

ENERGY AND GEOLOGICAL RESOURCES DIVISION[565]

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TITLE I
ENERGY RESOURCES
CHAPTER 1
GENERAL

565—1.1(455A,473) Definitions. The organization, purposes and functions of the energy bureau of the energy and geological resources division of the department of natural resources are described in 561—Chapter 1, Iowa Administrative Code. As used in this title, the following definitions apply:

“*Administrator*” means the administrator of the energy and geological resources division of the department.

“*Commission*” means the environmental protection commission. In the context of an administrative appeal, “commission” also includes the presiding hearing officer.

“*Energy bureau*” means the energy bureau of the energy and geological resources division of the department.

“*Person*” means an individual, firm, partnership, corporation, company, governmental unit, state agency, association, society or any other organization or institution.

“*Supplier*” means any person engaged in the business of selling, importing, storing or generating energy sources in Iowa.

565—1.2(17A,455A,473) Rules of practice. 561—Chapters 2 and 3 and 567—Chapters 5, 6¹ and 7, relating to public and confidential information, submission of information and complaints—investigations, rule-making procedure, declaratory rulings, and rules of practice in contested cases, respectively, are adopted by reference. If there is conflict between rules in this title and those adopted by reference, the rules of this title prevail.

¹ See Notice, IAB 2/11/87, ARC 7372, [567]—Chapter 6

[Filed without Notice 2/20/87—published 3/11/87, effective 4/15/87]

CHAPTER 2
Reserved

CHAPTER 3
STATE PETROLEUM SET-ASIDE
[Prior to 3/11/87, see Energy Policy Council[380] Ch 3]

SUBPART A—SET-ASIDE SYSTEM

565—3.1(473) General. The petroleum set-aside program is established to offer an opportunity to lessen emergency and hardship due to shortages or imbalances in the distribution of propane, middle distillate, motor gasoline and residual fuel oil (except as used by utilities or as bunker fuel for maritime shipping). Although the purpose of the petroleum set-aside is to alleviate emergency and hardship of petroleum consumers and end-users, the principal method for doing so is by releasing petroleum products to wholesalers who in turn release this petroleum product through normal distribution lines to those consumers or end-users in need. These rules are adopted by the department to utilize the prescribed set-aside percentage for each class of petroleum product. The percentage to be set aside, which is determined by the department, and the total petroleum product within each class estimated to enter the state each month will determine the total volume of the state set-aside.

565—3.2(473) Scope. The rules in this chapter apply only to release of the state set-aside and assignment of the state set-aside and do not govern department recommendations for allocation of new users.

565—3.3(473) Authorizing document. The director shall issue to an applicant granted an assignment a document authorizing such assignment. A copy of the authorizing document (or order) shall also be provided to the designated state representative of the prime supplier assigned to the applicant. An authorizing document issued by the director pursuant to this rule is effective upon issuance and represents a call on the prime supplier's set-aside volumes for the month of issuance, irrespective of the fact that delivery of the product subject to the authorizing document cannot be made until the following month. An authorizing document not presented to either the prime supplier or a designated local distributor of the prime supplier within ten days of issuance shall expire after that time.

565—3.4(473) Supplier's responsibilities. Suppliers shall provide the assigned amount of an allocated product to an applicant when presented with an authorizing document. The authorizing document shall entitle the applicant to receive product from any convenient local distributor of the prime supplier from which the state set-aside assignment has been made. Wholesale purchaser-resellers of prime suppliers shall, as nonprime suppliers, honor such authorizing documents upon presentation, and shall not delay deliveries required by the authorizing document while confirming such deliveries with the prime supplier. Any nonprime supplier which provides an allocated product pursuant to an authorizing document shall in turn receive from its supplier an equivalent volume of the allocated product which shall not be considered part of its allocation entitlement otherwise authorized.

565—3.5(473) Prime suppliers. All prime suppliers shall supply products from their state set-aside volume each month, as directed by the department, not to exceed the total state set-aside volume for each product for that month. That portion of a prime supplier's state set-aside volume for a particular month which is not allocated by the department during that month or which is not subject to an authorizing document issued no later than the last day of that month shall become a part of the prime supplier's total supply for the subsequent month and shall be distributed according to the federal allocation procedures.

565—3.6(473) Release of state set-aside.

3.6(1) At any time during the month, the department may order the release of part or all of a prime supplier's set-aside volume through the prime supplier's normal distribution system in the state.

3.6(2) From time to time, the department may designate certain geographical areas within the state as suffering from an intrastate supply imbalance. At any time during the month, the state office may order some or all of the prime suppliers with purchasers within such geographical areas to release part

or all of their set-aside volume through their normal distribution systems to increase the allocations of all of the supplier's purchasers located within such areas.

3.6(3) Orders issued pursuant to this paragraph shall be in writing and effective immediately upon presentation to the prime supplier's designated state representative. Such orders shall represent a call on the prime supplier's set-aside volumes for the month of issuance irrespective of the fact that delivery cannot be made until the following month.

SUBPART B—APPLICATIONS FOR ASSIGNMENTS FROM STATE SET-ASIDE SYSTEM

565—3.7(473) Scope and purpose. The state set-aside system is established for propane, middle distillate, motor gasoline and residual fuel oil (except as used by utilities or as bunker fuel for maritime shipping). The state set-aside shall be utilized by the department to meet hardship and emergency requirements of all wholesale purchaser-consumers and end-users within the state from the state set-aside volumes, including wholesale purchaser-consumers and end-users which are part of any governmental organization. To facilitate relief of the hardship and emergency requirements of wholesale purchaser-consumers and end-users, the department may direct that a wholesale purchaser-reseller can supply the wholesale purchaser-consumers and end-users experiencing the hardship or emergency.

565—3.8(473) Assignment from state set-aside. If the department approved a hardship or emergency application, it shall assign a prime supplier and an amount from the state set-aside to the applicant. To determine an appropriate prime supplier, the department may coordinate the assignment with the state representatives of the prime suppliers.

565—3.9(473) Who may apply. A wholesale purchaser-consumer or an end-user, seeking an assignment from the state set-aside system to meet a hardship or emergency requirement, and a wholesale purchaser-reseller, seeking an assignment to enable the purchaser-reseller to supply the wholesale purchaser-consumers and end-users, may apply for an assignment under the state set-aside system.

