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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

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
5	Friday, August 12, 1983	August 31, 1983
6	Friday, August 26, 1983	September 14, 1983
7	Friday, September 9, 1983	September 28, 1983

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

First quarter	July 1, 1983, to June 30, 1984	$104.00 plus $4.16 sales tax
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Fourth quarter	April 1, 1984, to June 30, 1984	$ 26.00 plus $1.04 sales tax

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Iowa Administrative Code

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

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

Iowa Administrative Code - $644.00 plus $25.76 sales tax
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Iowa State Printing Division
Grimes State Office Building
Des Moines, IA 50319
Phone: (515) 281-5231

NOTICE TO STATE AGENCIES AND ANY INTERESTED PERSONS REGARDING PUBLIC RECORDS LAW

Governor Terry E. Branstad has appointed a three-member committee to review and comment on Iowa's public record law, 1983 Iowa Code Chapter 68A, and a 1980 Citizens Privacy Task Force report. The task force report was issued during Governor Robert D. Ray's administration.

The committee is seeking comments from state agencies, local governments and any interested persons regarding Iowa's public records law and the right to privacy. Examples of the type of information sought would be agencies comments on determining what is a public record, comments regarding what documents should be or should not be public records and difficulties experienced in implementing the present law. All comments are welcomed.

Please address comments to committee member Kathryn L. Graf, Administrative Rules Coordinator, State Capitol, Des Moines. Iowa.

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COMMERCE COMMISSION[250]

NOTICE OF INTENDED ACTION

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

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

The Iowa State Commerce Commission gives notice, pursuant to Iowa Code section 17A.4(1), that on July 21, 1983, the Commission issued an order in Docket No. RMU-83-17, In Re: Adoption of Standards for Public Utility Management Efficiency, "Order Commencing Rulemaking."

Pursuant to the authority of Iowa Code section 476.2, the Commisssion intends to consider the adoption of any rules that may be necessary to conform to the requirements of 1983 Iowa Acts, House File 312, section 35, which requires the Commission to adopt rules and policies to implement a program for the analysis of the management efficiency of public utilities. The Commission is directed to adopt (1) rules establishing a methodology for the analysis of management efficiency and (2) rules for determining the level of profit or revenue requirement adjustment appropriate in light of the efficiency of the utility management.

Any interested person may file a written statement of position containing either general comments or specific proposals pertaining to the adoption of standards for public utility management efficiency. The Commission specifically requests all commenting parties to include with their comment proposed rules designed to accomplish the commenting parties' purposes. The statement may be filed no later than September 23, 1983, by filing an original and six copies of the written statement of position or proposals substantially complying with the form prescribed in Iowa Administrative Code 2.2(2).

Opportunity for oral presentation will be afforded if duly requested pursuant to Iowa Code section 17A.4(1)"b".

All communications will clearly indicate the author's name and address as well as specifically identify this docket and the rule upon which the comment is submitted. All communications will be directed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319.

ARC 3994

COMMERCE COMMISSION[250]

NOTICE OF INTENDED ACTION

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

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

The Iowa State Commerce Commission gives notice that on July 29, 1983, the Commission issued an order in Docket No. RMU-83-19, In Re: Remainder Assessment for Utilities Exempt From Rate Regulation, "Order Commencing Rulemaking." On April 27, 1983, the Seventieth General Assembly passed House File 312 to become effective July 1, 1983. Thus, our rules should be amended to conform to the new legislation. The purpose of this rulemaking is to amend the existing rules to establish that public utilities exempt from rate regulation shall not be assessed for remainder expenses incurred during review of rate-regulated public utilities. The proposed rulemaking shall also amend our rules to include the certified expenses incurred by the Office of Consumer Advocate to be directly chargeable to the public utility under 1983 Iowa Acts, House File 312, section 28.

Any interested person may file written comments not later than September 16, 1983, by filing an original and six copies of such comments substantially complying with the form prescribed in Iowa Administrative Code 250—subrule2.2(2). Such comments shall clearly indicate the author's name and address and shall contain the specific reference to this docket and the rule upon which comment is submitted. All comments shall be directed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319. Oral presentation in this matter may be requested as set forth in Iowa Code section 17A.4(1)"b", and Iowa Administrative Code 250—rule 3.6(17A, 474). This rulemaking shall be conducted pursuant to Iowa Administrative Code 250—chapter 3.

This rule is intended to implement 1983 Iowa Acts, House File 312, section 28.

ITEM 1. Amend rule 17.1(476) to read as follows:

250—17.1(476) Definition of "direct assessment." The charge to a particular public utility for expenses incurred by the commission *and the office of consumer advocate* for the purpose of determining rate matters to investigate the books, accounts, practices and activities of, or make appraisals of the property of, or to render any engineering or accounting services to any public utility.

ITEM 2. Amend rule 17.2(476) to read as follows:

250—17.2(476) Definition of "remainder assessment." The charge to all public utilities for the annual expenses reasonably attributable to the performance of the commission's *and the office of consumer advocate's* duties prescribed by Iowa Code chapter 476 *and 1983 Iowa Acts, House File 312, section 28* after deducting the direct assessments.

ITEM 3. Amend rule 17.4(476) to read as follows:

250—17.4(476) Expenses to be included in direct assessments.

17.4(1) Salaries of commission *and the office of consumer advocate* employees, which will be computed on an hourly rate obtained by dividing the individual's annual salary, and related benefit costs borne by the state, by the appropriate number of standard working hours for the year. The time of all commission *and the office of consumer advocate* employees engaged on the matter for which a direct assessment is to be made, whether on the property of the public utility, in the offices of the commission, or elsewhere, including travel time, will be included. The maximum chargeable time per person shall not exceed eight hours per day or forty hours per week.

17.4(2) Travel expenses incurred in an investigation or in rendering services by commission *and the office of consumer advocate* personnel or by others employed by the commission will be charged to the utility. Travel

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expenses include costs of transportation, lodging, meals and other normal expenses attributable to traveling.

17.4(3) Whenever the commission *and the office of consumer advocate* finds it necessary to engage persons, facilities or equipment for consulting advice, particular projects or services arising out of investigations, the cost to the commission of ~~such~~ special services, facilities, or equipment, shall be chargeable to the public utility under investigation.

17.4(4) Overhead expenses of the commission *and the office of consumer advocate* which are reasonably attributable to activities of the commission which can be directly assessed under Iowa Code section 476.10 will be charged to the utility.

ITEM 4. Amend rule 17.7(476) to read as follows:

250—17.7(476) compilation of assessment. *The commission shall ascertain and add to the direct assessment, certified expenses incurred by the office of consumer advocate directly chargeable to the public utility under 1983 Iowa Acts, House File 312, section 28.* The revenues for the remainder assessment shall be compiled by the commission and each utility assessed in proportion to its respective gross operating revenues during the last calendar year. *However, utilities exempt from rate regulation shall not be assessed for remainder expenses incurred during review of rate-regulated public utilities under Iowa Code section 476.31 or 476.32. Such remainder expenses shall be assessed proportionally among only the rate-regulated public utilities.* The bill or accompanying letter of transmittal to each utility shall indicate the assessable revenue for the utility, the rate at which the assessment was computed, and the assessment amount. Utilities not subject to rate regulation will be assessed at one-half the rate assessed those subject to such regulation.

This rule is intended to implement 1983 Iowa Acts, House File 312, section 28.

ARC 3995

COMMERCE COMMISSION[250]

NOTICE OF INTENDED ACTION

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

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

The Iowa State Commerce Commission gives notice that on July 29, 1983, the Commission issued an order in Docket No. RMU-83-12, "Order Commencing Rulemaking." This rulemaking is entitled In Re: Uniform Extension Policy Rules. The Commission, under its authority granted by Iowa Code sections 476.1 and 476.8, intends to consider amendments to Iowa Administrative Code 250—chapters 19, 20, and 21. The proposed amendments concern the arrangements for construction of utility extensions for new service.

Any interested person may file with the Commission written statements of position not later than September 16, 1983, in accordance with Iowa Administrative Code 250—rule 34(17A,474). An original and six copies of the written statement of position must substantially comply with the form prescribed in Iowa Administrative Code 250—subrule 2.2(2). Oral presentation in this docket is scheduled for 10:00 a.m. on September 21, 1983, in the Commission's Hearing Room on the First Floor of the Lucas State Office Building, Des Moines, Iowa.

All communications to the Commission shall clearly identify the author and the author's address, reference Docket No. RMU-83-12, and shall be addressed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319. This rulemaking proceeding shall be conducted in accordance with Iowa Administrative Code 250—chapter 3.

The Commission requests comments on these specific proposals and the following issues:

1. Should the three times base revenue formula be modified in cases where the new structure will be "superinsulated?"
2. Should there be a longer time period than thirty days allowed for attachment after completion of an extension in development areas? How much more time is reasonable?
3. Are there any definitions of terms which may be required to clarify the rules and promote uniformity of application?
4. Should the refund period be reduced from the present ten-year period?

ITEM 1. Amend subrules **19.3(10)**"a"(5) and (6) to read as follows:

(5) "Customer advances for construction records," as used in this subrule, shall mean a separate record established and maintained by the utility, which record includes by depositor, the amount of advance for construction provided by the customer, *whether the advance is by cash or commercial surety bond, and if by surety bond, all relevant information concerning the bond,* the amount of *the* refund, if any, to which the depositor is entitled, the amount of refund, if any, which has been made to the customer, the amount unrefunded, and the construction project or work order the extension was installed on.

(6) "Estimated construction costs," as used in this subrule, shall be calculated using average costs in accordance with good engineering practices and upon the following factors: Amount of service required or desired by the customer requesting the extension~~,~~; size, location, and characteristics of the extension~~, including all appurtenances~~; *and whether or not the ground is frozen.* The average cost per foot shall be computed utilizing the prior calendar year costs, *to the extent such cost basis does not exceed the current costs using current construction cost methodologies, resources and material, and working condition,* divided by the total feet of extensions by size of pipe for the prior calendar year. In no event shall estimated construction costs include costs associated with facilities built for the convenience of the utility.

ITEM 2. Amend subrule **19.3(10)**"b"(1) to read as follows:

(1) Plant additions. The utility will provide all gas plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served, or where the customer will not attach within thirty days after completion of construction. In such instances, the utility may require the customer or developer to *either* advance funds which are subject to refund as additional customers are attached *or make a*

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contribution in aid of construction. A contract between the utility and the customer which requires an advance *or a contribution in aid* by the customer to make plant additions shall be available for commission inspection.

ITEM 3. Amend **19.3(10)**"b"(2)"2" to read as follows:

2. If the estimated construction cost to provide a distribution main extension is greater than three times the estimated base revenue calculated on the basis of similarly situated customers, the applicant for such an extension shall contract with the utility and ~~deposit an advance for construction~~ *make a contribution in aid of construction* equal to the estimated construction cost less three times the estimated base revenue to be produced by the customer prior to commencement of construction.

ITEM 4. Amend subrule **19.3(10)**"b"(3) to read as follows:

(3) Advances for construction costs for distribution main extensions for customers who will not attach within thirty days. Where the customer will not attach within thirty days after completion of the distribution main extension, the applicant for the extension shall contract with the utility and deposit, prior to the commencement of construction, an advance for construction equal to the estimated construction cost.

Advance payments for plant additions or extensions which are subject to refund for a ten-year period, may be made by cash or commercial surety bond. In the event a surety bond is used, the bonded amount shall have added to it a surcharge equal to the annual interest rate paid by the utility on customer bill deposits times the bonded amount. The bond shall be called by the utility at the end of one year or when the earned refunds are equal to the bonded amount, less the surcharge, whichever occurs first. If, upon termination of the surety bond, there are not sufficient earned refunds to offset the full amount of the surety bond, less the surcharge, the depositors shall provide the utility a cash deposit equal to the amount of the surety bond, less refunds accumulated during the bonded period, plus the surcharge. Upon receipt of such cash deposit, the utility shall release the surety bond. The cash deposit, less the surcharge, shall be subject to refund by the utility for the remainder of the ten-year period.

ITEM 5. Amend **19.3(10)**"b"(4) to read as follows:

(4) Contribution in aid of construction for service line extensions. The utility shall finance and construct a service line extension without requiring a contribution in aid of construction or any payment by the applicant where the length of the service extension *to the first point of attachment* ~~does not exceed~~ *is up to* fifty feet on private property.

Where the length of the service extension exceeds fifty feet on private property, the applicant shall be required to provide a contribution in aid of construction within thirty days after completion. The contribution in aid of construction shall be computed as follows:

$$\text{(Estimated cost of construction)} \times \frac{\text{(Total length in excess of 50 feet)}}{\text{(Total length of extension)}}$$

ITEM 6. Amend **19.3(10)**"e" by adding the following as an unnumbered paragraph:

This rule shall not be construed as prohibiting an individual, partnership, or company from constructing its own service line extension, so long as the extensions constructed by the nonutility entity meet at a minimum the applicable portions of the standards in 19.5(1) and 19.5(2) and such other reasonable standards as the utility and inspecting authority may employ in constructing extensions, so long as the standards do not mandate a particular supplier.

ITEM 7. Amend subrule 20.3(13)"a"(1) as follows and insert the new definition as 20.3(13)"a"(2) and renumber the remaining definitions accordingly:

20.3(13) Extensions to customers.

a. Definitions. The following definitions shall apply to the terms used in this rule:

(1) "Extension" shall mean ~~either~~ a *transmission,* distribution, or ~~service~~ *secondary* line extensions~~.~~, *other than a service line extension.*

(2) "Service line extension" shall mean any secondary line extension on private property serving a single customer or single point of delivery of electric service.

ITEM 8. Amend newly numbered **20.3(13)**"a"(6) and (7) to read as follows:

(6) "Customer advances for construction records," as used in this subrule, shall mean a separate record established and maintained by the utility, which record includes by depositor, the amount of advance for construction provided by the customer, *whether the advance is by cash or commercial surety bond, and if by surety bond, all relevant information concerning the bond,* the amount of *the* refund, if any, to which the depositor is entitled, the amount of refund, if any, which has been made to the customer, the amount unrefunded; and the construction project or work order the extension was installed on.

(7) "Estimated construction costs," as used in this subrule, shall be calculated using average costs in accordance with good engineering practices and upon the following factors: Amount of service required or desired by the customer requesting the extension~~,~~; size, location, and characteristics of the extension~~, including all appurtenances~~; *and for underground extensions, whether or not the ground is frozen.* The average cost per foot shall be computed utilizing the prior calendar year costs, *to the extent such cost basis does not exceed the current costs using current construction cost methodologies, resources and material, and working conditions,* divided by the total feet of extensions by type of service for the prior calendar year. In no event shall estimated construction costs include costs associated with facilities built for the convenience of the utility.

ITEM 9. Amend **20.3(13)**"a" by adding the following new definition:

(8) "Point of attachment" is that point of first physical attachment of the service drop (overhead) or service lateral (underground) conductors to the customer's service entrance conductors. For overhead services it shall be the point of tap or splice to the service entrance conductors. For underground services it shall be the point of tap or splice to the service entrance conductors in a terminal box inside or outside the building wall. If there is no terminal box, it shall be the point of entrance into the building.

ITEM 10. Amend **20.3(13)**"b"(1) to read as follows:

(1) Plant additions. The utility will provide all electric plant at its cost in expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served, or where the customer will not attach within thirty days after completion of construction. In such instances, the utility may require the customer or developer to *either* advance funds which are subject to refund as additional customers are attached *or make a contribution in aid of construction.* A contract between the utility and the

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customer which requires an advance *or a contribution in aid* by the customer to make plant additions shall be available for commission inspection.

ITEM 11. Amend **20.3(13)**"b"(2)"1" to read as follows:

1. If the estimated construction cost to provide ~~a distribution line~~ *an* extension is less than or equal to three times the estimated base revenue calculated on the basis of similarly situated customers, utilities shall finance and make the extension without requiring an advance for construction.

ITEM 12. Amend **20.3(13)**"b"(2)"2" to read as follows:

2. If the estimated construction costs to provide ~~a distribution line~~ *an* extension is greater than three times the estimated base revenue calculated on the basis of similarly situated customers, the applicant for the extension shall contract with the utility and ~~deposit an advance for construction~~ *make a contribution in aid of construction* equal to the estimated construction cost less three times the estimated base revenue to be produced by the customer prior to commencement of construction.

ITEM 13. Amend **20.3(13)**"b"(3) to read as follows:

(3) Advances for construction costs for ~~distribution line~~ extensions for customers who will not attach within thirty days. Where the customer will not attach within thirty days after completion of the ~~distribution line~~ extension, the applicant for the extension shall contract with the utility and deposit, prior to the commencement of construction, an advance for construction equal to the estimated construction cost.

Advance payments for plant additions or extensions which are subject to refund for a ten-year period, may be made by cash or commercial surety bond. In the event a surety bond is used, the bonded amount shall have added to it a surcharge equal to the annual interest rate paid by the utility on customer bill deposits times the bonded amount. The bond shall be called by the utility at the end of one year or when the earned refunds are equal to the bonded amount, less the surcharge, whichever occurs first. If, upon termination of the surety bond, there are not sufficient earned refunds to offset the full amount of the surety bond, less the surcharge, the depositors shall provide the utility a cash deposit equal to the amount of the surety bond, less refunds accumulated during the bonded period, plus the surcharge. Upon receipt of such cash deposit, the utility shall release the surety bond. The cash deposit, less the surcharge, shall be subject to refund by the utility for the remainder of the ten-year period.

ITEM 14. Amend **20.3(13)**"b"(4) to read as follows:

(4) Contribution in aid of construction for service line extensions. The utility shall finance and construct either an overhead or underground service line extension without requiring a contribution in aid of construction or any payment by the applicant where the length of the overhead extension *to the first point of attachment* ~~does not exceed~~ *is up to* fifty feet on private property or where the cost of the underground extension *to the meter or service disconnect* is less than or equal to the estimated cost of constructing an overhead extension of fifty feet.

Where the length of the overhead service extension exceeds fifty feet on private property, the applicant shall be required to provide a contribution in aid of construction within thirty days after completion. The contribution in aid of construction shall be computed as follows:

$$\text{(Estimated cost of construction)} \times \frac{\text{(Total length in excess of 50 feet)}}{\text{(Total length of extension)}}$$

Where the cost of the underground service extension exceeds the estimated cost of constructing an *equivalent* overhead service extension of *up to* fifty feet, the applicant shall be required to provide a contribution in aid of construction within thirty days after completion equal to the difference between the estimated cost of constructing the underground *service* extension and the estimated cost of constructing an *equivalent* overhead *service* extension of *up to* fifty feet.

ITEM 15. Amend **20.3(13)**"c" to read as follows:

c. Refunds. The utility shall refund to the depositor for a period of ten years, from the date of the original advance, a pro rata share for each service attachment to the distribution line extension. The pro rata refund shall be computed in the following manner:

(1) If the combined total of three times estimated base revenue for the depositor and each customer who has attached to the ~~distribution line~~ extension exceeds the total estimated construction cost to provide the extension, the entire amount of the advance provided by the depositor shall be refunded to the depositor.

(2) If the combined total of three times estimated base revenue for the depositor and each customer who has attached to the ~~distribution line~~ extension is less than the total estimated construction cost to provide the extension, the amount to be refunded to the depositor shall equal three times estimated base revenue of the customer attaching to the extension.

(3) In no event shall the total amount to be refunded to a depositor exceed the amount of the advance for construction made by the depositor. Any amounts subject to refund shall be paid by the utility without interest. At the expiration of the above-described ten-year period, the customer advance for construction record shall be closed and the remaining balance shall be credited to the respective plant account.

ITEM 16. Amend **20.3(13)**"e" by adding the following as an unnumbered paragraph:

This rule shall not be construed as prohibiting an individual, partnership, or company from constructing its own service line extension, so long as the extensions constructed by the nonutility entity meet at a minimum the standards in 20.5(1) and 20.5(2) and such other reasonable standards as the utility and inspecting authority may employ in constructing extensions, so long as the standards do not mandate a particular supplier.

ITEM 17. Amend subrule **21.3(12)**"a"(4) to read as follows:

(4) "Customer advances for construction records", as used in this subrule, shall mean a separate record established and maintained by the utility, which record includes by depositor, the amount of advance for construction provided by the customer, *whether the advance is by cash or commercial surety bond, and if by surety bond, all relevant information concerning the bond,* the amount of refund, if any, to which the depositor is entitled, the amount of refund, if any, which has been made to the customer, the amount unrefunded, and the construction project or work order the extension was installed on.

ITEM 18. Amend subrule **21.3(12)**"a"(5) to read as follows:

(5) "Estimated construction costs", as used in this subrule, shall be calculated using average costs in accordance with good engineering practices and upon the following factors: Amount of service required or desired

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

by the customer requesting the extension, size, location and characteristics of the extension; ~~including all appurtenances~~; *and whether or not the ground is frozen.* The average cost per foot shall be calculated utilizing the prior calendar year costs, *to the extent such cost basis does not exceed the current costs using current construction cost methodologies, resources and material, and working conditions,* divided by the total feet of extensions by size of pipe for the prior calendar year. In no event shall estimated construction costs include costs associated with facilities built for the convenience of the utility.

ITEM 19. Amend subrule **21.3(12)**"b"(1) to read as follows:

(1) Plant additions. The utility will provide all water plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served or where the customer will not attach within thirty days after completion of construction. In such instances, the utility may require the customer or developer to *either* advance funds which are subject to refund as additional customers are attached *or make a contribution in aid of construction.* A contract between the utility and the customer which requires an advance *for a contribution in aid* by the customer to make plant additions shall be available for commission inspection.

ITEM 20. Amend subrule **21.3(12)**"b"(2)"2" to read as follows:

2. If the estimated construction cost to provide a distribution main extension is greater than three times the estimated annual revenue calculated on the basis of similarly situated customers, the applicant for such an extension shall contract with the utility and ~~deposit an advance for construction~~ *make a contribution in aid of construction* equal to the estimated construction cost less three times the estimated annual revenue to be produced by the customer prior to commencement of construction.

ITEM 21. Amend subrule **21.3(12)**"b"(3) to read as follows:

(3) Advances for construction costs for distribution main extensions for customers who will not attach within thirty days. Where the customer will not attach within thirty days after completion of the distribution main extension, the applicant for the extension shall contract with the utility and deposit, prior to the commencement of construction, an advance for construction equal to the estimated construction cost.

Advance payments for plant additions or extensions which are subject to refund for a ten-year period, may be made by cash or commercial surety bond. In the event a surety bond is used, the bonded amount shall have added to it a surcharge equal to the annual interest rate paid by the utility on customer bill deposits times the bonded amount. The bond shall be called by the utility at the end of one year or when the earned refunds are equal to the bonded amount, less the surcharge, whichever occurs first. If, upon termination of the surety bond, there are not sufficient earned refunds to offset the full amount of the surety bond, less the surcharge, the depositors shall provide the utility a cash deposit equal to the amount of the surety bond, less refunds accumulated during the bonded period, plus the surcharge. Upon receipt of such cash deposit, the utility shall release the surety bond. The cash deposit, less the surcharge, shall be subject to refund by the utility for the remainder of the ten-year period.

ITEM 22. Amend **21.3(12)**"e" by adding the following as an unnumbered paragraph:

This rule shall not be construed as prohibiting an individual, partnership, or company from constructing its own service line extension, so long as the extensions constructed by the nonutility entity meet at a minimum the applicable portions of the standards in 21.5(1) and 21.5(2) and such other reasonable standards as the utility and inspecting authority may employ in constructing extensions, so long as the standards do not mandate a particular supplier.

ARC 3996

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 July 22, 1983, the Commission issued an Order in Docket No. RMU-83-2, In re: Basic Local Service (Previously Entitled: Non-Outgoing Toll Local Telephone Service), "Order Proposing Rules." This docket was originally commenced by the Commission by order issued February 25, 1983, and a "Notice of Intended Action" was published in the March 16, 1983, Iowa Administrative Bulletin as ARC-3636. The notice published as ARC-3636 set forth proposed rules requiring telephone utilities to offer local service only. Written comments were filed on or about April 18, 1983, and an oral presentation was held April 25, 1983.

The Commission has carefully reviewed and evaluated the entire record, including all written comments filed in oral presentations and statements submitted in this proceeding, and finds that the proposal set forth in this notice should be published in the Iowa Administrative Bulletin. Interested persons will be afforded the opportunity to submit to the Commission written comments and oral presentations concerning whether the proposed rules should be adopted by the Commission as final rules and, if so, what modifications to the proposed rules should be made before such adoption. The modifications proposed to the originally proposed rules are a result of the written and oral comments made in this docket. Specifically, the proposed rules require telephone utilities to make available to all residential customers a new class of reduced service that will allow them to make calls within the local exchange or extended area but not allow them access to the toll network. This service, known as "basic local service," must be offered at a rate no greater than the rate applicable to local service, and no toll network access charges are to apply. In addition, the proposed rules have been modified to provide that the service must only be offered for exchanges technically capable of restricting toll on a reasonably economical basis. The purpose of this proposal is to ensure that the basic telephone service to all residential customers will be available at the lowest possible cost.

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

Any person interested in this matter may file a written statement of position no later than September 6, 1983, by filing an original and six copies of such statement, substantially complying with the form prescribed in Iowa Administrative Code subrule 2.2(2). The Commission is waiving subrule 3.4(2) for this proceeding only.

Oral presentation on the proposed rules will be held September 9, 1983, commencing at 10:00 a.m. in the Commission hearing room, first floor, Lucas State Office Building, Des Moines, Iowa.

