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# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

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

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

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

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

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

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

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

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### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
7	Friday, September 9, 1983	September 28, 1983
8	Friday, September 23, 1983	October 12, 1983
9	Friday, October 7, 1983	October 26, 1983

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## SUBSCRIPTION INFORMATION

### Iowa Administrative Bulletin

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

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>ARTS COUNCIL[100]</b> Policies and procedures, 2.3 IAB 9/14/83 ARC 4035	Arts Council Office 1223 E. Court Ave. Des Moines, Iowa	October 11, 1983 10:00 a.m.
<b>COLLEGE AID COMMISSION[245]</b> Defaulting on guaranteed student loans, 4.1(8), 5.1(8) 9.1(1) IAB 9/14/83 ARC 4052, ARC 4054 and ARC 4056 (See also ARC 4053, 4051, 4055, herein)	Commission Offices 201 Jewett Building Des Moines, Iowa	October 14, 1983 2:00 p.m.
<b>COMMERCE COMMISSION[250]</b> I-Save program, 27.1, 27.2, 27.13 IAB 8/3/83 ARC 3964	Commission Hearing Room First Floor Lucas State Office Building Des Moines, Iowa	September 20, 1983 10:00 a.m.
Construction of utility extensions for new service, 19.3, 20.3, 21.3 IAB 8/17/83 ARC 3995	Commission Hearing Room First Floor Lucas State Office Building Des Moines, Iowa	September 21, 1983 10:00 a.m.
Information about disconnection, 19.4(15), 20.4(15) IAB 9/14/83 ARC 4048	Commission Hearing Room First Floor Lucas State Office Building Des Moines, Iowa	October 26, 1983 10:00 a.m.
<b>EMPLOYMENT SECURITY[370]</b> Employer records and reports, ch 2 Employer's contributions and charges, ch 3 claims and benefits, ch 4 IAB 8/31/83 ARC 4011	Job Service Office 1000 E. Grand Ave. Des Moines, Iowa	September 20, 1983 9:00 a.m.
<b>ENERGY POLICY COUNCIL[380]</b> Low income home energy assistance, ch 14 IAB 9/14/83 ARC 4023 (See ARC 4022, herein)	Conference Room Second Floor Lucas State Office Building Des Moines, Iowa	October 4, 1983 10:00 a.m.
<b>HEALTH DEPARTMENT[470]</b> Communicable disease control (AIDS), 1.2 IAB 8/31/83 ARC 4016	Conference Room Third Floor Lucas State Office Building Des Moines, Iowa	September 20, 1983 1:30 p.m.
<b>INSURANCE DEPARTMENT[510]</b> Replacement of life insurance and annuities, ch 16 IAB 9/14/83 ARC 4031	Third Floor Conference Room Lucas State Office Building Des Moines, Iowa	October 7, 1983 10:00 a.m.
<b>IOWA DEVELOPMENT COMMISSION[520]</b> Industrial new jobs training program, ch 5 IAB 8/31/83 ARC 4003 (See ARC 4002)	Conference Room Development Commission 250 Jewett Building Des Moines, Iowa	September 21, 1983 2:00 p.m.
<b>NURSING, BOARD OF[590]</b> Nursing practice for registered nurses/licensed practical nurses, 6.6 IAB 8/17/83 ARC 3973	Auditorium Wallace State Office Building Des Moines, Iowa	September 15, 1983 7:30 p.m.

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Services for dropouts and dropout

prevention, ch 58

IAB 8/31/83 ARC 4013

(See ARC 4012)

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IAB 8/31/83 ARC 4014

Conference Room

First Floor

Grimes State Office Building

Des Moines, Iowa

September 21, 1983

6:00 p.m.

Conference Room No 1

Second Floor

Grimes State Office Building

Des Moines, Iowa

September 21, 1983

1:30 p.m.

**PUBLIC SAFETY DEPARTMENT[680]**

Accident reports, 1.4(5)

IAB 9/14/83 ARC 4026

Third Floor

Conference Room

East Half

Wallace State Office Building

Des Moines, Iowa

October 5, 1983

1:00 p.m.

**REAL ESTATE COMMISSION[700]**

Discipline and hearing

procedures, amendments to ch 4

IAB 8/17/83 ARC 3971

Commission Office

1223 E. Court Ave.

Suite 205

Des Moines, Iowa

September 23, 1983

9:00 a.m.

**WATER, AIR AND WASTE MANAGEMENT[900]**

Emission standards for contaminants,

23.1(2), 23.1(3)

IAB 9/14/83 ARC 4021

Fifth Floor

Conference Room

Wallace State Office Building

Des Moines, Iowa

October 4, 1983

10:30 a.m.

## ARC 4035

ARTS COUNCIL[100]  
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 304A.4 and 304A.6, the Arts Council hereby gives Notice of Intended Action to amend Chapter 2, "Policies and Procedures", Iowa Administrative Code.

The proposed rule introduces guidelines and procedures for a new program entitled "Training Grants" which is designed to upgrade the managerial skills of arts administrators and gives permanent status to the "Creative Artists Grants" category which was formerly a pilot project.

New, nonmatching grants to individual visual artists applying for grants to tour an exhibition of existing work are explained in the rule. Research has shown that a number of visual artists are unable to complete projects successfully under existing guidelines. The new rule will benefit artists as well as sponsors of the exhibitions.

The proposed rule also institutes an appeals process for applicants who feel their grant applications were declined due to review criteria other than what is stated in the grants brochure due to unstated conflict of interest by panel or Council members, or due to the presentation of erroneous information despite the fact that correct information was presented by the applicant.

The proposed rule clarifies the question of ownership of patents or copyrights for projects receiving Council support by stating that patents and copyrights will remain the property of the grantee unless otherwise contracted in writing.

Any interested person may make written suggestions or comments on these rules prior to October 11, 1983. Such written materials should be directed to the Director, Iowa Arts Council, State Capitol Complex, 1223 East Court Avenue, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the director, Iowa Arts Council at (515) 281-4451, or in the Council offices at 1223 East Court Avenue, Des Moines, Iowa. Also, there will be a public hearing on October 11, 1983 at 10:00 a.m. in the conference room at the Iowa Arts Council office. Persons may present their views at the public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the director of the Council at least one day prior to the date of the public hearing.

This rule is intended to implement Iowa Code sections 304A.4 and 304A.6.

ITEM 1. Subrule 2.3(1), paragraph "a" is amended as follows and a new paragraph "e" added:

a. The Iowa arts council may provide direct financial support only to organizations that are nonprofit under the Iowa nonprofit corporations Act and federally tax exempt.

e. Unless otherwise contracted for in writing prior to surrender, any and all patents, copyrights, or other legal interest of relevance to projects supported by the council, shall be the sole and exclusive property of the recipient or the recipients' design.

ITEM 2. Subrule 2.3(2), paragraph "a", subparagraph (4) is amended as follows:

(4) The Iowa arts council maintains a general policy to provide up to fifty percent funding of any project *except in categories designated as nonmatching*. The applicant must demonstrate the ability to provide at least fifty percent of the total project cost from other funding sources *in categories requiring cash match*.

ITEM 3. Subrule 2.3(2), paragraph "b", subparagraphs (1) and (6) are amended as follows:

(1) The Iowa arts council will not consider applications for capital improvements or construction, purchase of equipment, funding a previous year's deficit, ~~out-of-state travel; requests to travel out of state (except where special guidelines are in effect)~~, tuition assistance for academic study, ~~ticket subsidy programs;~~ reception expenses, projects excluding the general public, or projects which occur prior to the grant review process, ~~or projects which may be characterized as needlessly free of admissions or participation fees.~~ Organizations having negotiated indirect costs with the federal government may neither list indirect costs as a project expense, nor use them as cash match on an application. Applications from colleges and universities requesting assistance for events which take place on campus will be considered ~~only if the proposal involves people from the community in planning and implementation of the project.~~ *low priorities for funding unless the projects feature significant community participation. The council reserves the right to question the need of applications which ignore the earned-income potential of ticket sales or participation fees.*

(6) Applications will not be considered unless submitted on proper forms with support materials as requested. The standard application form should be used except where noted under program classifications. Support materials are noted in application instructions: *and grants-in-aid brochure*.

ITEM 4. Subrule 2.3(3) is amended as follows:

2.3(3) General grants. The general grants program awards matching grants to individuals and organizations for support of arts projects in performing, visual, literary, craft and folk arts. Programs and projects, salary support for full or part-time employment with arts agencies, touring performances, and touring visual arts exhibitions *and creative artists grants* are included in this category. The project year will run from July 1 to June 30. *The arts council will not provide support for an entire season in the general grants program.*

ITEM 5. Subrule 2.3(3), paragraph "c" is amended by adding the following subparagraph:

(6) *Grantees must schedule and co-ordinate tours of performances.*

ITEM 6. Subrule 2.3(3), paragraph "d", subparagraphs (1), (3) and (4) are amended as follows:

(1) Funding is available for preparing exhibits of completed art works; ~~or works pending completion~~. Allowable expenses may include crating and framing materials, insurance, ~~art~~ supplies and materials ~~necessary to complete works of art for touring and catalogs~~.

(3) ~~Applicants requesting funds to complete works to tour must submit required materials as stated in the current grants-in-aid brochure.~~ *Nonmatching grants are available to individual artists for the preparation of touring exhibitions. Applicants should ask sponsors to pay for shipping costs.*

(4) ~~Tours of performances are scheduled and co-ordinated by the grantee.~~ *Touring exhibitions may must*

## ARTS COUNCIL[100] (cont'd)

be scheduled by the artists, or by the Iowa arts council upon prior agreement. (Performances and exhibitions are publicized in Iowa arts council publications.)

ITEM 7. Subrule 2.3(3), paragraph "e" is amended as follows:

e. Creative artists grants. ~~Starting in January 1983, the Iowa arts council will conduct a pilot project program for professional creative writers (poets, playwrights, and fiction authors), musical composers or arrangers, dance choreographers, and film or video artists. Creative artists may apply for matching grants to prepare works-in-progress for circulation to potential publishers, agents, sponsors or performers. Eligible projects may include: Hiring musicians to produce a demonstration tape of a new composition, studio recording fees, hiring a music copyist to prepare a score or parts, hiring dancers to produce a video tape of a new choreography, typist fees to finalize the manuscript of a novel, hiring consultants to prepare publications or other preparatory expenses. Creative artists grants are not fellowships. After June 30, 1983, this program will be evaluated. Individuals interested in applying for creative artists grants after that date should contact the agency grants officer.~~

ITEM 8. Subrule 2.3(6) is amended by adding the following paragraph:

d. *Training grants. Nonmatching grants will be awarded on a monthly basis to arts administrators who wish to strengthen their managerial skills by attending seminars, institutes, workshops, conferences, or other short-term educational programs. Funds may be used for travel, registration fees, or other costs necessary to attend. The application procedure will be the same as that described under the mini-grant program.*

ITEM 9. Subrule 2.3(8) is amended by adding the following paragraph:

k. *Appeals. A formal appeals process is available only to applicants whose grants were declined on procedural impropriety or error as evidenced by one or more of the following reasons: (1) Application declined on the basis of review criteria other than those appearing in the relevant guidelines, (2) application declined based on influence on the advisory panel or council member(s) willfully or unwillingly failing to disclose conflicts of interest, and (3) application declined based on highly erroneous information provided by staff, panelists, or council members at the time of review despite the fact that the applicant provided the council staff with accurate and complete information on regulation forms as part of the standard application process. Incomplete applications are specifically denied any appeals process whatsoever. Substantially revised applications may be recognized as new applications, or may be declared ineligible if constraints of time preclude accurate information being made available to panelists. A successful appeal will be determined at the sole discretion of the agency director, whose discretions may include full or partial funding of the aggrieved application at the next earliest occasion.*

## ARC 4050

## COLLEGE AID COMMISSION[245]

## 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 261.2(4), the College Aid Commission proposes to amend chapter 2, Iowa Administrative Code.

This amendment is intended to restrict students from receiving scholarships if they have defaulted on a Guaranteed Student Loan or a National Direct Student Loan or if they owe a repayment on any Title IV grant assistance or state award.

Interested persons may submit comments orally or in writing to the Executive Director, Iowa College Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309 (515-281-3501) on or before October 14, 1983.