565—3.10(473) Where to file. All applications shall be filed with, or verbal requests made to, the director if the product will be physically delivered and the applicant is located in the state of Iowa.

565—3.11(473) What to file.

3.11(1) Application for assignment from the state set-aside system may be by the appropriate form, by other written communication or by verbal, including telephonic, request.

3.11(2) Every application, whether written or verbal, shall provide sufficient information to enable the director to determine that the proposed allocation satisfies the criteria for assignment contained in rule 3.13(473) and shall include all of the information required by subrule 3.11(3) of this rule.

3.11(3) Wherever possible, applicants should submit a completed copy of the form entitled "Application for Set-Aside Fuel." Copies of this form may be obtained from the administrative support station, energy and geological resources division. Any request, whether by form or otherwise, must include the following information:

- a. Applicant's name and address.
- b. Telephone number.
- c. Nature of the application.
- d. Product required.
- e. Applicant's past and current supply situation.
- f. Supplier's(s') name and address.
- g. Explanation of product end uses.
- h. The identification of any previous assignment order from the state set-aside system that was issued to the applicant or to any person that controls or is controlled by the applicant.

i. A statement that an energy conservation program is in effect. Such program may include reducing operating hours, establishing minimum purchase requirements, increased energy efficiencies in buildings and vehicles, and reducing nonessential energy usage.

j. A statement that the applicant's base period supplier or new supplier is unable to supply the applicant's requirements or, if the applicant does not have a supplier, a statement that the applicant has contacted two suppliers that could supply the allocated product and the identification of those suppliers.

k. If the applicant is a wholesale purchaser-reseller, the application shall contain a description of the wholesale purchaser-consumers and end-users that will be supplied and their hardship and emergency requirements.

l. Justification for hardship.

m. Applicant's dated, certifying signature.

3.11(4) With respect to verbal applications, the director shall determine first whether the claimed hardship is of such an emergency character that prior written application is impracticable. If so, the director shall obtain all required information of the applicant and may act thereon or may seek such verification as is possible and appropriate in the judgment of the director, given the circumstances of the applicant. Any verbal request must be immediately verified by the applicant in writing, which writing shall contain all of the information required by these rules. Failure to submit written verification shall result in denial of the application, rescission of an order of assignment, or other relief as the director deems appropriate.

If the director determines that the claimed hardship is not of such an emergency character that action upon verbal request is appropriate, the applicant shall submit a written application as provided in these rules.

565—3.12(473) Processing applications.

3.12(1) All applications shall be processed by the director in accordance with these rules.

3.12(2) The director may initiate an investigation of any statement, whether written or verbal, and utilize in its evaluation any relevant facts obtained by investigation. The director may solicit and accept submissions from third persons relevant to any application provided that the applicant is afforded an opportunity to respond to all third-person submissions. In evaluating an application, the director may consider any other source of information. The director may convene a conference if the director considers that a conference will advance evaluation of the application.

3.12(3) If the director determines that there is insufficient information upon which to base a decision and if, upon request, the necessary additional information is not submitted, the director may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the director may dismiss the application with prejudice.

3.12(4) The director may notify any person that it determines will be aggrieved by the assignment that comments regarding the application will be accepted.

565—3.13(473) Criteria for assignment from state set-aside.

3.13(1) *Hardship or emergency requirements.* There shall be assignments only to wholesale purchaser-consumers and end-users located within the state who demonstrate hardship or emergency requirements (or to wholesale purchaser-resellers to enable them to supply such persons) with respect to propane, middle distillate, motor gasoline and residual fuel oil (except that used by utilities or as bunker fuel for maritime shipping).

A hardship is a situation involving or potentially involving substantial discomfort or danger or economic dislocation caused by a shortage of an allocated petroleum product or both. An emergency is a hardship involving the absence of a petroleum product supply for a wholesale purchaser-consumer or an end-user which requires immediate attention.

3.13(2) *Assignment priorities.* To the extent that the state can determine the order of priority, assignments from the state set-aside to applicants demonstrating emergency or hardship requirements shall generally conform to the following rank order of assignment.

a. Protection of public health (including the production of pharmaceuticals), safety and welfare (including maintenance of residential heating, such as individual homes, apartments and similar occupied dwelling units), and the national defense;

b. Maintenance of essential public services (including facilities and services provided by municipally, cooperatively, or investor-owned utilities, or by any state or local government or authority, and including transportation facilities and services which serve the public at large);

c. Maintenance of agricultural operations, including farming, ranching, dairy, and fishing activities, and services directly related thereto;

d. Preservation of an economically sound and competitive petroleum industry, including the priority needs to restore and foster competition in the producing, refining, distribution, marketing, and petrochemical sectors of such industry, and to preserve the competitive viability of independent refiners, small refiners, nonbranded independent marketers, and branded independent marketers;

e. Allocation of residual fuel oil and refined petroleum products in such amounts and in such manner as may be necessary for the maintenance of, exploration for, and production or extraction of:

1. Fuels, and

2. Minerals essential to the requirements of the United States, and for required transportation related thereto;

f. Economic efficiency; and

g. Minimization of economic distortion, inflexibility, and unnecessary interference with market mechanisms.

3.13(3) *Assignment of set-aside volume.* A prime supplier's set-aside volume shall, to the extent possible, be uniformly assigned during the month so as to enable the director to meet the emergency and hardship priority needs of the state throughout the month.

3.13(4) *Report of projected distribution.* The department shall review monthly the projected degree to which there are emergency and hardship requirements of end-users in the various categories and may provide for differing assignments among priority categories in the state set-aside for that month. The department will assess the gravity of need of end-users in the various categories and may provide for differing assignment among priority categories on a monthly basis as deemed to be in the public interest. The director shall take appropriate steps to make monthly allocation projections and priorities available to the public. The department shall also review the extent to which the emergency and hardship requirements were met in the previous month.

565—3.14(473) Decision and order.

3.14(1) *Order.* Upon consideration of the application whether written or verbal, and other relevant information received or obtained during the proceeding, the director shall issue an order denying or granting the application.

An order granting an application for assignment from the state set-aside shall be the "authorizing document" for purposes of rule 3.3(473).

