

**CORRECTIONS DEPARTMENT[201]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 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 section 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 904.804, the Department of Corrections gives Notice of Intended Action to amend Chapter 37, “Iowa State Industries,” Iowa Administrative Code.

With these amendments, Iowa State Industries proposes to update rules on routine matters such as addresses, hours of operation, and location of product catalogs. The proposed amendments also clarify that products may be sold to contractors when the products will be sold to a public entity, adopt by reference the provisions of Department of Administrative Services rules dealing with procurement of goods and services, replace a defined term governing private sector employment of offenders, and replace a defined term governing utilization of offender labor in construction and maintenance projects. Revisions of cross references in Item 3 are based on proposed amendments in the Department of Administrative Services’ Notice of Intended Action published as **ARC 1969C**, IAB 4/15/15.

Any interested person may make written suggestions or comments on the proposed amendments on or before June 2, 2015. Such written materials should be sent to the Director of Prison Industries, 510 East 12th Street, Des Moines, Iowa 50319.

There will be a public hearing on June 2, 2015, from 11 a.m. to 1 p.m. in the Department of Corrections Conference Room, 510 East 12th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any person who intends to attend the public hearing and has special requirements should contact the Department of Corrections and advise of specific needs.

These rules do not provide for waivers in specified situations. An agencywide waiver provision is provided in 201—Chapter 7.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 904.804.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 37.2(5):

**37.2(5)** Iowa state industries may sell products to private contractors when the products purchased will be used by a public entity as provided in subrules 37.2(1) to 37.2(3).

ITEM 2. Rescind rules 201—37.3(904) and 201—37.4(904) and adopt the following **new** rules in lieu thereof:

**201—37.3(904) Catalogs.** Catalogs are available online at the Iowa state industries Internet home page <http://www.iaprisoinind.com>, or at the Iowa state industries showroom located at 1445 East Grand Avenue, Des Moines, Iowa 50316. Requests for mailed copies may be sent to the Iowa state industries showroom address.

**201—37.4(904) Offices.** The showroom and main office for Iowa state industries are located at 1445 East Grand Avenue, Des Moines, Iowa 50316; telephone (515)242-5778. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

ITEM 3. Amend rule 201—37.7(904) as follows:

**201—37.7(904) Procurement of goods and services.** The provisions of 11—Chapter ~~405~~ 117 are hereby adopted by reference with the following amendments.

1. Strike “Department of Administrative Services” and insert in lieu thereof “Iowa State Industries” in all rules except rule ~~11—105.10(8A)~~ 11—117.11(8A), which pertains to procurement of information technology devices and services.

2. In lieu of the definitions of “Department” and “Director,” insert the following:

“Department” means the division of Iowa state industries.

“Director” means the director of the division of Iowa state industries or the director’s designee.

3. ~~Rules 11—105.6(8A), 11—105.13(8A), and 11—105.15(8A) are not adopted.~~ Rules 11—117.7(8A) and 11—117.15(8A) and subrule 117.4(3) are not adopted.

4. In lieu of the text of ~~11—subrule 105.14(1)~~ 117.14(1), insert the following: “Purchase of goods. An agency may acquire goods not otherwise available through a master agreement in accordance with the procurement threshold guidelines in ~~11—105.3(8A)~~ subrule 117.5(3).”

5. In lieu of the text of rule ~~11—105.20(8A)~~ 117.20(8A), insert the following: “Appeal process. Vendors may appeal actions by Iowa state industries under these rules as follows:

“Step 1. Appeals shall be filed in writing to the Business Manager, Iowa State Industries, 406 North High Street, Anamosa, Iowa 52205, within ~~five~~ 5 working days of notification of the action being appealed. The appeal shall state the specific grounds upon which the vendor is challenging the action. The business manager, Iowa state industries, shall notify the vendor in writing of the decision within 10 working days.

“Step 2. If the appeal is not resolved, it may be further appealed by the vendor to the Director of Iowa State Industries, Jessie Parker State Office Bldg., 510 East 12th Street, Des Moines, Iowa 50319, within ~~ten~~ 10 working days of the notification of the Step 1 appeal response. The director of Iowa state industries shall notify the vendor in writing of the decision within 15 working days.

“Step 3. An unresolved appeal to the Director of Iowa State Industries shall be referred to the Director of the Department of Corrections, Jessie Parker State Office Bldg., 510 East 12th Street, Des Moines, Iowa 50319, within ~~ten~~ 10 working days of the notification of the Step 2 appeal response. The director of the department of corrections shall notify the vendor in writing of the decision within 15 working days.”