These rules are intended to implement Iowa Code section 261.2(4). These rules are also being filed Emergency as ARC 4049, and are incorporated by reference.

## ARC 4052

## COLLEGE AID COMMISSION[245]

## 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 261.15(2), the College Aid Commission proposes to amend chapter 4, Iowa Administrative Code.

This amendment is intended to restrict students from receiving grants if they have defaulted on a Guaranteed Student Loan or a National Direct Student Loan or if they owe a repayment on any Title IV grant assistance or state award.

Interested persons may submit comments orally or in writing to the Executive Director, Iowa College Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309 (515-281-3501) on or before October 14, 1983. A public hearing will be held at the Commission office at 2:00 p.m., Friday, October 14, 1983.

These rules are intended to implement Iowa Code section 261.15(2). These rules are also being filed Emergency as ARC 4051, and are incorporated by reference.

**ARC 4054****COLLEGE AID COMMISSION[245]****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 261.17(6)"b", the College Aid Commission proposes to amend chapter 5, Iowa Administrative Code.

The amendment is intended to restrict students from receiving a grant if they have defaulted on a Guaranteed Student Loan or a National Direct Student Loan or if they owe a repayment on any Title IV grant assistance or state award.

Interested persons may submit comments orally or in writing to the Executive Director, Iowa College Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309 (515-281-3501) on or before October 14, 1983. A public hearing will be held at the Commission office at 2:00 p.m., Friday, October 14, 1983.

These rules are intended to implement Iowa Code section 261.17(6)"b". These rules are also being filed Emergency as ARC 4053, and are incorporated by reference.

**ARC 4056****COLLEGE AID COMMISSION[245]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 261.1, and 1983 Iowa Acts, Senate File 533, section 5, the College Aid Commission proposes to amend chapter 9, Iowa Administrative Code.

The amendment is intended to restrict students from receiving a grant if they have defaulted on a Guaranteed Student Loan or a National Direct Student Loan or if they owe a repayment on any Title IV grant assistance or state award.

Interested persons may submit comments orally or in writing to the Executive Director, Iowa College Aid Commission, 201 Jewett Building, Des Moines, Iowa 50309 (515/281-3501), on or before October 14, 1983. A public hearing will be held at the Commission office at 2:00 p.m., Friday, October 14, 1983.

These rules are intended to implement Iowa Code sections 261.1 and 261.15.

These rules are also being filed Emergency as ARC4055 and are incorporated by reference.

**ARC 4048****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 August 26, 1983, the Commission issued an order in Docket No. RMU-83-21, In Re: Notice of Disconnect, "Order Commencing Rulemaking." The purpose of this proposed rulemaking is to amend Iowa Administrative Code 250—19.4(15)"h"(2) and 20.4(15)"h"(2) and inserting a new subparagraph to 19.4(15)"h" and 20.4(15)"h." Currently, these rules require that written disconnect notices include the name of a utility representative qualified to provide additional information about the disconnection. Under the proposed amendment, the utilities will not be required to name a representative on the disconnect notices. Instead, the utilities must provide current, detailed information concerning the customer's account and contacts with the utility to each qualified representative answering the customer's calls. Also, the utility representatives will be required to identify themselves by name to the customer.

In addition, this proposed rulemaking will incorporate a summary of the rights and remedies which utilities may use in notifying customers of disconnect. The summary would inform the customer of his or her rights and remedies which may be taken prior to disconnection. If a utility should choose not to use this form, it shall submit six copies of its proposed form to the Commission for approval. The purpose of this proposed rulemaking is to ensure that a customer is informed of the procedures and alternatives prior to disconnection.

Any interested person may file written comments not later than October 14, 1983, by filing an original and six copies of such comments substantially complying with the form prescribed in Iowa Administrative Code 250—subrule 2.2(2). Such comments shall clearly indicate the author's name and address and shall contain 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 shall be held on October 26, 1983, in the Commerce Commission Hearing Room, First Floor, Lucas State Office Building, Des Moines, Iowa 50319 at 10:00 a.m. Persons who wish to participate in this oral presentation must file a written appearance within the deadline for written comments. This rulemaking shall be conducted pursuant to Iowa Administrative Code 250—chapter 3.

ITEM 1. Amend 19.4(15)"h"(2) to read as follows:

(2) Given the customer, and any other person or agency designated by the customer, written notice that ~~he~~ ~~or she~~ the customer has at least twelve days in which to make settlement of his ~~or her~~ the account, together with a written summary of the rights and remedies available to avoid disconnection. The written notice shall also include

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

~~the name of a utility representative qualified to provide additional information about the disconnection and a toll-free or collect telephone number where that a utility representative qualified to provide additional information about the disconnection can be reached. Each utility representative must provide their name to the caller, and have immediate access to current, detailed information concerning the customer's account and previous contacts with the utility.~~

ITEM 2. Insert the following as 19.4(15)"h"(3) and renumber the remaining subparagraphs accordingly:

(3) The summary of the rights and remedies must be approved by this commission. Any utility providing gas service and defined as a public utility in Iowa Code section 476.1 which does not use the standard form set forth below shall submit to the commission six copies of its proposed form for approval.

#### CUSTOMER RIGHTS AND REMEDIES TO AVOID DISCONNECTION

The following is a summary of your rights and remedies under the rules of the Iowa State Commerce Commission. These are being provided as part of your notice that gas service provided by \_\_\_\_\_ (company name) will be disconnected unless your bill is paid or other arrangements are made by the date shown on the notice.

Disconnection for nonpayment may occur only after we have sent a written notice of disconnection by regular mail postmarked at least twelve days before service is to be shut off. This notice must include the reason for disconnection. We must try to contact you by phone or in person at least one day prior to disconnection. If disconnection is scheduled between November 1 and April 1 and it has not been possible to contact you by phone or in person, a notice must be posted at the premises to be disconnected at least twenty-four hours before service is disconnected. The posted notice will inform you of the pending disconnection and the rights and remedies available to you in order to avoid disconnection.

No disconnection may take place on a weekend, holiday, or after 2:00 p.m. on a normal weekday unless we are prepared to restore service on the same day if payment or other arrangements are made. Between November 1 and April 1, we cannot require you to pay a deposit before service is reconnected or as part of an agreement for service to be continued.

Disconnection will be avoided by paying the past due amount or by making arrangements to pay at our business office on or before the date listed on the notice.

Delinquent bill: If you are unable to pay a past due bill in full, you will be given a chance to enter into a payment agreement. That agreement will be tailored to your individual needs and allows you to spread payments for the past due bill over at least twelve months. You must also agree to pay each new monthly bill as it comes due. If we refuse an agreement, you will be provided an explanation in writing. You may then ask the commerce commission (515-281-5979) for assistance in working out an agreement with us. If you break the payment agreement, we are not required to offer you a second payment agreement and may disconnect service on one day's notice.

Health: Disconnection for nonpayment will be delayed thirty days if a physician or public health official determines that a permanent resident in your house has a serious health problem and will be endangered if service

is shut off. A telephone call from the doctor to our office must be followed up by written confirmation. During the thirty-day delay, you must work out a payment agreement. Disconnection may be delayed an additional thirty days, however, if the health official verifies that the health problem still exists.

Disputed bill: If you have a dispute over the accuracy of your bill, pay the undisputed portion and notify our office of the dispute. Disconnection will be delayed for up to forty-five days from the date the bill was mailed so that the dispute may be settled. If you file a written complaint with the Iowa state commerce commission, disconnection may be postponed should the commission request the extension.

Winter energy assistance (November 1—April 1): You may be eligible for low-income energy assistance or weatherization funds. If we are informed that you may qualify, disconnection will be postponed for thirty days to allow you time to apply for and obtain assistance. During this period, you must also enter into a payment plan for the amount not paid by assistance funds. For further information on how to apply for assistance and qualifications, contact our business office or your regional community action agency.

Customer assistance: To make arrangements on paying utility bills, please refer to the toll-free or collect telephone number listed \_\_\_\_\_ (location on utility bill). Service representatives are available to handle your call. If it is a long distance call, please reverse the charges. For more specific information concerning rights and remedies or for information on the rules regulating utilities, call the commerce commission, consumer services section.

ITEM 3. Amend 20.4(15)"h"(2) to read as follows:

(2) Given the customer, and any other person or agency designated by the customer, written notice that ~~he or she~~ the customer has at least twelve days in which to make settlement of ~~his or her~~ the account, together with a written summary of the rights and remedies available to avoid disconnection. The written notice shall also include ~~the name of a utility representative qualified to provide additional information about the disconnection and a toll-free or collect telephone number where that a utility representative qualified to provide additional information about the disconnection can be reached. Each utility representative must provide their name to the caller, and have immediate access to current, detailed information concerning the customer's account and previous contacts with the utility.~~

ITEM 4. Insert the following as 20.4(15)"h"(3) and renumber the remaining subparagraphs accordingly:

(3) The summary of the rights and remedies must be approved by this commission. Any utility providing electric service and defined as a public utility in Iowa Code section 476.1 which does not use the standard form set forth below shall submit to the commission six copies of its proposed form for approval.

#### CUSTOMER RIGHTS AND REMEDIES TO AVOID DISCONNECTION

The following is a summary of your rights and remedies under the rules of the Iowa State Commerce Commission. These are being provided as a part of your notice that the electric service provided by \_\_\_\_\_ (company name) will be disconnected unless your bill is paid or other arrangements are made by the date shown on the notice.



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

Disconnection for nonpayment may occur only after we have sent a written notice of disconnection by regular mail postmarked at least twelve days before service is to be shut off. This notice must include the reason for disconnection. We must try to contact you by phone or in person at least one day prior to disconnection. If disconnection is scheduled between November 1 and April 1 and it has not been possible to contact you by phone or in person, a notice must be posted at the premises to be disconnected at least twenty-four hours before service is disconnected. The posted notice will inform you of the pending disconnection and the rights and remedies available to you in order to avoid disconnection.

No disconnection may take place on a weekend, holiday, or after 2:00 p.m. on a normal weekday unless we are prepared to restore service on the same day if payment or other arrangements are made. Between November 1 and April 1, we cannot require you to pay a deposit before service is reconnected or as part of an agreement for service to be continued.

Disconnection will be avoided by paying the past due amount or by making arrangements to pay at our business office on or before the date listed on the notice.

Delinquent bill: If you are unable to pay a past due bill in full, you will be given a chance to enter into a payment agreement. That agreement will be tailored to your individual needs and allows you to spread payments for the past due bill over at least twelve months. You must also agree to pay each new monthly bill as it comes due. If we refuse an agreement, you will be provided an explanation in writing. You may then ask the commerce commission (515-281-5979) for assistance in working out an agreement with us. If you break the payment agreement, we are not required to offer you a second payment agreement and may disconnect service on one day's notice.

Health: Disconnection for nonpayment will be delayed thirty days if a physician or public health official determines that a permanent resident in your house has a serious health problem and will be endangered if service is shut off. A telephone call from the doctor to our office must be followed up by written confirmation. During the thirty-day delay, you must work out a payment agreement. Disconnection may be delayed an additional thirty days, however, if the health official verifies that the health problem still exists.

Disputed bill: If you have a dispute over the accuracy of your bill, pay the undisputed portion and notify our office of the dispute. Disconnection will be delayed for up to forty-five days from the date the bill was mailed so that the dispute may be settled. If you file a written complaint with the Iowa state commerce commission, disconnection may be postponed should the commission request the extension.

Winter energy assistance (November 1—April 1): You may be eligible for low-income energy assistance or weatherization funds. If we are informed that you may qualify, disconnection will be postponed for thirty days to allow you time to apply for and obtain assistance. During this period, you must also enter into a payment plan for the amount not paid by assistance funds. For further information on how to apply for assistance and qualifica-

tions, contact our business office or your regional community action agency.

Customer assistance: To make arrangements on paying utility bills, please refer to the toll-free or collect telephone number listed \_\_\_\_\_ (location on utility bill). Service representatives are available to handle your call. If it is a long distance call, please reverse the charges. For more specific information concerning rights and remedies or for information on the rules regulating utilities, call the commerce commission, consumer services section.