3.14(2) *Contents.* The order shall include a brief written statement summarizing the factual and legal basis upon which the order was issued. The order shall provide that any person aggrieved thereby may file an appeal with the department in accordance with these rules.

The order shall state that it is effective upon issuance and shall expire within ten days of its issuance unless the applicant presents the applicant's copy of the order to the prime supplier or a designated local representative of such prime supplier within those ten days.

3.14(3) *Service by director.* The director shall serve a copy of the order upon the applicant, the designated state representative of the prime supplier assigned to the applicant and any other person readily identifiable as one who will be aggrieved by said order.

3.14(4) *Denial of application.* The denial of an application shall be without prejudice to the right of the applicant to again request petroleum from the state set-aside.

565—3.15(473) Misuse of state set-aside. If the director has reason to believe that a recipient of state set-aside used the set-aside fuels for purposes other than those end-uses designated on the authorization

order and the application or if the director has reason to believe that the recipient has misrepresented any information on the application or authorization order, that recipient's eligibility for state set-aside may be rescinded. The director shall provide the recipient an opportunity to present evidence or arguments to the director. Should the director determine that misuse or misrepresentation has occurred and that the recipient should be ineligible for a reasonable period of time, the director shall give written, timely notice by personal service as in civil actions or by restricted certified mail to the recipient of the facts or conduct and any provision of law, including these rules, which warrant the action. Such notice shall advise the recipient of the opportunity to show, in an evidentiary hearing conducted pursuant to 567—Chapter 7 and these rules, that the facts or conduct relied upon by the director are not in fact true. The recipient may also alternatively request an oral argument or submission of briefs to the commission to dispute issues of law or policy. Any request for evidentiary hearing or argument shall be filed with the director within 15 days of service of the director's decision. Unless the commission finds that the public health, safety or welfare imperatively requires emergency action and makes a finding to that effect, the recipient shall not be denied eligibility during the pendency of the decision on the basis of misuse or misrepresentation. Such proceedings shall be promptly instituted and determined.

565—3.16(473) Time for action on application.

3.16(1) If the director fails to take action on an application, whether verbal or written, within ten days of filing (if the application is verbal, it shall be considered to be filed on the date that it is verbally communicated to the director), the applicant may treat the application as having been denied in all respects and may appeal therefrom as provided in this subpart.

3.16(2) Notwithstanding subrule 3.16(1) of this rule, the department may temporarily suspend the running of the ten-day period if it finds that additional information is necessary or that the application was improperly filed. The temporary suspension shall remain in effect until the director serves upon the person notice that the additional information has been received and accepted or that the application has been properly filed, as appropriate. Unless otherwise provided in writing by the director, the ten-day period shall resume running on the first day that is not a Saturday, Sunday, or state legal holiday and that follows the day on which the department serves upon the person the notice described in this paragraph.

SUBPART C—APPEALS

565—3.17(473) Appeals. These rules establish the procedures for the filing of an administrative appeal of assignment and set-aside orders issued by the director. In all cases, efforts shall be made by the director and any aggrieved parties to informally confer and resolve issues prior to scheduling an appeal. These rules shall apply to all appeals of assignment and set-aside orders.

565—3.18(473) Review of appeal. Appeals taken from the decision of the director shall be presented, heard and decided by the commission in accordance with 567—Chapter 7 and this subpart C.

565—3.19(473) Filing of appeal. Any person aggrieved by an order issued by the director may file an appeal with the department in accordance with these rules. The appeal shall be filed within 15 days of service of the order from which the appeal is taken. There has not been an exhaustion of administrative remedies until an appeal has been filed and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

565—3.20(473) Time of filing. The notice of appeal when filed in person shall be considered filed on the date delivered to the department. A notice of appeal when filed by mail shall be considered filed on the date postmarked.

565—3.21(473) Form of notice of appeal. All notices of appeal shall be in writing and signed by the appellant; shall designate clearly on its face that it is an appeal; shall contain a concise statement of the grounds for appeal and the requested relief; shall be accompanied by any documents or briefs, if any, which pertain to the appeal; shall be accompanied by the affidavit of mailing required in rule 3.22(473);

and shall state: “Any person adversely affected by the request for relief must file a response within ten days of the date this notice is mailed to ensure that their views will be considered by the set-aside board. See rule 3.22(473).” The appellant shall state whether a request for an informal settlement conference with the director or an evidentiary hearing regarding the appeal has been made.

565—3.22(473) Notice to affected third parties. The appellant shall file with the notice of appeal an affidavit certifying that the notice of appeal has been mailed to all persons readily identifiable as ones who would be aggrieved by the requested relief on appeal and shall include a list of the persons.

Upon receipt of the notice, the director shall notify any other third party readily identifiable as one who would be aggrieved.

565—3.23(473) Responses to notice of appeal. The director or any other person who may be adversely affected by the notice of appeal may file a response no later than ten days of the mailing of the notice served on the person and may raise any issue of law or fact which is relevant to the determination of the appeal.

565—3.24(473) Requests for evidentiary hearing. If the appellant or any other person requests an evidentiary hearing, the notice of appeal or response thereto shall state the issues of fact for the set-aside board to determine.

565—3.25(473) Resolution of appeal where no material issue of fact. If the commission determines that the appeal does not raise any issue of material fact, the appeal may be granted or denied upon the basis of the written notice of appeal and the requested documents. However, the commission may, on request or on its own motion, hold an oral argument where there is no material issue of fact, if it is determined that there is a substantial question of law or policy.

565—3.26(473) Scheduling of evidentiary hearing. If the commission determines that the appeal raises a material issue of fact, a request for an evidentiary hearing by the appellant or any other party shall be granted.

Upon granting of a request for an evidentiary hearing, the director shall schedule such hearing as soon as possible taking into account the convenience of the parties and the circumstances surrounding the appeal.

565—3.27(473) Notice of evidentiary hearing. Upon the scheduling of an evidentiary hearing on an appeal, the director shall mail a notice of hearing to the appellant and all third parties identifiable as being affected by resolution of the appeal at least ten days prior to the date of hearing, unless the parties agree in writing to waive this requirement.

The notice shall include:

1. A statement of the time, place and nature of the hearing;
2. A statement that the hearing is held pursuant to these rules and any other relevant legal authority;
3. A reference to the particular sections of any statutes and rules involved;
4. A short and plain statement of the matters to be considered at the hearing.