All communications to the Commission shall clearly identify the author and author's address, reference Docket No. RMU-83-2 and shall be addressed to the Executive Secretary, Iowa State Commerce Commission, Lucas State Office Building, Des Moines, Iowa 50319. This rulemaking proceeding shall be conducted pursuant to 250—Chapter 3, Iowa Administrative Code.

ITEM 1. Amend subrule **22.1(3)** by adding the following definition, to be inserted alphabetically:

"Basic local service" means the level of service at which a residential customer has exchange service or, if available, extended area service, and not the ability to access the toll network.

ITEM 2. Amend subrule **22.2(5)** by adding to the end of the current rule the following new paragraph:

v. Separate rates or charges for basic local service, including the company's rate, which shall not exceed the rate applicable to local service, and provisions for alerting all existing and new residential customers of the basic local service option and informing them that this choice may be reversed once within sixty days after the initial election without a service fee, and that there is no service charge for the initial election of this service by a customer.

ITEM 3. Amend rule 150—22.3(476) by adding the following new subrule:

22.3(14) Basic local service. Telephone utilities shall make available basic local service to all residential customers in exchanges technically capable of blocking access to the toll network on a reasonably economical basis. Telephone utilities shall not assess any access charge to the long distance network for the provisoin of basic local service.

ARC 3992

ENERGY POLICY COUNCIL[380]

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 requirements of the Department of Housing and Urban Development (HUD), as set forth in Subtitle A of Title V of the Energy Security Act, Pub. L. 96-294, 12 U.S.C. 3601, et. seq., establishing the Solar Energy and Energy Conservation Bank (SCB) and under the authority granted in Iowa Code section 93.7, the Iowa Energy Policy Council proposes rules implementing the Iowa SCB program, Chapter 16 entitled.

The Solar Energy and Energy Conservation Bank Program is designed to provide loan assistance to eligible individuals to install energy conservation measures and passive solar hot water heaters.

Rules being adopted by the Council describe income guidelines for program participation, assistance levels, eligible conservation and solar measures and the responsibilities of lenders and the Council. Complete text of these rules is published herein as emergency ARC 3991.

Any interested persons may make oral or written suggestions or comments on these proposed rules prior to September 7, 1983. Such written materials should be directed to the Director, Conservation Division, Iowa Energy Policy Council, Lucas State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Director, Conservation Division at 515/281-4420 or in conservation offices on the sixth floor of the Lucas State Office Building. There also will be a public hearing on Wednesday, September 7, 1983, at 1:30 p.m. in the conference room on the sixth floor of the Lucas State Office Building. Persons may present their views at this public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the director of the conservation division at least one day prior to the date of the public hearing.

ARC 3989

HEALTH DEPARTMENT[470]

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 135.11(15) and Chapter 17A.3, the Iowa State Department of Health hereby gives Notice of Intended Action to amend Chapter 73 "Special Supplemental Food Program for Women, Infants and Children (WIC)", Iowa Administrative Code.

These rules enlarge upon the present federally adopted rules by adding staffing, certification, medical equipment, food delivery, agency and vendor responsibilities, education and appeals and fair hearing processes.

A public hearing will be held on September 6, 1983 at 1:00 p.m. in the Lucas State Office Building - 3rd floor conference room, Des Moines, Iowa.

Written comment will be accepted until September 6, 1983. All submissions should be addressed to Mark W. Wheeler, Hearing Officer, Iowa State Department of Health, 3rd Floor-Lucas State Office Building, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 135.11(15).

Add the following new rules beginning with 470—73.5(135).

470—73.5(135) Staffing of local agencies.

73.5(1) The competent professional authority, as defined in 7 CFR 246.2, shall be an American Dietetic Association - eligible nutritionist.

HEALTH DEPARTMENT[470] *(cont'd)*

73.5(2) Local agencies shall secure written approval of applicants prior to hiring of the competent professional authority.

73.5(3) The competent professional authority (nutritionist) shall conduct at a minimum the following portion of the WIC certification:

a. Diet history/assessment.

b. Signature attesting to participant's eligibility for services.

73.5(4) A registered nurse, or other health personnel if under appropriate and direct supervision, shall conduct at minimum the following portion of the WIC health assessment: Hematocrit/hemoglobin.

73.5(5) Proposed staffing patterns within local WIC programs shall be subject to approval from the state office, following review in accord with established statewide WIC staffing standards.

470—73.6(135) Certification of participants. The certification process to determine eligibility for WIC services, as defined in 7 CFR Sec. 246.7, shall include the following additional procedures and definitions:

73.6(1) Income

a. Income guidelines shall be set at 150% of community service agency (CSA) annual poverty guidelines, or other percentage as directed by state agency. WIC state income guidelines shall be adjusted annually in July, following any change in CSA guidelines.

b. Income information is verified in writing on each individual applicant at each six-month certification.

c. The following are considered as income:

1. Money, wages, salaries, commissions before deductions;

2. Receipts from self-employment or farm business after deductions for business or farm expenses payment from public assistance, social security unemployment, workers' compensation, strike benefits, veteran's benefits, training stipends, alimony, child support, military family allotments or other regular support from an absent family member or someone not living in the household (includes parental assistance to students);

3. Government employee pensions, private pensions, and regular insurance or annuity payments;

4. Cash scholarships, unless specifically designated as intended for tuition and books, dividends, interest, rents, royalties, bonuses, or income from estates or trusts, cash received or withdrawn from any source including savings, investments, trust accounts and other resources which are readily available to the family;

Loans with a deferred payment schedule.

d. Income does not include:

1. Income or benefits received under any federal program which is excluded from consideration as income by any legislative prohibition, e.g.; VISTA;

2. Sale of property, house or car, tax refunds, gifts, one-time insurance payment or compensation for injury;

3. Income earned by family members under eighteen years of age;

4. Noncash income such as the bonus value of food and fuel produced and consumed on farms and the imputed value of rent from owner occupied farm or nonfarm housing, child support due but not paid, loans with an immediate repayment schedule.

e. Irregular income and household exceptions. Irregular income and exceptions to the standard household arrangement of parent and guardian shall be evaluated in accord with specifics in the Iowa WIC Policy and Procedure Manual. Issues not addressed in that manual shall be evaluated in accord with income review policies of the local contracting agency.

73.6(2) Time frame for services.

a. The date of initial visit shall be the day on which an applicant first appears in person at any of the contracted agency's offices.

b. Pregnant women shall be certified for the duration of their pregnancy and for up to six weeks postpartum.

c. The certification period (6 months) shall begin on the date of collection of the medical data used for determining nutritional risk. Data on infants shall not be more than one month old on the date that first benefits are received.

73.6(3) Medical equipment.

a. Medical equipment used in conducting WIC clinics shall be subject to approval by the state office.

b. Standards for conducting the medical and nutritional assessments on program applicants shall be as described in the Iowa WIC Policy and Procedure Manual.

c. Medical equipment shall be recalibrated in accord with procedures outlined in the Iowa WIC Policy and Procedure Manual.

73.6(4) Documentation of medical information. Medical documentation in individual participant records shall be as described in the Iowa WIC Policy and Procedure Manual.

73.6(5) Documentation of nonmedical information. Documentation of nonmedical information in individual participant and collective program records shall be as described in the Iowa WIC Policy and Procedure Manual.

73.6(6) Transfer of participant information. All medical and nonmedical information collected on a program participant, if transferred to other local agencies, to the state, or retained as confidential shall be handled in accord with procedures described in the Iowa WIC Policy and Procedure Manual.

470—73.7(135) Food Delivery. Food delivery refers to all aspects of the method by which WIC participants receive food benefits, i.e., printing, distribution, and processing of computerized personal food checks redeemable through retail food markets and the statewide banking system.

73.7(1) Responsibilities of WIC participants.

a. Prompt redemption of food checks. A WIC participant has thirty days from the date of issue in which to cash any WIC check through a vendor. The check becomes invalid after this time.

b. Attendance at monthly distribution clinics. Enrolled participants are required to appear in person and as scheduled to pick up monthly benefit of food checks. Missed attendance may entitle local agencies to deny that month's benefit. If a written statement is provided to the local agency, a proxy may pick up checks not more than twice in every six-month certification period.

c. Adherence to standards for use of the food instrument. The WIC participant in using the WIC check to obtain the specified foods shall:

(1) Sign each check at the time of receipt in the clinic.

(2) Present the blue ID folder to the vendor at point of purchase.

(3) Sign each check a second time in the appropriate box in the presence of the vendor.

(4) Write in the total amount of the purchase in the designated space.

(5) Write in the vendors' name in the designated "pay to the order of" column.

HEALTH DEPARTMENT[470] *(cont'd)*

(6) Not accept money in exchange for unused checks or portions of the food allotment.

(7) Attempt to redeem checks only with a WIC-contracted vendor.

73.7(2) Responsibilities of local agencies.

a. Loss or theft of checks. The local agency is responsible for any financial loss due to theft or other loss of food checks from clinics. Steps for minimizing the chances of theft or loss are followed in accord with the Iowa WIC Policy and Procedure Manual.

b. Mailing of WIC checks. WIC checks shall not be mailed on other than an occasional, individual basis without prior approval from the state WIC office.

c. Use of manual checks. Manually written checks shall be issued only when:

(1) Due to recent certification computer printed checks have not been printed.

(2) Computer checks arrive damaged or multilated, or are lost or stolen after being issued to client.

(3) Computer checks are not available due to error on input form, loss in transit, or a need for special formula.

(4) Computer checks contain incorrect data.

d. Training/monitoring of WIC vendors. The local agency shall communicate information regarding the Iowa WIC program to vendors, as instructed by the state office. Monitoring and training of vendors and annual securement of contracts shall be carried out in accord with state office directives outlined in the WIC Policy and Procedure Manual.

73.7(3) Responsibilities of WIC vendors.

a. Application and contract. A potential vendor shall make application to the WIC program and accept the obligations imposed by signing of a WIC Vendor contract prior to acceptance of any WIC checks. The obligations of the WIC contract shall be as outlined by the state WIC office and shall be binding.

b. Training. Participation in training session(s) as offered by state and local WIC staff, shall be a requirement for the WIC vendor.

c. Validity of checks. The WIC vendor shall be responsible for ensuring that:

(1) The participant counter signature required on the food check is completed in the vendor's presence, and that both signatures on the food instrument match;

(2) The participant presents a WIC identification card prior to redeeming checks for food;

(3) The type and quantity of food to be purchased is as indicated on the check;

(4) The amount of money written onto the check for repayment does not exceed $30.00 or other maximum amount as designated by the state office and printed on the check;

(5) The issue date is present on the check and is not older than thirty days prior to the date of usage;

(6) WIC checks are never exchanged for cash or credit;

(7) Substitutions of food different from those listed on the check in type or amount are not made;

(8) Checks are presented to the state's agent (bank) for payment within sixty days of the issue date;

(9) The cost of foods purchased by WIC participants does not exceed charges to other customers for the same foods.

d. Co-operation during monitorings. Contracted WIC vendors shall co-operate with state and local staff who present on-site to monitor the store's WIC activities.

e. Reimbursement to the program. Vendors determined by the state office to have collected more moneys than the true value of food items received shall make reimbursement to the state WIC Program upon request.

73.7(4) Responsibilities of state agency. The state agency shall determine when compliance buying activities are necessary to detect program violations by vendors. The agency shall develop all standards and procedures to be followed in carrying out compliance investigations. The state agency shall conduct compliance investigations using employees of the state of Iowa or provide appropriate supervision for investigators under contract.

470—73.8(135) Food package. The authorized supplemental foods shall be prescribed to participants from food packages outlined in 7 CFR 246.8 and in accord with the following regulations.

73.8(1) Prescription of foods. The competent professional authority is responsible for prescribing foods specifically needed by the individual from the total food package. This includes approval of requested changes in the food prescription during a six-month certification interval.

73.8(2) Tailoring to meet individual nutritional need. Food benefits are individually tailored within the designated federal maximum food package in order to best meet nutritional need. Amounts are reduced by the nutritionist according to the following restrictions per participant category, in accord with current national nutrition recommendations.

a. Women.

(1) Standard tailoring pattern. Skim milk is the milk of choice for women. Cheese is substituted at a maximum of two pounds per month with substitution discouraged when high fat, cholesterol and sodium intakes are a health concern.

(2) Obesity in women. Any postpartum nonbreastfeeding woman greater than or equal to 120% of the standard in weight for height receives skim milk rather than whole milk, and does not receive cheese as a substitute for milk. Obese pregnant and lactating women are encouraged to accept the same food package alterations without specific instructions for immediate weight loss.

b. Children.

(1) Standard tailoring pattern. Milk is tailored based on recommendations of the National Academy of Pediatrics that no more than 1/3 of a child's calories come from milk to help prevent iron deficiency anemia. Skim milk is the milk of choice for children over two years of age. Cheese is substituted at a maximum of two pounds per month with substitution discouraged when high fat, cholesterol and sodium intakes are a health concern.

(2) Obesity in children. Children greater than or equal to the 95th percentile in weight/height receive skim milk rather than whole milk, and do not receive cheese as a substitute for milk. An obese child 1 to 2 years of age is provided 2% milk rather than skim milk and does not receive cheese.

c. Infants.

(1) Formula for the breastfed infant. The maximum amount of formula provided to a breastfed infant is 203 oz. concentrate or equivalent, or up to one half of the total food package allotment.

(2) Ready-to-feed formula. Ready-to-feed formula shall be provided only under circumstances of contaminated water supply, inability of the caring adult to prepare formula of the proper dilution from powder or concentrate following instruction, or other special situations as determined by the nutritionist. The pro-

vision of ready-to-feed formula requires documentation of the special situation in the individual file.

(3) Substitution of cow's milk for formula 7 CFR 246.8 prohibits provision of whole milk to an infant less than twelve months of age.

(4) Noniron fortified formulas. Standard infant formulas without iron shall be provided only in physician-documented cases of a hemloytic anemia or hemachromatosis.

(5) Other special formulas. Special formulations not included within the Iowa WIC food list shall be made available following written documentation of the need by a physician and designation by an ISDH nutritionist as an appropriate feeding. Provision is arranged through contact of the local WIC agency with the state office.

(6) Infant juice. Fruit juice shall not be provided to an infant earlier than the fifth month of life. Regular canned or frozen juice shall be provided in preference to the individually packaged infant juices for purposes of cost containment.

d. Tailoring of eggs. The Iowa WIC food package shall include not more than one dozen eggs per month for any one person.

73.8(3) Changes in the state food package. Change in the approved food list shall be made only once per year by the State WIC Office.

470—73.9(135) Education.

73.9(1) Nutrition education of WIC participants.

a. Education as a benefit. Nutrition education is provided as a benefit of the program in accord with 7 CFR 246.9 and the following rules.

(1) A minimum of two nutrition education contacts shall be provided to each WIC participant, their parent or guardian during each six-month certification period.

(2) The nutrition education provided shall be suited to the specific nutritional needs of the participant, as evidenced through diet and medical history documentation.

(3) Individuals determined to be at high (health) risk, as defined in the Iowa WIC Policy and Procedure Manual, through medical or dietary history, shall receive a nutrition plan of care. The plan of care shall be documented in their medical record, and shall include at least two follow-up nutrition counseling sessions designed specifically to reduce their specific risk(s).

(4) Nutrition education materials and recommendations from the state office relating to content or manner of educational presentations to participants shall be incorporated into the educational component of WIC provided by locally contracted agencies.

73.9(2) Education of local WIC personnel. Agencies accepting WIC funds shall be responsible for ensuring that all staff employed with those funds attend all WIC training sessions as designated by the state office to be appropriate to their job.

470—73.10(135) Health services. The WIC program shall serve in the arrangement of ongoing health services for its participants. Health services are defined to include ongoing, routine pediatric and obstetrical care, and referral for diagnosis and treatment of any other condition. Local WIC agencies not able to provide such health services directly shall enter into written agreements with other public health agency(s) or private physician to ensure availability of health services.

73.10(1) Written agreements.

a. Contract for services. Local WIC agencies shall maintain an annual written, contractual agreement with any health agency performing WIC health assessments, whether for fee or exchange of service.

b. Memorandum of understanding. Local WIC agencies shall maintain an annual memorandum of understanding with any health agency designated to provide ongoing health services to WIC participants.

73.10(2) Referral procedures. The local WIC agency shall be responsible for referral of WIC participants to appropriate health care providers, as determined by the WIC health professional's assessment of their condition.

a. Authorization for release of information. Before referring medical or other personal information, including name, to an outside health agency, the local WIC agency shall secure the participant's written authorization to release such information. A separate statement shall be signed for each specific health or other service provider to which information is being sent. The information contained in individual participants records shall be confidential pursuant to 7 CFR 246.15.

b. The referral form. A standard referral form, or format approved by the state WIC office, shall be completed and sent to the referral agency. Documentation and follow-up is made in accord with the Iowa WIC Policy and Procedure Manual.

470—73.11(135) Appeals and fair hearings-local agencies and food vendors.

73.11(1) Right of appeal. A local agency or a food vendor shall have a right to appeal when a local agency's or food vendor's application to participate is denied, when participation is terminated, when a contract is not renewed by the state agency, or when any other adverse action which affects participation is taken by the state agency.

73.11(2) Request for hearing. An appeal is brought by filing a written request for a fair hearing with the State WIC Director, Department of Health, Lucas State Office Building, Des Moines, Iowa 50319, within thirty days of the date on which the adverse action is taken against the local agency or food vendor. The date of receipt of the written request for hearing by the state WIC director shall be the date of filing. The written request for hearing shall state the adverse action being appealed. Once the hearing request is received, the state WIC director shall forward the request to the appropriate hearing officer.

73.11(3) Notice of hearing. The hearing officer shall schedule the time, place and date of the hearing as expeditiously as possible. Parties shall receive the notice of hearing at least twenty days in advance of the scheduled hearing.

73.11(4) Postponement of adverse action. The adverse action which is the subject of appeal shall be postponed until a final hearing decision is reached.

73.11(5) Conduct of hearing. The hearing shall be conducted in accordance with the department of health hearing procedures found at IAC 470—chapter 173 and federal regulations found at 7 CFR 246.24. Copies of these regulations are available from the state WIC office upon request. At a minimum, each party to a hearing shall have the opportunity to present its case; to confront and cross-examine adverse witnesses; to be represented by counsel, if desired; and to review the case record prior to the hearing.

73.11(6) Decision. A written decision of the hearing officer shall be issued, where possible, within sixty days from the date of the request for a hearing unless the parties agree to a longer period of time. The decision of the hearing shall be mailed by certified mail return receipt requested or delivered by personal service.

HEALTH DEPARTMENT[470] *(cont'd)*

73.11(7) Proposed decision-appeal to the commissioner. The decision of the hearing officer is a proposed decision which shall become final unless an appeal is taken to the commissioner of public health in accordance with IAC 470—chapter 173. A decision of the commissioner shall be final upon issuance.

73.11(8) Judicial review. Judicial review of a final decision is brought by filing a petition for judicial review in the appropriate district court within thirty days after a proposed decision becomes final or after the issuance of a final decision by the commissioner. Petitions for judicial review must be filed in accordance with Iowa Code chapter 17A.

470—73.12(135) Appeals and fair hearings-participants.

73.12(1) Right of appeal. A WIC participant shall have the right to appeal whenever a decision or action of the state or local agency results in the individual's denial of participation, suspension, or termination from the WIC program.

73.12(2) Notification of appeal rights and right to fair hearing. Each program participant is notified in writing of their right to appeal and the procedures for requesting a fair hearing at the time of application (on certification input form) and at the time of denial of eligibility or termination from the program (on notification-of-eligibility card and notification-of-termination card). Appeal and fair hearing notices are also written, posted, and immediately available at local agencies to explain the method by which a fair hearing is requested, and that the participant may present arguments at the hearing either personally or through a representative such as a relative, friend, legal counsel, or other spokesperson.

73.12(3) Request for hearing. A request for a fair hearing is any clear expression by an individual or the individual's parent, guardian, or other representative that an opportunity to present its case is desired. The request for hearing shall be made to the local agency within ninety days from the date the individual receives notice of the decision or action which is the subject of appeal.

73.12(4) Receipt of benefits during appeal. Participants who are involuntarily terminated from the WIC program prior to the end of the standard certification period shall continue to receive program benefits while the decision to terminate is under administrative appeal-provided the request for a hearing is filed within fifteen days of the notice of termination. Participants who are terminated because of categorical ineligibility (i.e.; a child over five years of age) shall not continue to receive benefits during the appeal period. Individuals who are terminated at the end of a certification period for failure to re-apply, following notice of expiration of certification, shall not continue to receive benefits during the appeal period. Applicants who are denied program benefits at the initial certification or at subsequent recertifications, due to a finding of ineligibility, shall not receive benefits during the administrative appeal period.

73.12(5) Fair hearing officer. The fair hearing officer shall be impartial, shall not have been directly involved in the initial determination of the action being contested, and shall not have a personal stake in the decision. Hearing officers may be local agency directors, health professionals, community leaders, or any impartial citizen. Local agencies may seek the assistance of the state WIC office in the appointment of a hearing officer.

73.12(6) Notice of hearing. The hearing officer shall schedule the time, place and date of the hearing as expeditiously as possible. Parties shall receive notice of the hearing at least ten days in advance of the scheduled hearing. The hearing shall be accessible to the individual requesting the hearing. The hearing shall be scheduled within three weeks from the date the local agency received the request for a hearing, or as soon as possible thereafter, unless a later date is agreed upon by the parties.

73.12(7) Conduct of hearing. The hearing shall be conducted in accordance with federal regulations found at 7 CFR section 246.23. Copies of these regulations are available from the local and state agency. At a minimum, the individual requesting the hearing shall have the opportunity to:

a. Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;

b. Be assisted or represented by an attorney or other person;

c. Bring witnesses;

d. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses;

e. Submit evidence to establish all pertinent facts and circumstances in the case;

f. Advance arguments without undue interference.

73.12(8) Decision. Decisions of the hearing officer shall be in writing and shall be based on evidence presented at the hearing. The decision shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and pertinent regulations or policy. The decision shall be issued within forty-five days of the receipt of the request for a hearing, unless a longer period is agreed upon by the parties.

73.12(9) Appeal of decision to state agency. If either party to a hearing receives an unfavorable hearing decision, that decision may be appealed to the state WIC agency. Such appeals must be made to the state agency within fifteen days of the mailing date of the hearing decision. The hearing decision shall be reviewed by the state WIC director or an impartial person appointed by the state WIC director, who is familiar with state and federal WIC regulations. Appeals to the state WIC director shall be sent to: State WIC Director, Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

73.12(10) Conduct of appeal:

a. An appeal to the state WIC director shall be based on the record made at the hearing. The local agency shall have the responsibility to transfer the record of the hearing to the state WIC director.

b. A new hearing is not held before the state WIC director.

c. The appellant and the local agency shall have the right to present additional evidence to the state WIC director upon request if the evidence is relevant to the appeal.

d. Appellant, or appellant's representative may present arguments to the state WIC director in writing, or orally in person before the state WIC director, or orally in a telephone conference call. The right to oral presentation must be requested; if requested, the state WIC director, or person hearing the appeal, shall schedule a time for oral presentation, whether in person or by telephone conference call, as expeditiously as possible and shall notify the parties in writing of the time and place for the oral presentation at least ten days in advance of the time set.

HEALTH DEPARTMENT[470] *(cont'd)*

73.12(11) Appeal decision. A decision by the state WIC director, or person hearing the appeal, shall be made in writing and mailed to appellant within forty-five days of the date on which the notice of appeal was received. The decision shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and pertinent regulations or policy.

73.12(12) Appeal to the commissioner. The decision of the state WIC director shall constitute the final decision for purposes of judicial review unless a party appeals to the commissioner of public health within ten days of the receipt of the written decision of the state WIC director. Appeals to the commissioner shall be addressed to: Commissioner of Public Health, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

73.12(13) Judicial review. After entry of a decision by the state WIC director or, if an appeal is taken to the commissioner of public health, after entry of a decision by the commissioner a party may seek judicial review of that decision in the appropriate district court by filing a petition for judicial review within thirty days of the date on which the decision being challenged was issued. The petition for judicial review must be filed in accordance with Iowa Code chapter 17A.

73.12(14) Benefits after decision. If a final decision is in favor of the person requesting a hearing and benefits were denied or discontinued, benefits shall begin immediately. If a decision is in favor of the agency, benefits shall be terminated, if still being received, as soon as administratively possible after the issuance of a final decision. Benefits denied during any administrative appeal period may not be awarded retroactively following a final decision in favor of an applicant.

470—73.13(135) State monitoring of local agencies. The state agency shall review local agency operations through use of reports and documents submitted, state-generated data processing reports, on-site visits for evaluation and technical assistance.

73.13(1) On-site visits. State office staff shall visit local agencies whenever necessary, to review operations and assure compliance with state and federal regulations.

73.13(2) Request for written reports. The state office may request written progress reports from local agencies within specified time.

73.13(3) Qualifications of state reviewers. At minimum, one of the persons from the state office responsible for reviewing a local WIC agency shall be an American Dietetic Association-eligible nutritionist/dietitian.

470—73.14(135) Migrant services. To meet the WIC needs of migrant workers within the state, a contract or work agreement shall be maintained with at least one local migrant service agency within the state to provide or assist in the provision of service to this population.

470—73.15(135) Civil rights. The Iowa WIC program shall operate in compliance with the Equal Employment Opportunity Act of 1973, the Civil Rights Act of 1964, amended 1972, the State of Iowa Civil Rights Act of 1965, the Age Discrimination Act of 1967, Section 504 of Rehabilitation Act of 1973, Iowa Executive Order #15 of 1973, and Executive Order #11246 of 1965 as amended by Executive Order #11375 of 1967, to ensure the rights of all individuals under this program.