This rule is intended to implement Iowa Code section 904.813.

ITEM 4. Amend subrule 37.8(1) as follows:

**37.8(1) Rules of procedure.** The seven-member prison industries advisory board is represented by five appointees of the governor, one appointee of the parole board, and one appointee of the director, department of corrections. The principal duties of the advisory board are to promulgate and adopt rules and to advise the director, Iowa state industries, regarding the management of Iowa state industries.

a. A quorum shall consist of five members.

b. When a quorum is present, a position is carried by a majority of the members of the board.

c. The board shall meet at least once per calendar quarter. The meetings will be held at the seat of government unless notification is given otherwise. Other meetings shall be held at the call of the chairperson or of any three members when necessary for the board to discharge its duties.

~~(1) The communications media shall be notified at least two weeks in advance of board meetings.~~

(1) Notice of the meetings shall be given pursuant to Iowa Code chapter 21.

(2) When it is necessary to hold an emergency meeting, the communications media shall be notified as far in advance of the meeting as time allows. The nature of the emergency shall be stated in the minutes.

d. Copies of the minutes are kept on file in the office of the director, Iowa state industries. Minutes are available from the director’s office to interested persons upon request. Organizations may request to be placed on a mailing list. Copies of administrative rules and other materials considered are made a part of the minutes by reference.

e. In cases not covered by these rules, Robert’s Rules of Order shall govern.

ITEM 5. Amend rule 201—37.9(904) as follows:

**201—37.9(904) Private sector employment projects.**

**37.9(1) Definitions.**

“Advisory board” means the prison industries advisory board.

“Deputy director of prison industries” means the department of corrections deputy director responsible for the day-to-day operations of prison industries including private sector individuals.

“Director” means the chief executive officer of the department of corrections.

“Wage range” means the 10th percentile and 90th percentile wages.

“Workforce development board” means the state workforce development board.

“Workforce development director” means the chief executive officer of the department of workforce development.

~~37.9(2) Preapplication requirement. Prior to submitting an application to the deputy director of prison industries for a private sector employment project, the employer shall place a job order with a duration of at least 30 days with the nearest workforce development center. The job order will contain the prevailing wage determined by workforce development. The job order shall be listed statewide in all centers and on the department of workforce development’s jobs Internet Web site.~~

37.9(2) Preapplication requirement. Prior to submitting an application to the deputy director of prison industries for a private sector employment project, the employer shall place with the nearest workforce development center a job order with a duration of at least 30 days. The job order shall be listed statewide in all centers and on the department of workforce development’s jobs Internet site.

**37.9(3) Employer application.**

a. Private sector employers requesting offender labor must submit the following to the deputy director of prison industries:

- (1) Work program, including job description;
- (2) Proposed wage rate;
- (3) Description of job site;
- (4) Duration of the work; and
- (5) A copy of the job order listing with workforce development.

b. Upon receiving a written proposal to use offenders in a private sector work program, the deputy director of prison industries shall provide a copy of the private sector work proposal including job descriptions and proposed wages to the workforce development director.

c. The deputy director of prison industries shall send a letter to the department of workforce development requesting verification of the employer’s 30-day job listing, the ~~average wage rate~~ wage range for the job(s) the offenders will perform, the current unemployment rate in the county where the employer is located, and the current employment level of the company that will employ the offenders.

d. The deputy director of prison industries and the warden/superintendent at the proposed institution shall review the proposed projects with the board of supervisors and the sheriff in the county where the project will be located.

~~37.9(4) Verification. The workforce development director shall verify the employment levels and prevailing wages paid~~ wage range for similar jobs in the area and provide to the deputy director of prison industries, in writing:

- a. Verification of the employer’s 30-day job listing;
- b. The number of qualified applicant referrals and hires made as a result of the job order;
- ~~c. The average wage rate for the proposed job(s);~~
- ~~d. c.~~ c. The wage range for the proposed job(s);
- ~~e. d.~~ d. The current unemployment rate for the county where the employer is located; and
- ~~f. e.~~ e. The current employment levels of the company that will employ the offenders based upon the most recent quarter for which data is available.