565—3.28 to 3.32 Rescinded, effective 4/15/87.

565—3.33(473) Review by commission. A proposed decision of the presiding officer becomes the final decision of the commission without further proceedings unless there is an appeal to the commission within seven days from the entry of the proposed decision or the commission on its own motion at the meeting following entry of the proposed decision, decides to review it.

On appeal, the commission may review and reverse the findings of fact if the commission determines that such findings are clearly erroneous, or involve errors of law, which were the basis for decision.

565—3.34(473) Remedy for erroneous denial for assignment or set-aside request. If it is determined that an assignment or set-aside request by a party to the appeal in a particular month was erroneously denied, the presiding officer or commission may order that the request be granted provided the appeal is resolved in time to allow allocation from the state set-aside volume during that month. If the appeal is not resolved in time to allow allocation, special consideration shall be given to future requests by such party for an assignment or set-aside order. Since there is a need for expeditious action in order to effectuate the purpose of the state petroleum set-aside program, an appeal of an assignment or set-aside order shall not operate to stay the order.

565—3.35(473) Inspection of appeal decisions. Copies of all appeal decisions of the department shall be kept on file for at least five years from the date of decision and open for inspection in the department office. The decisions and determinations shall be open to public inspection during normal business hours of any working day.

SUBPART D—REQUESTS FOR CONFIDENTIAL TREATMENT

565—3.36(473) Requests for confidential treatment. Any requests or determinations regarding confidential treatment of information filed for use in the operation of the petroleum set-aside program shall be made in accordance with 561—2.4(22,455B,473).

[Filed emergency 9/14/79—published 10/3/79, effective 9/14/79]

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CHAPTER 4
PERMANENT ASSIGNMENT OF PETROLEUM PRODUCTS
[Prior to 3/11/87, see Energy Policy Council[380] Ch 4]
Rescinded IAB 7/9/03, effective 8/13/03

CHAPTER 5
PURCHASING FUEL FROM ALTERNATIVE SOURCES

[Prior to 3/11/87, see Energy Policy Council[380] Ch 5]

565—5.1(323A) Scope. This chapter establishes rules as required in Iowa Code section 323A.2(1)“c,” whereby the director is to make a determination on whether a franchisee has demonstrated that a special hardship exists due to petroleum outages or impending outages in the community served by the franchisee relating to the public health, safety, and welfare. Such a determination by the director is one of the steps necessary in order that a franchisee may purchase fuel from a source other than its franchisor without providing good cause for termination of a franchise.

This rule is intended to implement Iowa Code section 323A.2(1)“c.”

565—5.2(323A) Director’s determination. Any franchisee wishing to demonstrate to the director, as required in Iowa Code section 323A.2(1)“c,” that a special hardship exists in the community served by the franchisee relating to the public health, safety, and welfare, shall do so in conjunction with an application for set-aside petroleum made pursuant to Chapter 3 of these rules. Procedural rules of Chapter 3 shall also apply to this chapter. The criteria used by the director in making a determination of community hardship shall be the same as that used in 565—rule 3.13(473) of these rules, “criteria for assignment from state set-aside.” The director shall notify both the franchisee and franchisor in writing of the director’s decision following a review of the relevant facts presented.

This rule is intended to implement Iowa Code section 323A.2(1)“c.”

[Filed 12/4/81, Notice 9/30/81—published 12/23/81, effective 1/28/82]

[Filed without Notice 2/20/87—published 3/11/87, effective 4/15/87]

CHAPTER 6
BUILDING ENERGY MANAGEMENT PROGRAMS

565—6.1(473) General. Building energy management programs are established for public and private schools, merged area schools, area education agencies, cities, counties and other political subdivisions, hospitals, health care facilities, private colleges, nonprofit organizations, and the state and state agencies to reduce energy consumption and energy costs. These programs are established under Iowa Code sections 473.13A and 473.19 and Iowa Code Supplement section 473.20 and follow the guidelines of 10 CFR 420 (1976).

The state of Iowa and its agencies, public schools, merged area schools, area education agencies, cities, counties and other political subdivisions of the state are required to identify and implement through energy audits and technical engineering analyses all cost-effective energy management improvements for which the building energy management programs make financing available. Private schools and colleges, hospitals, health care facilities, and nonprofit organizations are also authorized and encouraged to participate in building energy management programs.

These programs are administered by the energy and geological resources division of the Iowa department of natural resources.

These programs are carried out by:

1. Conducting energy audits as needed on buildings and facilities owned or leased by mandated and eligible institutions;
2. Implementing operation and maintenance procedures;
3. Conducting technical engineering analyses as needed to identify energy management improvements;
4. Establishing an energy bank and energy loan program;
5. Funding or arranging financing for cost-effective energy management improvements;
6. Establishing energy accounting procedures; and
7. Providing for appeals and reporting measures.

6.1(1) Purpose and scope. This chapter establishes requirements for eligibility, and procedures for conducting an energy audit, conducting a technical engineering analysis, establishing a loan program, funding and arranging financing for cost-effective energy management improvements, and providing for possible appeals and enforcement measures.

6.1(2) Definitions. For the purpose of these rules:

“*Analyst*” means a licensed professional engineer or architect in the state of Iowa who has satisfied the requirements for being placed on the department’s list of qualified analysts as set out in the department’s technical engineering analysis guidelines.

“*Aggregate simple payback period*” means the total estimated cost of all studied and recommended energy management improvements in a building or facility, divided by the total estimated annual energy cost savings.

“*Btu*” means British thermal units, units of energy measurement.

“*Building*” means any structure that is heated, cooled, or lighted.

“*Cost-effective*” means that an energy management improvement or package of energy management improvements will, within the useful life of the improvement(s), generate savings sufficient to pay for the total costs of implementing the improvement(s). Under no circumstances is any improvement or package of improvements cost-effective if the time needed for the savings to pay for the improvement(s) exceeds the expected remaining useful life of the building or facility in which the improvement(s) is implemented.