470—73.16(135) Audits. Each local agency shall ensure an audit of the WIC program within their agency at least every two years, to be conducted by a private certified public accountant. Each audit shall cover all unaudited periods through the end of the previous grant year. The state health department's audit guide shall be followed to ensure an audit which meets federal and state requirements.

470—73.17(135) Reporting. Completion of grant applications, budgets, expenditure reports and written responses to the state's monitoring for the WIC program shall be conducted by local agencies in compliance with the formats and procedures outlined by the Iowa state department of health in the Iowa WIC Policy and Procedure Manual.

470—73.18(135) Program violation. Individuals, local agencies or vendors are subject to the sanctions outlined below if determined by local or state staff to be guilty of abusing the program or its regulations:

73.18(1) Individual participant violation. Participants within an entire family may be suspended from the program for up to three months for any of the following reasons:

a. Dual participation in both WIC and the commodity supplemental feeding program.

b. Attempting to purchase nonfood items.

c. Attempting to receive cash or credit with WIC check.

d. Attempting to sell or return WIC foods for cash or credit.

e. Alteration of a WIC check.

f. Attempting to redeem check issued to another participant.

g. Receiving benefits from more than one WIC clinic for the same time period.

h. Second instance of a class II violation as outlined below:

(1) Attempting to purchase unauthorized brands/types of foods.

(2) Attempting to purchase unauthorized foods.

(3) Abusive treatment of vendors or WIC staff.

(4) Attempting to redeem checks through an unauthorized vendor.

i. Third instance of a class I violation as outlined below:

(1) Attempting to cash checks more than thirty days old.

(2) Attempting to countersign checks signed by spouse or proxy.

All participants shall receive fifteen days notice prior to suspension. The local agency shall maintain record of all participant violation notices and suspensions.

73.18(2) Vendor violation. WIC vendors may be suspended from the program for a period of at least six months, not to exceed three years, for any of the following reasons:

a. Allowing purchase of nonfood items.

b. Discounting or trafficking in WIC checks.

c. Suspension from food stamp program.

d. Accepting WIC checks during a suspension period.

(1) Accepting checks over thirty days old.

(2) Redeeming checks over sixty days old.

(3) Accepting checks with no date stamp.

(4) Failure to endorse check/ "Pay to the order of" not filled in.

(5) Allowing purchase of unauthorized brands/types of foods.

e. Second instance of any Class II violation as outlined below:

(1) Accepting checks with missing/mismatched signatures.

(2) Charging more than shelf price of items on check.

HEALTH DEPARTMENT[470] *(cont'd)*

(3) Giving cash or credit or WIC check(s) (each transaction).
(4) Refusal to accept valid WIC checks from participants.
(5) Abusive or discriminatory treatment of WIC participants.
(6) Failure to stock required minimum of WIC foods.
(7) Failure to comply with other terms of agreement.
(8) Allowing purchase of unauthorized foods.
(9) Failure to reimburse state for potentially overpaid check or provide reasonable explanation for cost of check.
(10) Failure to submit two of the four required price assessment sheets.

All vendors shall receive thirty days' notice prior to suspension, to allow an opportunity for appeal. The state WIC office shall conduct all correspondence regarding possible program abuse among vendors.

470—73.19(135) Data processing. All local WIC agencies shall comply with the instructions outlined in the Iowa WIC Policy and Procedure Manual for use of the automated data processing system in provision of WIC checks and monitoring of WIC services. No local agency is exempted from adherence to any portion of these instructions.

470—73.20(135) Outreach. Outreach efforts within the Iowa WIC program shall be directed toward extension of services to the neediest Iowans of high priority by reason of their WIC status (see 7 CFR 246.1(d)3). State and local agencies shall shareresponsibility for the conduct of outreach efforts.

73.20(1) Local agency responsibilities. Local WIC agencies shall, under recommendation or approval from the state office, conduct any or all of the following outreach activities annually:

a. Employ of outreach worker(s).
b. A minimum of two newspaper articles on WIC in the local community.
c. Distribution of WIC brochures to numerous community organizations and offices.
d. Information meetings to county social service departments, including food stamp, drug/alcohol abuse counseling services, aid for dependent children staff, and child abuse staff, and to: Public health nurse offices, physician offices, maternal and child health programs, head start programs, dental programs, family planning programs, nutrition professional groups, nursing professional groups, extension services, parent-teacher and other community organizations.

470—73.21(135) Caseload management. The statewide caseload (number of participants) shall be managed by the state office in accord with funding limitations and federal regulations or directives. The federally established priority categories of participant shall be followed when limitations of services is necessary in accord with 7 CFR 246.7(d)3. In addition the following rules shall apply:

73.21(1) A local agency shall maintain a waiting list only when the state office determines that sufficient funds are not available to meet demand.

73.21(2) When a waiting list has been authorized, local agencies shall certify applicants of potential highest priority first (e.g. women and infants) and potential lower priority second (children). Within these priority groups, applicants shall be offered certification appointments in the order of placement on the list.

73.21(3) When insufficient funds are available to serve all priority categories, the state shall provide instructions to local agencies regarding which priority categories may continue to be certified.

73.21(4) When necessitated by federal funding restrictions, the state agency reserves the right to terminate categories of participants prior to the end of their certification period.

470—73.22(135) Grant application procedures for local agencies. Local agencies wishing to provide WIC services shall make application to the Iowa state department of health. A preapplication procedure shall be required with the first application. All local agencies currently administering the WIC program shall reapply to administer it on an annual basis. The contract period shall be from October 1 to September 30 annually.

470—73.23(135) Integration of services with other health programs. WIC local agencies shall be subject to the Iowa state department of health's recommendations and negotiations regarding integration of services with other health programs.

ARC 3988

HEALTH DEPARTMENT[470]

BOARD OF OPTOMETRY 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 and 147.76, the Board of Optometry Examiners gives Notice of Intended Action to amend chapter 143 of the Iowa Administrative Code.

The proposed amendments change the time for conducting the election of officers and require the application to take the examination be filed thirty days prior to the examination.

Any interested person may make written comments concerning the proposed amendments not later than 4:30 p.m. September 7, 1983, addressed to Peter J. Fox, Hearing Office, State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rules are intended to implement Iowa Code sections 147.22 and 147.36.

ITEM 1. Subrule 143.3(1) is amended to read as follows:

143.3(1) A chair, vice-chair, and secretary shall be elected ~~at the first meeting after June 30 of each year~~ *once a year.*

ITEM 2. Subrule 143.5(2) is amended to read as follows:

143.5(2) The forms properly completed shall be filed with the department, together with satisfactory evidence of compliance with *Iowa Code* section 154.3(1) and (2) ~~of the Code fifteen~~ *thirty* days prior to the examination.

ARC 3990

HEALTH DEPARTMENT[470]

BOARD OF BARBER 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 147.76 and 258A.2, the Board of Barber Examiners gives Notice of Intended Action to amend Chapter 152 of the Iowa Administrative Code.

The proposed rules change the required number of hours to complete continuing education for reinstatement of an inactive license from eight to six per year and indicate the current name of the professional licensure section.

Consideration will be given to written comments concerning the proposed rules received by Keith Rankin, Board Administrator, Board of Barber Examiners, State Department of Health, Lucas State Office Building, Des Moines, IA 50319 not later than 4:30 p.m. September 7, 1983.

The proposed rules are intended to implement Iowa Code sections 147.76 and 258A.2.

ITEM 1. Rule 470—152.105(258A) is amended to read as follows:

470—152.105(258A) Report of licensee. Each licensee shall file, with the renewal application, a signed report of continuing education not later than May 1 of each year beginning May 1, 1980. The report shall include the hours completed during the preceding calendar year. The renewal application and signed report of continuing education shall be sent to the Iowa State Department of Health, ~~Licensing and Certification~~ *Professional Licensure* Section, Board of Barber Examiners, Lucas State Office Building, Des Moines, IA 50319.

ITEM 2. Rule 470—152.106(258A) is amended to read as follows:

470—152.106(258A) Attendance record report. The person or organization sponsoring continuing education activities shall make a written record of the Iowa licensees in attendance and send a signed copy of such attendance record to the secretary of the board upon completion of the educational activity, but in no case later than January 31 of the following calendar year. The report shall be sent to the Iowa State Department of Health, ~~Licensing and Certification~~ *Professional Licensure* Section, Board of Barber Examiners, Lucas State Office Building, Des Moines, IA 50319.

ITEM 3. Subrule **152.109(2)**, paragraph "b" is amended to read as follows:

b. Completion of a total number of hours of accredited continuing education computed by multiplying ~~eight~~ *six* by the number of years a certificate of exemption shall have been in effect for such applicant; or

ITEM 4. Rule 470—152.201(258A) is amended to read as follows:

470—152.201(258A) Complaint. A complaint of a licensee's professional misconduct shall be made in writing by any person to the Board of Barber Examiners, ~~Licensing and Certification~~ *Professional Licensure* Section, Lucas State Office Building, Des Moines, IA 50319. The complaint shall include complainant's address and phone number, be signed and dated by the complainant, shall identify the licensee, and shall give the address and any other information about the licensee which the complainant may have concerning the matter.

ITEM 5. Rule 470—152.203(258A) is amended to read as follows:

470—152.203(258A) Investigation of complaints or malpractice claims. The chair of the board of barber examiners shall assign an investigation of a complaint or malpractice claim to a member of the board who will be known as the investigating board member or employee of the department may request information from any peer review committee which may be established to assist the board. The investigating board member or employee of the department may consult with an administrative hearing officer or assistant attorney general concerning the investigation on evidence produced from the investigation. The investigating board member, if the the board member investigates the complaint, the director of the ~~licensing and certification~~ *professional licensure* section, an administrative hearing officer or an assistant attorney general if the department investigates the complaint, shall make a written determination whether there is probable cause for a disciplinary hearing. The investigating board member shall not take part in the decision of the board, but may appear as a witness.

ARC 3978

HUMAN SERVICES DEPARTMENT[498]

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.3 and 217.6, the Department of Human Services proposes amending rules appearing in the IAC relating to departmental organization and procedures (chapter 1).

1983 Iowa Acts, Senate File 464, created a separate department of corrections, effective October 1, 1983, and changed the name of the Department of Social Services to the Department of Human Services, effective July 1, 1983. The changes in these rules on the departments' organization reflect the provisions of Senate File 464 by removing references to the division of adult corrections and changing the name of the department.

In addition to these changes, two other changes have been made. First, the titles of certain divisions have been changed to more closely reflect the responsibilities of the divisions within the matrix organization. Second, the titles of certain division directors have been changed to more accurately reflect their increasingly important advisory role on matters of departmentwide concern.

HUMAN SERVICES[498] *(cont'd)*

Consideration will be given to written data, views, or arguments thereto received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before September 7, 1983.

These rules are intended to implement Iowa Code section 17A.3(1)"a" and 1983 Iowa Acts, Senate File 464.

ITEM 1. Rule 770—1.1(17A) is amended to read as follows:

~~770~~*498*—**1.1(17A) Commissioner.** All operations of the department of ~~social~~ *human* services are, by law, the responsibility of the commissioner. The commissioner's responsibilities include:

ITEM 2. Rule 770—1.2(17A) and subrule 1.2(8) are amended to read as follows:

~~770~~*498*—**1.2(17A) Council.** The commissioner of the department has, by statute, the advice and counsel of the council on ~~social~~ *human* services. This seven-member council is appointed by the governor with consent of two-thirds of the Senate and its powers and duties are policy-making and advisory with respect to the services and programs operated by the department.

1.2(8) The office of appeals and fair hearings shall be the authorized representative to conduct hearings and appeals for the council on ~~social~~ *human* services.

ITEM 3. Subrule **1.3(7)** is rescinded and the remainder of rule 770—1.3(17A) is amended to read as follows:

~~770~~*498*—**1.3(17A) Organization at state level.**

1.3(1) The commandant has responsibility for veterans' services for the department including the Iowa Veterans Home, Marshalltown, which receives honorably discharged veterans for care who have served in the armed forces of the United States and spouses or surviving spouses of qualified veterans if they meet the admission criteria as adopted by the Iowa department of ~~social~~ *human* services.

1.3(2) The ~~assistant~~ *deputy* commissioner, who has been assigned the responsibility for the division of ~~administration~~ *management and budget*, shall provide primary support and monitoring services to all line elements of the department in the general area of data processing, statistical reporting, purchase of service, accounting/budgeting, personnel and training, office support services, public information and communications.

1.3(3) The ~~assistant~~ *deputy* commissioner, who has been assigned the responsibility for the division of organizational planning, shall provide support services to line elements of the department in areas of planning, administrative policy and procedures, grants, property management, and federal/state co-ordination.

1.3(4) The director of the division of inspector general shall provide support to the line elements and other support elements of the department in the areas of evaluations, audits, quality control, appeals, investigations, *recoupment*, affirmative action, and legal services.

1.3(5) The ~~director of~~ *assistant commissioner, who has been assigned responsibility for* the division of mental health/mental retardation/developmental disabilities, directs the administration of the following institutions and facilities:

a. Cherokee Mental Health Institute.

b. Clarinda Mental Health Institute, located on the grounds of the Clarinda Treatment Complex Institute Campus.

c. Independence Mental Health Institute.

d. Mount Pleasant Mental Health Institute, located on the grounds of the Mount Pleasant Treatment Center Complex.

e. Glenwood State Hospital-School.

f. Woodward State Hospital-School.

g. Departmental relationship with county care facilities, certain county officers, and organizations relating to mental health, mental retardation, and developmental disabilities.

1.3(6) The ~~director of community programs~~ *assistant commissioner, who has been assigned responsibility for the division of social services,* directs the delivery of departmental community based programs and services. The division is responsible for the following institutions and programs:

a. The state juvenile home, Toledo, which is for the care of children who have been removed from their own homes by the court.

b. The training school, Eldora, which provides care for legally designated juvenile delinquents.

c. Medical service programs including Title XIX (MEDICAID).

d. Assistance payments and food programs.

e. The development and direction of all social service programs for children and their families, licensing, day care, child development, and services to adults.

1.3(8) The ~~director of the division of field operations~~ *assistant commissioner, who has been assigned responsibility for the division of community services,* shall provide primary support services to all line elements of the department in the areas of child support and foster care collections and volunteer services. The division is also responsible for the management of local offices of the department aligned with district subdivisions. The division delivers community based programs and services through these offices.

This rule is intended to implement Iowa Code section 17A.3(1)"a".

ITEM 4. Subrule 1.4(3) is amended to read as follows:

1.4(3) There shall be at least one local office in each county. Local offices are generally located in the county seat in each county, but may be located in the major population center within each county. The local office has the responsibility to implement all financial assistance and human service programs as designated by the department of ~~social~~ *human* services. The local office, in a majority of counties, has the responsibility to administer the county general relief program. Persons interested in the general relief program may inquire at the local office on whether the program is administered in that county.

ARC 3966

HUMAN SERVICES DEPARTMENT[498]

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 217.6 the Department of Human Services proposes amending rules appearing in the IAC relating to fair hearings and appeals (chapter 7).

These amendments bring the fair hearings and appeals rules into compliance with federal regulations and the department's food stamp rules. These rules change fraud hearings to administrative disqualification hearings and referrals by district benefit administrators are based on alleged intentional program violations rather than alleged fraud.

These rules establish a process to allow individuals alleged to have made intentional program violations or who have been referred for prosecution to waive a hearing or prosecution by signing disqualification consent agreements.

Consideration will be given to written data, views or arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before September 7, 1983.

These rules are intended to implement Iowa Code section 17A.22.

ITEM 1. Subrules 7.21(1) and (2) are amended to read as follows:

7.21(1) All fair hearings in the food stamp program shall be conducted in accordance with federal regulation, Title 7, section 273.15, as amended to ~~October 17, 1978~~ *February 15, 1983.*

7.21(2) All administrative ~~fraud~~ *disqualification* hearings shall be conducted in accordance with federal regulation, Title 7, section 273.16 as amended to ~~October 17, 1978~~ *February 15, 1983. Alleged intentional program violation shall be referred to the office of appeals and hearings by the District Benefit Payments Administrator.*

a. Hearing over disqualification for intentional program violation will be conducted by state hearing officers.

b. A form letter, Advance Notice Of Your Administrative Disqualification Hearing, FNS 396 (3-83) will be sent by certified mail thirty days prior to the hearing date. The hearing may be scheduled as an in-person hearing or as a teleconference hearing. The teleconferencing rules at 770—7.22(217) apply.

ITEM 2. Rule 770—7.21(217) is amended by adding new subrules as follows:

7.21(3) Waiver of right to administrative disqualification hearing.

a. On any case that the benefit payments administrator certifies to the appeals and hearings office, the household member suspected of intentional program violation shall be provided a Waiver Consent Agreement, Form FP-2324-0, which provides that the member may waive the right to an administrative disqualification hearing. The waiver may be sent prior to a notice of administrative disqualification hearing being mailed by the appeals office.

b. The waiver consent agreement must be signed by the accused individual and the head of household if the accused is not the head of household. Signing a waiver will result in a disqualification and a reduction in benefits, even if the individual does not admit to the facts, and the remaining household members, if any, will be held responsible for repayment of the resulting claim. There is no right of appeal from the consent order.

7.21(4) Deferred adjudication.

a. The state agency shall have agreements with the state's attorney general's office or county prosecutors that allow accused individuals to sign disqualification consent agreements according to the following procedures:

(1) Written notification shall be provided to the household member which informs the individual of the consequences of consenting to disqualification as a part of deferred adjudication. The notice shall include:

(2) A statement for the accused individual to sign that the accused individual understands the consequences of consenting to disqualification, along with a statement that the head of household must also sign the consent agreement if the accused individual is not the head of household, with an appropriately designated signature block.

(3) A statement that consenting to disqualification will result in disqualification and a reduction in benefits for the period of disqualification, even though the accused individual was not found guilty of civil or criminal misrepresentation or fraud.

(4) A warning that the disqualification penalties for intentional program violation under the food stamp program, which could be imposed, are a six-month disqualification for the first violation, twelve-month disqualification for the second violation, and permanent disqualification for the third violation, and a statement of which penalty will be imposed as a result of the accused individual having consented to disqualification.

(5) A statement of the fact that the remaining household members, if any, will be held responsible for repayment of the resulting claim, unless the accused individual has already repaid the claim as a result of meeting the terms of the agreement with the prosecutor or the court order.

ARC 3968

HUMAN SERVICES DEPARTMENT[498]

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 600.22 the Department of Human Services proposes amending rules appearing in the IAC relating to adoption services (chapter 139).

Currently rules provide for the department to accept adoption applications for easy-to-place children without any limit on the number of applications to be accepted. There are currently 1,200 applications in a pending file in central office. These amendments define easy-to-place children and limit the number of applications any district may accept. The department will continue to encourage adoption applications for hard-to-place children.

The current practice of maintaining a statewide list of approved families was established to assure placement of children at an adequate distance from birth family members who may interfere with placement. Current districts are now so large that children may be placed within the district at an adequate distance from birth family. This rule provides for each district to maintain a waiting list of approved families for easy-to-place children. The central office will continue to operate the Iowa Adoption Exchange in which families approved for hard-to-place children are registered.

Consideration will be given to written data, views or arguments thereto, received by the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before September 7, 1983.

These rules are intended to implement Iowa Code section 600.22.

Rule 770—139.1(600) is rescinded and the following inserted in lieu thereof:

498—139.1(600) Application. Persons wishing to adopt a child through the department of human services may make application on form SS-6101-4, Application for Adoption. Application is for adoption of children who are or will be under the guardianship of the department.

139.1(1) No applications will be accepted in any district for the adoption of an easy-to-place child, i.e., a normal, healthy Caucasian child or sibling group of two children who are age seven or less, or a healthy minority child age seven or less from Caucasian applicants until fewer than twenty applications are pending in that district. Applications will then be accepted only until thirty applications are on file. An exception to this rule may be made for relatives of the child, or foster parents or other persons applying to adopt a child with whom the applicant has a significant relationship.

139.1(2) The district offices of the department shall keep waiting lists of families approved for adoption of children described in 139.1(1), in chronological order by date of application. The waiting list in each district shall be used for adoptive placement of easy-to-place children available for adoption in that district, except when there is reason to place a child in an adoptive home outside that district. An appropriate adoptive placement for a particular child is the primary consideration.

This rule is intended to implement Iowa Code section 600.22.

ARC 3973

NURSING, BOARD OF[590]

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.3, 147.76, and 152.1, the Iowa Board of Nursing hereby gives Notice of Intended Action to amend Chapter 6, "Nursing Practice for Registered Nurses/Licensed Practical Nurses", Iowa Administrative Code. The substance of this rule is also being submitted as an emergency adopted and implemented rule, ARC 3972, published in the Iowa Administrative Bulletin on August 17, 1983.

The rule relates to the acceptance of licensed practical nurses to do supportive or restorative nursing care in the home of a patient without a registered nurse or physician being present in the home.

Any interested person may make written suggestions or comments prior to September 6, 1983. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, 1223 East Court Avenue, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Executive Director at 515/281-3256 or in the office at 1223 East Court Avenue. Also, there will be a public hearing on Thursday, September 15, 1983, at 7:30 p.m. in the Wallace State Office Building Auditorium, East 9th and Grand, Des Moines, Iowa. Persons may present their views at this public hearing either orally or in writing.

Persons who wish to make oral presentations at the public hearing should contact the office of the Executive Director at least one day prior to the date of the public hearing.

This rule is intended to implement Iowa Code sections 17A.3, 147.76, and 152.1.

The following amendment is proposed.

Chapter 6 is amended by adding rule 6.6(152) as follows:

590—6.6(152) Specific nursing practice for licensed practical nurses. The licensed practical nurse shall be permitted to provide supportive and restorative care in the home setting under the supervision of a registered nurse as defined in subrule 6.2(5) or a physician.

ARC 3975

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 chapter 7A, the Office for Planning and Programming proposes the following amendments to Chapter 23 "Community Development Block Grant Nonentitlement Program," Iowa Administrative Code.

These amendments are intended to further the state objectives of the Community Development Block Grant Nonentitlement Programs; make changes recommended by the Iowa Community Development Council, a citizen advisory group; and make several technical changes to reflect new practices in grant management.

Any interested persons may submit written data, views or arguments concerning the rules proposed for adoption to the Division of Local Government Affairs, Office for Planning and Programming, Capitol Annex, 523 East 12th Street, Des Moines, Iowa 50319, no later than 7:00 p.m., Wednesday, September 7, 1983. A public hearing on the proposed rules will be held at 7:00 p.m., September 7, 1983 in the Lucas State Office Building, hearing rooms 1 and 2, E. 12th and Grand, Des Moines, Iowa.

These rules are intended to implement Iowa Code section 7A.3, and 1982 Iowa Acts, chapter 1262, section 3.

The following rules are proposed.

ITEM 1. Rule 23.4(7A) is amended as follows:

Amend first paragraph to read:

630—23.4(7A) Eligible and ineligible activities. Rule 23.4(7A) provides a ~~general summary~~ *list* of eligible and ineligible activities under the CDBG program. ~~In instances where questions arise concerning the eligibility of a specific activity, OPP will utilize the more detailed description of eligible and ineligible activities in the Iowa CDBG Management Guide, which may be obtained from OPP.~~

Subrule **23.4(2)**, paragraph "q" is rescinded and the following inserted in lieu thereof:

q. Provision of assistance through not-for-profit corporations to private, for-profit entities, when the assistance is necessary or appropriate to carry out an economic development project.

Subrule **23.4(3)** is amended by adding the following:

g. Residential care facilities. Construction of residential care facilities for the physically and mentally handicapped, including county care facilities as established in Iowa Code chapter 253.

ITEM 2. Rule 23.6(7A) is amended as follows:

Subrule **23.6(1)**, paragraph "d" is rescinded and the following inserted in lieu thereof:

d. Project must address at least one of the following three objectives:

(1) Primarily benefit low and moderate income persons. Over fifty percent of those benefiting from a project must be considered low and moderate income persons.

(2) Aid in the prevention or elimination of slums and blight. The application documents the extent or seriousness of deterioration in the area to be assisted, showing a clear adverse effect on the well-being of the area or community, and illustrating that the activity or activities proposed will alleviate or eliminate the conditions causing the deterioration.

(3) Meet other urgent community development needs involving a threat to health, safety or welfare of the community. The seriousness of the condition is documented by an independent authority (i.e. department of water, air and waste management, state fire marshal, health department, department of transportation or other appropriate nonlocal entity) or by generally accepted standards, and the activity is directly related to alleviating or eliminating the identified threat.

Subrule **23.6(2)**, paragraph "c" is rescinded and the following inserted in lieu thereof:

c. Cities of under 2,500 population and counties of under 6,800 population that did not receive a CDBG grant in the preceding two years' programs will receive 50 bonus points. Cities of under 2,500 population and counties of under 6,800 population that did not receive a CDBG grant in the preceding year's program but did receive a CDBG grant in the prior year will receive 25 bonus points.

Subrule **23.6(2)** is further amended by adding the following:

f. All projects in multipurpose applications will be included in the point score determination and final ranking of CDBG applications. However, individual projects within a multipurpose application must receive a combined score of at least 100 points out of a possible 400 points for the "magnitude of need" and "project impact" rating factors, in order to receive CDBG funding. Projects not meeting this criterion shall be eliminated from any application after final ranking, but prior to funding of the application.