**ARC 4023****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 Health and Human Services (DHHS) and the Social Security Administration (SSA), as set forth in Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Volume 45, Code of Federal Regulations (CFR), Part 96, subpart h, and under the authority granted by the 1983 Iowa Acts, Senate File 556, section 11, the Iowa Energy Policy Council gives Notice of Intended Action to adopt rules rewriting Chapter 14, Low-Income Home Energy Assistance Program (LIHEAP), Iowa Administrative Code.

The Low-Income Home Energy Assistance Program provides assistance to eligible households to offset the rising costs of home heating that are excessive in relation to household income.

The substance of these rules was submitted as an emergency adopted and implemented rule, published in the Iowa Administrative Bulletin on September 14, 1983, as ARC 4022. The subject matter of those emergency rules is incorporated by reference.

Any interested person may make written or oral suggestions or comments on these rules prior to 4:30 p.m., October 4, 1983, by contacting the Energy Assistance Division, Iowa Energy Policy Council, Lucas State Office Building, Des Moines, Iowa 50319, 515/281-3943.

Also, there will be a public hearing on Tuesday, October 4, 1983, at 10:00 a.m., in the Conference Room, Second Floor, Lucas State Office Building, Des Moines, Iowa 50319. Persons may present their views at this public hearing either orally or in writing.

**ARC 4038****HEALTH DEPARTMENT[470]**BOARD OF PHYSICAL AND OCCUPATIONAL  
THERAPY 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 section 147.80, the Board of Physical and Occupational Therapy Examiners gives Notice of Intended Action to amend Chapters 137 and 138 of the Iowa Administrative Code.

The proposed amendments adjust fees to pay for the costs of licensing as required by Iowa Code section 147.80.

Any interested person may make written comments concerning the proposed amendments not later than 4:30 p.m., October 5, 1983, addressed to Peter J. Fox, Hearing and Compliance Officer, State Department of Health, Lucas State Office Building, Des Moines, IA 50319.

The proposed rules are intended to implement Iowa Code section 147.80.

ITEM 1. Rule 470—137.6(147) is rescinded and the following adopted in lieu thereof:

**470—137.6(147) License fees.** All fees are nonrefundable.

**137.6(1)** The application fee for a license to practice physical therapy issued upon the basis of examination or endorsement is sixty dollars. The examination fee is an additional fifty-five dollars.

**137.6(2)** The renewal fee of a license to practice physical therapy for a biennial period is sixty dollars.

**137.6(3)** Penalty fee, in addition to renewal fee, for failure to renew license within thirty days after the expiration date is twenty dollars.

**137.6(4)** Penalty fee for failure to complete the continuing education by the end of the continuing education period is thirty dollars, unless the delay is because of illness.

**137.6(5)** Reinstatement fee is twenty-five dollars.

**137.6(6)** Fee for a certified statement that a licensee is licensed in this state is ten dollars.

**137.6(7)** Fee for a duplicate license if the original license is lost or stolen is ten dollars.

ITEM 2. Rule 470—138.207(258A) is rescinded and the following adopted in lieu thereof:

**470—138.207(147) License fees.** All fees are nonrefundable.

**138.207(1)** The application fee for all licenses is sixty dollars.

**138.207(2)** The application fee for a limited permit as provided by Iowa Code section 148B.4 is twenty-five dollars.

**138.207(3)** The renewal fee for all licenses for a biennial period is sixty dollars.

**138.207(4)** Reinstatement fee is twenty-five dollars.

**138.207(5)** Fee for a certified statement that a licensee is licensed in this state is ten dollars.

**138.207(6)** Fee for a duplicate license if the original is lost or stolen is ten dollars.

**ARC 4039****HEALTH DEPARTMENT[470]**

BOARD OF PODIATRY EXAMINERS

**NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code sections 147.36, 147.76, and 147.80, the Board of Podiatry Examiners gives Notice of Intended Action to amend Chapter 139 of the Iowa Administrative Code.

The proposed amendments remove the requirement that an out-of-state applicant have the application attested by a clerk of court, remove the requirement of citizenship for licensure, and adjust the renewal fee to cover indirect costs.

Any interested person may make written comments concerning the proposed amendments not later than 4:30 p.m., October 5, 1983, addressed to Peter J. Fox, Hearing Officer, State Department of Health, Lucas State Office Building, Des Moines, IA 50319.

The proposed rules are intended to implement Iowa Code sections 147.36 and 147.80

ITEM 1. Subrule 139.1(4) is amended to read as follows:

**139.1(4)** The statements made in application form shall be subscribed and sworn to by the applicant and attested under seal by a notary public, ~~or if executed outside the state of Iowa, by the clerk of a court of record.~~

ITEM 2. Subrule **139.1(18)** is rescinded.

ITEM 3. Subrule 139.3(3) is amended to read as follows:  
**139.3(3)** Fee for renewal of license to practice podiatry for a biennial period is ~~seventy one hundred forty~~ dollars.

ITEM 4. Subrule 139.3(4) is amended to read as follows:  
**139.3(4)** Fee for a certified statement that a licensee is licensed in this state is ~~five ten~~ dollars.

ITEM 5. Subrule 139.3(5) is amended to read as follows:  
**139.3(5)** Fee for a duplicate license if the original license is lost or stolen is ~~five ten~~ dollars.

**ARC 4040****HEALTH DEPARTMENT[470]**

BOARD OF HEARING AID DEALER 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 section 147.80, the Board of Hearing Aid Dealer Examiners gives Notice of Intended Action to amend Chapter 145 of the Iowa Administrative Code.

The proposed amendments adjust fees to pay for the costs of licensing as required by Iowa Code section 147.80.

Any interested person may make written comments concerning the proposed amendments not later than 4:30 p.m., October 5, 1983, addressed to Peter J. Fox, Hearing and Compliance Officer, State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rules are intended to implement Iowa Code section 147.80.

Rule 470—145.10(154A) is rescinded and the following adopted in lieu thereof:

**470—145.10(154A) License fees.** All fees are nonrefundable.

**145.10(1)** The application fee for a license to practice as a hearing aid dealer issued upon the basis of an examination or reciprocity is one hundred thirty dollars. For those persons who are required to take the examination, the examination fee is an additional fifty dollars.

**145.10(2)** Fee for renewal of a license to practice as a hearing aid dealer is one hundred thirty dollars.

**145.10(3)** Fee for a temporary permit is thirty-five dollars.

**145.10(4)** Fee for a certified statement that a licensee is licensed in this state is ten dollars.

**145.10(5)** Fee for a duplicate license if the original is lost or stolen is ten dollars.

**ARC 4041****HEALTH DEPARTMENT[470]**

BOARD OF SPEECH PATHOLOGY AND AUDIOLOGY 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 section 147.80(15), the Board of Speech Pathology and Audiology Examiners gives Notice of Intended Action to amend Chapter 155 of the Iowa Administrative Code.

The proposed amendments adjust fees to pay for the costs of licensing as required by Iowa Code section 147.80.

Any interested person may make written comments concerning the proposed amendments not later than 4:30 p.m., October 5, 1983, addressed to Peter J. Fox, Hearing and Compliance Officer, State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rules are intended to implement Iowa Code section 147.80(15).

Rule 470—155.7(147) is rescinded and the following adopted in lieu thereof:

**470—155.7(147) License fees.** All fees are nonrefundable.

**155.7(1)** The application fee for a temporary or a permanent license is twenty-five dollars. For issuance of the license, the applicant shall pay an additional eighty dollars for a permanent license or an additional forty dollars for a temporary license.

**155.7(2)** The fee for biennial renewal of all licenses except temporary clinical license is eighty dollars. The annual renewal fee for a temporary clinical license is forty dollars.

**155.7(3)** The penalty fee for failure to renew a license within thirty days following its expiration is forty dollars.

**155.7(4)** The reinstatement fee for a lapsed license or to reinstate a license under certificate of exemption status is twenty-five dollars.

**155.7(5)** The fee for certification of Iowa license is ten dollars.

**155.7(6)** The fee for license replacement is ten dollars.

**ARC 4042****HEALTH DEPARTMENT[470]**

BOARD OF COSMETOLOGY 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 section 147.80, the Board of Cosmetology Examiners gives Notice of Intended Action to amend Chapter 160 of the Iowa Administrative Code.

The proposed amendments adjust fees to pay for the costs of licensing as required by Iowa Code section 147.80.

Any interested person may make written comments concerning the proposed amendments not later than 4:30 p.m., October 5, 1983 addressed to Grace M. West, Executive Secretary, Board of Cosmetology Examiners, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rules are intended to implement Iowa Code section 147.80.

ITEM 1. Subrule 160.7(1) is amended to read as follows:

**160.7(1)** License to practice cosmetology issued upon the basis of an examination given by the board of examiners is ~~fifteen~~ *twenty-five* dollars.

ITEM 2. Subrule 160.7(2) is amended as follows:

**160.7(2)** License to practice cosmetology for out-of-

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

state applicants issued by examination or under a reciprocal agreement is ~~forty fifty~~ dollars.

ITEM 3. Subrule 160.7(3) is amended to read as follows:

**160.7(3)** License to conduct a school teaching cosmetology is ~~five hundred one thousand~~ dollars.

ITEM 4. Subrule 160.7(4) is amended to read as follows:

**160.7(4)** Renewal of license to conduct cosmetology school is ~~one hundred two hundred~~ dollars.

## ARC 4043

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 §17A.4(1)"b", Iowa Code.

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

Pursuant to the authority of Iowa Code section 249A.4 the Department of Human Services proposes amending rules appearing in the IAC relating to conditions of eligibility for medical assistance (Chapter 75).

These rules require the medical assistance recipient or the recipient's representative to timely report medical resources, define timely report, define actions required of the recipient or the recipient's representative must take to utilize medical resources, and the penalty for failure to co-operate without good cause. The rules protect the benefits of children and legally incompetent adult recipients by specifying that only the medical assistance of adult parent or payee recipients may be terminated.

These rules also change the allocation procedure for the department's recoveries on medical assistance subrogation claims as directed by 1983 Iowa Acts, Senate File 541, section 15.

These rules also specify the responsibility of providers to report the existence of third party resources to the department. These rules define the responsibility of an attorney to notify the department of that attorney's involvement in a claim, to which the department is subrogated, when the attorney has actual knowledge of that subrogation.

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 October 5, 1983.

These rules are intended to implement Iowa Code sections 249A.4, 249A.5 and 249A.6 and 1983 Iowa Acts, Senate File 541, section 15.

ITEM 1. Rule 498—75.1(249A) is amended by adding a new subrule as follows:

**75.1(16)** Payee. For the purposes of this chapter, payee refers to a SSI payee defined in Iowa Code sections 633.3(7) and 633.3(20) and an ADC payee defined in IAC 498—chapter 43.

ITEM 2. Rule 75.2(249A) is amended to read as follows:

**498—75.2(249A) Medical resources.** Medical resources include health and accident insurance, eligibility for care through Veterans Administration, ~~Crippled Childrens Program~~ *specialized child health services*, Title XVIII of the Social Security Act (Medicare) and other resources for meeting the cost of medical care which may be available to the recipient. Such resources must be used when reasonably available.

*When a medical resource may be obtained by filing a claim or an application, and co-operating in the processing of that claim or application, that resource shall be considered to be reasonably available, unless good cause for failure to obtain that resource is determined to exist.*

Payment will be approved only for those services or that part of the cost of a given service for which no medical resources exist. Persons who have been approved by the social security administration for supplemental security income shall complete form MA-2120-0, Request for Information Re Private Health Insurance Coverage and Other Medical Benefits, and return such form to the local office of the department of social services. Persons eligible for Part B of the Medicare program shall make assignment to the department on form MA-2106-6, Statement Regarding Assignment of Claims — Part B, Medicare.