“*Degree day*” means a unit of measure that is used to help describe the effect of weather severity on the amount of energy needed for heating or cooling a building. A degree day represents the difference between a given base temperature (usually 65° Fahrenheit) and the mean daily temperature (average of the daily maximum and minimum air temperatures). One heating (or cooling) degree day is accumulated for each whole degree that the daily mean temperature is below (or above) the base temperature. The more extreme the weather, the higher the number of degree days (either daily or annual totals).

“Department” means the department of natural resources.

“Energy accounting system” means a computerized or manual mechanism that allows facilities to track, at a minimum, their monthly energy consumption by unit and cost per square foot, and Btu per square foot per degree day.

“Energy audit” means an energy survey of a building that is conducted by means of a walk-through during a visit to the building or facility in accordance with requirements of rule 6.3(473).

“Energy auditors” means paraprofessionals, approved by the department, trained and qualified in energy auditing and in identifying energy management improvements. This includes certified energy managers as designated by the Association of Energy Engineers.

“Energy management improvement” means construction, rehabilitation, acquisition, or modification of an installation, of any of the fixtures, or of any of the equipment in a building or facility, which is intended to reduce energy consumption or energy source, and which may contain integral control and measurement devices.

“Expected remaining useful life of a building or facility” means the time period planned or estimated until the building or facility is abandoned, demolished, or fundamentally rebuilt to the extent that its basic function is altogether changed. This time period is determined and explained in the report of the energy audit or technical engineering analysis conducted for each mandated and eligible institution participating in a building energy management program.

“Facility” means any structure, system or processing site that consumes energy to carry out a function or service of a mandated or eligible institution, including its installed energy-consuming machinery.

“Health care facility” means an institution as defined in Iowa Code section 139A.1(10).

“Hospital” means an institution that is licensed and regulated under Iowa Code chapter 135B.

“Local government” means any city, county, municipality, or any other political subdivision of the state of Iowa.

“Mandated and eligible institutions” means (1) the state, state agencies, political subdivisions of the state, school districts, area education agencies, and community colleges that are required under Iowa Code section 473.13A to identify and implement, through energy audits and technical engineering analyses, all energy management improvements for which financing is made available by the department; and (2) private schools and colleges, hospitals, health care facilities, and other nonprofit organizations that are authorized and encouraged to also participate in building energy management programs.

“Operation and maintenance procedures” means the routine functioning and upkeep of a facility that consume energy as they are performed. Energy savings from operation and maintenance procedures are obtained when low- or no-cost measures are taken to improve the efficiency of such things as worker schedules and facility occupancy schedules, thermostat settings, hot water temperatures and usage, building envelope sealing and regular facility repairs, scheduled equipment repairs and servicing, equipment power optimization, and facility lighting levels.

“School” means any public school district, area education agency, or merged area school (public community colleges and vocational/technical schools) which is defined by the department of education administrative rules in 281—Chapter 1.

“Simple payback period” means the time required for the cumulative savings from an energy management improvement project to recover its initial investment cost and other accrued costs, without accounting for the time-value of money. It is calculated by dividing the estimated total costs of acquiring the materials and installation for the implementation of an energy management improvement by the estimated annual savings for the energy management improvement. For renewable and coal conversions, savings are based on the fuel replaced.

“Square feet” means the total gross conditioned floor area of a building or facility.

“Technical engineering analysis” means the thorough examination of, and written report for, a building or facility, conducted in accordance with the current guidelines established by the department. A technical engineering analysis identifies energy management improvement opportunities, including operations and maintenance improvements, with estimated costs of the improvements broken down by materials and installation costs, estimated annual cost savings by fuel type, and calculated simple

payback periods. The analysis report is signed and certified by an analyst who is employed by a firm on the list of qualified engineering/architectural firms that is maintained by the department and updated periodically according to the most current guidelines established by the department.

“*Useful life*” or “*service life*” means the time period an energy management improvement is estimated to last until it wears out, needs to be replaced, or no longer performs the function for which it is intended. This also means the time during which a particular system or component of a system remains in its original service application.

565—6.2(473) Applicability. The requirements of this chapter apply to all buildings and facilities owned or leased by mandated or eligible institutions.

6.2(1) *Applicability for energy audit.* An energy audit is required for all buildings and facilities that are part of mandated or eligible institutions and that meet the criteria identified in rule 6.3(473).

6.2(2) *Applicability for technical engineering analysis.* A technical engineering analysis is required for all buildings and facilities for which the criteria identified in rule 6.4(473) have been met.

6.2(3) *Applicability for building energy management programs.* Building energy management programs are applicable to all buildings and facilities for which:

a. A mandated or eligible institution provides a technical engineering analysis and summary of recommended energy management improvements approved by the department and a schedule for implementation of existing and new operation and maintenance procedures; or the mandated or eligible institution provides an energy audit, or small building energy audit, whichever the department authorizes as appropriate, and a summary of recommended energy management improvements approved by the department for a building or facility not meeting the criteria identified in rule 6.4(473),

b. Energy management improvements have been recommended by the department, and

c. The mandated or eligible institution has no formal plan adopted by its own governing body, including any formal plans which are subject to the occurrence of any conditions precedent, to close or otherwise dispose of the building or facility during the aggregate simple payback period for which funding is requested.

565—6.3(473) Energy audits.

6.3(1) *Objective.* The purpose is to conduct an initial energy survey of buildings or facilities, as preapproved by the department, to identify operation and maintenance procedures and their scheduled implementation, and to identify potential energy management improvements, in accordance with the energy audit guidelines established and periodically updated by the department. In addition, an energy audit may serve as a basis for proceeding with a technical engineering analysis if authorized by the department.

6.3(2) *Qualified auditors.* Energy audits shall be conducted by any person, firm, or certified energy manager as preapproved by the department.

6.3(3) *Contents of an energy audit.* The energy audit will be completed on forms prescribed and approved by the department, and in accordance with the energy audit guidelines established and periodically updated by the department.

6.3(4) *Exemption.* Rescinded IAB 3/20/02, effective 4/24/02.

565—6.4(473) Technical engineering analysis.

6.4(1) *Objective.* The objective of the technical engineering analysis is to perform a comprehensive examination and written report to identify and analyze opportunities for energy management improvements, and improved operation and maintenance procedures, with estimates of costs and annual cost savings.

