Schultz, JJ. Opinion by Schultz, J. (14 pages \$5.60)

Defendant appeals from the district court's order setting the amount of interest owed by him on a judgment for plaintiff, and rejecting his claim for interest on punitive damages refunded as a result of reversal on appeal by this court. The trial court originally awarded plaintiff Muchmore \$10,000 in punitive damages, but this award was reversed in an earlier appeal. Plaintiff had executed on the judgment and held the \$10,000 for a year and a half. OPINION HOLDS: I. It is essential that the court award interest on the restored amount for the period plaintiff held it; the rate of interest should be 5% as specified by section 535.2(b) from the date of execution until the date restitution was ordered, and 10% from the later date until payment of the restored amount. II. Under the usury statute Grover must pay interest to the school fund for a period which begins when the principal became due under the contract and ends when "judgment is rendered"; Muchmore was not entitled to usurious interest, but is entitled to interest at the statutory rate of 7% on the principal amount from October 31, 1980, until December 4, 1980; Grover is liable for the forfeiture to the school fund and for interest at 10% on the forfeiture from May 7, 1982, until the entire amount is paid.

No. 67374. CUNHA v. CITY OF ALGONA.

Appeal from Iowa District Court for Kossuth County, Tom Hamilton, Judge. Affirmed in part, reversed in part, and remanded. Considered by Reynoldson, C.J., Uhlenhopp, Harris, McCormick, McGiverin, Larson, Schultz, and Carter, JJ., and LeGrand, Senior Judge. Opinion by Uhlenhopp, J. Dissent by LeGrand, Senior Judge. (15 pages \$6.00)

Defendant county appeals with leave from interlocutory order overruling its amended motion to dismiss. Plaintiff was convicted in the Iowa District Court for Kossuth County in 1970 and sentenced to life imprisonment. In 1980 a federal district court granted habeas corpus, and plaintiff was released. He then sued Kossuth County and the city of Algona for damages. OPINION HOLDS: I. We consider the amended motion to dismiss as directed to the recast petition as amended. II. The county contends that it was not required in 1970 to anticipate the change by the United States Supreme Court in the rule regarding sufficiency of evidence; this ground makes assumptions which do not appear on the face of the petition, so the motion is "speaking" in nature; the ground is thus untenable under a motion to dismiss; an Iowa district court cannot in one case take judicial notice of another of its cases, let alone a case in another trial court. III. The county's contention that legal proceedings following plaintiff's criminal conviction clothe the county with absolute immunity from civil liability depends on assumptions dehors the petition; we thus intimate no opinion on the validity of the argument. IV. We need not decide whether a stricter pleading standard applies in civil rights cases than in other litigation, for we hold that the count of the petition attacked does not state a claim in any event; the current trend of opinion appears to be against the existence of direct municipal liability for constitutional violations; "local government damages liability for Fourteenth Amendment violations cannot be based solely on the Fourteenth Amendment using respondeat superior or any other theory of liability." V. The allegations of plaintiff's count IV sufficiently state acts under color of law, deprivation of federal rights, and county involvement, to withstand attack by motion to dismiss. VI. Plaintiff cannot recover punitive damages from the county on his section-1983 claim. VII. Under present Iowa rule of civil procedure 69, the pleader need only make a short and plain statement of a "claim" showing that he is entitled to relief, and demand judgment; the counts of plaintiff's petition alleging false arrest and imprisonment and malicious prosecution will withstand a motion to dismiss. VIII. The county argues that the claims for false arrest and imprisonment and for negligence are barred by the six-month time limitation imposed in section 613A.5 of the Iowa Code; this ground of the motion is speaking in nature. IX. Subsection (3), section 613A.4, of the Iowa Code of 1981, as amended by 1982 Iowa Acts chapter 1018, section 4, exempts municipalities from liability for any claim "based upon an act or omission of an officer . . . exercising due care, in the execution of a statute, ordinance, or regulation . . . or based upon the . . . performance . . . of a discretionary function. . . ."; the part of subsection (3) regarding execution of a statute, ordinance, or regulation would not exempt a municipality for negligent execution, for it is prefaced with the words "exercising due care"; the part of the subsection regarding a discretionary function affects substantive rights and does not apply retrospectively; the county's

No. 67374. CUNHA V. CITY OF ALGONA (Summary continued)

argument based on section 613A.4(3) is thus without merit. DISSENT ASSERTS: The majority decides it cannot address the principle question raised because that would take the court into matters outside the petition, a forbidden area in considering a motion to dismiss; I disagree because the entire history of this matter is properly before us by virtue of judicial notice; on the merits, I am convinced the motion should have been sustained in its entirety; it is contrary to all principles of fairness and justice to hold a party civilly liable for conduct free of any impropriety when performed and subject to attack only because the criterion for conviction was changed years later.