(1) *The recipient, or one acting on the recipient's behalf, shall file a claim, or submit an application, for any reasonably available medical resource, and shall also co-operate in the processing of the claim or application. Failure to do so, without good cause, shall result in the termination of medical assistance benefits. The medical assistance benefits of a minor or a legally incompetent adult recipient shall not be terminated.*

(2) *When a parent or payee, acting on behalf of a minor, or of a legally incompetent adult recipient, fails to file a claim or application for reasonably available medical resources, or fails to co-operate in the processing of a claim or application, without good cause, the medical assistance benefits of the parent or payee shall be terminated.*

(3) *Good cause for failure to co-operate in the filing or processing of a claim or application, shall be considered to exist when the recipient, or one acting on behalf of a minor, or of a legally incompetent adult recipient, is physically or mentally incapable of co-operation. Good cause shall be considered to exist, when co-operation is reasonably anticipated to result in:*

a. *Physical or emotional harm to the recipient for whom medical resources are being sought.*

b. *Physical or emotional harm to the parent or payee, acting on the behalf of a minor, or of a legally incompetent adult recipient, for whom medical resources are being sought.*

(4) *The determination of good cause shall be made by the Utilization Review Section of the Bureau of Medical Services. This determination shall be based on information and evidence provided by the recipient, or by one acting on the recipient's behalf.*

ITEM 3. Subrules 75.4(2) and 75.4(3) are amended to read as follows:

**75.4(2)** The department may pursue its rights to recover either directly from any third party or from any recovery obtained by or on behalf of any medical assistance recipient. ~~A reduction for attorney fees from the full~~

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

amount of the department's claim shall be allowed only where the department's recovery is obtained from the proceeds recovered by or on behalf of the recipient. If a recipient of the medical assistance program incurs the obligation to pay attorney fees and court costs for the purpose of enforcing a monetary claim to which the department is subrogated, the court costs and reasonable attorney fees shall first be deducted judgment or settlement. One-third of the remaining balance shall then be deducted and paid to the recipient. From the remaining balance, the claim of the department shall be paid. Any amount remaining shall be paid to the recipient. The department will provide computer generated documents or claim forms describing the services for which it has paid upon request of any affected recipient or such recipient's attorney. Such documents may also be provided to a third party where necessary to establish the extent of the department's claim.

**75.4(3)** In those cases where appropriate notification is not given to the department or where the department's recovery rights are otherwise adversely affected by an action of the recipient or one acting on the recipient's behalf, medical assistance benefits shall be terminated. The medical assistance benefits of a minor child or a legally incompetent adult recipient shall not be terminated. Subsequent eligibility for medical assistance benefits shall be denied until such time as an amount equal to the unrecovered claim has been reimbursed to the department or the individual produces documentation of incurred medical expense equal to the amount of the unrecovered claim. Such incurred medical expense shall not be paid by the medical assistance program.

a. The applicant, or recipient, or one acting on the applicant or recipient's behalf, shall provide information and verification as required to establish the availability of medical or third party resources.

b. At time of application, the applicant or one acting on the applicant's behalf, shall report the existence of any potential medical resource. The applicant, or one acting on the applicant's behalf, shall promptly report any changes in medical resources that occur during the application process.

c. The recipient, or one acting on the recipient's behalf, shall timely report to the department, both the existence of any potential medical resources, or any changes in existing medical resources.

A report shall be considered timely when made within ten days from:

(1) The date that health insurance begins, changes or ends.

(2) The date that eligibility begins for care through veterans administration, specialized child health services, Title XVIII of the Social Security Act (Medicare) and other resources.

(3) The date the recipient, or one acting on the recipient's behalf, files an insurance claim against an insured third party, for the payment of medical expenses that otherwise would be paid by Medicaid.

(4) The date the recipient, or one acting on the recipient's behalf, retains an attorney with the expectation of seeking restitution for injuries from a possibly liable third party, and the medical expenses resulting from those injuries would otherwise be paid by Medicaid.

(5) The date that the recipient, or one acting on the recipient's behalf, receives a partial or total settlement for the payment of medical expenses that would otherwise be paid by Medicaid.

The recipient may report the change in person, by telephone, by mail or by using the Ten Day Report of Change,

form PA-4106-0, which is mailed with the Aid to Dependent Children Assistance warrants.

d. The recipient, or one acting on the recipient's behalf, shall complete the Recipient Inquiry, form MA-4047-0, when the department has reason to believe that the recipient has received an accident related injury. Failure to cooperate in completing and returning this form, or in giving complete and accurate information, shall result in the termination of medical assistance benefits.

e. In those instances where the recovery rights of the department are adversely affected by the actions of a parent or payee, acting on the behalf of a minor, or legally incompetent adult recipient, the medical assistance benefits of the parent or payee shall be terminated. In those instances where a parent or payee fails to cooperate in completing or returning the Recipient Inquiry, form MA-4047-0, or fails to give complete and accurate information concerning the accident related injuries of a minor or legally incompetent adult recipient, the medical assistance benefits of the parent or payee shall be terminated.

f. The recipient, or one acting on the recipient's behalf, shall refund to the department any settlement or payment received, that is intended to cover any medical expenses that would otherwise be paid by Medicaid. Failure of the recipient to do so, shall result in the termination of medical assistance benefits. In those instances where a parent or payee, acting on the behalf of a minor, or of a legally incompetent adult recipient, fails to refund such a settlement or overpayment to the department, the medical assistance benefits of the parent or payee shall be terminated.

ITEM 4. Rule 770—75.4(249A) is amended by adding the following subrules:

**75.4(4)** Third party and provider responsibilities.

a. A person who provides health care services to a medical assistance (Medicaid) beneficiary shall notify the department whenever the person has reason to believe that third parties may be liable for payment of the costs of those health care services. The health care services provider shall notify the department by phone call or in writing. The health care services provider shall also inform the department by appropriate notation on the Inpatient Hospital Claim, form XIX HOSP-1, the Outpatient Hospital Claim, form XIX HOSP-2, or on the Health Insurance Claim, form HCFA 1500, that liable third parties may exist.

b. The health care services provider shall notify the department when that health care services provider receives a request for billing or treatment information from a recipient, an attorney, an insurer or other third party.

c. An attorney representing an applicant for or a past or present recipient of medical assistance on a claim to which the department is subrogated under this rule shall notify the department of the claim of which the attorney has actual knowledge, prior to filing a claim, commencing an action or negotiating a settlement offer. The mailing and deposit in a United States post office or public mailing box of the notice, addressed to the department at its state or district office location, is adequate legal notice of the claim.

**75.4(5)** Subrogation rights of the department.

a. The subrogation rights of the department are valid and binding on an attorney, insurer, or other third party only upon notice by the department or unless the attorney, insurer or other third party has actual notice that the recipient is receiving medical assistance from the department and only to the extent that the attorney,

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

insurer or third party has not made payment to the recipient or an assignee of the recipient prior to the notice.

Any information released to an attorney, insurer or other third party, by the health care services provider, that indicates that reimbursement from the state was contemplated or received, shall be construed as giving the attorney, insurer or other third party actual knowledge of the department's involvement. For example, information supplied by a health care services provider which indicates medical assistance (Medicaid) involvement shall be construed as showing involvement by the department under Iowa Code section 249A.6. Payment of benefits by an insurer or third party pursuant to the subrogation rights of this rule discharges the attorney, insurer or other third party from liability to the recipient or the recipient's assignee to the extent of the payment to the department.

b. When the department has reason to believe that an attorney is representing an applicant for or recipient of medical assistance on a claim to which the department is subrogated under this rule, the department shall issue notice to that attorney of the department's subrogation rights by mailing the Attorney Letter, form MA-4050-0, to the attorney.

c. When the department has reason to believe that an insurer is liable for the costs of a recipient's medical expenses, the department shall issue notice to the insurer of the department's subrogation rights by mailing the Notice of Subrogation, form MA-4053-0, to the insurer.

d. The mailing and deposit in a United States post office or public mailing box of the notice, addressed to the attorney or insurer is adequate legal notice of the department's subrogation rights.

**75.4(6)** For purposes of this rule the term "third party" includes an attorney, individual, institution, corporation, or public or private agency which is or may be liable to pay part or all of the medical costs incurred as a result of injury, disease or disability by or on behalf of an applicant for or a past or present recipient of assistance under the medical assistance program.

This rule is intended to implement Iowa Code section 249A.6.

**ARC 4044****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 §17A.4(1)"b" of Code.

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

Pursuant to the authority of Iowa Code section 249.4, the Department of Human Services proposes amending rules appearing in the IAC relating to amount, duration and scope of medical and remedial services (Chapter 78).

This rule permits community mental health centers to receive reimbursement from the medical assistance program when a staff psychologist, social worker or psychi-

atric nurse, provides the preliminary diagnostic evaluation of medical assistance recipients for voluntary admission to one of the state mental health institutes without an interview with a board eligible or a board certified psychiatrist prior to submission of the first claim.

This rule also provides that services provided by a psychologist meeting the requirements of the National Register of Health Service Providers in Psychology do not require the supervision of a board eligible or board certified psychiatrist.

Consideration shall 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 October 5, 1983.

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

Subrule 78.16(1) is rescinded and replaced as follows:

**78.16(1)** Payment to a community mental health center will be approved for reasonable and necessary services provided to medical assistance recipients by a psychiatrist, psychologist, social worker or psychiatric nurse on the staff of the center under the following conditions.

a. Services must be rendered under the supervision of a board eligible or board certified psychiatrist. All services must be performed under the supervision of a board eligible or board certified psychiatrist subject to the conditions set forth in 78.16(1)"b" with the following exceptions.

(1) Services by staff psychiatrists, or

(2) Services rendered by psychologists meeting the requirements of the National Register of Health Service Providers in Psychology, or

(3) Services provided by a staff member, listed in this subrule, performing the preliminary diagnostic evaluation of medical assistance recipients for voluntary admission to one of the state mental health institutes.

b. Supervisory process.

(1) Each patient shall have an initial evaluation completed which shall include at least one personnel interview with a board eligible or board certified psychiatrist. This must be accomplished prior to admission of the first claim for services rendered to that patient.

(2) Not later than four weeks following the day of the first interview with the psychiatrist there shall be a patient staffing. The staffing shall occur at a joint meeting of the staff member providing the service and a board certified or board eligible psychiatrist. During the staffing the member providing the service shall, when necessary, first review the case history and then present any additional essential data which has been collected since the initial psychiatric evaluation such as reports from other agencies and institutions and data obtained from subsequent patient contact. As a result of dialogue between the psychiatrist and staff member, the diagnosis, treatment needs and treatment plan shall be delineated. The result of the staffing shall be recorded by the staff person providing the service and countersigned by the psychiatrist and placed in the patient's permanent record.

(3) Not later than four months after the initial staffing and each four months thereafter there shall be a documented review of the case by the psychiatrist and staff member to evaluate and revise or change the treatment plan as necessary.

(4) A staffing of patients at four weeks and subsequent periodic four-month reviews are not payable as

## HUMAN SERVICES DEPARTMENT[498] (cont'd)

separate services under the program. These reviews shall be documented in the record and are subject to audit by the department of human services.

## ARC 4045

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 §17A.4(1)"b" of Code.

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

Pursuant to the authority of Iowa Code sections 217.6 and 234.6, the Department of Human Services proposes amending rules appearing in the IAC relating to foster care services [Social Services chapter 136].

The current rules state that the foster care review may include the present or previous care providers. These rules define foster care providers to be those providers who have cared for a child in the thirty-six-month time period prior to the review. The rules allow the participation of former foster care providers, who are no longer licensed, if the parent consents. This provision allows for the lawful sharing of confidential information to unlicensed providers.

Consideration will be given to written data, views or arguments thereto, received by the Bureau of Policy, Research and Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319 on or before October 5, 1983.

These rules are intended to implement Iowa Code section 234.6.

ITEM 1. Subrule 136.2(5) is amended to read as follows:

**136.2(5)** The need for foster care and the efforts to prevent placement shall be evaluated by a review committee prior to placement, or, for emergency placements only, within thirty days after the date of placement. The review shall meet the following requirements:

a. Department staff on the review committee shall be the child's service worker, a supervisor knowledgeable in child welfare, and one or more additional persons appointed by the district administrator. At least one of these persons shall not be responsible for the case management or the delivery of services to either the child or the parents or guardian who are the subject of the review.

b. The review shall be open to the participation of the parents or the guardian of the child, local and area education staff and juvenile court staff, ~~present or previous care providers~~, and the guardian ad litem.

c. *The present foster care provider, if any, and previous foster care providers who have cared for the child in the thirty-six months prior to the review month shall be notified of the review and have the opportunity to participate. If the provider is no longer licensed, consent of the parents is required to allow participation.*

e.d. Written notice of the review shall be sent to the child's parents or guardian at least five working days prior to the date of the review.

d.e. Other persons may be invited to the review with the consent of the parents or guardian.

e.f. A written summary of the review recommendations shall be sent to the child's parents or guardian following the review.

f.g. Review committee recommendations shall be advisory to the service worker and supervisor, who are responsible for development of the department case plan and for reports and recommendations to the juvenile court.