6.4(2) *Technical engineering analysis conducted.* Technical engineering analyses shall be conducted for all buildings or facilities recommended by the department in accordance with the following criteria:

a. Annual Btu consumption per square foot, compared with similar building or facility types as determined by the department on a periodic basis; and

b. If applicable, the type or nature of energy audit findings.

A technical engineering analysis shall also be conducted for any facility that has previously had a technical engineering analysis completed more than three years before making a new application for financing through a building energy management program.

6.4(3) Procedures.

a. Mandated and eligible institutions select and contract with an analyst qualified to perform technical engineering analyses. A request for proposals shall be sent by each participating mandated or eligible institution to all firms on the qualified analyst list maintained by the department. The department may modify requirements in the procurement of the firm consistent with applicable state and federal regulations. Following accepted practices, the mandated or eligible institution will select the qualified firm that best meets its needs and that has no conflicts of interest with the institution.

b. In accordance with the department's technical engineering analysis guidelines, each participating mandated or eligible institution shall identify the needs the institution wants to be considered in its technical engineering analysis.

c. Upon request of the mandated or eligible institution, the department may allow completion of technical engineering analyses of all of the institution's buildings or facilities in phases or stages.

d. Upon the mandated or eligible institution's receipt of the completed technical engineering analysis, a copy is submitted to the department.

The department will review the technical engineering analysis and notify the mandated or eligible institution of any technical concerns that need to be discussed and resolved.

The department will approve or reject the technical engineering analysis based on compliance with the department's Technical Engineering Analysis Guidelines, which are periodically updated by the department.

6.4(4) Contents of a technical engineering analysis. The technical engineering analysis shall include the information required in the current Technical Engineering Analysis Guidelines as developed, maintained, and periodically updated by the department.

6.4(5) Exemptions. The required technical engineering analysis may be waived by the department on a case-by-case basis as negotiated with the department.

6.4(6) Analyst firms retained. Mandated and eligible institutions shall retain qualified analyst firms that are free from conflicts of interest with the respective institutions to perform the professional services required for each technical engineering analysis. Qualification standards and procedures for analyst firms have been adopted by the department and are available upon request.

565—6.5(473) Installation of cost-effective energy management improvements.

6.5(1) Objective. All cost-effective energy management improvements are to be installed in the buildings and facilities of all mandated and eligible institutions.

6.5(2) Installation of cost-effective energy management improvements required. Installation of cost-effective energy management improvements shall be required for buildings and facilities as follows:

a. Energy management improvements, as recommended by the technical engineering analysis, which have an aggregate simple payback that meets the criteria detailed in the Guidelines for Cost-Effective Energy Management Improvement Projects as adopted and periodically updated by the department.

b. Upon request of a mandated or eligible institution, the department may approve the installation of energy management improvements in phases or stages. The mandated or eligible institution shall submit an implementation schedule for the department's approval.

6.5(3) Procedures.

a. Plans and specifications shall be prepared for selected energy management improvements by a qualified engineer selected by the mandated or eligible institution, provided the engineer has no conflict of interest with the institution.

b. Bidding, award, and installation of energy management improvements shall be accomplished in accordance with applicable state law.

c. Installation of energy management improvements shall be completed in a building or facility within 24 months of the review of the technical engineering analysis and approval of the recommended energy management improvements by the department.

d. Upon completion of the installation of each energy management improvement, the mandated or eligible institution shall submit to the department a certificate of completion that:

- (1) Describes the improvement, its location, and cost;
- (2) Certifies that the installation was in accordance with recommendations of the technical engineering analysis (noting instances of substantial changes of final project scope from original recommendations); and
- (3) Certifies that the improvement is operating properly.

565—6.6(473) Funding and fees.

6.6(1) Objective. Building energy management programs are established to provide direct funding, grants, loans, leases, and alternative financing for conducting energy audits and technical engineering analyses and for implementing energy management improvements.

6.6(2) Funding and financing sources.

a. Funding for these programs may be from gifts, federal grants, state appropriations, and other sources.

b. Financing for these programs may be provided by private sources as arranged by the department.

c. Costs of a technical engineering analysis may be included in financing for the installation of energy management improvements.

6.6(3) Funding for energy audits and technical engineering analysis.

a. Short-term, interest-free loans and grants, as funds are available, will be provided by the department to mandated and eligible institutions upon request to pay the professional audit and engineering fees for energy audits and technical engineering analyses and to pay for the deferred billing of administrative costs recovery provided under subrule 6.6(5). Design costs for energy management improvements are considered for inclusion in the overall financing provisions of the building energy management programs.

b. Costs of the energy audits and technical engineering analyses, and payment for the recovery of administrative costs as provided under subrule 6.6(5), may be included in financing for the installation of energy management improvements, provided that within six months after the approval of the energy audits or the technical engineering analyses, the participating mandated and eligible institutions proceed to implement energy management improvements.

c. The energy loan program is established in the office of the treasurer of the state to be administered by the energy and geological resources division, department of natural resources, for making loans and grants to mandated and eligible institutions to complete technical engineering analyses. Funding for this program may come from gifts, federal funds, state appropriations, and other sources.

6.6(4) Funding for cost-effective energy management improvements.

a. Financing is available for all cost-effective energy management improvements identified in energy audits and technical engineering analyses.

b. Energy management improvement financing shall be supported by, but not limited to, payments from energy savings resulting from the energy management improvements.

6.6(5) Recovery of the programs' administrative costs. Participating mandated and eligible institutions shall help pay for the programs' administrative costs. Payment to the department shall be made within six months of the approval of submitted energy audits or technical engineering analyses, based upon a sliding scale related to the total square footage of each building in the program, or on a case-by-case basis as agreed upon in advance by a mandated or eligible institution and the department, in accordance with schedules adopted and periodically updated by the department.

565—6.7(473) Energy accounting system.

6.7(1) Objective. Energy accounting procedures are established, as funds are available, for:

a. Developing information for comparative and management review of energy and dollar consumption for mandated and eligible institutions, and on a statewide basis to assist them and the department to accomplish the goals of the building energy management programs.

b. Comparing mandated and eligible institutions' energy consumption and energy costs before and after energy management improvements have been installed in buildings or facilities to confirm energy and cost savings.

6.7(2) *Energy accounting system participation.* The energy accounting system established by mandated and eligible institutions shall be in accord with requirements established by the department.