ITEM 3. Rule 23.7(7A) is amended as follows:

Subrule 23.7(2) is rescinded and the following inserted in lieu thereof:

23.7(2) Up to five percent of total program funds may be reserved in any year for the imminent threat contingency fund. If this fund is not fully utilized in any program year, the excess amount will be reallocated to the general nonentitlement program for the current program year. For the purpose of this subrule, each program year shall begin on the date that the grant award to the state is received from HUD. (Rules for this fund are in subrule 23.9(3).)

Subrule **23.7(3)** is amended by striking the words "prior HUD and", from the third paragraph.

Subrule 23.7(4) is rescinded and the following inserted in lieu thereof:

23.7(4) Funds recaptured, for any reason, by OPP shall be reallocated to the general nonentitlement program for the current year. For the purpose of this subrule, current year shall mean the last fiscal year for which a grant award has been received from HUD.

ITEM 4. Rule 23.8(7A) is amended as follows:

Subrule **23.8(2)**, paragraph "a" is rescinded and the following inserted in lieu thereof:

PLANNING AND PROGRAMMING[630] *(cont'd)*

a. All recipients shall comply with applicable provisions of OMB Circular No. A-102, "Uniform Administrative Requirements for Grant-in-Aid to State and Local Governments". Any clarifications or modifications of this standard by the state shall be clearly stated in the Iowa CDBG Management Guide provided to each recipient. Where requirements differ between the circular and state or local law, the more restrictive requirement shall prevail. Contracts may also be conditioned to provide other requirements.

Subrule **23.8(2)**, paragraph "d", subparagraph (1) is rescinded and the following inserted in lieu thereof:

(1) Units of general local government shall be required to return to the federal government interest (except for interest described in subparagraph 23.8(2) "d"(3)) earned on grant funds advanced in accordance with the "Iowa CDBG Management Guide".

Subrule **23.8(3)**, paragraph "b" is rescinded and the following inserted in lieu thereof:

b. The recipient's financial management system meets the standards for fund control and accountability prescribed in the Iowa CDBG Management Guide.

Subrule 23.8(4) is rescinded and the following inserted in lieu thereof:

23.8(4) Recordkeeping and retention. Financial records, supporting documents, statistical records, the environmental review records required by 24 Code of Federal Regulations 58.30, and all other records pertinent to the grant program shall be retained by the recipient in accordance with the provisions of the Iowa CDBG Management Guide, with the following additions:

a. Records for any displaced person shall be retained for three years after the person has received final payment;

b. Records pertaining to each real property acquisition shall be retained for three years after settlement of the acquisition, or until disposition of the applicable relocation records in accordance with 23.8(4)"a", whichever is later;

c. Representatives of the secretary of the department of housing and urban development, the inspector general, the general accounting office, the state auditor's office and the office for planning and programming shall have access to all books, accounts, documents, records and other property belonging to or in use by recipients pertaining to the receipt of assistance under these rules.

Subrule 23.8(5) is rescinded and the following inserted in lieu thereof:

23.8(5) Performance reports and reviews. Grantees shall submit grantee performance reports to OPP as prescribed in the Iowa CDBG Management Guide. The reports will assess the use of funds in accordance with program objectives, the progress of program activities, and compliance with the certifications made under 23.5(3)"e".

OPP may perform any reviews or field inspections it deems necessary to assure program compliance, including reviews of grantee performance reports. When problems of compliance are noted, OPP may require remedial actions to be taken. Failure to respond to a notification of need for remedial action may result in the implementation of 23.9(5).

ITEM 5. Rule 23.9(7A) is amended as follows:

Subrule 23.9(8) is rescinded and the following inserted in lieu threrof:

23.9(8) Forms. Participants in the block grant program must complete the following forms, as applicable:

a. Grant application procedures.

(1) Standard application package for competitive program.

(2) Reserved.

b. Program administration procedures.

(1) Grant contract.

(2) Status of federal funds and request for payment. (Form 1)

(3) Record of in-kind contributions forms package. (Forms 2-A through 2-D)

(4) Grantee performance report. (Form 3)

(5) Program activities schedule. (Attachment A)

(6) Request for release of funds and certification. (Form 9)

(7) Standard contractor compliance forms package.

These rules are intended to implement Iowa Code section 7A.3 and 1982 Iowa Acts, chapter 1262, section 3.

ARC 3977

PUBLIC SAFETY DEPARTMENT[680]

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 912.3, the Iowa Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 17, "Crime Victim Reparation", Iowa Administrative Code.

The present rules of the department do not provide a time frame for protesting the findings by the Iowa Crime Victim Reparation Program. The proposed rule provides information regarding time limits for filing a protest as well as where to direct such protests.

Any interested person may make written suggestions or comments on these proposed rules prior to September 7, 1983. Such written materials should be directed to the Administrator, Victim Reparation Program, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Administrator, Victim Reparation Program at 515/281-6937 or in the Victim Reparation Office on the third floor of the Wallace State Office Building. Also, there will be a public hearing on September 7, 1983 at 10:00 a.m. in the third floor conference room, east one-half of the Wallace State Office Building. Persons may present their views at this public hearing either orally or in writing.

Persons who wish to make oral presentations at the public hearing should contact the Administrator of the Victim Reparation Program at least one day prior to the date of the public hearing.

This rule is intended to implement Iowa Code section 912.3.

The following amendment is proposed:

Chapter 17 is amended by adding the following new rule:

PUBLIC SAFETY DEPARTMENT[680] *(cont'd)*

680—17.16(912) Hearings. The findings and conclusions of the victim reparation program regarding reparations shall be final after thirty days of the claimant's receipt of the findings unless within that time the claimant files a protest with the Director of the Administrative Services Division, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319 by personal service or certified mail.

The filing of a protest as well as all proceedings under this rule, shall be in accordance with the procedures outlined in 680—Chapter 10, of the Iowa Administrative Code.

ARC 3971

REAL ESTATE COMMISSION[700]

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 117.9 the Iowa Real Estate Commission proposes action by amending chapter 4 in order to clarify confusing language, require a majority vote of the entire commission membership to find guilt in a disciplinary matter, and extend the time in which a respondent has in which to request a continuance.

Persons interested in commenting on the proposed rule changes shall submit same to the Iowa Real Estate Commission no later than 4:30 p.m., September 20, 1983. Comments shall be submitted to the Commission by sending or delivering them to the Commission office at 1223 E. Court Avenue, Suite 205, Des Moines, Iowa 50319.

The Iowa Real Estate Commission will hold a public hearing concerning these rules at which time oral comments may be made to the Commission. The public hearing will be held at 9:00 a.m. September 23, 1983, in the Commission office at 1223 E. Court Avenue, Suite 205, Des Moines, Iowa. Any individual wishing to present oral comments should notify the Commission office of their intent no later than the time prescribed for submitting written comments.

These rules are intended to implement Iowa Code sections 117.35 and 258A.

Subrule **4.18**, item 8 is amended as follows:

8. A statement requiring the respondent within the period of ten days after receipt of the notice of hearing to: ~~A~~acknowledge receipt of the notice of hearing on the form provided with the notice.

~~State whether the respondent will require an adjustment of the date and time of the hearing; and~~

9. A statement requiring the respondent to ~~F~~*f*urnish the commission with a list of potential witnesses, and their current addresses which the respondent intends to have called. *The answer required in item 7 and the list of potential witnesses, if any, as required in item 9 shall be provided to the executive director no later than ten days prior to the date set for hearing.*

Subrule 4.30(1) is amended as follows:

4.30(1) When three or more members of the commission preside over the receiption of the evidence at the hearing, the commission's decision is a final decision. *A finding of guilt by the commission shall require a majority vote of the entire commission.*

ARC 3993

COMMERCE COMMISSION[250]

The Iowa State Commerce Commission hereby gives notice that on July 29, 1983, the Commission issued an order in Docket No. RMU-83-20, In Re: Rules Concerning Interest Rate on Gas Refunds, "Order Adopting Rule on an Emergency Basis." Pursuant to Iowa Code Sections 17A.4 and 17A.5, the Commission amended Iowa Administrative Code 19.10(3)"d" to correct an amendment previously adopted on an emergency basis by order issued June 3, 1983, in Docket No. RMU-83-9. The Commission finds public notice and participation is unnecessary for good cause because the original amendment to Iowa Administrative Code 19.10(3)"d" made in Docket RMU-83-9 was not required by the new legislation 1983 Iowa Acts, H.F. 312, section 23, and Iowa Code section 17A.4(2). The Commission also finds the normal effective date of the rule, thirty-five days after publication in the Iowa Administrative Bulletin, should be waived pursuant to Iowa Code section 17A.5(2), and the amendment should be effective immediately. The emergency implementation of this rule confers a benefit by making our rules consistent with the statute.

Amend Iowa Administrative Code **19.10(3)**"d" by amending it as follows:

d. The interest rate of refunds distributed under this subrule, compounded annually, shall be the ~~two percent per annum plus the quarterly~~ interest rate at commercial banks for twenty-four-month loans for personal expenditures (as set forth in the Federal Reserve Statistical Release G.19 or its equivalent). This federal reserve quarterly rate shall be deemed to be effective for these purposes as of the first day of the month following the availability of the published data to the rate-regulated utility. For time periods less than a year, a weighted average of the published quarterly rate is applicable. Interest shall accrue from the date the rate-regulated utility receives the refund or billing from the supplier to the date the refund is distributed to customers.

Administrative costs of refund processing shall not be deducted from refund amounts.

[Filed emergency 7/29/83, effective 7/29/83]
[Published 8/17/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/17/83.

ARC 3991

ENERGY POLICY COUNCIL[380]

Pursuant to the requirements of the Department of Housing and Urban Development (HUD), as set forth in Subtitle A of Title V of the Energy Security Act, Pub. L. 96-294, 12 U.S.C. 3601, et seq., establishing the Solar Energy and Energy Conservation Bank (SCB) and under the authority granted in Iowa Code section 93.7, the Iowa Energy Policy Council adopts emergency rules implementing the Iowa SCB program, Chapter 16 entitled.

The Solar Energy and Energy Conservation Bank Program is designed to provide loan assistance to eligible individuals to install energy conservation measures and passive solar hot water heaters.

Rules being adopted by the Council describe income guidelines for program participation, assistance levels, eligible conservation and solar measures and the responsibilities of lenders and the Council.

In accordance with Iowa Code section 17A.4(2), the Council finds that public notice and participation is impracticable in that the Solar Energy and Energy Conservation Bank (SCB) requires the EPC program be implemented by September 1, 1983. Thus, it is imperative that the SCB program be operational by this date. Organizational and procedural rules are required of all agencies by Iowa Code chapter 17A. Immediate compliance with these requirements is necessary to facilitate public participation in the council's substantive functions.

The Council also finds, pursuant to section 17A.5(2)"b"(1) that the normal effective date of this rule thirty-five days after publication should be waived and the rule be made effective upon filing with the Administrative Rules Coordinator on September 1, 1983, as it confers a benefit upon the public since it: Provides subsidized loans for energy conservation measures and passive solar hot water heaters.

These rules implement Iowa Code sections 17A.3(1)"a", 17A.3(1)"b", 17A.7, 17A.9 and 1983 Iowa Acts, House File 196.

These rules are being submitted as a Notice of Intended Action, ARC 3992, to allow public comment.

CHAPTER 16
SOLAR ENERGY AND ENERGY CONSERVATION BANK

380—16.1(PL96-294) Definitions.

16.1(1) "Act" means the Solar Energy and Energy Conservation Bank Act. 12 U.S.C. 3601, et seq.

16.1(2) "Annual income" has the meaning used for the Section 8 Housing Assistance Payment Programs of HUD, and means the total annual income of a family from all sources for the twelve-month period following the date of determination of income, computed in accordance with the section of this title which prescribes the method of computation.

16.1(3) "Applicant" means any person applying for financial assistance.

16.1(4) "Bank" means the Solar Energy and Energy Conservation Bank established under the Act.

16.1(5) "Contractor" means the installer of a solar energy system or energy conservation measure (other than the recipient) and includes the builder of a newly constructed one- to four-family ormultifamily residential building.

16.1(6) "Cost-effective" means that an energy conservation measure or solar energy system is expected to result in a dollar savings that exceeds its costs over the life of the measure or system, without consideration of the financial assistance under the programs of the bank, except that as otherwise specified in rules 16.45(PL96-294) and 16.65(PL96-294) "cost-effective" has the meaning stated in that rule.

16.1(7) "Covered product" means:

a. If the manufacturer provides a complete solar energy system to the supplier for installation by the contractor, then the system.

b. In all other cases, all components of a solar energy system which are designed for use in solar energy systems and which are not ordinary building materials generally used for construction purposes.

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

16.1(8) "Date of completion of installation" means:

a. The date of completion of performance by the contractor under its contract with the recipient.

b. If the recipient performs the installation, the date the recipient completes the installation work, or

c. If a one- to four-family or multifamily residential, commercial or agricultural building with an installed solar energy system is newly constructed or substantially rehabilitated and is purchased by the recipient, the date the recipient accepts title to the building.

16.1(9) "Dwelling unit" means any building (including a manufactured home) or part of a building designed for year-around nontransient residential use by one family.

16.1(10) "Energy audit" means:

a. An energy audit of a building or dwelling unit performed for purposes of Title VI or Title VII of the National Energy Conservation Policy Act, 42 U.S.C. 8216, et seq. and 8283, et seq., respectively, or

b. In the case of a one- to four-family or multifamily residential building or a dwelling unit in any such building, an onsite inspection of the building or dwelling unit using procedures approved by an Iowa or federal government entity (or performed by an energy auditor who is determined to be qualified by an Iowa or local governmental entity) which includes a determination of and provides information on:

(1) The type, quantity, and rate of energy consumption of such building or dwelling unit;

(2) Energy conserving maintenance and operating procedures which can be employed to significantly reduce the energy consumption of such building or dwelling unit;

(3) In the case of a one- to four-family residential building, a multifamily residential building which does not contain a central heating or cooling system, or a dwelling unit in such building, the cost of purchasing and installing appropriate energy conservation measures, a solar energy system, or both, and the savings in energy costs which are likely to result from the installation of such measures or system; and

(4) In the case of a multifamily residential building which contains a central heating or cooling system, or a dwelling unit in such building, the need, if any, for the purchase and installation of appropriate energy conservation measures, a solar energy system, or both; or

c. In the case of a commercial or agricultural building, an onsite inspection of the building using procedures approved by an Iowa or federal governmental entity (or performed by an energy auditor which is determined to be qualified by an Iowa or local governmental entity) which includes a determination of and provides information on:

(1) The type, quantity, and rate of energy consumption of such building;

(2) Appropriate energy conserving maintenance and operating procedures which can be employed to significantly reduce the energy consumption of such building; and

(3) The need if any, for the purchase and installation of energy conservation measures, a solar energy system, or both, in such building.

16.1(11) "Energy conservation measure" means a measure listed in rule 16.63(PL96-294).

16.1(12) "Energy design analysis" means a technical analysis performed on the design of a building to assess the cost-effectiveness of the energy conserving features and use of solar energy on an annual basis performed by a licensed engineer or architect qualified to conduct such an analysis.

16.1(13) "Family" has the meaning used for lower-income housing programs of HUD as set forth in 812.2(d) of U.S. Code, as it may be amended from time to time, or any replacement definition. It includes but is not limited to an elderly family as defined in 812.2(c) of this title, a single person as defined in 812.2(f) of this title, the remaining member of a tenant family, and a displaced person as defined in 812.2(a) of this title, but excludes certain aliens.

16.1(14) "Financial assistance" means financial assistance described in 16.10(PL96-294).

16.1(15) "Financial institution" means:

a. Any lender with a current contract of insurance under Section 2 of Title I of the National Housing Act, 12 U.S.C. 1703,

b. Any utility providing financing for the purchase and installation of energy conservation measures or solar energy systems in accordance with the requirements of Title II of the National Energy Conservation Policy Act, 42 U.S.C. 8211, et seq.,

c. Any unit of local government which receives a grant under Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 4301, et seq., in accordance with a statement of objectives and projected use of funds which includes lending activities to be undertaken by the unit of local government,

d. Any public body for which a local loan approval agreement is in effect under the Section 312 Rehabilitation Loan program, 42 U.S.C. 1452(b),

e. Any lender currently approved to participate in HUD mortgage insurance programs under Title II of the National Housing Act, 12 U.S.C. 1709(b)(1),

f. Any institution with the following characteristics:

(1) Any member of the Federal Reserve System or financial institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation, the Federal Deposit Insurance Corporation or the National Credit Union Administration, or any depository institution which is subject to the inspection and supervision of a governmental agency which is required by law to make periodic examinations of its books and accounts; or

(2) Any institution which has as its principal activity the lending or investment of funds in mortgages, consumer installment notes or similar advances of credit, or the purchase of consumer installment contracts, and is not subject to the inspection and supervision of a governmental agency as provided above in paragraph "f", subparagraphs (1) and (2) of this subrule; and meets the following requirements: (a) It shall have and maintain net worth of not less than $100,000 in assets acceptable to the state in which it will provide financial assistance, (b) it shall have and maintain a reliable warehouse line of credit or other loan funding program acceptable to Iowa in which it will provide financial assistance, in an amount of not less than $250,000 available for use in loan financing, and (c) it shall within seventy-five days of the close of its fiscal year and at such other times as may be requested, file with Iowa an audit report based on an audit performed by a certified public accountant, or by an independent public accountant licensed by a regulatory authority of Iowa or other political subdivision of the United States on or prior to December 31, 1970, which shall include a financial statement in a form acceptable to Iowa, including a balance sheet, and statement of operations and retained earnings; or

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

(3) Any federal, Iowa or municipal governmental agency, a Federal Reserve Bank, a Federal Home Loan Bank, and a National Mortgage Association which is empowered to participate in a consumer installment lending operation.

g. Any institution described in paragraph "f" of this subrule must also meet the following requirements:

(1) It is a chartered institution, a permanent organization having succession, or a trust, which agrees to notify Iowa of all corporated changes, including, but not limited to mergers, terminations, name, location, control of ownership, and character of business.

(2) It employs trained personnel competent in all aspects of consumer lending activities and the state of Iowa determines that it has adequate staff and facilities, and

(3) It shall file a yearly report of its status and operations with Iowa and shall submit a copy of its latest financial statement or any other information upon request of the state of Iowa, and

h. Any other organization specifically approved by the bank as a financial institution.

16.1(16) "HUD" means the Department of Housing and Urban Development.

16.1(17) "Improvement costs" means the actual costs of an energy conservation measure or passive solar energy system and, if installed by a builder or contractor, the actual costs to the recipient of the labor involved in the installation, as certified in the installation certificate required by rule 16.27(PL96-294).

16.1(18) "Manufacturer" means:

a. For the purposes of warranties for solar energy systems, the producer of any covered product, and

b. For the purpose of warranties for energy conservation measures, the producer of any energy conservation measure.

16.1(19) "Median area income" means median annual income for an area as determined by the bank based on the data used by HUD for establishing the median area income for use in the programs authorized under Section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437(f).

16.1(20) "Multifamily residential building" means any building used as a residence which contains five or more dwelling units and has at least one system for heating or cooling or both.

16.1(21) "One- to four-family residential building" means any building used as a residence which contains at least one and not more than four dwelling units and has at least one system for heating or cooling or both.

16.1(22) "Passive solar energy system" means, with respect to a building, any component, addition, alteration or improvement which is designed to utilize solar energy for space or water heating or to provide space cooling based primarily on convective, conductive, or radiant energy transfer (or some combination of these types) to reduce the energy requirements of the building. In addition, such a system for space heating shall either contain the "five recognition factors" or shall be approved in writing by the bank. The "five recognition factors" are: (a) A solar collection area, (b) an absorber, (c) a storage mass, (d) a heat distribution method, and (e) a heat regulation device. A "solar collection area" is a large area of transparent or translucent material, such as glass, positioned so that the rays of the sun directly strike an absorber. The collector area must be facing within 30° of south. An "absorber" is a surface, such as a floor, that is exposed to the rays of the sun. The absorber changes solar radiation into heat, and then transfers the heat to a storage mass. A "storage mass" is material, such as masonry, that receives and holds heat from the absorber and later releases the heat to the inside of the home. The storage mass must be large enough to store and deliver enough solar heat for the size of the home. Also, the storage mass must be located so that the stored heat is distributed directly to the living areas of the home through a heat distribution method. A "heat distribution method" is a system that releases radiant or convective heating from the storage mass to the living areas of the home. A "heat regulation device" is a shading or venting mechanism, such as awnings, of insulated drapes, to control the amount of solar heat admitted through the solar collection areas, and nighttime insulation or its equivalent to control the amount or heat permitted to escape from the inside of the home.

16.1(23) "Person" means an individual or any corporation, partnership, joint venture or other nongovernmental entity.

16.1(24) "RCS" means the Residential Conservation Service program of the Department of Energy set forth in 42 U.S.C. 8201, et seq. and 10 CFR Part 456.

16.1(25) "Recipient" means a person receiving financial assistance under the Act.

16.1(26) "Solar energy system" means a system listed in rule 16.43(PL96-294).

16.1(27) "Standard loan" means a loan having over its amortization period a fixed rate of interest and level monthly payments.

16.1(28) "Substantially rehabilitated" or "substantially rehabilitating" means that, with respect to an existing one- to four-family or multifamily residential building, a solar energy system is being installed and other improvements (costing at least $1,000 per dwelling unit) are being made by a builder who is offering the building for sale.

16.1(29) "Supplier" means:

a. For the purposes of warranties for solar energy systems, the supplier (other than the manufacturer) of any covered product, and

b. For the purposes of warranties for energy conservation measures, the supplier (other than the manufacturer) of any energy conservation measure.

The term includes but is not limited to the person who supplies a covered product or energy conservation measure to the contractor or, if the recipient performs the installation, the recipient.

380—16.2(PL96-294) Bank organization. The organization of the bank is described in the bylaws of the bank, which are published as Part 1895 of Federal Register Vol. 45. Amendments to the bylaws are effective when adopted by the board and will be published in the Federal Register for information purposes.

16.3 to **16.9** Reserved.

FINANCIAL ASSISTANCE — GENERAL DIVISION

380—16.10(PL96-294) General. This division sets forth the conditions and requirements that are applicable to financial assistance for both solar energy systems and energy conservation measures.

380—16.11(PL96-294) Types of assistance.

16.11(1) General. The bank is authorized to make payments to financial institutions for use as financial assistance in the form of reductions of the principal obligations of loans or qualifying portions of loans and grants.

16.11(2) Forms of financial assistance for loans. Except as specified in this rule, financial assistance used

in connection with loans shall be in the form of reduction of principal.

380—16.12(PL96-294) Reduction of principal. When financial assistance is in the form of reduction of principal, the amount of financial assistance shall be subtracted from the principal amount of the loan and the recipient shall repay the difference between these amounts on the basis of a loan repayment schedule using the same interest rate as for comparable unassisted loans.

16.13 to **16.20** Reserved.

380—16.21(PL96-294) Repayment of loans.

16.21(1) No prepayment penalty. There shall be no penalty imposed on the borrower if the loan is repaid before the end of the term of repayment.

16.21(2) Term of repayment. Unless financial institutions establish shorter terms (but no less than one year) at the request of the borrower, financial assistance may be provided in connection with loans for:

a. The purchase and installation of energy conservation measures only if the term of repayment of the loan is not less than five and not more than fifteen years.

b. The purchase and installation of solar energy systems in one- to four-family or multifamily residential buildings, or the purchase of one- to four-family or multifamily residential buildings with such systems, only if the term of repayment of the loan is not less than five and not more than thirty years, or

c. The purchase and installation of solar energy systems in commercial or agricultural buildings with such systems, only if the term of repayment of the loan is not less than five and not more than forty years.

380—16.22(PL96-294) Combined loan applications. Recipients may receive financial assistance with respect to a single loan for combination of eligible solar energy systems or energy conservation measures or both. The amount of financial assistance provided will be the sum of the amounts of financial assistance which would be available if all solar energy systems were financed by one loan and all energy conservation measures were financed by a separate loan.

380—16.23(PL96-294) Limitations on retroactive assistance.

16.23(1) Purchase and installation in existing buildings. Financial assistance shall not be provided in connection with expenditures for purchase and installation of solar energy systems or energy conservation measures in existing buildings if the expenditures were made prior to the date of the application for financial assistance.

16.23(2) Purchase from builders. Financial assistance shall not be provided in connection with a loan for the purchase of a building if permanent financing has been closed prior to the date of the application for financial assistance or if the expenditures were made by the applicant prior to the date this part becomes effective.

16.23(3) New construction by recipient. Financial assistance shall not be provided in connection with expenditures for the purchase and installation of solar energy systems in a building which is newly constructed by the recipient, if the recipient has closed permanent financing of the expenditures prior to the date of the application for financial assistance or if the expenditures were made prior to the date this part becomes effective.

380—16.24(PL96-294) Terms and conditions of loans similar to unassisted loans. Except as otherwise required by this part, the terms and conditions of loans proposed to be assisted under this part must be comparable to similar unassisted loans at the prevailing market rates provided by the financial institution. Terms and conditions include the interest rate, maturity and any required fees, points or security provisions.

380—16.25(PL96-294) Debarred contractors, suppliers and financial institutions.

16.25(1) Contractor's certification. Contractors being paid in whole or in part with financial assistance provided under this part shall certify that neither they nor their suppliers (if any) are on (1) the consolidated list of debarred, suspended and ineligible contractors prepared by the General Services Administration pursuant to the temporary rule published at 47 FR 43692 and any successor rule, or (2) HUD's list of debarred, suspended and ineligible participants, available from HUD field offices (see Part 24 of this title).