ITEM 2. Subrule 136.6(4) is amended as follows:

**136.6(4)** In conjunction with the case plan review, the case shall be presented every six months to a review committee which conforms to the requirements in subrule 136.2(5); ~~with the addition that the foster care provider shall also have notice of the review and opportunity to participate.~~ When the court holds a hearing to review the placement, the district administrator may waive or modify the department review committee procedure. The review committee shall:

a. Evaluate the continuing necessity for foster care placement.

b. Evaluate the continuing appropriateness of the foster care placement.

c. Evaluate the extent of compliance with the case plan.

d. Evaluate the extent of progress made toward lessening the causes for foster care placement.

e. Project a likely date by which the child will leave foster care.

This rule is intended to implement Iowa Code section 234.6(6)"b".

## ARC 4031

## INSURANCE DEPARTMENT[510]

## NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 507B.12, the Iowa Department of Insurance hereby gives Notice of Intended Action to add Chapter 16, "Replacement of Life Insurance and Annuities", Iowa Administrative Code.

These rules are designed to regulate the activities of insurers and agents with respect to the replacement of existing life insurance and annuities. Purchasers of replacement policies are protected against unknowingly making disadvantageous replacements by a mechanism which requires disclosure to the replaced insurer any time a life insurance policy or annuity a company has written is or may be replaced. This should promote efforts by both companies and their agents to give the consumer sufficient information to make an informed choice. The rules also provide for a notice to be given to the consumer, procedures to be followed by both the replacing and replaced insurer and agent, recordkeeping, and penalties.

**INSURANCE DEPARTMENT**[510] (*cont'd*)

Any interested person may make written suggestions or comments on these proposed rules prior to October 12, 1983. Such written materials should be directed to Kimerlee P. O'Hara, Attorney, Market Conduct Division, Iowa Department of Insurance, Lucas State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally should contact Kimerlee P. O'Hara at 515/281-4241 or in the Insurance Department offices on the ground floor of the Lucas State Office Building. Also, there will be a public hearing on Friday, October 7, 1983, at 10:00 a.m. in the third floor conference room of the Lucas State Office Building in the Health Department offices. 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 shall request to do so in writing no later than October 4, 1983. The request should be addressed to Ms. Kimerlee P. O'Hara, Market Conduct Division, Iowa Department of Insurance, Lucas State Office Building, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code section 507B.4.

Add the following new chapter of rules:

## CHAPTER 16

## REPLACEMENT OF

## LIFE INSURANCE AND ANNUITIES

**510—16.1(507B) Purpose and authority.**

**16.1(1)** The purpose of these rules is:

a. To regulate the activities of insurers, agents and brokers with respect to the replacement of existing life insurance and annuities; and

b. To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by:

(1) Assuring that purchasers receive information with which a decision can be made in the best interests of the purchasers;

(2) Reducing the opportunity for misrepresentation and incomplete disclosures; and

(3) Establishing penalties for failure to comply with requirements of this chapter.

**16.1(2)** These rules are authorized by Iowa Code section 507B.12 and are intended to implement Iowa Code section 507B.4.

**510—16.2(507B) Definition of replacement.** "Replacement" means any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing agent or broker or to the proposing insurer if there is no agent, that by reason of such transaction, existing life insurance or annuity has been or is to be:

**16.2(1)** Lapsed, forfeited, surrendered, or otherwise terminated;

**16.2(2)** Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

**16.2(3)** Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

**16.2(4)** Reissued with any reduction in cash value; or

**16.2(5)** Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty-five percent of the loan value set forth in the policy.

**510—16.3(507B) Other definitions.**

**16.3(1)** "Conservation" means any attempt by the existing insurer or its agent or broker to dissuade a policyowner from the replacement of existing life insurance or annuity. Conservation does not include such routine administrative procedures as late payment reminders, late payment offers or reinstatement offers.

**16.3(2)** "Direct-response sales" means any sale of life insurance or annuity where the insurer does not utilize an agent in the sale or delivery of the policy.

**16.3(3)** "Existing insurer" means the insurance company whose policy is or will be changed or terminated in such a manner as described within the definition of "replacement".

**16.3(4)** "Existing life insurance or annuity" means any life insurance or annuity in force, including life insurance under a binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period.

**16.3(5)** "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.

**16.3(6)** "Registered contract" means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account, or any other contracts issued by life insurance companies which are registered with the Federal Securities and Exchange Commission.

**510—16.4(507B) Exemptions.**

**16.4(1)** Unless otherwise specifically included, this chapter shall not apply to transactions involving:

a. Credit life insurance;

b. Group life insurance or group annuities;

c. An application to the existing insurer that issued the existing life insurance and when a contractual change or conversion privilege is being exercised; and

d. Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

**16.4(2)** Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control shall be exempt. However, agents or brokers proposing replacement shall comply with the requirements of subrule 16.5(1); and

**16.4(3)** Registered contracts shall be exempt from the provisions of subparagraph 16.7(1)"b"(2) and subrule 16.7(2) requiring provision of policy summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu thereof.

**510—16.5(507B) Duties of agents and brokers.**

**16.5(1)** Each agent or broker who takes an application for life insurance or annuity shall submit to the insurer, with or as part of each application, the following:

a. A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction; and

b. A signed statement as to whether the agent or broker knows replacement is or may be involved in the transaction.

**16.5(2)** Where replacement is involved, the agent or broker shall:

a. Present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replace-



**INSURANCE DEPARTMENT**[510] (*cont'd*)

ment" in the form as described in Exhibit A, or other substantially similar form approved by the commissioner ("replacement notice"). The notice shall be signed by both the applicant and the agent or broker and the original shall be left with the applicant.

b. Obtain with or as part of each application a list of all existing life insurance or annuity to be replaced and properly identified by name of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

c. Leave with the applicant the original or a copy of written or printed communications used for presentation to the applicant.

d. Submit to the replacing insurer with the application a copy of the replacement notice provided pursuant to paragraph 16.7(2)"a".

**16.5(3)** Each agent or broker who uses written or printed communications in a conservation shall leave with the applicant a copy of the materials used.

**510—16.6(507B) Duties of all insurers.** Each insurer shall:

**16.6(1)** Inform its field representatives or other personnel responsible for compliance with this chapter of its requirements.

**16.6(2)** Require with or as a part of each completed application for life insurance or annuity a statement signed by the applicant as to whether such proposed insurance or annuity will replace existing life insurance or annuity.

**510—16.7(507B) Duties of insurers that use agents or brokers.**

**16.7(1)** Each insurer that uses an agent or broker in life insurance or annuity sales shall:

a. Require with or as part of each completed application for life insurance or annuity, a statement signed by the agent or broker as to whether the agent or broker knows replacement is or may be involved in the transaction.

b. Where a replacement is involved:

(1) Require a list of all of the applicant's existing life insurance or annuity to be replaced and a copy of the replacement notice provided the applicant pursuant to paragraph 16.5(2)"a" to be submitted by the agent or broker with the application for life insurance or annuity. Such existing life insurance or annuity shall be identified by name of insurer, insured and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(2) Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained pursuant to subparagraph 16.7(1)"b"(1) and a policy summary or ledger statement containing policy data on the proposed life insurance or annuity as required by rules 15.66(507B) to 15.73(507B). Life insurance cost index and equivalent level annual dividend figures need not be included in the policy summary or ledger statement. This written communication shall be made within five working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.

**16.7(2)** Existing insurers—conservation.

a. Each existing insurer, or such insurer's agent or broker, that undertakes a conservation shall within

twenty days from the date the written communication plus the materials required in paragraph 16.7(1)"b" is received, furnish the policyowner with a policy summary for the existing life insurance or a ledger statement containing policy data on the existing policy or annuity.

b. The policy summary or ledger statement shall be completed in accordance with subrule 15.68(7), except that information relating to premiums, cash values, death benefits and dividends, if any, shall be computed from the current policy year of the existing life insurance. The policy summary shall include the amount of any outstanding indebtedness, the sum of any dividend accumulations or additions, and may include any other information that is not in violation of any regulation or statute. Life insurance cost index and equivalent level annual dividend figures need not be included in the policy summary.

c. When annuities are involved, the information shall be sufficient to disclose all of the material terms of the annuity.

d. The replacing insurer may request the existing insurer to furnish it with a copy of the summaries.

**16.7(3)** Records maintenance.

a. The replacing insurer shall maintain evidence of the replacement notice, the policy summary, the annuity disclosure and any ledger statements used, and a replacement register, cross-indexed, by replacing agent and existing insurer to be replaced.

b. The existing insurer shall maintain evidence of policy summaries, annuity disclosures or ledger statements used in any conservation.

c. Evidence that all requirements were met shall be maintained for at least three years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is earlier.

**16.7(4)** The replacing insurer shall provide in its policy or in a separate written notice which is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within a period of twenty days commencing from the date of delivery of the policy.

**510—16.8(507B) Duties of insurers with respect to direct response sales.**

**16.8(1)** If in the solicitation of a direct response sale, the insurer did not propose the replacement, and a replacement is involved, the insurer shall send a replacement notice with the policy to the applicant.

**16.8(2)** If the insurer proposed the replacement it shall:

a. Provide to applicants or prospective applicants with or as a part of the application a replacement notice.

b. Request from the applicant with or as part of the application, a list of all existing life insurance or annuity to be replaced and properly identified by name of insurer and insured.

c. Comply with the requirements of subparagraph 16.7(1)"b"(2) if the applicant furnishes the names of the existing insurers, and the requirements of subrule 16.7(3), except that it need not maintain a replacement register.

**510—16.9(507B) Penalties.**

**16.9(1)** A violation of this chapter shall occur if an agent, broker or insurer recommends the replacement or conservation of an existing policy by use of a substantially inaccurate presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any.

INSURANCE DEPARTMENT[510] (cont'd)

16.9(2) Any insurer, agent, representative, officer or employee of such insurer failing to comply with the requirements of this chapter shall be subject to such penalties as may be appropriate under the insurance laws.

16.9(3) Patterns of action by policyowners who purchase replacing policies from the same agent or broker shall be deemed prima facie evidence of the agent's or broker's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall be deemed prima facie evidence of the agent's or broker's intent to violate this chapter.

16.9(4) This chapter does not prohibit the use of additional material other than that which is required that is not in violation of these rules or any other statute or administrative rule.

510—16.10(507B) Severability. If any rule or portion of a rule of this chapter, or the applicability thereof to any person or circumstance, is held invalid by a court, the remainder of this chapter, or the applicability of such provision to other persons, shall not be affected thereby.

EXHIBIT A  
TO CHAPTER 32

NOTICE REGARDING REPLACEMENT  
REPLACING YOUR  
LIFE INSURANCE POLICY OR ANNUITY?

Are you thinking about buying a new life insurance policy or an annuity and discontinuing or changing an existing one? If you are, your decision could be a good one—or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

We are required by law to notify your existing company that you may be replacing their policy.

\_\_\_\_\_  
Applicant's Signature      Date      Agent's Signature

ATTENTION CONSUMER. THIS NOTICE IS  
REQUIRED BY THE INSURANCE COMMISSIONER.  
PLEASE READ IT CAREFULLY BEFORE SIGNING.

ARC 4032

INSURANCE DEPARTMENT[510]  
NOTICE OF INTENDED ACTION

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

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

Pursuant to the authority of Iowa Code section 511.8, subsection 20, paragraph "b", the Iowa Department of Insurance hereby gives Notice of Intended Action to create a new Chapter 32, "Deposits by a Life Company in a Custodian Bank or Clearing Corporation", which implements the authority of insurance companies under Iowa Code chapter 508 to make deposits in custodian banks or clearing corporations in order to satisfy the legal reserve requirement.