No. 68557. NOEL v. NOEL.

Appeal from Iowa District Court for Scott County, James R. Havercamp, Judge. Affirmed in part, reversed in part. Considered by Reynoldson, C.J., and Uhlenhopp, McGiverin, Larson, and Schultz, JJ. Opinion by Uhlenhopp, J. (9 pages \$3.60)

Plaintiff appeals from the trial court's ruling on defendant's motion for adjudication of law points. The court held that plaintiff's claim against his deceased father's estate for improvements to the father's farm was barred by issue preclusion and res judicata as a result of a judgment against plaintiff in an earlier suit. OPINION HOLDS: I. Whether claimant's prosecution of his entire probate claim is precluded by the judgment in the prior action depends in part upon whether the probate case involves basically the same "claim" as the subject of the earlier declaratory case; this is a typical case of two actions founded on the same claim, when that term is given a pragmatic rather than legalistic application; however, the executor waived claim preclusion by failing to interpose it appropriately before judgment in the declaratory action. II. Issue preclusion does not apply to claimant's assertion in his probate claim of an oral promise to pay for repairs and improvements; however, claimant's assertion of promissory estoppel does come squarely within the Court of Appeals holding in the first appeal that there was no estoppel; this satisfies the "necessary and essential" requirement of issue preclusion; claimant is thus foreclosed from prosecuting his estoppel assertion.

No. 68564. IN RE ESTATE OF YOUNG.

Appeal from the Iowa District Court for Warren County, Jack D. Levin, Judge. Reversed and remanded. Considered by Harris, P.J., and McCormick, Schultz, Carter, and Wolle, JJ. Opinion by Wolle, J. (5 pages \$2.00)

Beneficiaries of decedent's estate appeal from an order allowing extraordinary fees and expenses to the administrator of the estate and the administrator's attorney. OPINION HOLDS: Under Iowa Rule of Probate Procedure 2(c), an application for allowance of extraordinary expenses or services must show the amount of extra time or expense involved, and the notice of hearing on the application must specify "the amounts claimed;" the only reasonable meaning of "amounts claimed" in the context of "expenses or services" is the total dollar amounts requested; the notice mailed in this case was defective because it failed to state the dollar amounts; because this defect requires that we remand this case for further proceedings, we need not and do not decide whether service on a certain attorney was effective to provide notice to appellants.

No. 67758. STATE V. TOBIN.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Linn County, August F. Hansell, Judge. Decision of court of appeals vacated; district court judgment affirmed. Considered by Harris, P.J., and McCormick, Schultz, Carter, and Wolle, JJ. Opinion by McCormick, J.

(7 pages \$2.80)

The State was granted further review of the court of appeals decision reversing defendant's guilty plea conviction of second degree theft as defined in Iowa Code section 714.2(2) (1981) (theft of property of certain value or theft of property of lesser value by one who has been convicted of theft twice before). Defendant pleaded guilty to the recidivist alternative but reserved the right to challenge on appeal the use of prior convictions to enhance punishment. The court of appeals found that defense counsel had promised to raise a double jeopardy issue by motion in arrest of judgment, that he did not keep his promise, that this promise induced the plea, and that defendant was therefore denied effective representation. OPINION HOLDS: Defense counsel's dereliction was not in failing to keep a promise to raise the constitutional challenge on appeal but in failing to present the challenge to the trial court for ruling; review of an appellate issue is not precluded when failure to preserve error results from a due process denial of effective representation; because defendant will get what he bargained for -- an opportunity to make an appellate challenge to his conviction on double jeopardy grounds -- no basis exists for invalidating the guilty plea on this account; the prior convictions are a predicate for enhanced punishment rather than elements of the current theft charge, and use of prior convictions to enhance punishment does not violate the constitutional stricture against double jeopardy.