16.25(2) Financial institutions. No financial institution may participate in the bank's programs if it is on HUD's list of debarred, suspended and ineligible participants available from HUD field offices.

380—16.26(PL96-294) Limitation on proceeds of tax-exempt borrowings. Financial assistance shall not be provided for a loan made from the proceeds of borrowings, if the interest on such borrowings is exempt from federal taxation.

380—16.27(PL96-294) Installation certificate.

16.27(1) Loans. An applicant for financial assistance in the form of principal reduction on a loan must agree to certify that the proceeds of the loan have been used to purchase and install a solar energy system or energy conservation measures, or to purchase a newly constructed or substantially rehabilitated building with a solar energy system. Such certification shall be made immediately after such purchase and installation or purchase of a building.

16.27(2) Certification provided to bank. A certification shall be made available to the bank by the financial institution upon request of the bank.

380—16.28(PL96-294) Energy audit or energy design analysis required. An applicant for financial assistance must submit to the financial institution a copy of an energy audit performed for the building or dwelling unit for which financial assistance is requested (or an energy design analysis, in the case of a newly constructed or substantially rehabilitated building) before the financial assistance is provided.

380—16.29(PL96-294) Financial assistance not available until notice. Notwithstanding anything to the contrary in the solar division and conservation division of this part, no financial assistance shall be provided in connection with the following unless the bank has published a notice in the Federal Register specifically stating that financial assistance may be provided for such purposes.

1. Agricultural or commercial buildings. Energy conservation measures or solar energy systems of any kind in agricultural or commercial buildings.

2. Multifamily residential buildings. Solar energy systems of any kind in multifamily buildings.

3. Existing one- to four-family residential buildings. Solar energy systems (except passive solar domestic hot water systems) in existing one- to four-family residential buildings.

16.30 to **16.40** Reserved.

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SOLAR ENERGY ASSISTANCE DIVISION

380—16.41(PL96-294) General. This division sets forth the conditions and requirements that are applicable only to financial assistance for solar energy systems.

380—16.42(PL96-294) Eligible recipients.

16.42(1) Existing buildings. An owner of an existing one- to four-family or multifamily residential, commercial or agricultural building who purchases and installs a solar energy system in such building with the proceeds of a loan shall be eligible to receive financial assistance in connection with such loan.

16.42(2) Newly constructed or substantially rehabilitated buildings. A purchaser of a newly constructed or substantially rehabilitated one- to four-family or multifamily residential, commercial or agricultural building with a solar energy system shall be eligible to receive financial assistance in connection with a loan for purchase of the building.

16.42(3) Joint application. A joint owner of a dwelling unit or of a building may apply for assistance individually, together with other joint owners in a single application, or with other joint owners by separate application. If separate applications are made by two or more joint owners with respect to the same building or dwelling unit, such applicants collectively may not receive assistance exceeding the maximum level of assistance established under 16.44(PL96-294) of this part.

16.42(4) Relationship to other federal programs. An owner or purchaser is not an eligible recipient if the owner or purchaser has an outstanding commitment, or has received preliminary or final approval of the owner's or purchaser's application, for assistance under any of the following federal assistance programs with respect to which a solar energy system is to be installed:

a. HUD.

(1) Section 235 Homeownership Assistance, 12 U.S.C. 1715z.

(2) Section 8 Lower Income Rental Assistance for New Construction and Moderate and Substantial Rehabilitation, 42 U.S.C. 1437f.

(3) Indian Housing, 42 U.S.C. 1437, et seq. and Part 805 of this title.

(4) Section 312 Rehabilitation Loans, 42 U.S.C. 1452b.

b. Farmers Home Administration. Section 515 Direct Loans, 42 U.S.C. 1485.

c. Department of Energy. Institutional Conservation (Schools and Hospitals) Program, 42 U.S.C. 6371, et seq.

380—16.43(PL96-294) Eligible solar energy systems.

16.43(1) Eligible systems. Only passive solar hot water energy systems shall be eligible solar energy systems.

16.43(2) Cost-effectiveness. A passive solar energy system shall not be eligible for assistance unless it has been found to be cost-effective as a result of an energy design analysis (in the case of a newly-constructed or substantially rehabilitated building) or an onsite energy audit (in all other cases). "Cost-effective" has the meaning specified in 16.1(PL96-294) except that in the case of passive solar domestic hot water systems in existing buildings, "cost-effective" means that the measures have a simple pay-back period of seven years or less as determined by an energy audit without consideration of the financial assistance of the programs of the bank.

380—16.44(PL96-294) Levels of assistance. Financial assistance shall not exceed $1,000 or 40 percent of the cost of the passive solar hot water heater.

380—16.45(PL96-294) Warranties.

16.45(1) General. The recipient shall provide the financial institution with either a written certification from the contractor (or the supplier, if the recipient performs the installation) that the warranty requirements of this rule have been satisfied or with other evidence acceptable to the financial institution that the warranty requirements of this rule have been satisfied.

16.45(2) Manufacturer's warranty. The manufacturer shall warrant in writing that the recipient, the contractor who installs the covered products and the supplier of the covered products shall be entitled to obtain from the manufacturer within a reasonable period of time and at no charge appropriate replacement parts or materials for those covered products found within three years from the date of completion of installation to be defective due to materials, manufacture or design. A recipient who finds an alleged defect shall give written notice of the alleged defect to the contractor, supplier or manufacturer within thirty days of the recipient's discovery thereof. If a defect exists, the manufacturer shall provide replacement parts or materials without charge for the parts or materials and for their transportation to the site of installation of the solar energy system.

16.45(3) Supplier's warranty. The supplier shall provide to the recipient a written warranty equivalent to that required under subrule 16.45(2). The supplier may satisfy this requirement by an assignment of the manufacturer's warranty required by subrule 16.45(2) to the person to whom the covered product is supplied.

16.45(4) Contractor's warranty. The contractor for the installation of a solar energy system shall warrant in writing to the recipient that any defect in materials, manufacture, design or installation found within one year from the date of completion of installation shall be remedied without charge and within a reasonable period of time. A recipient who finds an alleged defect shall give written notice of the alleged defect to the contractor within thirty days of the recipient's discovery thereof.

16.45(5) Other law. This rule shall not be deemed to relieve a warrantor under this rule from full compliance with federal and Iowa law applicable to warranties, except to the extent that such law is inconsistent with the requirements of this rule.

380—16.46(PL96-294) Standards. In the case of a newly constructed or substantially rehabilitated one- to four-family or multifamily residential building, or in the case of added heated space in an existing one- to four-family or multifamily residential building, the purchaser must provide certification that the building meets or exceeds the standards contained in Paragraph 607-3, Building Insulation of the HUD Minimum Property Standards for One and Two Family Dwellings, 4900.1, or Multifamily Housing, 4910.1, as appropriate.

16.47 to **16.60** Reserved.

ENERGY CONSERVATION ASSISTANCE DIVISION

380—16.61(PL96-294) General. This division sets forth the conditions and requirements that are applicable only to financial assistance for energy conservation measures.

380—16.62(PL96-294) Eligible recipients.

16.62(1) General. Subject to the provisions of this section, an owner of, or a tenant in, a one- to four-family or multifamily residential, commercial or agricultural building who purchases and installs energy conservation measures in such building with the proceeds of a loan

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shall be eligible to receive financial assistance in connection with the loan. An owner of, or tenant in, a one- to four-family residential building and a tenant in a multifamily residential building who purchases and installs energy conservation measures in such building shall be eligible to receive financial assistance in the form of a grant. All buildings in which energy conservation measures are installed must have been completed before January 1, 1980.

16.62(2) Income limitations — grants. In order to receive financial assistance in the form of a grant, a recipient must be an individual whose family has an annual income not in excess of 80 percent of the median area income.

16.62(3) Income limitations — loan subsidies. In order to receive financial assistance in the form of reduction of principal.

a. An owner of a one- to four-family residential building or a condominium dwelling unit, a tenant in a one- to four-family or multifamily residential building, or a shareholder of a housing cooperative corporation must be an individual whose family has an annual income not in excess of 150 percent of the median area income.

b. A housing cooperative corporation or a residential condominium association must be the owner of a cooperative or condominium which is occupied by families with an average annual income per family not in excess of 150 percent of the median area income.

16.62(4) Application on behalf of others. Assistance may be provided to an applicant, which is not an owner or tenant but which is acting on behalf of owners of one- to four-family residential buildings, for use by the applicant in purchasing and installing energy conservation measures in such buildings pursuant to a program approved by the bank. Where such assistance is provided, the income limitations in rule 16.62(PL96-294) shall apply to the owners of the buildings to be improved, and the assistance limitations in 16.64(PL96-294) shall be applicable to the improvement cost for each building. Under any such program, the requirements of 16.27(PL96-294) (energy audits), 16.65(PL96-294) (warranties) and other such provisions of this part pertaining to the qualification of individual buildings for financial assistance may be complied with by the applicant at the time that dwellings are selected for improvements.

16.62(5) Individually-metered tenants. A tenant in a multifamily residential building is eligible for financial assistance only if the tenant will pay costs for space heating and cooling which are measured by an individual utility meter after all the energy conservation measures are installed.

16.62(6) Relationship to other federal programs. An owner or tenant is not an eligible recipient if the owner or purchaser has an outstanding commitment, or has received preliminary or final approval of his application, for assistance under any of the following federal assistance programs with respect to which an energy conservation measure is to be installed:

a. HUD.

(1) Section 8 Lower Income Rental Assistance for Moderate and Substantial Rehabilitation, 42 U.S.C., 1437f.

(2) Flexible Subsidy (Troubled Projects), 42 U.S.C. 1715z-1A and Part 219 of this title.

(3) Section 312 Rehabilitation Loans, 42 U.S.C. 1452b.

b. Farmers Home Administration. Section 515 Direct Loans, 42 U.S.C. 1485.

c. Department of Energy.

(1) Weatherization Program, 42 U.S.C. 6863.

(2) Institutional Conservation (Schools and Hospitals) Program 42 U.S.C. 6371, et seq.

380—16.63(PL96-294) Eligible energy conservation measures. The following shall be eligible energy conservation measures for one- to four-family residential buildings.

1. Caulking and weatherstripping,
2. Furnace efficiency modifications including: (1) Replacement burners, furnaces, boilers, or any combination thereof, which increases the energy efficiency of the heating system, (2) devices for modifying flue openings which will increase the energy efficiency of the heating system, and (3) electrical or mechanical furnace ignition systems which replace standing gas pilot lights,
3. Clock thermostats,
4. Ceiling, attic, wall, floor, and duct insulation,
5. Water heater insulation,
6. Storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflecting window and door materials,
7. Devices associated with loan management techniques,
8. Replacement air conditioners, and
9. Conversion from master utility meters to individual utility meters, when directly related to and undertaken with the installation of any of the items specified in paragraphs "1." through "8." of this rule, and
10. Energy audits (in excess of the first $15 in cost for each unit covered by the audit), when followed by installation of any of the items specified in paragraphs "1." through "8." of this rule.

380—16.64(PL96-294) Levels of assistance. Financial assistance shall not exceed the least of any applicable amounts determined in this rule.

16.64(1) Fixed amount and percentage of costs: The maximum amount of assistance shall be determined according to the following chart (income limits are applied to the annual income of the family of the owner or tenant):

Building Type	Assistance As % of Improvement Cost	1 unit	2 unit	3 unit	4 unit
1 to 4 unit residential buildings: Income of owner or tenant:					
Less than 60% of area median	50% up to	$1,250	$2,000	$2,750	$3,500
80 to 100% of area median	35% up to	875	1,400	1,925	2,450
100 to 120% of area median	30% up to	750	1,200	1,650	2,100
120 to 150% of area median	20% up to	500	800	1,100	1,440

16.64(2) In the case of energy conservation measures which do not benefit all dwelling units within a building, any dwelling units in the building which do not benefit from the energy conservation measures shall be counted in determining the building type but shall not be counted in determining maximum assistance. In order to determine the number of dwelling units in a building, the following principles shall be applied:

a. All dwelling units sharing a common space conditioning system shall be considered part of the same residential building; and

b. Except in the case of a manufactured home park, all dwelling units located on or above land included in the most recent recorded deed shall be considered part of the same building, whether or not any space conditioning systems are shared.

380—16.65(PL96-294) Warranties.

16.65(1) General. The recipient shall provide the financial institution with either a written certification from the contractor (or the supplier, if the recipient performs the installation) that the warranty requirements of this rule have been satisfied or with other evidence acceptable to the financial institution that the warranty requirements of this rule have been satisfied.

16.65(2) Manufacturer's warranty. The manufacturer shall warrant in writing that the recipient, the contractor who installs an energy conservation measure and the supplier of the energy conservation measure shall be entitled to obtain from the manufacturer within a reasonable period of time and at no charge appropriate replacement parts or materials for those energy conservation measures found within one year from the date of completion of installation to be defective due to materials, manufacture or design. A recipient who finds an alleged defect shall give written notice of the alleged defect to the contractor, supplier or manufacturer within thirty days of the recipient's discovery thereof. If a defect exists, the manufacturer shall provide replacement parts or materials without charge for the parts or materials and for their transportation to the site of installation of the energy conservation measure.

16.65(3) Supplier's warranty. The supplier shall provide to the recipient a written warranty equivalent to that required under subrule 16.65(2). The supplier may satisfy this requirement by an assignment of the manufacturer's warranty required by subrule 16.65(2) to the person to whom the energy conservation measure is supplied.

16.65(4) Contractor's warranty. The contractor for the installation of an energy conservation measure shall warrant in writing to the recipient that any defect in materials, manufacture, design or installation found within one year from the date of completion of installation shall be remedied without charge and within a reasonable period of time. A recipient who finds an alleged defect shall give written notice of the alleged defect to the contractor within thirty days of the recipient's discovery thereof.

16.65(5) Other law. This rule shall not be deemed to relieve a warrantor under this rule from full compliance with federal and Iowa law applicable to warranties, except to the extent that such law is inconsistent with the requirements of this rule.

380—16.66(PL96-294) Limitation on assistance to tenants. Financial assistance may be provided to tenants only if the owner of the tenant's building or dwelling unit have given written consent to the tenant for installation of the energy conservation measures.

380—16.67(PL96-294) Limitation on assistance to residents of housing cooperatives. Financial assistance may be provided to a resident of housing cooperatives only if the cooperative corporation has given prior written consent to the resident for installation of energy conservation measures.

380—16.68(PL96-294) Minimum expenditures for energy conservation measures. The total improvement cost for energy conservation measures purchased and installed with the assistance of a grant must exceed $250.

380—16.69(PL96-294) Contractors and suppliers. All contractors and suppliers who install energy conservation measures or supply materials for them must appear on a list of approved contractors and suppliers provided under Section 213(a) of the National Energy Conservation Policy Act, 42 U.S.C. 8211, except that this requirement shall not apply in the case of loans in Iowa without approved lists. This requirement shall not apply to a loan made to an owner of a multifamily residential building, or a housing cooperative corporation or a condominium association in the case of a one- to four-family residential building.

380—16.70(PL96-294) Residential energy audit information. Financial institutions must inform applicants for financial assistance for energy conservation measures in one- to four-family or multifamily residential buildings, no later than the time that the application is submitted, of the availability of energy audits.

16.71 to16.90 Reserved.

DISBURSEMENT PROCEDURES DIVISION

380—16.91(PL96-294) General. The financial assistance program of the bank will be implemented through states that have been selected to participate in the program on the basis of proposals submitted in response to a solicitation of state proposals published in the Federal Register. Proposals will be selected on the basis of considerations stated in the solicitation.

380—16.92(PL96-294) Cooperative agreements. The Iowa Energy Policy Council (EPC) will enter into cooperative agreements with the bank which will form the legal framework for bank/EPC relationships during program implementation. In addition to the matters covered in other sections of this subpart E, the cooperative agreements will cover such matters as the allocation and obligation of funds for the EPC, the responsibilities of the EPC for the administration of its approved programs, federal requirements applicable to the administration of its approved programs, and procedures covering resolution of any disputes between the bank and EPC suspension or termination of EPC's participation in programs of the bank, and program closeout.

380—16.93(PL96-294) Allocation of funds. Following selection of participating states, the bank will allocate funds among the states based on the level and availability of appropriated funds and the specific programs proposed in the individual state proposals approved for funding by the bank. Each state will be informed of its allocation and any conditions attached to the allocation. Such conditions will be designed to ensure the expeditious obligation and expenditure of available funds. Each cooperative agreement shall require that the state obligate all funds allocated to it within one year (for fiscal year 1982 funds) or by the last date the funds are available under the terms of the applicable appropriation (for other fiscal years) to avoid recapture of funds by the bank pursuant to 16.94(PL96-294).

380—16.94(PL96-294) Recapture and reallocation of funds. Upon program implementation, the bank will monitor program progress through periodic reporting as required by 16.99(PL96-294). Each cooperative agreement shall provide that funds allocated to EPC may be recaptured by the bank based on the results of program implementation activities by EPC, market response to programs implemented in Iowa and other considerations to be set forth in the cooperative agreement. Recaptured funds will not be reallocated.

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380—16.95(PL96-294) Authorized expenditures.

16.95(1) Permissible uses of funds. Funds allocated by the bank to EPC for implementing financial assistance programs shall be expended only for payments to financial institutions which have provided financial assistance in accordance with this part, or for administrative expenses or promotional expenses.

16.95(2) Administrative expenses. EPC may use funds received from the bank to pay administrative expenses if such expenses have been authorized by the bank and the payments do not exceed fifty percent of the total administrative expenses of the EPC or two percent of the total amounts of funds allocated to the EPC by the bank, whichever is less. Administrative expenses shall not include the purchase of nonexpendable personal property (defined in Attachment N to OMB Circular A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments").

16.95(3) Promotional expenses. EPC may use funds received from the bank to pay promotional expenses if such expenses have been authorized by the bank and the payments do not exceed one percent of the total amounts of funds allocated to EPC.

16.95(4) Principles for determining allowable expenses. Administrative and promotional expenses must be allowable under the principles and standards established in OMB Circular No. A-87, "Cost Principles for State and Local Governments."

380—16.96(PL96-294) Distribution of funds. There is no predetermined distribution of funds for energy conservation measures or solar energy systems nor for the type of financial assistance to be made. The approval of funding levels and specific programs for states by the bank shall constitute an initial distribution of funds for the energy conservation measures or solar energy systems and the type of financial assistance described in the approved EPC programs. EPC may make a redistribution of approved funds for different eligible measures or types of financial assistance only with specific written approval of the bank.

380—16.97(PL96-294) Selection of financial institutions. EPC will select the financial institutions which will provide financial assistance within Iowa. The state of Iowa may serve as a financial institution itself as long as it qualifies under the definition set forth in rule 16.1(PL96-294).

380—16.98(PL96-294) Maximum levels of assistance. EPC may establish maximum levels of financial assistance which are lower than the maximum levels set forth in this part.

380—16.99(PL96-294) Reporting and recordkeeping requirements.

16.99(1) Semiannual state reports. EPC shall submit reports to the bank within thirty days of the six-month periods ending June 30 and December 31 beginning with the first such period in which notice of selection is made and continuing until program closeout. The reports shall cover, as a minimum, the following:

1. A summary of the overall program for the reporting period and overall results to date, including financial reports required by Attachment H of OMB Circular A-102, ("Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments");
2. Problems encountered and actions taken to resolve them;
3. Acceptance/objections by industry, local governments, financial institutions, and the public;
4. The number of applicants for and recipients of loans and grants by income category and type of building;
5. Total costs of energy conservation and solar measures implemented and amounts of subsidies by type of measure;
6. The estimated energy savings by income category of recipients, building type and type of measure;
7. The cost-effectiveness of the program in terms of administrative costs, promotional costs, leveraging of funds, energy savings in terms of dollars per barrel of oil equivalent and other measures as may be appropriate; and
8. Evaluation of the program in terms of achieving scheduled milestones and events and in meeting program goals and objectives.

16.99(2) Retention of records by EPC. EPC shall retain all records pertaining to use of funds received from the bank, including all reports received from financial institutions, for a period of three years from the date of submission of the semiannual state report for the period covered by such records, except that if any litigation, claim or audit is started before the expiration of the three-year period, all related records shall be retained for three years after final disposition of the litigation, claim or audit.

380—16.100(PL96-294) Manner of payment. Payments to EPC will be made by electronic funds transfer whenever possible, letter of credit, or other means, pursuant to the cooperative agreements and in compliance with the Intergovernmental Cooperation Act (42 U.S.C. 4201, et seq.) and Treasury Circular No. 1075 (31 CFR Part 205). EPC may request payments only for the administrative and promotional expenses which have been incurred, or for payment to financial institutions in connection with financial assistance which has been provided. EPC will utilize appropriate procedures to minimize the time elapsing between the transfer of funds by the Treasury to the EPC and the disbursement of funds by the EPC to financial institutions.

16.101 to **16.120** Reserved.

MISCELLANEOUS

380—16.121(PL96-294) Penalties and remedies.

16.121(1) General. Any person (including an applicant or financial institution) who knowingly makes any false statement or misrepresents any material fact with respect to any financial assistance applied for or provided under this chapter, or fails to make any disclosure or statement required by this chapter, is subject to a fine of not more than $10,000, or imprisonment for not more than one year, or both, for each offense. Each false statement, material misrepresentation or failure to make a required disclosure or statement shall be a separate offense.

16.121(2) Penalties in this rule not exclusive. The penalties provided for in subrule 16.121(1) shall be in addition to any civil or criminal fines or penalties applicable under law, including Title 16 of the United States Code and any other applicable provisions of federal, state or local law.

16.121(3) Other relief. Nothing in this rule shall limit any rights of the bank to recover funds from financial institutions, recipients or any other persons or pursue any other remedies available under law.

380—16.122(PL96-294) Retention of records by financial institutions and recipients.

16.122(1) Financial institution. Financial institutions shall retain all records related to applications for

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financial assistance for a period of three years from the date the financial assistance is provided (or the date of application, if never provided).

16.122(2) Recipients. Recipients shall retain all records pertaining to the application, the assisted loan or grant, the solar energy system or energy conservation measures for which the loan or grant was sought, and warranties for a period of three years after the financial assistance is provided. (Approved by the Office of Management and Budget under OMB control number 2535-0050).

380—16.123(PL96-294) Audit. The bank, the HUD Inspector General, the Comptroller General of the United States, or any duly authorized representative, shall have access to all records required to be retained by this part or by any agreement with the bank for the purpose of audit or other examinations or copying.

380—16.124(PL96-294) Prohibition against tax credits and financial assistance for same expenditure.

16.124(1) Information provided to the Secretary of the Treasury. As required by Section 506(f) of the Act, the bank shall provide to the Secretary of Treasury such information as the Secretary of Treasury determines is necessary to ensure that no person is allowed for the same expenditure both financial assistance under the Act and a credit against federal income taxes under 26 U.S.C. 38 (investment credit) or 26 U.S.C. 44C (residential energy credit). Except as otherwise directed by the Secretary of the Treasury, the bank intends to discharge this responsibility as well as the information return requirements of 26 U.S.C. 6050D by requiring either a state or financial institution within a state to submit Internal Revenue Service Form 6497 ("Information Return of Nontaxable Energy Grants or Subsidized Energy Financing") or any replacement form duly approved by the Office of Management and Budget to the appropriate office of the Internal Revenue Service.

16.124(2) Information required from applicant. As a condition of financial assistance, an applicant shall be required to provide to the financial institution:

a. All information which the Secretary of Treasury determines is necessary under subrule 16.124(1) and which is possessed by the recipient, including the applicant's Social Security number or taxpayer identification number and other information required for Internal Revenue Service Form 6497 or any replacement form duly approved by the Office of Management and Budget.

b. A certification that the applicant will not claim a federal tax credit under 26 U.S.C. 38 or 44C for amounts expended for the assisted energy conservation measures or assisted solar energy system up to the amount used as the basis for determining the financial assistance, except as permitted by regulations or other legal interpretations of the Internal Revenue Service. (Approved by the Office of Management and Budget under OMB control number 2535-0050).

380—16.125(PL96-294) No gross income. The amount of any financial assistance provided under this chapter shall not be included in the gross income of any recipient for purposes of the Internal Revenue Code of 1954, 26 U.S.C. 1, et seq.

380—16.126(PL96-294) No increase in basis. No recipient shall receive any increase in basis under the Internal Revenue Code of 1954, 26 U.S.C. 1, et seq., which is attributable to the amount of any financial assistance provided under this chapter.

380—16.127(PL96-294) Waiver of regulations. Upon determination of good cause, the president of the bank may waive any provision of this part unless the provision is required by the Act. Each such waiver will be in writing and shall be supported by documentation of the pertinent facts and grounds for waiver. No person shall have a right to a hearing in connection with any waiver or refusal to waive by the president of the bank.

380—16.128(PL96-294) Applicability of general HUD regulations.

16.128(1) Not subject to HUD regulations. The bank is not subject to the regulations of general applicability to HUD contained in this title and issued by the Secretary of HUD or a delegatee of the secretary, except as expressly adopted by the bank in this chapter or otherwise. Nothing in this rule shall excuse the bank from compliance with statutes or executive orders.

16.128(2) Regulations adopted. The following provisions of this title, as they may be amended from time to time, are adopted by the bank and shall be binding as regulations of the bank, except as provisions of such regulations may be waived in accordance with rule 16.127(PL-294): Part 0 (Standards of Conduct), Part 1 (Nondiscrimination), Part 2 (Hearing Practice and Procedures under Part 1), Part 7 (Equal Employment Opportunity), Part 10 (Rulemaking: Policy and Procedures), Part 15 (Production or Disclosure of Material or Information), Part 16 (Privacy Act), Part 17 (Administrative Claims), Part 20 (Board of Contract Appeals), Part 35, Subpart F (Lead-Based Paint) and Part 50 (Procedures for Protection and Enhancement of Environmental Quality). References to "the Secretary" in such provisions shall ordinarily be construed as including the board. In conjunction with its adoption of Part 50 of this title, the bank adopts a categorical exclusion from requirements for environmental clearances for approval by the board of state programs and allocation of funds to the states, as well as for any actions taken by states or financial institutions in accordance with approved state programs.