Under Iowa Code section 511.8, subsection 16, an insurance company organized under Iowa Code chapter 508 is required to deposit with the Iowa commissioner of insurance securities in an amount equal to the statutorily defined "legal reserve", which is the net present value of all outstanding policies and contracts involving life contingencies. Iowa Code section 511.8, subsection 20, authorizes such a company to deposit securities in a "custodian bank" or "clearing corporation", rather than with the insurance commissioner. Such a deposit would satisfy the legal reserve deposit requirement. The commissioner is required to adopt rules implementing the authority of a company to make deposits in these entities. By allowing a company to make a deposit in a "custodian bank" or "clearing corporation", the company can meet the legal reserve requirement and, at the same time, more efficiently buy and sell securities and thereby earn more current market yields on its securities. These rules impose safeguards upon the use of custodian banks and clearing corporations by a company and thereby serve to protect the policyholders of the company.

Any interested person may file a written statement of position on the subjects covered by the proposed rules no later than October 4, 1983. Such written statement should be directed to Commissioner of Insurance, Lucas State Office Building, Des Moines, Iowa 50319.

These rules implement Iowa Code section 511.8, subsection 20, paragraph "b".

The following new chapter is adopted.

CHAPTER 32

DEPOSITS BY A DOMESTIC LIFE COMPANY IN A  
CUSTODIAN BANK OR CLEARING CORPORATION

510—32.1(508) Purpose. These rules implement the authority of insurance companies organized under Iowa Code chapter 508 to make deposits of securities in custodian banks or clearing corporations in order to satisfy the

## INSURANCE DEPARTMENT[510] (cont'd)

legal reserve requirement imposed on those companies. These rules place requirements on such deposits which are for the protection of policyholders in the state.

**510—32.2(508) Definitions.** As used in this chapter:

**32.2(1)** "Commissioner" means the commissioner of insurance of the state of Iowa.

**32.2(2)** "Company" means a company organized under Iowa Code chapter 508.

**32.2(3)** "Custodial account" means an account established by agreement between a company and a custodian pursuant to Iowa Code section 511.8, subsection 20, and these rules.

**32.2(4)** "Custodial agreement" means an agreement entered into between a company and a custodian pursuant to these rules.

**32.2(5)** "Custodian" means an institution meeting the requirements of rule 32.4(508) which has entered into a custodial agreement with a company.

**32.2(6)** "Custodied securities" means securities held by or through a custodian when held directly by the custodian or held for the account of the custodian in an authorized clearing corporation or in the federal reserve book entry system.

**32.2(7)** "Authorized clearing corporations" means the following organizations, which are hereby recognized by the commissioner as authorized clearing corporations for purposes of Iowa Code section 511.8, subsection 20, paragraph "b", subparagraph (2), and such other corporations as the commissioner may from time to time designate:

- a. Depository Trust Company.
- b. Midwest Securities Trust Company.
- c. Pacific Securities Depository Trust Company.
- d. Philadelphia Depository Trust Company.
- e. Euroclear Clearance Ltd.

**510—32.3(508) Requirements upon custodial account and custodial agreement.** Custodied securities may be used to meet the legal reserve deposit requirements of Iowa Code section 511.8, subsection 16, provided such securities are held under written agreement with a custodian which provides:

**32.3(1)** That the custodial account is to be titled as follows: " \_\_\_\_\_

Insurance Company Account No. \_\_\_\_\_ in custody for and to vest in the Commissioner of Insurance of the State of Iowa in accordance with Iowa Code section 508.19".

**32.3(2)** That the company shall, on or before the fifteenth day of each month certify to the commissioner on a form provided by the commissioner that the aggregate value (determined as provided by Iowa Code section 511.8, subsection 17) of securities on deposit with the commissioner in the manner specified by Iowa Code section 511.8, subsection 16, and in the custodial account as of the last day of the preceding month was at least equal to the company's legal reserve (as defined in Iowa Code section 511.8) as of the last day of the preceding year. In the event the company fails or refuses to make the certification provided in this subrule, or in the event the commissioner is authorized or directed by reason of any determination, appointment, or order pursuant to Iowa Code section 508.17, 508.18, or 508.22, the commissioner may acquire custody or otherwise assume control of the custodied securities, and may order reregistration, delivery, or other disposition which the commissioner deems appropriate under the circumstances. In addition,

if the commissioner has reason to believe that a company may be insolvent, or that its condition is such as to render its further continuance in business hazardous to the public or holders of its policies, or that continued trading by the company in custodied securities may create a hazard to the public or policyholders, the commissioner may order the company to cease trading in custodied securities pending examination as provided in Iowa Code section 508.16.

**32.3(3)** That securities held in a fungible bulk by the custodian and securities in a clearing corporation or in the federal reserve book entry system shall be separately identified on the custodian's official records as being owned by the company. The custodian's records shall identify which custodied securities are held by the custodian and which securities are in a clearing corporation or in the federal reserve book entry system. If the securities are in a clearing corporation, such records shall also identify the name of the clearing corporation, the location of the securities, and, if held through an agent, the name of the agent.

**32.3(4)** That all custodied securities that are registered must be registered in the name of the company, in the name of a nominee of a company, in the name of the custodian or its nominee, or, if held in a clearing corporation, in the name of the clearing corporation or its nominee.

**32.3(5)** That during the course of the custodian's regular business hours, the commissioner or the commissioner's representative and authorized employees and representatives of the company, shall be entitled to examine on the premises of the custodian the custodian's records relating to custodied securities of the company.

**32.3(6)** That the custodian or its agents shall be required to submit to the commissioner, at least annually, or more often as the commissioner may from time to time request, the opinion(s) of an auditor who shall be satisfactory to the commissioner specifically addressing the respective systems of internal account control and recordkeeping of the custodian or its agents.

**32.3(7)** That the custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the company's annual statement and supporting schedules as filed with various regulatory authorities and in connection with any audit of the financial statements of the company. Copies of these records shall be delivered to the commissioner upon written request to the custodian.

**32.3(8)** That the custodian is obligated to indemnify the company for any loss of securities while in its custody occasioned by negligence or dishonesty of the custodian's officers or employees, or burglary, robbery, holdup, theft, extortion, or mysterious disappearance, including loss by damage or destruction.

**32.3(9)** That, in the event that there is a loss of the securities for which the custodian is obligated to indemnify the company, the custodian shall promptly replace the same, or the value thereof, and the value of any loss of rights or privileges resulting from said loss of securities and the custodian shall make available to the company for inspection any and all securities or value amounts so replaced.

**32.3(10)** That minimum levels of deposits of securities at face values totaling \$100,000 shall be maintained at all times.

**32.3(11)** The custodial agreement may contain additional specific operating instructions, controls and provi-

**INSURANCE DEPARTMENT[510] (cont'd)**

sions concerning the operation of the custodial account provided such operating instructions, controls and provisions are not in conflict with these rules.

**32.3(12)** Custodial agreements shall be submitted by a company to the commissioner for the commissioner's review to ensure compliance with these rules.

**510—32.4(508) Requirements upon custodians.** The custodian shall be a bank or trust company having its principal place of business in the United States, selected by the company to act as the custodian under an agreement authorized by Iowa Code section 511.8, subsection 20, and shall possess the following qualifications:

**32.4(1)** The custodian shall be audited annually by independent public accountants whose audit report, together with the related financial statements, and opinion on internal controls shall be made available to the company and the commissioner.

**32.4(2)** The laws governing the custodian shall recognize that the custodied securities remain the specific property of the company, and are not subject to the claim of any third parties arising out of the third party's claim against the custodian.

**32.4(3)** The custodian shall maintain blanket bond coverage relating to its custodial functions with limits equal to or exceeding those suggested by the American Bankers Association.

**32.4(4)** The custodian's capital and surplus funds shall at all times equal or exceed \$25,000,000 and the custodian shall at all times have assets in excess of \$500,000,000, unless the commissioner finds that a particular custodian with less than that amount of funds or assets would possess the requisite stability and soundness to perform the custodial functions without detriment to a company's policyholders.

Any interested person may make written suggestions or comments on this proposed rule prior to October 5, 1983. Such written material should be directed to the Administrative Officer, Iowa State Patrol Division, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Administrative Officer, Iowa State Patrol Division at 515/281-8390 or in the Iowa State Patrol offices on the third floor of the Wallace State Office Building. Also, there will be a public hearing on October 5, 1983 at 1:00 p.m. in the third floor conference room east 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 Administrative Officer of the Iowa State Patrol Division at least one day prior to the date of the public hearing.

This rule is intended to implement Iowa Code section 321.271, as amended by 1983 Iowa Acts, House File 57.

The following amendment is proposed:

ITEM 1. Amend rule 680—1.4(17A) by adding a new subrule 1.4(5).

**1.4(5)** Accident reports filed as required by Iowa Code section 321.266 and which are retained by the department are available to any party to an accident, the party's insurance company or its agent, or the party's attorney on written request and the payment of a \$4.00 fee for each copy, by check or money order payable to the Department of Public Safety. Such request shall be made to the state patrol district headquarters in the district in which the accident occurred.

**ARC 4027****REVENUE DEPARTMENT[730]  
NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue hereby gives Notice of Intended Action to amend Chapter 54, "Allocation and Apportionment", Iowa Administrative Code.

The present rules of the department can produce in some factual situations a conflict with recent decisions of the United States Supreme Court in ASARCO, Inc. v. Idaho State Tax Commission, 458 U.S. \_\_\_\_\_, 73 L.Ed.2d 787 (1982) and F. W. Woolworth Co. v. Taxation and Revenue Department, 458 U.S. \_\_\_\_\_, 73 L.Ed.2d 819 (1982). These cases provide, that in order to tax the investment income of a single taxpayer corporation, as is done by Iowa Code section 422.33(1), the income recipient and the income payer must either conduct a unitary business or the income itself must be a part of the unitary stream of income, of the income recipient, where the recipient and the payer do not have a unitary relation-

**ARC 4026****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 §17A.4(1)"b", Iowa Code.

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

Pursuant to the authority of Iowa Code Chapter 80, the Iowa Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 1, "The Department" Iowa Administrative Code.

The 1983 Iowa Acts, House File 57 provides that if a copy of an investigatory officer's report of a motor vehicle accident filed with the department is retained by the law enforcement agency of the officer who filed the report, a copy shall be made available to any party to the accident, the party's insurance company or its agent, or the party's attorney, on written request and the payment of a fee.

Current rules do not address accident report requests, as to who may receive them as well as the charge for a copy of the report. This rule is to provide such information to the public.

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

ship. The current rules of the department are based, to some extent, upon a "business purpose" test to determine a unitary relationship which the United States Supreme Court recently found to be an erroneous legal standard. In addition, the present rules, to some extent, apply a "potential to control" test which the Supreme Court has also condemned. These rules adopt the actual "functional relationship" or "centralized management" tests which have been approved by the U.S. Supreme Court.

The present rules may be broader in scope than the unitary income guidelines adopted by the U.S. Supreme Court allow and could tax an excessive portion of investment income, which is determined to be a part of the single taxpayer corporation's unitary income. The proposed rule makes it clear that the determination of unitary business income is based upon the facts and circumstances in each case. The proposed rules do not purport to change Iowa's application of the unitary concept as it applies to single corporate entities in the determination of unitary business income and these proposed rules do not require or authorize the filing of a combined report. Iowa has never historically required or allowed the filing of a combined report and, under the Container case, such requirement or authorization is discretionary with the taxing state. These rules are amended to bring the department's rules into compliance with these two Supreme Court cases and the recent decision of the United States Supreme Court in Container Corporation of America v. Franchise Tax Board, \_\_\_ U.S. \_\_\_, \_\_\_ L.Ed.2d \_\_\_, 51 U.S.L.W. 4987 (1983).

None of the amendments in this rule will necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 14, 1983. Such written comments should be directed to the Director, Income Tax Division, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

Persons who want to orally convey their views should contact Donald R. Cooper, Director, Income Tax Division at 515/281-3254 or at the income tax offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 7, 1983.

This rule is intended to implement Iowa Code chapter 422.

The following amendment is proposed.