6.7(3) *Procedures.*

a. The energy accounting system will be initiated by the department by notifying selected mandated and eligible institutions. Instructions and guidelines will be provided by the department.

b. Copies of monthly utility bills and other related information will be provided by the mandated and eligible institutions, upon request of the department, to:

(1) Establish energy consumption levels and energy costs prior to the installation of energy management improvements;

(2) Establish the current and future level of savings in energy consumption and costs after the installation of energy management improvements.

c. Reports will be developed, printed, and distributed under the department's direction on a periodic basis.

565—6.8(473) Appeals and reporting measures.

6.8(1) *Scope and applicability.*

a. This rule provides procedures governing appeals from administrative orders to mandated and eligible institutions concerning requirements of the building energy management programs.

b. Rules of Iowa Administrative Code 561—Chapter 7, "Rules of Practice in Contested Cases," shall govern appeals to the department.

6.8(2) *Procedures.*

a. Appeal procedures shall be in accord with Iowa Administrative Code 561—Chapter 7, "Rules of Practice in Contested Cases," governing appeal of administrative orders of the department of natural resources.

b. Any mandated or eligible institution appealing an action of the department shall file a written notice of appeal within 30 days of the receipt of the department's action. Written notice of appeal shall contain information explaining why the appeal is being made.

These rules are intended to implement Iowa Code sections 473.13A and 473.19 and Iowa Code Supplement section 473.20 and 10 CFR 420 (1976).

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[Appeared as Ch 6, renumbered Ch 7, IAC 12/23/81]
[Prior to 3/11/87, see Energy Policy Council[380] Ch 7]

CHAPTER 7
ENERGY MEASURES AND ENERGY AUDITS GRANT PROGRAMS
FOR SCHOOLS AND HOSPITALS AND BUILDINGS OWNED BY
UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS

[Appeared as Ch 5, IAC 10/3/79]
[Appeared as Ch 6, renumbered Ch 7, IAC 12/23/81]
[Prior to 3/11/87, see Energy Policy Council[380] Ch 7]
Rescinded IAB 7/9/03, effective 8/13/03

CHAPTER 8
TECHNICAL ASSISTANCE AND ENERGY CONSERVATION:
GRANT PROGRAMS FOR SCHOOLS AND HOSPITALS
AND FOR BUILDINGS OWNED BY UNITS OF LOCAL
GOVERNMENT AND PUBLIC CARE INSTITUTIONS

[Appeared as Ch 6, IAC 10/3/79]
[Appeared as Ch 7, renumbered Ch 8, IAC 12/23/81]
[Prior to 3/11/87, see Energy Policy Council[380] Ch 8]
Rescinded IAB 7/9/03, effective 8/13/03

CHAPTERS 9 to 12
Reserved

CHAPTER 13
STANDBY EMERGENCY ENERGY CONSERVATION MEASURES

[Appeared as Ch 12, renumbered Ch 13, IAC 12/23/81]

[Prior to 3/11/87, see Energy Policy Council[380] Ch 13]

565—13.1(473) Scope. The purpose of this chapter is to establish procedures for the department to follow if it is found that an actual or impending acute shortage of energy exists and to reference certain actions which might be recommended to the governor for inclusion in an emergency proclamation or in response to a federally mandated conservation target under the Emergency Energy Conservation Act (96-102). Iowa Code section 473.8 authorizes the department, by resolution, to recommend that the governor issue a proclamation of an acute energy shortage. That recommendation may also be accompanied by recommended actions, if any, to cope with the energy shortage. The department will keep on file an Emergency Energy Conservation Plan (EECP) from which the department may adopt particular actions for recommendation to the governor.

565—13.2(473) Director findings. If the director by resolution determines the health, safety, or welfare of the people of this state is threatened by an actual or impending acute shortage of usable energy, the director shall transmit the resolution to the governor together with recommendation on the declaration of an emergency by the governor and recommended actions, if any, to be undertaken.

565—13.3(473) Emergency Energy Conservation Plan. The EECP will consist of voluntary and mandatory measures which the department contemplates would be recommended to the governor for inclusion in an emergency proclamation under Iowa Code section 473.8. The department shall tailor its recommendations to the specific emergency confronted at the time of the resolution. The department may, at the time of an energy emergency, determine that additions, modifications, or deletions of the proposed measures are necessary.

565—13.4(473) Actions available for public inspection. Further information on recommended actions or measures will be available for public inspection at the department office, Wallace Building, Des Moines, IA 50319-0034 and will be available to any person or agency upon request.

These rules implement Iowa Code section 473.8.

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CHAPTERS 14 and 15
Reserved

CHAPTER 16
SOLAR ENERGY AND ENERGY CONSERVATION BANK
[Prior to 3/11/87, see Energy Policy Council[380] Ch 16]
Rescinded IAB 7/9/03, effective 8/13/03

CHAPTER 17
BUILDING ENERGY MANAGEMENT FOR STATE AND LOCAL GOVERNMENT
[Prior to 3/11/87, see Energy Policy Council[380] Ch 17]
Rescinded IAB 7/9/03, effective 8/13/03

CHAPTER 18
STATE ENERGY PROGRAM
[Prior to 3/11/87, see Energy Policy Council[380] Ch 18]

565—18.1(473) Scope of authority and purpose. The state energy program is established to promote energy management improvements by all Iowa consumers. Funds for this program are made available through annual grants from the U.S. Department of Energy and from other sources determined by the Iowa legislature. The funds are administered by the environmental services division of the department of natural resources.

The state energy program was enacted under Title III of the Energy Policy and Conservation Act, Public Law 94-163, amended by Title IV of the Energy Conservation and Production Act, Public Law 94-385. Regulations were promulgated in 10 CFR Part 420 on February 20, 1976.

The program was enacted to develop and implement a comprehensive program for the identification, development and demonstration of energy efficiency and alternative energy opportunities to meet local needs and to utilize local resources.

The purpose of the program is to comply with federally required program measures, to demonstrate energy efficiency within state government, to develop and promote community energy management models, to provide energy information and education for Iowa consumers, to support the development and use of Iowa energy resources, and to evaluate procedures to improve marketing effectiveness and operation efficiency.