~~37.9(5) Prevailing wages~~ Wage range. The deputy director of prison industries shall obtain employment levels in the locale of the proposed job(s) and the ~~prevailing wages~~ wage range for the job(s) in question from the department of workforce development prior to authorizing any private sector

work program. The deputy director of prison industries will consider the ~~average wage rate and~~ wage range from the department of workforce development for the appropriate geographic area for which occupational wage information is available. The appropriate geographic area may be statewide. To reduce possible displacement of civilian workers, the deputy director of prison industries shall advise prospective employers and eligible offenders of the following requirements:

- a. Offenders shall not be eligible for unemployment compensation while incarcerated.
- b. Before the employer initiates work utilizing offender labor, the deputy director of prison industries shall provide the baseline number of jobs as established by the department of workforce development.
- c. In January and July of each year, the deputy director of prison industries shall receive from the department of workforce development the actual number of civilian workers by employer and shall compile a side-by-side comparison for each employer. A copy of the side-by-side comparison will be provided to the advisory board and workforce development director semiannually.

**37.9(6) to 37.9(9)** No change.

ITEM 6. Amend rule 201—37.10(904) as follows:

**201—37.10(904) Utilization of offender labor in construction and maintenance projects.**

**37.10(1) Definitions.**

“*Director*” means the chief executive officer of the department of corrections.

“*Employer*” means a contractor or subcontractor providing maintenance or construction services under contract to the department of corrections or under the department of administrative services.

“*Wage range*” means the 10th percentile and 90th percentile wages.

“*Workforce development director*” means the chief executive officer of the department of workforce development.

**37.10(2) Scope.** Utilization of offender labor applies only to contractors or subcontractors providing construction or maintenance services to the department of corrections. The contract authority for providing construction or maintenance services may be the department of administrative services.

**37.10(3) Employer application.** Employers working under contract with the state of Iowa may submit an application to the department of corrections to employ offenders. Requests for such labor shall not include work release offenders assigned to community-based corrections under Iowa Code chapter 905.

~~a. Prior to submitting an application, the employer shall place with the nearest workforce development center a job order with a duration of at least 30 days. The job order shall contain the prevailing wage determined by the department of workforce development. The job order shall be listed statewide in all centers and on the department of workforce development’s jobs Internet Web site.~~

a. Prior to submitting an application to the deputy director of prison industries for a private sector employment project, the employer shall place with the nearest workforce development center a job order with a duration of at least 30 days. The job order shall be listed statewide via the department of workforce development’s jobs Internet site.

b. The employer’s application shall include:

- (1) Scope of work, including type of work and required number of workers;
- (2) Proposed wage rate;
- (3) Location;
- (4) Duration; and
- (5) Reason for utilizing offender labor.

c. The department of corrections shall verify through the department of workforce development the employer’s 30-day job listing, the ~~average wage rate~~ wage range for the job(s) the offenders will perform, the current unemployment rate in the county where the employer is located, and the current employment level of the employer that will employ the offenders.

**37.10(4) Verification.** The director of workforce development shall verify the employment levels and ~~prevailing wages paid~~ wage range for similar jobs in the area and provide to the director, in writing:

- a. Verification of the employer’s 30-day job listing;

- ~~b.~~ The number of qualified applicant referrals and hires made as a result of the job order;
- ~~c.~~ ~~The average wage rate for the proposed job(s);~~
- ~~d.~~ ~~c.~~ The wage range for the proposed job(s);
- ~~e.~~ ~~d.~~ The prevailing wage as determined by the U.S. Department of Labor;
- ~~f.~~ ~~e.~~ The current unemployment rate for the county where the employer is located;
- ~~g.~~ ~~f.~~ The current employment levels of the employer that will employ the offenders based upon the most recent quarter for which data is available.

**37.10(5) Safety training.** The employer shall document that all offenders employed in construction and maintenance projects receive a ten-hour safety course provided free of charge by the department of workforce development or by a trainer with the appropriate authorization from the Occupational Safety and Health Administration Training Institute.

**37.10(6) ~~Prevailing wages~~ Wage range.**

a. The director will not authorize an employer to employ offenders in hard labor programs without obtaining from the department of workforce development employment levels in the locale of the proposed jobs and the ~~prevailing wages~~ wage range for the jobs in question. The ~~average wage rate and~~ wage range from the department of workforce development will be based on the appropriate geographic area for which occupational wage information is available. The appropriate geographic area may be statewide.

b. To reduce any potential displacement of civilian workers, the director shall advise prospective employers and eligible offenders of the following requirements:

- (1) Offenders will not be eligible for unemployment compensation while incarcerated.
- (2) Before the employer initiates work utilizing offender labor, the director shall provide the baseline number of jobs as established by the department of workforce development.
- (3) If the contract to employ offender labor exceeds six months, the director shall:
  1. Request and receive from the workforce development director the ~~average wage rates and~~ wage ranges for jobs currently held by offenders and current employment levels of employers employing offenders; and
  2. Compile a side-by-side comparison of each employer.

**37.10(7) No change.**

This rule is intended to implement Iowa Code section 904.701.