Rule 730—54.2(422) is amended by striking the entire rule and inserting in lieu thereof the following new rule:

**730—54.2(422) Allocation or apportionment of investment income.**

**54.2(1)** The classification of investment income by the labels customarily given them, such as interest, dividends, rents, and royalties, is of no aid in determining whether that income is business or nonbusiness income. Interest, dividends, rents and royalties shall be apportioned as business income to the extent the income was earned as a part of a corporation's unitary business, a portion of which is conducted in Iowa. Mobil Oil Corp. v. Commissioner of Taxes, 445 U.S. 425 (1980); ASARCO, Inc. v. Idaho State Tax Commission, 458 U.S. \_\_\_, 73 L.Ed.2d 787 (1982); F. W. Woolworth Co. v. Taxation and Revenue Dept., 458 U.S. \_\_\_, 73 L.Ed.2d 819 (1982); Container Corporation of America v. Franchise Tax Board, \_\_\_ U.S. \_\_\_, \_\_\_ L.Ed.2d \_\_\_, 51

U.S.L.W. 4987 (1983). Whether investment income is part of a corporation's unitary business income depends upon the facts and circumstances in the particular situation. The burden of proof is upon the taxpayer to show that the treatment of investment income on the return as filed is proper. There is a rebuttable presumption that an affiliated group of corporations in the same line of business have a unitary relationship, although that is not the only element used in determining unitariness.

**54.2(2)** All business income, except for capital gains and the receipts therefrom, must be included in the computation of the denominator of the business activity formula. The computation of the business activity ratio is as follows:

a. Interest income from accounts receivable. Accounts receivable interest income is included in the numerator of the business activity formula if the taxpayer receives accounts receivable interest income from customers located in Iowa. Accounts receivable interest income which cannot be segregated by geographical source shall be included in the numerator of the business activity ratio applying the same ratio as gross receipts within Iowa bear to total gross receipts.

EXAMPLE: The taxpayer operates a multistate chain of gasoline service stations, selling for cash and on credit. Interest is charged on credit sales, but the interest income cannot be segregated by geographical source. During the tax year, the taxpayer had gross receipts within Iowa of \$300,000, total gross receipts everywhere of \$1,000,000, and accounts receivable interest income everywhere of \$10,000. \$10,000 would be included in the denominator of the business activity formula, and 30 percent of \$10,000, or \$3,000, would be included in the numerator of the business activity formula.

b. Interest income other than accounts receivable. All other interest income determined to be business income, except nontaxable interest income, shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

c. Dividend income. All dividend income (net of special deductions) determined to be business income shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa.

d. Rental income. All rental income determined to be business income shall be included in the numerator of the business activity formula to the extent that property is utilized in Iowa or in its entirety if the taxpayer's commercial domicile is in Iowa and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rent by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental periods in the taxable year. If the physical location of the property during the rental period is unknown or not ascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental payer obtained possession.

e. Royalty income. All royalty income from intangible personal property determined to be business income shall be included in the numerator of the business activity formula if the taxpayer's commercial domicile is in Iowa. All royalty income from tangible personal property or real property determined to be business income shall be included in the numerator of the business activity for-

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

mula if the situs of the tangible personal property or real property is within Iowa.

f. Other miscellaneous income. All other miscellaneous income determined to be business income shall be included in the computation of the business activity formula to the extent such income items do not represent a recapture of expense.

Subrules 54.2(1) and 54.2(2) are effective for tax years beginning on or after January 1, 1983.

**54.2(3)** Grossed-up foreign income. For purposes of administration of the Iowa corporation income tax law, Internal Revenue Code of 1954, section 78 (gross-up) shall be considered to be nonbusiness income, irrespective of the fact that the income creating the gross-up may be business income, and shall be allocated to the situs of the income payer.

This rule is intended to implement Iowa Code section 422.33.

**ARC 4021****WATER, AIR AND WASTE  
MANAGEMENT DEPARTMENT[900]**

DEPARTMENT OF WATER, AIR AND WASTE

MANAGEMENT COMMISSION

**NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 455B.133 the Water, Air and Waste Management Commission gives Notice of Intended Action to amend Chapter 23, "Emission Standards for Contaminants" by proposing to adopt by reference recently promulgated federal regulations pertaining to new source performance standards and emission standards for hazardous air pollutants and by including, as facilities affected by new source performance standards, seven additional sources.

In order to prevent new air pollution problems, by section 111(b)(1)(A) of the Clean Air Act, the Administrator of the Environmental Protection Agency was required to publish a list of categories of major sources that cause or contribute significantly to air pollution which may reasonably be anticipated to endanger health or welfare. Regulations establishing standards of performance for new sources within each category were promulgated and have been adopted by reference by the department. Each standard of performance establishes allowable emission limitations that reflect the degree of emission limitation which is achievable through the application of the best technological system of continuous emission reduction. These regulations apply only to "new sources", that is, sources, the construction or modification of which is commenced after the date of the individually proposed rules. The rules are adopted by reference by subrule 23.1(2).

Similarly, by section 112 of the Clean Air Act the EPA was required to adopt emission standards for "hazardous air pollutants", those pollutants which cause or contribute to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness. These standards apply to new and existing sources and are adopted by reference by subrule 23.1(3).

In greater detail, the following amendments are proposed:

Item 1 amends subrule 23.1(2) by including, as federal regulations adopted by reference, those regulations pertaining to 40 C.F.R. Part 60 which have been promulgated through June 30, 1983. Part 60 which sets forth federal standards of performance for new stationary sources is amended by adding the seven new source categories specifically adopted herein and by amending various emission standards, opacity standards and testing methods.

Item 1 further amends subrule 23.1(2) by adding, as facilities specifically affected by the standards of performance for new stationary sources, the following seven types of facilities: Surface coating of metal furniture operations, lead-acid battery manufacturing plants, phosphate rock plants, graphic arts publication rotogravure printing, industrial surface coating, metal coil surface coating, and asphalt processing and asphalt roofing manufacturing.

Item 2 amends subrule 23.1(3) by including, as federal regulations adopted by reference, those regulations pertaining to 40 C.F.R. Part 61 which have been promulgated through June 30, 1983. Part 61 which sets forth emission standards for hazardous air pollutants is amended by the adoption of four new test methods and by adopting technical monitoring and testing instructions.

Any person interested in receiving a copy of the federal regulations proposed to be adopted by reference may contact the Department of Water, Air and Waste Management. Copies are available from the department for the cost of reproduction.

Any interested party may file a written statement of position on the subjects covered by the proposed rules no later than October 14, 1983. These written statements should be directed to the Executive Director of the Department of Water, Air and Waste Management, 900 East Grand Avenue, Des Moines, Iowa 50319. Persons or organizations are also invited to present oral or written comments at a public hearing on these proposed amendments which will be held on October 4, 1983, at 10:30 a.m. in the fifth floor conference room of the Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Subrule 23.1(2) is amended as follows:

**23.1(2)** New source performance standards. The federal standards of performance for new stationary sources, 40 Code of Federal Regulations Part 60 as amended through ~~January 27, 1982~~, *June 30, 1983*, shall apply to the following affected facilities as defined in said part.

Further amend subrule **23.1(2)** by adding the following paragraphs:

## WATER, AIR AND WASTE MANAGEMENT DEPARTMENT[900] (cont'd)

gg. Surface coating of metal furniture. Any metal furniture surface coating operation in which organic coatings are applied.

hh. Lead-acid battery manufacturing plants. Any lead-acid battery manufacturing plant which uses any of the following: Grid casting, paste mixing, three-process operation, lead oxide manufacturing, lead reclamation, other lead-emitting operations.

ii. Phosphate rock plants. Any phosphate rock plant which has a maximum plant production capacity greater than four tons per hour including the following: Dryers, calciners, grinders, and ground rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorus production.

jj. Graphic arts industry: Publication rotogravure printing. Any publication rotogravure printing press except proof presses.

kk. Industrial surface coating — large appliances. Any surface coating operation in a large appliance surface coating line.

ll. Metal coil surface coating. Any of the following at a metal coil surface coating operation: Prime coat operation, finish coat operation, and each prime and finish coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously.

mm. Asphalt processing and asphalt roofing manufacturing. Any saturator, mineral handling and storage facility at asphalt roofing plants; and any asphalt storage tank and any blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants.

ITEM 2. Subrule 23.1(3) is amended as follows:

**23.1(3)** Emission standards for hazardous air pollutants. The federal standards of emissions for hazardous air pollutants, 40 Code of Federal Regulations Part 61 as amended through ~~December 31, 1980~~, *June 30, 1983*, are adopted by reference, except 40 CFR §61.22(d), and shall apply to the following affected pollutants as defined in that part.

**ARC 4049****COLLEGE AID COMMISSION[245]**

Pursuant to the authority of Iowa Code section 261.2(4), the College Aid Commission emergency adopts amendments to chapter 2, Iowa Administrative Code.

In compliance with Iowa Code section 17A.4(2), the Commission finds that public notice and participation is contrary to the public interest since it would prevent implementation for the 1983-84 school year.

The Commission 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 August 26, 1983, as it confers a benefit upon the public to ensure speedy implementation of these programs.

The Commission adopted these rules at its August 9, 1983, meeting. These rules are also being filed as a Notice of Intended Action, ARC 4050.

These rules are intended to implement Iowa Code section 261.2(4).

ITEM 1. Subrule 2.1(5), paragraph "b" is amended by adding the following subparagraph:

(6) A student who is in default on a Guaranteed Student Loan or a National Direct Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the state of Iowa scholarship program. A loan which has been discharged in bankruptcy shall not be considered in default. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in chapter 11.

ITEM 2. Subrule 2.1(8) is amended by adding the following paragraph "f".

f. A renewal applicant who is in default on a Guaranteed Student Loan or a National Direct Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the state of Iowa scholarship program. A loan which has been discharged in bankruptcy shall not be considered in default. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in chapter 11.

These rules are intended to implement Iowa Code section 261.2(4).

[Filed emergency 8/26/83, effective 8/26/83]  
[Published 9/14/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/14/83.

**ARC 4051****COLLEGE AID COMMISSION[245]**

Pursuant to the authority of Iowa Code section 261.15(2), the College Aid Commission emergency adopts amendments to chapter 4, Iowa Administrative Code.

In compliance with Iowa Code section 17A.4(2), the Commission finds that public notice and participation is

contrary to the public interest since it would prevent implementation for the 1983-84 school year.

The Commission 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 August 26, 1983, as it confers a benefit upon the public to ensure speedy implementation of these programs.

The Commission adopted these rules at its August 9, 1983 meeting.

These rules are intended to implement Iowa Code section 261.15(2). These rules are also being filed as a Notice of Intended Action, ARC 4052.

Rule 245—4.1(261) is amended by adding the following:

4.1(8) Restriction. A student who is in default on a Guaranteed Student Loan or a National Direct Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the Iowa Tuition Grant Program. A loan which has been discharged in bankruptcy shall not be considered in default. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by Commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in chapter 11.

These rules are intended to implement Iowa Code section 261.15(2).

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[Published 9/14/83]

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**ARC 4053****COLLEGE AID COMMISSION[245]**

Pursuant to the authority of Iowa Code section 261.17(6)"b", the College Aid Commission emergency adopts amendments to chapter 5, Iowa Administrative Code.

In compliance with Iowa Code section 17A.4(2) the Commission finds that public notice and participation is contrary to the public interest since it would prevent implementation for the 1983-84 school year.

The Commission 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 August 26, 1983, as it confers a benefit upon the public to ensure speedy implementation of these programs.

The Commission adopted these rules at its August 9, 1983, meeting.

This rule is intended to implement Iowa Code section 261.17(6)"b".

This rule is also being filed as a Notice of Intended Action, ARC 4054.

Rule 245—5.1(261) is amended by adding the following:



## COLLEGE AID COMMISSION[245] (cont'd)

5.1(8) Restriction. A student who is in default on a Guaranteed Student Loan or a National Direct Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the Iowa Vocational-Technical Tuition Grant program. A loan which has been discharged in bankruptcy shall not be considered in default. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in chapter 11.

This rule is intended to implement Iowa Code section 261.17(6)"b".

[Filed emergency 8/26/83, effective 8/26/83]

[Published 9/14/83]

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**ARC 4055****COLLEGE AID COMMISSION[245]**

Pursuant to the authority of Iowa Code section 261.1, and 1983 Iowa Acts, Senate File 533, section 5, the College Aid Commission adopts amendments to chapter 9, Iowa Administrative Code.