No. 68164. SOMMERS v. IOWA CIVIL RIGHTS COMMISSION.

Appeal from the Iowa District Court for Polk County, Richard Strickler, Judge. Affirmed. Considered by Harris, P.J., and McCormick, McGiverin, Larson, and Schultz, JJ. Opinion by Schultz, J.

(16 pages \$6.40)

Petitioner appeals the district court's ruling affirming the respondent's refusals to accept jurisdiction of petitioner's complaints of job discrimination based on her transsexualism. OPINION HOLDS: I. Since the Iowa Civil Rights Act (Iowa Code chapter 601A) does not expressly include transsexuals as a protected class and by proscribing discrimination on account of sex the legislature did not intend that the term would include transsexuals, the respondent's determination that it did not have jurisdiction to hear petitioner's complaint of job discrimination based on her transsexualism was not unreasonable, arbitrary, or capricious. II. In the context of employment transsexualism is not a disability; the respondent did not err in dismissing petitioner's complaint of employment discrimination based on disability.

No. 68771. SMITH v. BOARD OF EDUCATION.

Appeal from the Iowa District Court for Des Moines County, William C. Cahill, Judge. Reversed and remanded. Considered by Reynoldson, C.J., Uhlenhopp, McGiverin, Larson, and Schultz, JJ. Opinion by Larson, J.
(9 pages \$3.60)

This is an appeal from district court decision reversing school board's termination of plaintiff's teaching contract under Iowa Code section 279.15-.18. **OPINION HOLDS:** I. We do not agree with the district court that the decision of the school board was unsupported by a preponderance of the evidence; the superintendent's recommendation for termination, while in part the result of subjective evaluation, was not, as Smith contends, unsupported by a factual basis; there was, therefore, just cause for Smith's termination under the staff reduction provisions of the master contract between the board and teachers' association. II. Even if, arguendo, Smith was entitled to access to other teachers' confidential personnel files through the use of a subpoena issued by the board under Iowa Code section 279.16, Smith failed to preserve the statutory means of enforcing such a subpoena; the sufficiency of the evidence supporting the board's ruling is not affected by the unavailability of these records under these circumstances.

No. 68456. SCHIELD v. FARMERS SAVINGS BANK.

Appeal from the Iowa District Court for Tama County, Harold J. Swailes, Judge. Affirmed. Considered by Reynoldson, C.J., and Uhlenhopp, McGiverin, Larson, and Schultz, JJ. Per curiam.
(4 pages \$1.60)

Plaintiff appeals from order denying new trial in action for personal injury occurring during alleged landlord-tenant relationship. **OPINION HOLDS:** I. Reference to the instruction in the notice of appeal should be considered surplusage; the appeal notice clearly refers to the April 2 order, which denied the plaintiff's motion for new trial; this is a final judgment. II. When the trial court's post-trial fact findings are examined, it becomes apparent that even if we were to adopt them, they do not establish the status of landlord-tenant necessary to apply Restatement (Second) of Property section 17.6 (1977) concerning the landlord's duty of care; we cannot say under the record before us which does not include a transcript of the jury trial that the trial court erred in refusing the requested instruction on the landlord's duty of care.

No. 68373. BILTMORE ENTERPRISES, INC. v. IOWA DEPARTMENT OF JOB SERVICE.

Appeal from the Iowa District Court for Woodbury County, Lawrence W. McCormick, Judge. Affirmed in part, reversed in part and remanded to the agency. Considered en banc. Opinion by Carter, J. Dissent by LeGrand, Senior Judge.
(13 pages \$5.20)

Part-time employer appeals from the district court decision on judicial review affirming respondent agency's award of unemployment benefits to an employee also laid off from a second job. **OPINION HOLDS:** I. The agency did not erroneously calculate the claimant's base period wage and length of his unemployment period. II. The agency did not fail to consider the special circumstances of claimant's dual employment situation. III. The issue of claimant's alleged unavailability for work should be considered by the agency on remand. **DISSENT ASSERTS:** The issues raised by the employer were adequately presented to the agency; these facts call for special treatment due to the special circumstances of claimant's dual employment situation; the majority's interpretation of the applicable statutes leads to the kind of strained, impractical, and absurd results that should be eschewed in statutory construction.