16.128(3) Future HUD regulations. The president of the bank is authorized to subject the bank to any regulations of general applicability to HUD which are added to this title in the future, by issuing a notice in the Federal Register to that effect.

380—16.129(PL96-294) Other federal requirements.

16.129(1) General. Financial assistance shall be provided by financial institutions in compliance with all applicable federal statutes and regulations, as they may be amended from time to time including, but not limited to, those coded in this part and those generally applicable to "federal financial assistance."

16.129(2) Nondiscrimination. Certain aspects of the bank's programs are subject to Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601, et seq.) and Executive Order 11063, and any regulations under these provisions.

16.129(3) Historic preservation. No financial assistance shall be provided in connection with any energy conservation measure or solar energy system which would have an adverse effect on the historic aspect of any district, site, building, structure or object included in or eligible for inclusion in the National Register maintained by the Secretary of the Interior under 16 U.S.C. 470a, unless such financial assistance is in connection with an assistance program of a federal agency other than the bank and the assistance of the other agency is being provided in compliance with the procedures set forth in the

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

regulations of the Advisory Council of Historic Preservation (36 CFR Part 800).

16.129(4) Floodplains and wetlands. In order to carry out the federal policies stated in Executive Orders 11988 ("Floodplain Management") and 11990 ("Protection of Wetlands"), no financial assistance shall be provided in connection with buildings located in one hundred-year floodplains or wetlands, unless such financial assistance is in connection with an assistance program of a federal agency other than the bank and the assistance of the other agency is being provided in compliance with the procedures set forth in Executive Order 11988 or 11990.

16.129(5) Flood insurance program. No financial assistance shall be provided in connection with any building located in an area that has been identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR Parts 59-79) or less than a year has passed since FEMA notification regarding such hazards, and insurance on the structure is obtained in compliance with Section 102(a) of the Flood Disaster Protection Act of 1973 (Public Law 93-234, 42 U.S.C. 4001, et seq.).

16.129(6) Coastal barriers. No financial assistance shall be provided in connection with any building located in an undeveloped coastal barrier (as defined in the Coastal Barriers Resources Act, Public Law 97-348).

16.129(7) Other laws. Financial institutions shall ensure that all financial assistance is provided in accordance with the following statutes and regulations to the extent applicable:

1. Truth-in-Lending Act (15 U.S.C. 1601, et seq. and 12 CFR Part 226 (Regulation Z)).
2. Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2610, et seq. and Part 3500 of this title).
3. Equal Credit Opportunity Act of 1976 (15 U.S.C. 1691, et seq. and 12 CFR Part 202).

380—16.130(PL96-294) Department of Housing and Urban Development funding. Funding for this program is subject to the continued financial support of Iowa's Solar Energy and Energy Conservation Bank program by the U.S. Department of Housing and Urban Development. If the Department of Housing and Urban Development discontinues the current level of funding of the plan, this program may be terminated by the council.

[Filed emergency 7/29/83, effective 9/1/83]

[Published 8/17/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/17/83.

ARC 3987

HEALTH DEPARTMENT[470]

Pursuant to the authority of Iowa Code chapter 17A.3 and section 135.11(15), the Iowa State Department of Health hereby emergency adopts and implements amendments to the following rules: Chapter 3 "Blood Testing Laboratories"; Chapter 17 "Sanitation of Habitable Building"; Chapter 18 "Tourist Camps, Trailer Camps, Cabin Camps, Construction Camps and Similar Establishments and Areas"; Chapter 126 "Application for Free Treatment" and Chapter 173 "Administrative Hearings", Iowa Administrative Code.

These rule changes are the result of a request by the Governor's Administrative Rules Coordinator to update rules which are no long appropriate or applicable. The changes reflect out of date rules or rules where statutory authority for the rules has been changed or repealed.

In compliance with Iowa Code section 17A.4(2), the department finds that public notice and participation is impracticable in that the rule changes are merely to conform the present rules with mandated statutory changes or repeal.

The department also finds, pursuant to section 17A.5(2) "b"(2) that the normal effective date of this rule thirty-five days after publication should be waived and the rule be made effective upon filing and receipt with the Administrative Rules Coordinator as it confers a benefit upon the public to ensure speedy and uniform compliance with the department's legislative mandate.

The Iowa State Board of Health adopted these changes at its regular meeting of May 11, 1983.

These rules implement Iowa Code chapters 17A, 135 and 140.

ITEM 1. Amend rule 470—3.1(140,596) to read as follows:

470—3.1(140,596) Approved ~~premarital and~~ prenatal blood testing laboratories. The state department of health approves the following laboratories for the purpose of performing serologic tests ~~for syphilis~~ in accordance with ~~premarital and~~ prenatal requirements.

ITEM 2. Amend subrule 3.1(6) to read as follows:

3.1(6) Those private and other governmental laboratories performing serologic tests ~~for syphilis~~ within the state of Iowa which meet the standards established for this purpose by the state department of health. A list of approved private and other governmental laboratories is available upon request to the State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

ITEM 3. Amend rule 470—17.1(135) to read as follows:

470—17.1(135) General. Every dwelling which is in whole or in part leased by the owner or his agent, except hotels and other establishments which are licensed by the department of agriculture, shall comply with the following requirements and in addition all dwellings shall conform to the requirements of ~~the state housing law~~ *any city housing code created pursuant to section 364.17* in all cities where applicable. The owner or lessor shall be deemed responsible for compliance with said requirements.

ITEM 4. Amend rule 18.1(135) to read as follows:

470—18.1(135) General. All tourist camps, trailer camps, cabin camps, construction camps and similar establishments and areas available for residence, *except mobile home parks as defined by rule,* camp or picnic use which are maintained, operated or leased, free of charge or upon payment of fees, by any municipality, community, institution, corporation, association, firm or person, except hotels and other establishments which are licensed by the state department of agriculture, shall comply with the following requirements:

Trailers may be occupied as temporary residence (except as prohibited by the housing law and local ordinances) only when parked in a trailer camp or other area with facilities complying with the provisions of this code.

HEALTH DEPARTMENT[470] *(cont'd)*

ITEM 5. Amend subrule 18.1(4) and 18.1(5) by deleting "Environmental Quality Department" and in lieu thereof replace with Department of Water, Air and Waste Management as follows:

18.1(4) Water supply. There shall be provided within two hundred feet of any trailer space or cabin, accessible at all times, a water supply which complies with the requirements of chapter ~~22~~ *41* of the ~~Environmental Quality Department~~ *department of water, air and waste management* rules entitled "Water Supplies".

18.1(5) Excreta and sewage. There shall be provided at each such camp, establishment or area, accessible at all time, a method of excreta disposal which complies with the requirements of chapter ~~12~~ *69* entitled ~~"Sewage, Industrial Wastes and Excreta Disposal."~~ *"Sewage, Commercial Wastes and Excreta Disposal."*

ITEM 6. Delete chapter 126 "Application for Free Treatment" in its entirety.

ITEM 7. Amend rule 173.8(17A) to read as follows:

470—173.8(17A) Subpoenas. When reasonably necessary or the full presentation of a case, the hearing officer or the commissioner may, either upon his or her own motion or upon the request of a party, issue subpoenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, and other documents which are relevant and material to any matter in issue at the hearing. Parties who desire the issuance of a subpoena shall file with the hearing officer or the commissioner a written request therefor, designating the witnesses or documents to be produced, and describing the address or location thereof.

The responsibility for having the subpoena served by a peace officer or otherwise shall be upon the party who requests the issuance of the subpoena. The party who requests the subpoena shall pay the cost of having the subpoena served and the cost of the witness fees and travel for the witness. A witness who appears because of subpoena shall receive a daily fee of three dollars and ~~fifteen cents~~ *the state rate per* mile travel expense. A witness shall not receive mileage for travel when he travels in a vehicle for which another witness is receiving mileage.

ARC 3982

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of 1983 Iowa Acts, House File 641, section 3, subsection (1), paragraph "d", rules of the Department of Human Services relating to unemployed parent workfare program (chapter 59) are hereby amended.

This rule is necessary to specify the responsibilities of the county, recipients and work sites when registrants choose to develop their own work program by arranging and performing voluntary community service work.

The Department of Human Services finds that notice and public participation is impracticable because there is not adequate time to implement the regular rulemaking process and still carry out 1983 Iowa Acts, House File 641, section 3, subsection (1), paragraph "d". Therefore this rule is filed pursuant to Iowa Code section 17A.4(2).

The Department of Human Services finds 1983 Iowa Acts, House File 641, section 12, requires these rules be effective immediately. Therefore, this rule is filed pursuant to Iowa Code section 17A.5(2)"b"(1).

The Council on Human Services adopted this rule July 28, 1983.

This rule is intended to implement 1983 Iowa Acts, House File 641, section 3, subsection (1), paragraph "d". This rule shall become effective upon filing.

Rescind subrule **59.16(2)**, paragraph "j" and replace with the following:

j. The county or agency shall allow fourteen calendar days beginning with the date of initial meeting with the registrant for registrants to develop their own work sites by arranging and performing voluntary community service work. Work sites must be nonprofit agencies which agree to serve as work sites for the county or agency and which agree to meet all program requirements as specified in IAC 498—chapter 59 including payment of administrative fees charged by the county or agency. The county or agency shall provide written information which will assist registrants in identifying approvable work sites, enable participants to inform potential work sites of requirements for becoming a work site and specify procedures for notifying the county or agency when a potential work site agrees to participate. Registrants who do not locate their own work site within the allowable time frame shall be required to accept work assignments made by the county or agency.

Participants shall also be allowed to transfer to self-developed worksites after they have participated at their current worksites for six calendar months. With the exception of the entry month, calendar months must be full months. Participants must give current worksites fourteen calendar days notice prior to transfer.

This rule is intended to implement 1983 Iowa Acts, House File 641, section 3, subsection (1), paragraph "d".

[Filed emergency 7/29/83, effective 7/29/83]
[Published 8/17/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/17/83.

ARC 3983

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 249A.4 rules of the Department of Human Services appearing in the IAC relating to amount, duration and scope of medical and remedial services (chapter 78) are hereby amended.

This rule changes the current rule specifying that payment will not be made to a skilled nursing home or facility outside of Iowa. The rule would allow payment to an out-of-state facility for skilled nursing care when that facility agrees to participate in the Iowa Medical Program, and the attending physician recommends placement.

HUMAN SERVICES[498] *(cont'd)*

The Department of Human Services finds that notice and public participation would be unnecessary, and contrary to the public interest. There has been concern expressed by parents, congressional offices, and advocate groups regarding the adverse effect of the current rule. Therefore, this rule is filed pursuant to Iowa Code section 17A.4(2).

The department finds this rule confers a benefit on the public by removing a restriction on a service. Those persons requiring skilled nursing care from out-of-state facilities would not have this service reimbursed by Medicaid without this rule change. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)"b"(1).

The Council on Human Services adopted this rule July 28, 1983. These rules are intended to implement Iowa Code section 249A.16.

This rule shall become effective August 1, 1983.

Rescind subrule 78.12(13) and replace as follows:

78.12(13) Medical assistance payment shall be approved to out-of-state skilled nursing facilities at the rate established by the state in which the facility is located under the following conditions:

a. The facility has agreed to participate in the Iowa Medicaid program.

b. The facility has been certified for Medicaid participation by the state in which the facility is located.

c. The attending physician recommends placement for one or more of the following reasons:

(1) A medical emergency or when a recipient's health would be endangered if required to travel to Iowa.

(2) The recipient lives near an Iowa border and needed services are traditionally or more appropriately available from a facility in a bordering state.

(3) Needed services are not otherwise readily available within the state of Iowa.

d. Prior approval has been given by the department.

[Filed emergency 7/29/83, effective 8/1/83]
[Published 8/17/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/17/83.

ARC 3984

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of 1983 Iowa Acts rules of the Department of Human Services relating to amount duration and scope of medical and remedial services (chapter 78) are hereby amended.

This rule is necessary to implement the increased reimbursement for hearing aids approved by the legislature.

The Department of Human Services finds that notice and public participation is impracticable because there is not adequate time to implement the regular rulemaking process and still carry out the 1983 Iowa Acts, House File 641, section 5, subsection 1, therefore this rule is filed pursuant to Iowa Code section 17A.4(2).

The Department of Human Services finds 1983 Iowa Acts, House File 641, section 12, requires these rules be effective immediately. Therefore, this rule is filed pursuant to Iowa Code section 17A.5(2)"b"(1).

The Council on Human Services adopted this rule July 28, 1983.

This rule is intended to implement Iowa Code sections 249A.2 and .4 and 1983 Iowa Acts, House File 641, section 5, subsection 1. This rule shall become effective August 1, 1983.

Paragraphs **78.14(7)**"a" to "f" are amended to read as follows:

a. Payment for hearing aids shall be acquisition cost plus a dispensing fee covering fitting and service for six months.

(1) For service in the office, the dispensing fee shall not exceed ~~$150.00~~ *$159.00*.

(2) For service out of the office, the dispensing fee shall not exceed ~~$165.00~~ *$174.90*.

b. Payment will be made for the ear mold, not to exceed ~~$20.00~~ *$21.20*.

c. Payment for batteries shall be made only when they are requested by the recipient.

d. Payment will be made for routine service after the first six months, not to exceed ~~$12.50~~ *$13.30* per year.

e. Payment for repairs shall be made for the charge to the dealer for parts and labor by the manufacturer or manufacturer's depot and for a service charge when this charge is made to the general public.

f. Payment for the replacement of a hearing aid less than four years old shall require prior authorization.

This rule is intended to implement Iowa Code section 249A.2(6) and 249A.4 and 1983 Iowa Acts, House File 641, section 5, subsection 1.

[Filed emergency 7/29/83, effective 8/1/83]
[Published 8/17/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/17/83.

ARC 3972

NURSING, BOARD OF[590]

Pursuant to the authority of Iowa Code sections 17A.3, 147.76 and 152.1, the Iowa Board of Nursing emergency adopts an amendment to Chapter 6, "Nursing Practice for Registered Nurses/Licensed Practical Nurses", Iowa Administrative Code.

In compliance with Iowa Code section 17A.4(2), the department finds that public notice and participation are contrary to the public interest. Licensed practical nurses were practicing within the home without problems until October 1982 when the rules went into effect. The board never intended to eliminate licensed practical nurses from providing supportive or restorative care in homes. This change was an inadvertent by-product of the October rule change. As a result citizens needing licensed practical nurse care are forced to accept the care of nonskilled private individuals or less skilled home health aides or hire registered nurses. For the safety of the public, licensed practical nurses should be allowed to practice in this area of care immediately.

The department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of this rule thirty-five days after publication should be waived and the rule be made effective upon filing with the Administrative Rules Coordinator on July 29, 1983 as it confers a benefit upon the public.

NURSING, BOARD OF[590] *(cont'd)*

The Iowa Board of Nursing adopted this amendment at a regular meeting on July 22, 1983.

This rule implements Iowa Code section 17A.3, 147.76, and 152.1.

This rule is being filed as a Notice of Intended Action under ARC 3973.

Chapter 6 is amended by adding rule 6.6(152) as follows:

590—6.6(152) Specific nursing practice for licensed practical nurses. The licensed practical nurse shall be permitted to provide supportive and restorative care in the home setting under the supervision of a registered nurse as defined in subrule 6.2(5) or a physician.

This rule is effective until the Notice of Intended Action ARC 3973 is adopted or until March 1, 1984, whichever occurs first.

[Filed emergency 7/29/83, effective 7/29/83]
[Published 8/17/83]

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ARC 3986

PLANNING AND PROGRAMMING[630]

Pursuant to the authority of Iowa Code section 7A.3 and the 1983 Iowa Acts, Senate File 548, section 92, the Office for Planning and Programming (OPP) adopts and implements on an emergency basis a new Chapter 18, "Iowa Community Cultural Grants Program (ICCG)". Chapter 18 is created in order to administer a program of grants to Iowa cities and community groups for the development of community programs that would provide local jobs for Iowa residents and at the same time promote a city's historical, ethnic and cultural heritages through the development of festivals, music, drama, cultural programs or tourist attractions.

In compliance with Iowa Code section 17A.4(2), OPP finds public notice and participation impractical because of the time constraints placed on the program by the 1983 Iowa Acts, Senate File 548, section 92. The purpose of the ICCG program is to provide local jobs for Iowans and the allocation of funds must be committed as soon as possible to ensure their expenditure by June 30, 1984.

Failure to implement the program promptly could result in denying adequate time to the cities and communities participating in the program.

Also, paragraph two of section 92 mandates that all grant applications be evaluated and reviewed by the Iowa Arts Council, Iowa State Historical Board and the Tourism Division of the Iowa Development Commission with recommendations for grant awards being made to the Iowa Jobs Commission.

The Office for Planning and Programming intends to accept applications for grant funds from August 1, 1983 to October 1, 1983. The review and selection process will require approximately four weeks and grant awards should be made by November 1, 1983.

The agency also finds that pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of these rules thirty-five days after publication should be waived and the rules be made effective on July 29, 1983, as it confers a benefit on the public to assure full and accurate compliance with the program's legislative mandate.

These rules are intended to implement the 1983 Iowa Acts, Senate File 548, section 92 and were approved by the Iowa Jobs Commission and adopted by the Office for Planning and Programming on July 26, 1983.

The following new chapter is added:

CHAPTER 18
IOWA COMMUNITY CULTURAL GRANTS PROGRAM

630—18.1(70GA,SF548) Purpose. The purpose of the Iowa Community Cultural Grants Program is to establish a program of grants to cities and community groups for the development of community programs that would provide local jobs for Iowa residents and at the same time promote a city's historical, ethnic and cultural heritage, through the development of festivals, music, drama, cultural programs or tourist attractions.

630—18.2(70GA, SF548) Program description. Any city or community group as defined by these rules is eligible to apply for and receive a grant through the program. The program shall operate as a competitive grants program and be administered by the office for planning and programming under the direction and supervision of the Iowa jobs commission. Cities and community groups may make application to the Iowa jobs commission which will approve or disapprove such applications based on criteria described in these rules. Contractual agreements specifying the terms of the grant award shall then be executed between the office for planning and programming and successful applicants.

630—18.3(70GA, SF548) Definitions. When used in this chapter, unless the context otherwise requires:

18.3(1) "Act" means the 1983 Iowa Acts, senate file 548, division XIII, section 92.

18.3(2) "Administrative costs" mean reasonable and necessary costs and charges associated with the planning and execution of proposed project or program; such as, bookkeeping, travel, consumable supplies, project development, project management, printing, and audit costs.

18.3(3) "Advisory committee" means the committee established by the Act comprised of the Iowa arts council, the Iowa historical board and the tourism division of the Iowa development commission.

18.3(4) "Eligible applicant" mean an incorporated city or a community group which is federally tax exempt and incorporated under the Iowa Nonprofit Corporation Act. Nonprofit organizations that have not yet achieved tax-exempt status may apply through an alternative organization (fiscal agent) which is tax-exempt and otherwise eligible to apply.

Community group shall not include a school, church, convention or association of churches or organizations operated primarily for religious purposes, and which are operated, supervised, controlled or are principally supported by a church, convention or association of churches.

18.3(5) "Application" means a request for an Iowa community cultural grants program that complies with the requirement of rule 18.4(70GA, SF548).

18.3(6) "Cost" means all the costs of the project or program.

18.3(7) "Eligible activity" refers to festivals, performing, visual and literary arts, tourist attractions and activities and services that will increase historic preservation, arts, tourism services and contribute to the

PLANNING AND PROGRAMMING[630] *(cont'd)*

cultural enrichment of the community and be available to the general public which provides for local jobs for Iowa residents.

18.3(8) "Grantee" means any applicant receiving grant funds under this program.

18.3(9) "Iowa Community Cultural Grants Program" (ICCG) means the program established and authorized by the Act.

18.3(10) "Iowa jobs commission" refers to the commission established by the 1983 Acts, senate file 548, section 2"a" composed of five public members, not more than two from the same political party, appointed by the governor subject to confirmation by the senate under Iowa Code section 2.32, and one senator, to serve as an ex officio nonvoting member, appointed by the president of the senate, and one representative, to serve as an ex officio nonvoting member, appointed by the speaker of the house of representatives.

18.3(11) "Local matching funds" means at least fifty percent or more of the total program or project cost which must be provided by the city or community group submitting an application for a grant and which shall not include any portion of another state or federal grant.

18.3(12) "In-kind services" means a noncash contribution provided by a grantee as a part of the grantees' matching share of a project, which shall not exceed one half of the match requirement. Such expenses as labor costs, transportation costs, rent, or supplies may be included in computing in-kind services.

18.3(13) "Proposed project" means one or more eligibile activities for which a city or community group has submitted a single application for grant funds. Only one application may be submitted by an applicant unless the eligible applicant is serving only as a fiscal agent for another group in additional applications.

18.3(14) "Fiscal agent" means an organization which is tax-exempt and otherwise eligible to apply as defined in subrule 18.3(4). The fiscal agent becomes the legal applicant of record, redistributes the funds to the intended receiver, and is entirely responsible for all published requirements of the grants program, including contracts, revised budgets, fiscal records and reports.

630—18.4(70GA, SF548) Application procedures. Applicants shall submit applications to the Iowa Jobs Commission, Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319. Applications shall be in the form prescribed by the Iowa jobs commission and the office for planning and programming and contain information identified in rule 18.5(70GA, SF548). All applications submitted shall be reviewed by the advisory committee with their remarks and recommendations for grantees and grant awards being submitted to the Iowa jobs commission which will determine final grantees and grant awards to the extent funds are available.

630—18.5(70GA, SF548) Contents of application. Each application shall contain the following information:

1. Description of the proposed project or program including a time schedule for implementing the proposed project or program.
2. The amount of grant funds requested.
3. The amount of city, private or other local cash or in-kind resources or combination thereof which are committed in an amount not less than fifty percent of the total project or program cost.
4. Include, if necessary, a description of in-kind services to be contributed in lieu of providing up to one half of the entire match in cash.
5. A description of how the proposed project will create jobs immediately and the estimated number of jobs. A description of how the proposed project will generate future jobs, the estimated number of jobs and sources of funding.
6. A description of the proposed project's historical, ethnic, cultural heritage and tourism value for the city or community.
7. A budget for the project or program.
8. A designation as to whether or not the program or project existed prior to the passing of 1983 Iowa Acts, senate file 548.

630—18.6(70GA, SF548) Review and rating of applications. The office for planning and programming shall conduct a preliminary review of each application to determine that the applicant is eligible, that the application is complete, that the proposed project is consistent with the program purpose of providing jobs through eligible activities and that requested grant funds will be matched with a local match equal to not less than fifty percent of the total project cost with no more than one half of the match being in-kind services.

Applications which do not meet these criteria will not be considered for funding. Applications which meet the minimum criteria will be rated by the advisory committee on the following factors to determine recommendations to the Iowa jobs commission on the order and amount of funding.

1. Number and impact of full-time or part-time jobs, or both, created during project duration.	200 points
2. Number and impact of potential, continuing or re-occuring jobs created	200 points
3. Percent of local matching funds in cash	100 points
4. Historical, ethnic, cultural and tourism value and quality	500 points
Total	1000 points

630—18.7(70GA, SF548) Administration of grants. Grant awards will be made in 3 categories: 1) $1,000-$2,499; 2) $2,500-$24,999 and; 3) $25,000-$75,000. A preliminary allocation of $225,000 has been reserved for grants ranging from $25,000-$75,000 pending review of grant applications. In addition, a minimum of $20,000 is reserved for grants ranging from $1,000-$2,499.

18.7(1) At least twenty-five percent of the funds appropriated for the Iowa community cultural grants program shall be awarded to community programs or projects which were not in existence prior to this Act. Also included in this category may be activities or programs which are a significant expansion of a previously established project.

18.7(2) The Iowa jobs commission reserves the right to not grant all appropriated funds if there is an insufficient number of acceptable applications submitted to adequately achieve the purposes of the Act as described in rule 18.1(70GA, SF548).

630—18.8(70GA, SF548) Contract agreement. Upon approval of each grant award, the office for planning and programming shall prepare a contract agreement which shall include the terms and conditions of the grant, including grant amount, project description and matching requirements. This contractual agreement must be

PLANNING AND PROGRAMMING[630] *(cont'd)*

executed by the director of the office of planning and programming or designee, and the mayor or other duly authorized official of a recipient city, or a recipient community group. The contract will include dates for requisition of reimbursable expenditures.

630—18.9(70GA, SF548) Administrative costs. Not more than five percent of the ICCG grant funds may be used for administrative costs.

630—18.10(70GA, SF548) Reporting and audit requirements. The office for planning and programming may require grantees to submit progress reports on the status of the project. Any grant of $25,000 or over will be required to conduct an onsite financial compliance audit of their grant project expenditures at their expense. All grants of less than $25,000 may be required to submit documentation of expenses for the purpose of a desk audit or may be required to conduct an on-site audit of grant project expenditures at their expense.

630—18.11(70GA, SF548) Timing of grants. In order to promote sound administration and effectuate the intent of the Act, the office for planning and programming, under the direction of the Iowa jobs commission, may set one or more deadlines for grant applications and make awards of some or all of the funds appropriated under this Act.