The department of natural resources will annually submit to the U.S. Department of Energy a combined state energy plan and grant application. The plan will qualify the department to receive an annual federal grant for the next fiscal year (July 1 through June 30) and to implement the program measures described in the plan.

565—18.2(473) Definitions.

“Energy management” means efficient energy use or the utilization of renewable energy resources which results in a net reduction in the use of nonrenewable energy resources.

“Energy management improvement” means an activity which is intended to reduce energy consumption or installation of a renewable energy resource as prescribed in Subpart D of 10 CFR Part 450.

“Grantee” means the state or other entity named in the notice of financial assistance award as the recipient.

“Plan” means a state energy plan for the state energy program including required program measures and otherwise meeting the applicable federal guidelines.

“Program measure” means one or more actions by the state of Iowa, designed to effect energy management improvements, excluding actions in areas specifically covered by national energy conservation programs.

565—18.3(473) General. The department of natural resources will administer the state energy program and will set forth the conditions and requirements that are applicable in the state energy plan which is based on federal guidelines and which is approved annually by the federal funding agency.

18.3(1) Goals and purposes. The goals and purposes of the program are as follows: to improve the state economy by striving for energy independence, to increase the efficient use of energy resources, to substitute nonrenewable energy with Iowa energy resources, to improve the standard of living through energy management, to coordinate energy management activities throughout the state, to minimize adversity resulting from energy shortfalls, to recommend legislation that will improve Iowa’s energy management climate, to provide continuing information and education about energy management, to effectively market energy management opportunities, and to develop monitoring and evaluation procedures that will ensure continued improvement in program effectiveness.

18.3(2) Program measures. Several program measures will be used to accomplish these goals and purposes. Program measures may include training and education, the creation of new energy-related

jobs, demonstrations and pilot projects, developing and distributing literature, financial and technical assistance, and other activities.

The selection of program measures will be based on the result of market analysis and assessment of needs by the director and may include a public hearing or other solicitations of input.

A program measure may be included in the plan if submitted to the department in writing, if it meets federal guidelines and regulations and the rules of this chapter, and if it is determined to be beneficial to Iowa.

565—18.4(473) State energy plan. Each year the department shall submit a state energy plan and grant application to the U.S. Department of Energy. The plan will describe all program measures to be implemented during the coming fiscal year (July 1 through June 30) and will comply with federal guidelines. Upon approval by the U.S. Department of Energy, this plan becomes the document that authorizes federal funding and the implementation of the proposed program measures. A copy is available from the department upon request.

The department maintains its policies, schedules, structure, and budget in a manner that encourages public review, responsiveness to user concerns, energy conservation and fiscal solvency.

565—18.5(473) Eligibility. All residents of the state of Iowa are eligible to propose program measures and to receive the benefits and services provided by the state energy program. Assistance shall be provided in the form of program measures that will have an immediate and substantial effect in reducing the rate of growth in Iowa energy demand.

18.5(1) Proposals. To be eligible to receive a financial grant for the development and implementation of a program measure, an applicant must submit a proposal that meets all of the requirements specified in a Request for Proposals. To accomplish the goals and purposes as set forth in the plan, proposals will be solicited statewide from the greatest number of individuals and organizations that can be identified, or the request for proposal will be published in newspapers.

Project proposals will include:

1. A description and cost estimate of the proposed program measure(s);
2. An explanation of the benefits to be gained from the projects;
3. An explanation and justification of need for the programs;
4. A proposed schedule of when funds will be needed;
5. A proposed plan with an activity time schedule and sources of funds.

18.5(2) Criteria for selection. The environmental services division shall review each proposal and shall select the projects to be recommended for approval by the department. Criteria for evaluating proposals and awarding contracts are included in each Request for Proposal. These criteria are pertinent to specific objectives targeted by each RFP and include a point system for evaluation. Criteria may include, but will not be limited to, proposals which:

1. Foster coordination among Iowans;
2. Enhance economic development;
3. Increase investments to energy conservation;
4. Extend service/assistance to the disadvantaged or areas/sectors not served before;
5. Document estimated energy savings;
6. Provide for matching funds.

Proposals will be reviewed and evaluated by a panel of not fewer than three persons with general knowledge of the applicable energy management field but without personal interest in the proposal or the applicants.

565—18.6(473) Appeal and complaint procedure. The following appeal and hearing procedures shall be used.

18.6(1) In the event applicants believe they are eligible for a grant award but have been denied such a grant, they may appeal the decision by writing the department within 15 days of the award decision and

ask that a state hearing be held. The claimant must explain in writing why the decision is being appealed and include any information which might affect the decision.

18.6(2) The director will respond to the claimant in writing within 15 days of receiving the appeal. The response will include notice of the date, time and place of the scheduled hearing. Hearings may be held by telephone at a mutually convenient time. Prior to the hearing, the department will provide an opportunity for the claimant to review the grant proposal file and any written evidence that will be used in the hearing. An informal conference with the director or appropriate staff may be requested for the purpose of discussing actions taken and resolving the issues raised in the request for hearing.

18.6(3) The rules of Iowa Administrative Code 567—Chapter 7, “Contested Case Proceeding,” shall govern appeals to the department of natural resources.

These rules are intended to implement Iowa Code section 473.7 and as specified in 10 CFR 420 (1976).

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CHAPTER 19
GRANTS TO NONPROFIT AND LOCAL GOVERNMENT
HOUSING ORGANIZATIONS
Rescinded IAB 7/9/03, effective 8/13/03

CHAPTER 19
GRANTS TO NONPROFIT AND LOCAL GOVERNMENT
HOUSING ORGANIZATIONS
Rescinded IAB 7/9/03, effective 8/13/03

CHAPTERS 20 to 49
Reserved

TITLE II
GEOLOGICAL SURVEY

CHAPTER 50
GENERAL
[Prior to 3/11/87, see Geological Board [460] Ch 1]
Rescinded **ARC 4425C**, IAB 5/8/19, effective 6/12/19; see 2018 Iowa Acts, ch 1023

CHAPTER 51
OIL, GAS, AND METALLIC MINERALS
[Transferred from Natural Resources[580] Ch 12]
[Prior to 3/11/87, see Soil Conservation Department[780] Ch 29]
Rescinded **ARC 4425C**, IAB 5/8/19, effective 6/12/19; see 561—Chapter 17