No. 67900. POWELL V. KHODARI-INTERGREEN CO.

Appeal from Iowa District Court for Polk County, Theodore H. Miller, Judge. Affirmed in part and reversed in part on plaintiff's appeal; affirmed on defendants' appeal. Considered by Uhlenhopp, P.J., and Harris, McGiverin, and Carter, JJ., and LeGrand, Senior Judge. Opinion by Carter, J.

(10 pages \$4.00)

Plaintiff appeals from judgment on jury verdict in action seeking damages for breach of employment contract and alleged tortious conduct of the defendants incident to termination of plaintiff's employment. Defendants cross-appeal from trial court rulings as to applicability of a foreign law. The employment contract contemplated that plaintiff would perform services for the employer as a carpenter foreman in Saudi Arabia. **OPINION HOLDS:** I. Iowa Rule of Appellate Procedure 10(b) requires the inclusion in the record on appeal of all evidence relating to an issue when appellant seeks to urge trial court erred in directing a verdict on that issue; there is nothing in the record on appeal except the allegations of the petition to show that the conduct alleged to constitute intentional infliction of emotional distress in fact occurred; this precludes us from disturbing the trial court's grant of the motion for directed verdict on this issue. II. It is a generally recognized principle that a statute of one state has no extraterritorial effect beyond its borders; however, if the elements are established which are proscribed by Iowa Code section 720.1 (1977), we would consider such conduct to be civilly actionable under our law in the absence of any statute; until it is established that the law of another state or nation applies to this claim and that such law classifies the alleged conduct differently, plaintiff's claims cannot be resolved against him on the basis of the allegations of his petition; the burden to establish foreign law falls on the party claiming that foreign law is different from local law; the pleadings reveal factual issues pertaining to the choice of law issues, which precluded their adjudication under rule 105 (application for adjudication of points of law), so we do not consider the parties' arguments on the merits of these issues. III. We find no error in the forms of verdict which were employed by the trial court in submitting the breach of contract claim.

No. 68100. ADAMS v. IOWA OIL CO.

Appeal from Iowa District Court for Dubuque County, Thomas H. Nelson, Judge. Affirmed. Considered by Harris, P.J., and McCormick, Schultz, Carter, and Wolle, JJ. Per curiam.

(6 pages \$2.40)

Defendant corporation and individual defendant petroleum distributors, appeal with permission from district court order denying their motion for summary judgment based on statute of limitations contained in federal Petroleum Marketing Practices Act for claims and remedies involving termination of plaintiffs' retail gasoline franchise. **OPINION HOLDS:** We cannot conclude that all common law claims both contract and tort between a petroleum marketing franchisor and its franchisees are preempted by the PMPA; the issue of preemption may not properly be determined as a matter of law from the face of plaintiffs' petition.

No. 68542. REICHL v. IOWA DEPARTMENT OF JOB SERVICE.

Appeal from the Iowa District Court for Winnebago County, B. C. Sullivan, Judge. Affirmed. Considered by Harris, P.J., and McCormick, Schultz, Carter, and Wolle, JJ. Opinion by Carter, J.

(6 pages \$2.40)

No. 68542. REICHL v. IOWA DEPARTMENT OF JOB SERVICE. (Continued)

Respondent agency appeals district court reversal of its order for repayment of unemployment benefits which the agency determined had been overpaid to petitioner. After petitioner employee had received benefits under two favorable agency decisions denying the employer's claim of misconduct, the agency remanded the case to a hearing examiner for consideration of the employer's claim that petitioner had refused suitable work. When the decision on remand was adverse to petitioner, the agency sought to recoup the benefits paid, pursuant to Iowa Code section 96.3(7). **OPINION HOLDS:** We interpret Iowa Code section 96.6(2) (1979) and the agency's own rules contained in Iowa Administrative Code 370.3.43 as creating a proscription against benefit recoupment when there are two favorable administrative decisions "allowing payment of benefits"; the agency's contention that section 96.6(2) only applies where two favorable decisions are later overturned on the same issues which have previously been determined may have some appeal in situations where the agency acts on newly discovered information of disqualification, but where, as in the present case, the agency has been alerted to the issue upon which disqualification is based and proceeds to approve payment of benefits in two successive decisions, we hold 96.6(2) precludes recoupment from the recipient.

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