The office for planning and programming intends to accept applications for grant funds from August 1, 1983 through October 1, 1983. The review and selection process will require approximately four weeks and grant awards should be made by November 1, 1983. All grant moneys must be spent by June 30, 1984 and all projects completed by December 31, 1984.

630—18.12(70GA, SF548) Annual report. The office for planning and programming shall submit to the governor and the general assembly an annual report setting forth the details of the operations of the program on the basis of the fiscal year beginning July 1 and ending June 30.

These rules are intended to implement the 1983 Iowa Acts, senate file 548, sections 2"a" and 92.

[Filed emergency 7/29/83, effective 7/29/83]
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ARC 3976

REVENUE DEPARTMENT[730]

Pursuant to the authority of Iowa Code section 421.14 and 422.68(1), the Iowa Department of Revenue hereby emergency adopts a rule to amend Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage", Iowa Administrative Code.

The United States Supreme Court in Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue, ____ U.S. ____, 75 L.Ed.2d 295, 103 S.Ct. 1365 (1983), held that the Minnesota newsprint and ink tax was unconstitutional. For all practical purposes, the Iowa newsprint and ink tax and the Minnesota newsprint and ink tax are identical. This rule provides that the department will discontinue to enforce the collection of tax on newsprint and ink incorporated in or used in the printing of any newspaper, free newspaper, or shoppers guide based on the Opinion of the Attorney General, July 6, 1983, (Osenbaugh to Bair, Director of Revenue).

In compliance with Iowa Code section 17A.4(2), the department finds that public notice and participation is impractical in that the director's decision to discontinue to enforce the collection of the tax is effective immediately and it is doubtful that persons who have been responsible for paying or remitting the tax will object to the director's decision.

The department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this rule 35 days after publication, should be waived and the rule be made effective immediately upon filing with the Administrative Rules Coordinator as it confers a benefit upon the public by reducing the tax liability of persons who have been subject to the tax on newsprint and ink imposed by Iowa Code section 422.42(3).

This rule is intended to implement the Opinion of the Attorney General, July 6, 1983, (Osenbaugh to Bair, Director of Revenue).

The following amendment is adopted.

Amend rule 730—18.42(422,423), by adding the following as subrule 18.42(2) now marked reserved.

18.42(2) The department discontinues enforcement and collection of the sales or use tax on newsprint and ink incorporated in or used in the printing of any newspaper, free newspaper or shoppers guide for sale. Op. Att'y Gen. (Osenbaugh to Bair), #83-7-1.

[Filed emergency 7/29/83, effective 7/29/83]
[Published 8/17/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/17/83.

ARC 3985

COLLEGE AID COMMISSION[245]

Pursuant to the authority of Iowa Code section 261.37, the College Aid Commission adopts amendments to chapter 10, Iowa Guaranteed Student Loan Program, Iowa Administrative Code.

The amendment to section B includes a number of technical revisions which improve the text so that the regulations are more clearly stated. The amendment also allows a student to borrow a second time for the same academic status if a second loan is warranted. The amendment also allows a student who has maintained satisfactory academic progress and has remaining eligibility within the aggregate loan limits to receive a fifth loan when a college official certifies that circumstances require a fifth year of study. Educational institutions will be required to maintain documentation justifying their approval of a loan made under the rule.

Notice of Intended Action was published in IAB volume V, number 26, June 22, 1983, as ARC 3814.

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

This rule was adopted in final form on July 27, 1983, and will become effective on September 21, 1983.

ITEM 1. Rule 245—10(261) is amended to read as follows:

245—10(261) The Iowa Guaranteed Student Loan Program, Chapter II, Section B.

B. Loan Limits: Amounts and Restrictions. The purpose of the Iowa Guaranteed Student Loan (IGSL) is to assist students in meeting the cost of higher education. Students should borrow only the amount they need to pay for their education rather than the maximum amounts as defined below. Keeping loan obligations to a minimum will facilitate repayment. The amount of the loans is to be mutually agreed upon by the borrower and the lender within the lender's stated policies and the following program limitations:

1. The maximum loan amount for the student borrower is determined by his/her status, as a dependent undergraduate, independent undergraduate, graduate, or professional student. No loan or combination of loans for a single academic period may exceed the *net* cost of education for that period, *defined as the total cost of education* less other financial aid anticipated.

a) *Dependent Undergraduate* students may apply for up to $2,500 per academic year (i.e. Fr., Soph., Jr., Sr.), ~~or the net cost of education, whichever is less,~~ if their family Adjusted Gross Income (AGI) is $30,000 or below. ~~Those~~ Dependent undergraduate students whose family Adjusted Gross Income is above $30,000 ~~Will be subject to a needs analysis test established by the Secretary of Education, and may apply for a loan amount where the unmet need (cost less aid less Expected Family Contribution) as determined by the educational institution is as follows:~~ *must demonstrate unmet financial need on the basis of a test specified by the Secretary of Education. Unmet need is defined as the Cost of Education less the Expected Family Contribution less all other financial aid. The loan amount is determined as follows:*

If Unmet Need Is:	*Loan Limits:*
$ 1.00 to $ 499	— Actual amount of unmet need
$ 500.00 to $1000	— Loan amount of up to $1000, ~~not to exceed cost less aid~~
$1001.00 or above	— Actual amount of unmet need

The aggregate total of loans outstanding may not exceed $12,500.

b) *Independent Undergraduate* students, as certified by the educational institution, may apply for up to $2,500 per academic year (i.e. Fr., Soph., Jr., Sr.) ~~or the net cost of education, whichever is less.~~ *if their family adjusted gross income (AGI) is $30,000 or below.* ~~Those~~ Independent undergraduate students whose AGI is above $30,000 must qualify on a need basis. The need analysis ~~will~~, *specified by the Secretary of Education,* determines the *loan* amount the student is eligible to apply for under the GSL Program. Refer to loan limits as outlined in Section II-B-1-a. *The aggregate total of loans outstanding may not exceed $12,500.*

i) ~~Independent undergraduate students may borrow under the Iowa PLUS Program the difference between their net costs of education and the amount extended on their GSL for a combined total not to exceed $2,500.~~

~~The aggregate total of loans outstanding may not exceed $12,500.~~

c) *Graduate and professional students* ~~certified by the school as dependent or independent and~~ whose family AGI is $30,000 or below, will be eligible to borrow up to $5,000 per academic year or the net cost of education, whichever is less. Graduate and professional students ~~certified as dependent or independent and having~~ *with* a family AGI of over $30,000 will be eligible to borrow ~~that~~ *the* amount indicated by the needs test, *the* net cost of education, or $5,000 per academic year, whichever is less. The aggregate total of loans outstanding may not exceed $25,000 including undergraduate loans.

~~i) Students able to borrow the $5,000 under the GSL Program and who show remaining need will be eligible to borrow the remaining amount of need under the Iowa PLUS Program up to $3,000 per academic year. Aggregate combined loans under the GSL and PLUS Programs may not exceed $40,000.~~

~~ii) Students who are not eligible to borrow under the GSL Program will be eligible to borrow up to $3,000 per academic year under the Iowa PLUS Program or the net cost of education, whichever is less.~~

~~2. The GSL may not exceed the cost of education less any financial aid and other resources available to the student, including loans under the Iowa PLUS Program subject to annual loan limits.~~

2. Iowa Guaranteed Student Loans ~~and Iowa PLUS funds~~ may be used *only* for ~~the estimated cost of attendance. "Estimated Cost of Attendance" means the~~ *bona fide educational expenses including* tuition and all applicable fees, ~~and the school's estimate of~~ other expenses related to attendance at the institution, including but not limited to the cost of room and board, transportation, books, and supplies for the period for which a loan is sought. Transportation costs may not include purchase or repair of a vehicle.

3. A student ~~or parent~~ who requests to borrow a second time for the same academic status (i.e., Fr., Soph., Jr., Sr.) ~~as indicated on the previous loan application~~ may be permitted to do so *after a college official certifies that* ~~if any~~ *one* of the following conditions exists:

a) the student ~~has~~ lost credits when ~~changed~~ *changing* schools, and/or

b) the student ~~has~~ *lost credits when* ~~changed~~ *changing academic* programs or curriculums, and/or

c) the student lost credits due to illness, and/or

d) the student has remaining eligibility within the loan limits of that academic period, *and/or*

e) the student has special documented circumstances that warrant a second loan.

COLLEGE AID COMMISSION[245] *(cont'd)*

4. A student who has maintained satisfactory academic progress and has remaining eligibility within the aggregate loan limits may receive a fifth loan when a college official certifies that special circumstances require a fifth year of study. Reasons for approving a fifth loan may include but are not limited to:

a) the student is required to take additional courses when changing programs or curriculums,

b) the student is required to take additional courses when changing schools,

c) The student is pursuing a double major, second degree, or science or engineering program that routinely requires more than four years of study,

d) the student lost credits due to illness,

e) the student is completing a five-year undergraduate program developed for educationally disadvantaged students.

5. Educational institutions must maintain documentation in the student's permanent file justifying their approval of a loan made under section 4 or 5 above.

These rules are intended to implement Iowa Code chapter 261.

[Filed 7/29/83, effective 9/21/83]
[Published 8/17/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/17/83.

ARC 3967

HEALTH DEPARTMENT[470]

BOARD OF OPTOMETRY EXAMINERS

Pursuant to the authority of Iowa Code sections 147.76 and 258A.4, the Board of Optometry Examiners hereby amends the rules relating to the licensure of optometrists found in chapters 143 and 144 of the Iowa Administrative Code.

Notice of Intended Action regarding the proposed action was published in the Iowa Administrative Bulletin March 30, 1983 as ARC 3662.

The rules provide that an optometrist practicing in a branch office display in each branch office a current certification of license. The rules are the same as published under Notice.

The rules are intended to implement Iowa Code sections 147.76 and 258A.4.

The rules shall become effective October 1, 1983.

ITEM 1. Chapter 143 is amended by adding the following new rule:

470—143.9(154) Branch offices.

143.9(1) Each optometrist practicing in a branch office shall display in each branch office in an area visible to the public a certified statement as provided by subrule 160.4(4) that the optometrist is currently licensed to practice optometry in the state of Iowa.

ITEM 2. Rule 470—144.112(258A) is amended by adding the following new subrule:

144.112(15) Failure to display a current certification of license for a branch office as required by rule 470—143.9(154).

[Filed 7/22/83, effective 10/1/83]
[Published 8/17/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/17/83.

ARC 3979

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 234.6 the Department of Human Services adopted these rules relating to the food stamp program (chapter 65). These rules were adopted by the Council of Human Services on July 28, 1983.

Notice of Intended Action regarding these rules was published April 27, 1983 as ARC 3719 [Notice appeared under Social Services Department, renamed Human Services Department by 1983 Iowa Acts, S.F. 464, effective 7/1/83]. These rules are necessary to bring the Food Stamp Program into compliance with the Omnibus Budget Reconciliation Act of 1981.

The Council of Human Services approved rule addition to clarify the department's procedures and requirements in response to the comments received regarding these rules.

Current food stamp policy requires participating households to report changes within ten days. Current policy also uses prospective budgeting to determine eligibility and compute benefits. This means that we attempt to match each month's allotment with its circumstances. We do this before the issuance month (or during the issuance month for applications) so we must rely on projections of future income and circumstances.

The Omnibus Budget Reconciliation Act of 1981 required the states to implement food stamp Monthly Reporting and Retrospective Budgeting (MRRB) no later than October 1, 1983. Other legislation has provided additional waiver authority to give the states more flexibility in design of their MRRB systems. Each state must use the flexibility to improve consistency with its aid to dependent children MRRB system unless it has a very good reason for an "inconsistent" choice.

Retrospective budgeting means that computation of a household's allotment is based on its income and circumstances for a prior month. For example, in Iowa, this will mean that the information an eligible household reports concerning December will be received and processed in January to determine the amount of the allotment received in February. In this example, December is the budget month and February is the issuance month. This method will not be used to determine allotments for the "beginning months"; prospective budgeting will be used. The beginning months are the month of application and the next month.

Monthly reporting will replace the requirement to report changes within ten days, for some households. This means that the household must submit a report of its circumstances each month in order to stay in the program. The report must include all the information and verification the local office needs to determine eligibility and the allotment: Income, deductions, members of the household, etc. Failure, by the household, to meet the monthly reporting requirements by certain deadlines, will cause the household's participation to be canceled.

Changes in allotment or eligibility caused by information in the monthly report do not require a "timely notice". An "adequate notice" is required. This means that the notice must be written and provide a complete explanation of the local office action, but it will not be considered late if it is received by the time the allotment is, or would have been, received. This adequate notice will not prevent "reinstatement" of benefit level when the household files a timely appeal.

HUMAN SERVICES[498] *(cont'd)*

The options selected and reasons for the selection follow:

1. Calendar month, rather than fiscal month, was selected for definition of the budget month and the issuance month, to provide consistency with aid to dependent children and to conform to the existing issuance system.

2. A two-month retrospective budgeting system, rather than a one-month retrospective budgeting system, was selected to allow sufficient local office and computer processing time; fit the existing benefits issuance system; co-ordinate with the aid to dependent children program; and allow two beginning months.

3. Determining eligibility prospectively, rather than retrospectively, was selected as being more responsive to change in household membership and circumstances. This option is also consistent with aid to dependent children.

4. To consider the public assistance grant to be received in the issuance month, rather than the grant received in the budget month, in calculation of food stamp benefits, was selected as being more responsive to change in household circumstances and more accessible as information in the benefit calculation process.

5. Providing specific information on how the benefit level was calculated in a notice separate from, rather than with, the issuance was selected to prevent delay in mailing of benefits, to be compatible with current issuance equipment, and to provide a longer advance notice to most households. A waiver regarding benefit calculation notice has been approved and implementation of this option will occur in early 1984.

6. To provide postage-paid envelopes for return of the monthly report by the household. This option will encourage prompt return of the monthly report and prevent a potential hardship to the household. It is consistent with aid to dependent children.

7. The fifth calendar day of the month following the budget month as the "due date" by which the department must receive the complete monthly report form, when the monthly report was mailed to the household during the budget month. This due date is consistent with aid to dependent children.

8. To suspend, rather than terminate, a household's participation in the food stamp program when the household becomes temporarily ineligible — for one month — was chosen. The department has also been granted a waiver regarding suspension of benefits. The suspension option was chosen to prevent the need for reapplication by the household and to provide consistency with the aid to dependent children program.

9. The department has chosen to use, but modify the option at 7 CFR 273.21(b)(2)(ii) so that households without countable earned income whose adult members are all elderly or disabled (as defined by 7 CFR 271.2) are excluded from the monthly reporting requirement unless these households are required to file monthly reports for the aid to dependent children program. This option will provide consistency with the aid to dependent children program and accommodate households whose elderly and disabled members might have difficulty with the monthly reporting requirements.

10. Considering the income received in the budget month, rather than the income averaged for the budget month, was selected. Income that a household receives in the budget month will be considered without conversion to a regular monthly amount. This option provides for accurate budgeting that responds directly to the information provided by the household. Use of actual income received in the budget month is consistent with aid to dependent children and may reduce errors.

11. Recertifying households by providing a monthly report form, rather than a recertification form, was chosen, with modification to not require an addendum. This option provides consistency in food stamp reporting requirements and with the aid to dependent program.

12. For the state to act on all reported changes, rather than only changes reported on monthly reports, for monthly reporting households, was selected. The selected option provides for the early addition of new household members to the food stamp household. It also provides consistency with the aid to dependent children program.

13. Regulations do not specify when the household, which has changes causing it to be either subject to, or exempt from, monthly reporting, is to begin or end monthly reporting. The department has chosen to adopt the aid to dependent children policy to ensure consistency and prompt action. A monthly report will be required for the budget month in which exemption is lost and a monthly report will not be required for the budget month after the budget month in which exempt status is attained.

The department has been granted the following waivers to federal regulations:

1. To determine benefits prospectively for the 'beginning months' for all food stamp households. This will respond to the need which prompted the household to apply for food stamps and will provide consistency with the aid to dependent children program.

2. To retrospectively disregard income that terminated in a 'beginning month' when this income was considered prospectively for the beginning month. This will provide consistency with the aid to dependent children program, and will avoid counting terminated income twice in computation of benefits.

3. To allow a third 'beginning' month, of prospective budgeting, on joint public assistance/food stamp application cases when the third month is necessary to permit a simultaneous transition from prospective to retrospective budgeting for the two programs. This waiver also extends the retrospective disregard of income from a source that terminated in the beginning month when the income was considered prospectively for a beginning month. This will allow for consistency with the aid to dependent children program in consideration of income and calculation of benefits.

4. To modify an option to exclude households from monthly reporting so that households without countable earned income whose adult members are all elderly or disabled, as defined by 7 CFR 271.2, are not required to submit monthly reports unless these households are required to file monthly reports for the aid to dependent children program. This option provides an additional exclusion of households which may have difficulty meeting monthly reporting requirements.

5. To limit reinstatement of the household, which has been canceled due to failure to file a complete monthly report and subsequently files the report, to the end of the report month or to the extended filing date, whichever is later. This will provide consistency with aid to dependent children program requirements.

6. To require monthly verification of unearned income or prorated or annualized income only when this income changes (starts, stops, or changes in amount). This will provide consistency with aid to dependent children program requirements. The waiver also provides for more equitable treatment than the regulations. The regula-

tions would require monthly verification of all income so that when verification of unearned or annualized income was not submitted with the monthly report, the department would act only on a reported change which would decrease benefits.

7. To consider a monthly report to be incomplete if verification of gross earnings and changes in annualized or prorated or unearned income is not submitted with the monthly report. This will provide consistency with aid to dependent children program requirements.

8. To modify the option to suspend household participation when the household's retrospective net income exceeds program limits, but eligibility for benefit issuance is expected to exist for the following month. The reason for suspension will not be restricted to a periodic increase in recurring income. Suspension may not occur for two consecutive months. This waiver provides consistency with aid to dependent children.

9. To omit statements regarding fair hearing and reinstatement rights from the monthly report form however the department has chosen to retain statements of appeal rights on the monthly report form.

10. For verification of interest income with the monthly report. Verification of interest income, on a routine basis, would cause a hardship for food stamp recipients since financial institutions could impose fees for monthly interest statements.

11. To send a notice to terminate benefits when a complete report is not received by the due date — the end of the initial filing period. This will provide consistency with the aid to dependent children program and does not prevent reinstatement of the household which files a complete report subsequent to the due date, but prior to the end of the month which precedes the issuance month or by the extended filing date, whichever is later.

12. For the pretest requirement. The aid to dependent children program MRRB system will have been used for one year prior to the implementation of MRRB for food stamps.

13. A temporary waiver of the requirement that "specific information on how the state agency calculated the benefit level," be provided. The department is planning a system for automated calculation of benefits and issuance of notices concerning income and deductions. This system will provide a summary of how the benefit level was calculated. Manual summary of the computation, with notices, would be expensive and might result in delay of notices. The waiver, if granted, would expire with the implementation of the automated system. This implementation is planned for February 1, 1984.

The department has requested the following waivers:

1. To allow use of the monthly report form, without addendum, as a recertification document. This would match aid to dependent children program use of the form as a review document. The waiver has been granted contingent upon approval of the form by the Mountain Plains regional office of the food and nutrition service, USDA.

2. To exempt households, other than those excluded by regulation (7 CFR 273.21(b)), from the monthly reporting requirement. The households we propose to exempt are either aid to dependent children program, aid to dependent children-related medical program, child medical assistance program or refugee resettlement - cash assistance program assistance households which are exempt from monthly reporting for assistance eligibility; or are nonpublic assistance households which have no members who have countable earned income and have no members who either have "recent work history" or are not exempt from work registration as a condition of participation in the food stamp program, if the household has nonexempt income and, except for contributions and gifts received not more frequently than twice a year, it is all constant unearned income.

The department has scheduled the following implementation dates:

1. October 1, 1983 for the requirement that monthly report forms be submitted concerning the budget month of October. The forms will be sent from Des Moines at the end of October to be returned to the local offices by November 7. The issuance for December will be the first issuance resulting from retrospective budgeting, and will reflect October income and circumstances.

The department will implement the rule for the entire public assistance (aid to dependent children program, aid to dependent children-related medical, refugee assistance, child medical assistance program) food stamp caseload. Aid to dependent children program implementation of MRRB occurred with the budget month of August 1982. Public assistance - food stamp households have been subject to inconsistent budgeting and reporting requirements since that time. This inconsistency causes client and worker confusion and has probably contributed to the increasing food stamp error rate.

2. December 1, 1983, the department will implement the rule in one "pilot" county for all food stamp cases other than those described as public assistance cases (above). The county (not yet designated) will serve as a test site for a new automated benefit calculation system. Households subject only to retrospective budgeting will be "phased-in". This date also refers to a "budget" month — December.

3. January 1, 1984, the department will implement the rule for the entire Iowa food stamp caseload. Households subject only to retrospective budgeting will be "phased-in". This implementation will occur with the implementation of an automated benefit calculation system.

The department studied the impact of aid to dependent children MRRB on field staff or field processes, and attempted to determine the impact of food stamp MRRB, as well. The department has decided that implementation of food stamp MRRB should be delayed for nonpublic assistance clients until improvements in automated systems are completed. Development of an automated benefit calculation system and improvements to existing data processing systems will be contracted for and are to be completed during January 1, 1984.

This date also refers to a "budget" month — January.

A waiver request for delay of food stamp implementation, as described, has been denied.

The December and January dates might be revised to January and February if the automated system is delayed.

65.2 has been reworded to clarify intent.

65.19(6) has been reworded to clarify intent.

65.19(7) has been reworded to clarify intent and shorten the monthly reporting period.

65.19(8) has been reworded to clarify intent.

65.19(15) has been deleted and replaced.

65.19(16) and (17) have been added to clarify intent as a response to comments.

These rules are intended to implement Iowa Code section 234.12.

These rules will be effective October 1, 1983.

ITEM 1. Rule—65.1(234) is amended by adding new subrules.

HUMAN SERVICES[498] *(cont'd)*

65.1(4) "Suspension" means a month in which a benefit issuance is not made due to retrospective net income which exceeds program limits, when eligibility for benefit issuance is expected to exist for the following month.

65.1(5) "Constant unearned income" means nonexempt unearned income which is expected to be received regularly and is not expected to change, in source or amount, more often than annually. Time limited benefits, such as job insurance benefits, are not considered to be constant unearned income.

65.1(6) "Recent work history" means that the individual has been without income from employment no more than three full calendar months. Income disregarded in accordance with 7 CFR 273.9(c) shall not be considered income from employment for this exemption.

65.1(7) "Report month" for retrospective budgeting means the calendar month following the budget month.

ITEM 2. Rule—65.2(234) is amended to read as follows.

~~770~~*498*—**65.2(234) Application.** Persons in need of food stamps may apply at the local office of ~~social~~ *human* services by completing form FP-2101-0 or FP-2101-1, food stamp application, *when the application is for an initial month or the application is for a household whose previous participation was in another county,* except when any person in the household *is* applying for ~~or receiving~~ aid through the aid to dependent children program or related medical programs, *the refugee resettlement assistance programs,* or the child medical assistance program. These persons shall complete form PA—2207-0, Public Assistance Application. *Households receiving food stamps without a change of county may apply for continued participation by submitting* form PA—2140-0, Public Assistance Eligibility Report. ~~and the Food Stamps Supplement to the Public Assistance Eligibility Report, form FP-2138-0, as appropriate.~~

ITEM 3. Chapter 65 is amended by adding a new rule:

~~770~~*498*—**65.19(234) Monthly reporting/retrospective budgeting.**

65.19(1) Budgeting cycle. Retrospective budgeting will base benefit calculation on the budget month which is the second calendar month preceding the issuance month.

65.19(2) Reporting responsibilities of monthly reporting households. The Public Assistance Eligibility Report, form PA—2140-0 will be supplied to the recipient, by the department, as needed or requested. The department shall provide a postage-paid envelope for return to the local office of form PA—2140-0, the Public Assistance Eligibility Report. The household shall return the completed form to the local office by the fifth calendar day of the month which precedes the issuance month, when the form was issued in the department's regular end-of-month mailing. The household shall return the completed form to the local office by the seventh day after the date of the issuance of the form when the form was not issued in the department's regular end-of-month mailing. Failure to return a completed form shall result in cancellation of assistance. A completed form is a form with all items answered, accompanied by verification as required in 65.19(14) and 65.19(15), and signed and dated by a responsible household member on or after the last day of the budget month.

65.19(3) Determination of eligibility. Eligibility will be determined on the basis of the household's prospective income and circumstances.

65.19(4) Public assistance income. The aid to dependent children and refugee cash assistance grant(s) authorized for the issuance month will be considered in determination of the household's eligibility and benefit level.

65.19(5) Suspension. Suspension is not limited to households whose recurring income has a periodic increase. Suspension may not occur for two consecutive months.

65.19(6) Households required to submit monthly reports. All households, not exempt by regulation or rule are subject to monthly reporting. Exempt households are: Households without countable earned income whose adult members are all elderly or disabled, as defined by 7 CFR 271.2, unless these households are required to submit AFDC monthly reports; if a waiver is granted by the secretary of the department of agriculture, aid to dependent children, aid to dependent children-related medical assistance, child medical assistance or refugee resettlement — cash assistance households which are exempt from monthly reporting for assistance eligibility; if a waiver is granted by the secretary of the department of agriculture, nonpublic assistance households which have no members who have countable earned income and have no members who either have "recent work history" or are not exempt from work registration as a condition of participation in the food stamp program, if the household has nonexempt income and, except for contributions and gifts received not more frequently than twice a year, it is all "constant unearned income".

65.19(7) Entering or leaving monthly reporting or retrospective budgeting due to a change in status. A monthly report will be required for the budget month in which exempt status is lost. Retrospective budgeting will begin for the issuance month which corresponds to the budget month in which exempt status is lost.

The household will not be required to submit a monthly report for the budget month following the budget month in which exempt status is attained. The exempt status which is related to recent work history will be attained in the third month of recent work history. Retrospective budgeting will end for the issuance month which corresponds to the budget month in which exempt status is attained.

65.19(8) Prospective beginning months. All eligible households will have benefits calculated prospectively for the two beginning months. When a household has applied for assistance from the aid to dependent children program or related medical programs, the child medical assistance program or the refugee resettlement - cash assistance program, and for food stamp benefits using a form PA-2207-0, Public Assistance Application, a third food stamps' beginning month will be allowed when the public assistance program's first "initial month" is the same calendar month as the second food stamps' beginning month and the third beginning month permits a simultaneous transition to retrospective budgeting.

65.19(9) Disregarded income for the first months of retrospective budgeting. Income considered prospectively in the beginning months and not expected to continue shall not be considered again.

65.19(10) Action on reported changes. The local office will act on all reported changes for households required to submit monthly reports.

65.19(11) Actual income. Calculation of benefits will consider the actual income received or anticipated to be received in the budget month, without conversion to regular monthly amounts, unless income is required to be annualized or prorated.

65.19(12) Mailing of notices. All individual household notices of benefit amounts will be mailed separately from food stamps.

HUMAN SERVICES[498] *(cont'd)*

65.19(13) Reinstatement. Reinstatement of the household canceled for failure to submit a complete monthly report will occur only when the otherwise eligible household submits a complete report by the end of the report month or by the extended filing date, whichever is later.

65.19(14) Verification of income. A monthly report will be considered incomplete when it is not accompanied by verification of unearned income or prorated income or annualized income when this income starts, stops, or changes in amount. Verification of interest income, with a monthly report, is not required.

65.19(15) Return of verification. The local office will return all items of verification, submitted in the monthly reporting process, to the household.

65.19(16) Notice regarding reinstatement. The household which has received a Notice of Cancellation, form 4107-0, shall be notified in writing of its status every time the department receives a monthly report form prior to the end of the "report month", or the extended filing period, whichever is later.

65.19(17) Additional information and verification. The household which has submitted a complete monthly report shall submit, or co-operate in obtaining, additional information and verification needed to determine eligibility or benefits within five working days of the local office's written request.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/17/83.

ARC 3980

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 249A.4 the Department of Human Services adopted rules relating to amount, duration and scope of medical and remedial services (chapter 78). These rules were adopted by the Council of Human Services July 28, 1983.

Notice of Intended Action regarding these rules was published in the IAB May 25, 1983 as ARC 3774 [Notice appeared under Social Services Department, renamed Department of Human Services by 1983 Iowa Acts, S.F. 464, effective 7/1/83].

This rule allows approved hospitals to use their beds interchangeably to provide acute or skilled nursing care with reimbursement based on the level of care provided. There currently is a shortage of skilled nursing care beds available in several parts of the state. This action can help to alleviate this shortage. Since April the department has been paying all hospitals at reduced rates for the lower level of skilled care when acute care is not required. The swing bed program would provide an additional financial incentive to eligible hospitals under Medicare and Blue Cross/Blue Shield cost settlement procedures to fully utilize bed capacity. A swing bed program would also allow hospitals to admit long term care patients whereas our present lower level of payment process only relates to patients the hospital is unable to discharge.

This rule is identical to that placed under notice. This rule is intended to implement Iowa Code section 249A.4(1). This rule shall become effective October 1, 1983.

Amend 770—78.3 by adding a new subrule as follows:

78.3(16) Payment will be made for medically necessary skilled nursing care when provided by a hospital participating in the swing bed program certified by the Iowa State Department of Health and approved by the U.S. Department of Health and Human Services. Payment shall be at the average rate per patient day paid during the previous calendar year for routine skilled nursing services furnished by Iowa skilled nursing facilities participating in the Medicaid program.

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

[Filed 7/29/83, effective 10/1/83]
[Published 8/17/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/17/83.

ARC 3981

HUMAN SERVICES DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 232.142 the Department of Human Services adopted rules relating to county and multicounty juvenile detention homes and county and multicounty juvenile shelter care homes (chapter 105). These rules were adopted by the Council of Human Services July 28, 1983.

Notice of Intended Action regarding these rules was published in the IAB May 25, 1983 as ARC 3775. [Notice appeared under Social Services Department; renamed Human Services Department by 1983 Iowa Acts, S.F. 464, effective July 1, 1983]

These rules allow for provisional approval of facilities that do not meet all standards but deficiencies do not warrant rejections of the approval request, Department of Public Safety criminal record checks of applicants for employment in the facilities, limitations and requirements for use of mechanical restraints, prohibition of use of chemical restraints, Child Abuse Registry checks and incorporate appropriate form names and numbers and requirements of the health department.

Subrule 105.21(1), 105.2(2) and 105.2(3) were revised and a new subrule 105.2(4) added.

Rule 105.22(232) was reworded.

These rules are intended to implement Iowa Code sections 232.142(5) and 232.142(6). These rules shall become effective October 1, 1983.

ITEM 1. Subrule 105.1(4) is amended as follows:

105.1(4) "Prime programming time" is any period of the day when special attention or supervision is necessary, for example, upon awakening in the morning, during meals, later afternoon play, transitions between activities, evenings, and bedtime, weekends and holidays, in order to maintain continuity of programs and care. *Prime programming time shall be defined by the facility and approved by the department of human services.*

ITEM 2. New subrules 105.1(8) and 105.1(9) shall be added as follows:

105.1(8) "Mechanical restraint" means restriction by the use of a mechanical device of a child's mobility or ability to use the hands, arms or legs.

105.1(9) "Chemical restraint" means the use of chemical agents including psychotropic drugs as a form

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of restraint. The therapeutic use of psychotropic medications as a component of a service plan for a particular child is not considered chemical restraint.

ITEM 3. Subrule **105.2(8)**, paragraph "b", subparagraph (2), is amended as follows:

(2) Machines using hot water for sanitizing must maintain the *wash* water at least one hundred fifty degrees Fahrenheit *and rinse water at a temperature of at least one hundred eighty degrees Fahrenheit* or a single temperature machine at one hundred sixty-five degrees Fahrenheit for both wash and rinse.

ITEM 4. Subrule **105.2(12)**, paragraph "f" is rescinded and the following adopted:

f. A facility with unsafe water can meet water safety requirements by utilizing an alternative safe water source for foster children until the facility's own water supply is tested as safe. The Unsafe Water Sample Approval Form, SS-2208 must be completed and approved by the department.

ITEM 5. Subrule **105.3(3)**, paragraph "e", is amended as follows:

e. References. At least two written references or documentation of oral references shall be contained in the employee's personnel record. In case of unfavorable references, there shall be documentation of further checking to assure that the person will be a reliable employee. ~~There shall be a criminal records check with the division of criminal investigation asking whether the applicant has been convicted of a crime involving mistreatment or exploitation of a child.~~

ITEM 6. Subrule **105.3(3)** is amended by relettering paragraphs "f" to "i" as "k" to "n", respectively, and adding the following new paragraphs:

f. After July 1, 1983, a written, signed and dated statement which discloses any substantiated instances of child abuse, neglect or sexual abuse committed by the applicant is required.

g. Documentation of the submission of Form SS-1606-0, Request for Child Abuse Information, to the registry and the registry response. The request may be submitted after probationary employment but the response must be received before permanent employment is assured.

h. A written, signed and dated statement furnished by the new applicant for employment which discloses any convictions of crimes involving the mistreatment or exploitation of a child.

i. Documentation of a check with the Iowa department of public safety on all new applicants for employment asking only whether the applicant has been convicted of a crime involving the mistreatment or exploitation of a child prior to permanently employing the individual. Department Form SS-2203, "Department of Public Safety Check", shall be used.

j. Documentation of any checks with the Iowa department of public safety for persons hired prior to July 1, 1983 for whom the agency has reason to suspect a criminal record and asking only whether the employee has been convicted of a crime involving the mistreatment or exploitation of a child. Department Form SS-2203, "Department of Public Safety Check", shall be used.

o. Information covered in paragraphs "g", "i", "j", is confidential and may not be redisseminated except to that particular applicant or employee.

ITEM 7. Subrule 105.10(1) is amended as follows:

105.10(1) Written policies. When a juvenile detention facility uses a control room as part of its service, the facility shall have written policies regarding its use *and the facility director shall complete Form SS-2209-3, Evaluation and Recommendation to Operate a Control Room.* The policy shall:

ITEM 8. Rule 770—105.12(232) is amended as follows:

~~770~~*498*—**105.12(232) Staffings.** The staff shall be available to participate in staffings or upon request to provide a written summary of the child's progress and behavior while in the facility program. Written recommendations regarding future planning and placement shall be provided to the referring agency or court upon request. *Staff shall be available to discuss recommendations with the child's parent or guardian.*

ITEM 9. Rule 770—105.13(232) is amended as follows:

~~770~~*498*—**105.13(232) Child abuse.** ~~When~~ *Written* policies shall prohibit mistreatment, neglect or abuse of children and specify reporting and enforcement procedures for the facility. Alleged violations shall be reported immediately to the director of the facility and appropriate department of ~~social~~ *human* services personnel. ~~Any employee found to be in violation of division III, part 2 of chapter 232, The Code; as substantiated by the department of social services investigation,~~ *Any employee for whom there is a substantiated instance of child abuse or failure to report child abuse* shall be subject to the agency's policies concerning dismissal.

ITEM 10. Subrules 105.16(1) and 105.16(5) are amended as follows:

105.16(1) Generally. A facility shall have written policies regarding methods used for control and discipline of children which shall be available to all staff and to the child's family. Discipline shall not include withholding of basic necessities such as food, clothing, or sleep. *Agency staff shall be in control of and responsible for discipline at all times.*

105.16(5) Written policies. The facility shall provide to the child written policies specifying inappropriate behaviors, reasonable consequences for misconduct, and due process procedures available to the child. *Upon request, the above information shall be provided to the child's parent or guardian and referring worker.*

ITEM 11. Rule 770—105.19(232) and subrule 105.19(1) are amended as follows:

~~770~~*498*—**105.19(232) Approval.** The department will issue a Certificate of Approval, *SS-1205-0*, annually without cost to any juvenile detention homes or juvenile shelter care home which meets the standards. The department may offer consultation to assist homes in meeting the standards.

105.19(1) Applications. An application shall be submitted on forms provided by the department *SS-3105-0, Application for License or Certificate of Approval.* It shall be signed by the operator of the home, *chairman of the county board of supervisors, or chairman of the multi-county board of directors* and shall indicate the type of home for which the application is made.

Subrule **105.19(2)**, paragraph "c", is amended as follows:

c. Applications will be rejected when the ~~applicant~~ *director of the facility* has been convicted of a crime indicating an inability to operate a children's facility or care for children.

Subrule 105.19(4) is amended to read as follows:

105.19(4) Notification. Homes ~~will~~ *should* be notified of approval or rejection within one hundred twenty days

of application *unless the applicant requests and is granted an extension by the department. Form SS-3307, Notification of Action, will be used to inform applicants of approval and a restricted certified letter will be used to inform applicants of rejection.*

Subrule **105.19(5)**, paragraph "d" is amended to read as follows:

d. Decisions on renewals ~~shall~~ *should* be made within sixty days from the application for renewal. *Notification of renewal decisions shall be the same as for new applications.*

ITEM 12. Chapter 105 is amended by adding new rules as follows:

498—105.20(232) Provisional approval.

105.20(1) Required conditions. A provisional approval may be issued at the time of application or reapplication for approval or as a result of a complaint investigation when all of the following conditions exist:

a. The shelter care or detention facility fails to meet the approval requirements.

b. A provisional approval has not previously been issued to the facility for the same deficiencies during the past year.

c. The deficiencies do not present an immediate danger to the child's physical or mental health.

d. The director of the facility, chairman of the county board of supervisors, or chairman of the multicounty board of directors provides the department with the following:

(1) A plan for correcting the deficiencies.

(2) The date by which the standards will be met.

If conditions "b", "c" or "d" are not met, then the application for approval shall be rejected or the approval revoked.

105.20(2) Time limited. Provisional approvals shall not be issued for longer than one year.

105.20(3) Completed corrective action. When the corrective action is completed on or before the date specified on the provisional approval, a full approval shall be issued for the remainder of the year.

105.20(4) Uncompleted corrective action. When the corrective action is not completed by the date specified on a provisional approval, the department shall not grant a full approval and has the option of rejecting or extending the provisional approval. An extension of a provisional approval shall not cause the effective period of a provisional approval to exceed eighteen months. If the corrective action plan is not completed within eighteen months, the approval shall be rejected.

498-105.21(232) Mechanical restraint — juvenile detention only. When a juvenile detention facilty uses mechanical restraints as a part of its program, the facility shall have written policies regarding their use. These policies shall be approved by the department prior to their use. The policies shall be available to clients, parents or guardians, and referral sources at the time of admission. Policies shall also be available to staff. The executive director of the detention home shall sign the commitment contained in Form SS-2212-3, "Evaluation and Recommendation for Approval to Use Mechanical Restraint", before the facility shall be approved to use mechanical restraint.

105.21(1) Restrictions on mechanical restraints.

a. Mechanical restraints shall not inflict physical injury.

b. Each use of mechanical restraint shall be authorized by the executive director of the facility, as discussed in 105.5(4), or other staff designated by the executive director if those staff meet one of the following requirements:

(1) Have a bachelor's degree in social work, psychology or a related behavioral science and one year of supervised experience in a juvenile shelter care, detention or foster group care facility.

(2) Have five years of supervised experience in a juvenile shelter care, detention or foster group care facility.

(3) Have some combination of advanced education in related behavioral sciences and supervised experience in a juvenile shelter care, detention or foster group care facility equal to five years. The facility shall have a written listing of all staff designated and qualified to authorize the use of mechanical restraint.

c. When immediate restraint is necessary to protect the safety of the child, other residents of the facility, staff or others, mechanical restraint may be utilized without prior authorization but in each case a person designated to provide authorization shall be contacted as soon as the child is restrained. The designated person shall visit the resident before determining if continued use of the mechanical restraint is necessary. If not viewed as necessary, the child shall be immediately released from restraint.

d. Each authorization of mechanical restraint shall not exceed one hour in duration without a visit by and written authorization from a licensed psychologist, psychiatrist or physician or psychologist employed by a local mental health center.

e. No child shall be kept in mechanical restraint for more than one hour in a twelve-hour period without a visit by and written authorization from a licensed psychologist, psychiatrist or physician or psychologist employed by a local mental health center.

f. Any time that a child is placed in mechanical restraint a staff person shall be assigned to monitor the child with no duties other than to ensure that the child's physical needs are properly met. The staff person shall remain in continuous auditory and visual contact with the child.

g. Each child shall be released from mechanical restraint as soon as the restraints are no longer needed.

105.21(2) Documentation.

a. Each use of mechanical restraints shall be documented in the clients record and shall include at least the following:

(1) The date and time the child was placed in mechanical restraint.

(2) The type of mechanical restraint utilized.

(3) The reason for the restraint.

(4) The signature of the person authorizing the restraint and the time of authorization.

(5) The signature of the person placing the child in restraint.

(6) The signature of the person providing the continuous auditory and visual contact with the child.

(7) The signature of the person releasing the child and the time of release.

b. Each use of mechanical restraint shall be documented in a separate file which is used only for the recording of uses of mechanical restraints and shall contain the name of the child restrained and the information discussed in 105.21(2)"a".

c. Each facility authorized to use mechanical restraint shall submit a quarterly report to the bureau of children's services of the department which shall include all the information required in 105.21(2)"b".

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105.21(3) Continued use of mechanical restraints. When a child requires mechanical restraint on more than four occasions during any thirty-day period, the facility shall hold an immediate emergency meeting within three days of the fifth incident and shall have a licensed psychologist or psychiatrist or psychologist employed by a local mental health center present at the staffing to discuss the appropriateness of the child's continued placement at the facility.

105.21(4) In transporting children. Notwithstanding 105.21(1)"d", mechanical restraint of a child by the staff of a juvenile detention facility while that child is being transported to a point outside the facility is permitted when there is a serious risk of the child exiting the vehicle while the vehicle is in motion. The facility shall place a written report on each use in the child's case record and the mechanical restraint file. This report shall document the necessity for the use of restraint.

Seat belts are not considered mechanical restraints. Agency policies should encourage the use of seat belts while transporting children.

498—105.22(232) Chemical restraint. Chemical restraint shall not be utilized in juvenile shelter care or detention facilities. Each juvenile shelter care or detention facility shall have written policies which clearly prohibit and use of chemical restraints.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/17/83.

ARC 3974

NURSING, BOARD OF[590]

Pursuant to the authority of Iowa Code sections 17A.3, 147.53, and 152.1, the Iowa Board of Nursing adopts amendments to Chapter 7, "Advanced Registered Nurse Practitioners" appearing in the Iowa Administrative Code.

These rules generally define the education and areas of practice of the Certified School Nurse Practitioner.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 11, 1983 as ARC 3752. Change from the notice is in the language so that it is more understandable to the average lay person. The substance of the rule remains the same.

These rules implement Iowa Code sections 17A.3, 147.53, and 152.1.

These rules will become effective on' September 21, 1983.

ITEM 1. Amend rule 7.1(152) by adding the following subrule:

7.1(10) Certified school nurse practitioner. The certified school nurse practitioner is an advanced registered nurse practitioner educated in the disciplines of nursing andschool health who possesses evidence of certification by the American Nurses' Association, or a successor agency as approved by the board.

The certified school nurse practitioner is authorized by rule to practice advanced nursing assessment, intervention and management of the physical and psychosocial health status of students. In providing care, the certified school nurse practitioner may collaborate with the student's family, educators, or health professionals.

ITEM 2. Amend subrule **7.2(1)** by adding the following paragraph "e":

e. School nurse practitioner.

[Filed 7/29/83, effective 9/21/83]
[Published 8/17/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/17/83.

ARC 3969

TRANSPORTATION, DEPARTMENT OF[820]

01 DEPARTMENT GENERAL DIVISION

Pursuant to the authority of Iowa Code section 307.10, the Transportation Commission, on July 19, 1983, adopted amendments to 820—[01,B] chapter 2 entitled "Procurement".

A Notice of Intended Action for these rule amendments was published in the June 8, 1983 Iowa Administrative Bulletin as ARC 3784.

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 to increase 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 lisitng of instances where negotiation may be used, which is found in subrule 2.3(3), has been reworded only to increase 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

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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 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 identical to the ones published under notice except for the following:

In paragraph 2.3(3)"d", the words "or personal" were deleted.

In paragraph 2.4(1)"c", a reference to legal counsel concurrence was added.

In paragraph 2.4(3)"h", the reference to fuels was deleted.

In subrule 2.8(1) and subparagraph 2.8(8)"a"(3), minor grammatical corrections were made.

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

These rule amendments are to be published as adopted in the August 17, 1983 Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective September 21, 1983.

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.

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

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 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:

(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. Subject to concurrence of legal counsel, a bidder's name may be rmoved 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 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 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.

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 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 applicant 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.

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

(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 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. Prenegotiations ~~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.

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

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 *pre*qualified shall be considered for selection.

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

2.8(7) Contract ~~required~~. *Following successful negotiations,* ~~A~~ *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 TECHINICAL 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.

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.

[Filed 7/28/83, effective 9/21/83]
[Published 8/17/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/17/83.

ARC 3970

WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900]

WATER, AIR, AND WASTE MANAGEMENT COMMISSION

Pursuant to the authority of Iowa Code section 455B.133, the Water, Air and Waste Management Commission hereby adopts amendments to Chapter 23, "Emission Standards for Contaminants", of the IAC.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 16, 1983, as ARC 3544 [Notice appeared under Environmental Quality. Renamed; 1982 Iowa Acts, chapter 1199, effective 7/1/83] A public hearing was held on March 18, 1983. The only change from the rule as proposed is that the City of Johnston has been removed from the listing of cities subject to the open burning prohibition. In view of the comments received, as well as review of relevant data by staff, the proposed rule was changed to exclude the City of Johnston from the prohibition on open burning. The City of Clive remains included for the following reasons: Intent of the original rule, the impact of open burning on the primary and secondary ambient air quality standards, and the unique features of the City of Johnston compared with the City of Clive.

The intent of the original rule was to include Clive. Presently subrule 23.2(4) prohibits the open burning of residential and landscape waste in Cedar Rapids, Council Bluffs, Des Moines and their contiguous cities. In the enforcement of this rule it became obvious that the use of the word "contiguous" caused inequities in the Des Moines area. For instance, the City of Clive is a metropolitan area city, yet it does not share a common boundary with Des Moines, and therefore may not be contiguous. Consequently, Clive was arguably not included in the burning ban, although it certainly was intended that Clive be included in the original burning prohibition. In order to resolve this inconsistency, it was necessary to select another method of describing the affected area for the burning prohibition.

The restrictions on open burning (or the leaf burning ban as it has become popularly known) were imposed in order to prevent continued violations of the ambient air quality standards. Ambient air quality standards are established for the protection of public health and welfare. Monitoring conducted over five years in the Des Moines area showed violations of the air quality standards when leaf burning was allowed. The department has responsibility for developing and implementing pollution control strategies that will enable all areas of the state to come into compliance with the ambient air quality standards. It has been determined that the open burning prohibition is necessary to achieve ambient air quality standards in the Des Moines area, and is part of the particulate control strategies for Cedar Rapids and Council Bluffs as well. Because the movement of air masses or smoke is not restricted or controlled by municipal boundaries, the solution to the Des Moines nonattainment problem must be applied to all of the metropolitan area cities.

At present, parts of Clive, Urbandale, West Des Moines, all of Windsor Heights, and most of Des Moines are classified as secondary nonattainment for particulates. The City of Johnston is classified as attainment.

A recent request to EPA asks that parts of Des Moines be reclassified from primary to secondary nonattainment for particulates. This request is based on monitoring data that shows the air in Des Moines is getting cleaner. Part of the reason for this improvement is due to the ban on open burning. It is necessary to extend this ban to the City of Clive in order to continue the improvement in Des Moines' air quality to the day when the secondary standard can be met and maintained.

The reasons for including Clive in the ban on open burning are: Part of Clive is a secondary nonattainment area, Clive's existing open burning ordinance is the same as that used by Des Moines during the time violations were recorded, open burning in Clive will produce air pollution similar to that recorded in Des Moines, Clive is primarily residential with a population density similar to that of Des Moines, special monitoring in Des Moines showed violations, and therefore similar burning in Clive is expected to cause violations that impact on the Des Moines metropolitan secondary nonattainment area.

The reasons for excluding Johnston from the ban on open burning are: Johnston is primarily rural with a much lower population density than Clive or Des Moines, Johnston was not included in the original plan to ban open burning, Johnston is located about one-half mile from the nearest city limit of Des Moines, and Johnston is not located in any nonattainment area. Therefore, open burning in Johnston is not expected to significantly impact on the Des Moines metropolitan nonattainment area.

The proposed amendment would not change the restricted open burning areas in Cedar Rapids or Council Bluffs. The City of Clive would be added to the restricted open burning areas for Des Moines. The affected cities have been listed in the proposed rule to avoid confusion.

This rule was adopted by the Water, Air and Waste Management Commission at its meeting on July 29, 1983.

This rule will become effective on September 21,1983.

This rule is intended to implement Iowa Code section 455B.133.

The following rule is adopted:

Subrule 23.2(4) is amended by striking it and inserting in lieu thereof the following:

23.2(4) Unavailability of exemptions in certain areas. Notwithstanding 23.2(2) and 23.2(3)"d" and "f", no person shall allow, cause or permit the open burning of residential or landscape waste in the cities of: Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, and Pleasant Hill.

[Filed 7/28/83, effective 9/21/83]
[Published 8/17/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 8/17/83.

EFFECTIVE DATE DELAY

[Pursuant to §17A.4(5)]

AGENCY	RULE	EFFECTIVE DATE DELAYED
Beer and Liquor Control Department[150]	Rule 4.32(123) [IAB 7/6/83, **ARC 3857**]	Seventy days from effective date of 8/10/83.

OBJECTION

REGENTS, BOARD OF[720]

At its August 2, 1983 meeting, the administrative rules review committee voted the following objection:

At its August 2, 1983 meeting the administrative rules review committee objected to the promulgation of 720 IAC 2.36(5), on the grounds that it is unreasonable to constantly waive the requirements of a "permanent" rule as an alternative to rescinding that rule and repromulgating it if ever needed. The subrule at issue is adopted as ARC 3860, published in VI IAB 1 (7-6-83).

This subrule, renewed every two years since 1979, waives on a temporary basis the so-called "parietal rule". This permanent rule, generally speaking, requires freshmen and sophomore students at UNI to live in university dormitories, fraternities, or sororities. The "parietal rule" will automatically go into effect whenever the board of regents allows the waiver to expire.

The system of a permanent rule coupled with temporary suspensions, allows the controversial permanent rule to be implemented without the public comment, criticism or controversy that might accompany a rulemaking procedure. It is the committee's opinion this is unreasonable, and is calculated to avoid the opportunities for public comment that are provided by Iowa Code Chapter 17A.

This objection may be rescinded if the board of regents agrees to precede any enforcement of the parietal rule with a rulemaking process providing notice and an opportunity for public participation.

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