In compliance with Iowa Code section 17A.4(2), the Commission finds that public notice and participation is contrary to the public interest since it would prevent implementation for the 1983-84 school year.

The Commission 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 August 26, 1983, as it confers a benefit upon the public to ensure speedy implementation of these programs.

The Commission adopted these rules at its August 9, 1983, meeting.

These rules are intended to implement Iowa Code sections 261.1 and 261.15. These rules are also being filed as a Notice of Intended Action, ARC 4056.

Subrule 9.1(1) is amended by adding the following new paragraph:

h. An applicant who is in default on a Guaranteed Student Loan or a National Direct Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the National Guard Educational Benefits Program. A loan which has been discharged in bankruptcy shall not be considered in default. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in chapter 11.

These rules are intended to implement Iowa Code sections 261.1 and 261.15.

[Filed emergency 8/26/83, effective 8/26/83]

[Published 9/14/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/14/83.

**ARC 4057****CORRECTIONS,  
DEPARTMENT OF[291]**

Pursuant to the authority set forth in 1983 Iowa Acts, Senate File 464, which creates a separate Department of Corrections, the Iowa Department of Corrections hereby gives notice that effective October 1, 1983, the following chapters are transferred from the Department of Social Services [770] of the Iowa Administrative Code to the Department of Corrections [291], the Iowa Administrative Code.

In accordance with Iowa Code section 17A.4(2), the agency finds that notice and public participation are unnecessary since the change affects only chapter numbers and in a few cases chapter names. No substantive changes are made herein. This is filed emergency pursuant to the above section and Iowa Code section 17A.5(2)"b"(1) and becomes effective October 1, 1983, per legislative mandate.

Department of Corrections chapters 1-19, 25, 26, 41, 42 and 43 are addressed under separate document which sets forth new agency rules.

Transfer without change the following chapters from the Department of Social Services [770] to the Department of Corrections [291] as enumerated. In some cases the chapter titles have been changed.

Department of Social Services [770]		Department of Corrections [291]	
Chapter	Title	Chapter	Title
15	Jail Facilities	50	Same
16	Adult Correctional Institutions	20	Same
17	Iowa State Penitentiary	21	Same
18	Iowa State Men's Reformatory	22	Same
19	Women's Reformatory	23	Iowa Correctional Institution for Women
20	Iowa Security and Medical Facility	27	Same
21	Riverview Release Center	28	Same
22	Medium Security Institutions	24	Medium Security Unit
23	Iowa State Industries	37	Same
24	Halfway Houses, Work Release and Furlough	44	Work Release
26	Parole and Probation	45	Parole
27	Interstate Compact for the Supervi- sion of Parolees and Probationers	46	Same

Department of Social Services [770] Chapter 25, Community-Based Corrections, is rewritten as Department of Corrections [291], Chapter 40, Community-Based Corrections Administration, under separate document.

**CORRECTIONS, DEPARTMENT OF**[291] (*cont'd*)

The following Department of Corrections chapters are reserved for future use: 29-36 (inclusive); 38 and 39; 47-49 (inclusive).

[Filed emergency 8/29/83, effective 10/1/83]

[Published 9/14/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/14/83.

**ARC 4022****ENERGY POLICY COUNCIL**[380]

Pursuant to the requirements of the Department of Health and Human Services (DHHS) and the Social Security Administration (SSA), as set forth in Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Volume 45, Code of Federal Regulations (CFR) Part 96, subpart h, and under the authority granted by the 1983 Iowa Acts, Senate File 556, section 11, the Iowa Energy Policy Council adopts emergency rules rewriting 380—Chapter 14, Low Income Home Energy Assistance Program (LIHEAP).

The Low Income Home Energy Assistance Program provides assistance to eligible households to offset the rising costs of home heating that are excessive in relation to household income.

In compliance with Iowa Code section 17A.4(2), the council finds that public notice is impracticable and contrary to the public interest in that the LIHEAP becomes effective October 1, 1983 by federal legislation. Statewide hearings have been conducted for the 1983-84 State Plan for LIHEAP, and these emergency rules implement the recommendations developed in those public hearings.

These rules differ from the rules presently contained in Chapter 14 primarily by providing for application for weatherization assistance to be made simultaneously with an application for energy assistance as a convenience for applications, an incentive for energy conservation, and to reduce administrative costs.

The council 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 made effective on October 1, 1983, so that funds may be provided for the winter heating season.

Further criteria and guidelines may be found in the Low Income Home Energy Assistance Program State Plan and the Low-Income Home Energy Assistance Program Procedures Manual. These documents expand on the subjects contained herein in more detail, contain copies of the forms to be used by the local administering agencies, include those planning documents required for federal approval of this grant program, and set forth the methods of calculating levels of benefit and benefit payments depending upon the amount of federal funding. The actual benefit for each category of households cannot be determined until Congressional appropriations are completed. Inclusion of these documents as part of these rules would be unduly cumbersome and expensive and is not expedient due to their length and the nature of those materials. Copies are available for public inspection at the local administering agencies and are on file at the Iowa Energy Policy Council, Lucas State Office Building, Des Moines, Iowa 50319, 515/281-3943. Copies may be obtained at cost at that address and phone number.

These rules are also being filed as Notice of Intended Action, ARC 4023.

380—Chapter 14 is rescinded and the following adopted:

**CHAPTER 14  
LOW INCOME****HOME ENERGY ASSISTANCE PROGRAM**

**380—14.1(70GA,SF556,PL97-35) Purpose.** Pursuant to the requirements of the Department of Health and Human Services (DHHS) and the Social Security Administration (SSA), as set forth in Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Volume 45, Code of Federal Regulations (CFR), Part 96, subpart h, and 1983 Iowa Acts, Senate File 556, section 11, the Iowa Energy Policy Council (IEPC) will administer the 1983-84 Low-Income Home Energy Assistance Program (LIHEAP) beginning October 1, 1983 and ending September 30, 1984.

LIHEAP is intended to provide assistance to eligible households to offset the rising costs of home heating that are excessive in relation to household income. Households with incomes at or below one hundred fifty percent of the Office of Management and Budget's federal poverty income guidelines, revisions of which are published in the Federal Register, may be eligible for assistance under LIHEAP.

**380—14.2(70GA,SF556,PL97-35) Income.**

**14.2(1)** Proof of income eligibility is required. All income (each and every payment) shall be verified for each household member based on the three-month or annual period immediately preceding the application date or the most recent calendar year. Verification of income shall be made through documentary evidence in the possession of the applicant household. If documentary evidence is not available from the household, verification shall be obtained from the source of the income. There will be no self declarations of income permitted.

**14.2(2)** Household income refers to total gross cash receipts from all sources for each member of the household. Income includes but is not limited to: Money, wages and salaries before any deductions but not including food or rent in lieu of wages. Household income includes receipts from self-employment or from the household's own farm or business after deductions for farm or business expenses; also regular payments from public assistance, Supplemental Security Income (SSI), Social Security, unemployment insurance, workers' compensation, strike benefits from union funds, veterans' benefits, training and educational stipends, alimony, child support, military family allotments, or other regular support from an absent family member or someone not living in the household, government employee pensions, private pensions, regular insurance or annuity payments, and income from dividends, interest, rent, royalties, or income from estates and trusts. The local administering agencies will determine in each individual case whether income of a closely held corporation should be counted for program eligibility purposes.

**14.2(3)** For program eligibility purposes, income does not include the following: Cash over which the household has no control and which is administratively difficult to compute as determined by the local administering agency, such as reimbursement for expenses incurred in connection with employment. Also to be disregarded are loans, any assets drawn down as withdrawals from banks, savings institutions, or investments; sale of property, house or car; tax refunds, gifts, one-time

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insurance payments or compensation for injury, educational and training grants or scholarships, noncash income such as the bonus value of food and fuel produced and consumed on farms, the implied value of rent from owner-occupied farm or nonfarm housing, and those federal payments or benefits which must be excluded by law.

**14.2(4)** Further income criteria and guidelines are contained in the Iowa State Plan for the Low Income Home Energy Assistance Program and the Low Income Home Energy Assistance Program Procedures Manual as described in 14.6(70GA,SF556,PL97-35).

**380—14.3(70GA,SF556,PL97-35) Program criteria.** All households assisted by this program must meet program eligibility guidelines.

**14.3(1)** Both owner-occupied and renter-occupied households will be assisted.

**14.3(2)** Applications will be accepted from November 1, 1983 until February 29, 1984. Households must apply and meet the income eligibility guidelines and there must be program funds available before benefit payments can be made. The amount of assistance a household may receive depends upon the household income, the household size, the dwelling type, the heating region of the state in which the household is located and the type of primary heating fuel the household uses as set forth in the State Plan and Procedures Manual described in 14.6(70GA,SF556,PL97-35).

**14.3(3)** All clients applying for this program will simultaneously be making application for weatherization assistance, and IAC 380—15.2(93) shall govern such weatherization applications.

**14.3(4)** The following types of energy assistance payments may be made:

a. To home energy suppliers in the form of a single payment. One check may be issued to an energy supplier for more than one household. The client's assistance shall remain as a credit on the client account until the program assistance is expended. Program assistance will be applied only to the cost of the heating source supplying the household's nonbusiness residential primary heating fuel.

b. To eligible households directly made only as a last resort. When appropriate the local administering agency shall complete the Request for Direct Payment and submit it to the Iowa energy policy council for approval. Only after signed approval is received from the Iowa energy policy council may direct payments be made to the specified household.

c. Households which pay energy costs as an undesignated portion of rent are eligible for assistance. For administrative reasons payments shall be made jointly payable in the name of the household and the landlord but sent to the household. The grant is, however, to the household and must be treated by the landlord as any other rental payment by that household. Multiple payments shall be issued if the assistance award exceeds the monthly rental payment.

d. The assistance award for households whose primary source of heat is wood will be forwarded to the household's electric supplier. If no electric supplier exists, a direct payment may be requested.

e. The level of assistance for the program year will be determined based on the circumstances at the time of approval. If a household moves or ceases to exist, any unused funds remaining with the vendor shall be returned to the local administering agency within thirty days. If the client contacts the local administering agency

within thirty days after moving, any unused portion of the assistance award shall be forwarded to the client's new vendor or to the client at his new address. If the client fails to notify the agency of his new address within thirty days, any unused funds returned to the local administering agency shall be returned to program funds.

f. Energy crisis payments not to exceed \$150 per household may be authorized by the local administering agency where necessary to prevent an immediate threat to life or health as specified in the procedures manual referred to in 14.6(70GA,SF556,PL97-35). Applications for crisis assistance will be accepted from November 1, 1983 to March 31, 1984.

**14.3(5)** Residents of publicly assisted housing units who are vulnerable to the rising cost of heat, as defined in Federal Register, Volume 45, No. 196 260.150(1), will be assisted at the minimum benefit level by fuel type (150%) as described in the Procedures Manual referred to in 14.6(70GA,SF556,PL97-35). Evidence of vulnerability must be documented for the file.

**14.3(6)** No benefits will be paid to or on behalf of any household which is in no way responsible for payment of any portion of its energy costs.

**14.3(7)** In the event that it appears all LIHEAP funds will be expended, the Iowa energy policy council will be required to establish a priority for payments on approved households. The local administering agency must notify the Iowa energy policy council, in writing, when five percent or less of its contract program budget remains unobligated. The following prioritized payment procedure will be used.

1. Payments will be prioritized according to the date and time of application as recorded on the top of the intake form.

2. In order to be fair to the homebound and handicapped, the date and time of application shall be recorded when such household contacts the office for assistance, not when the home visit is made.

**14.3(8)** Further program criteria are contained in the Low Income Home Energy Assistance Program State Plan and the Low Income Home Energy Assistance Program Procedures Manual referred to in 14.6(70GA,SF556,PL97-35).

**380—14.4(70GA,SF556,PL97-35) Local administering agencies.** The Iowa energy policy council shall administer the LIHEAP by subcontracting with community action agencies (CAAs) as local administering agencies meeting program and fiscal requirements.

**14.4(1)** The CAAs will be required to sign a delegate agreement which specifies allowable program activities, DHHS regulations, special conditions, program and fiscal reporting to IEPC, participation forms and audit requirements.

**14.4(2)** Reserved.

**380—14.5(70GA,SF556,PL97-35) Appeal and hearing procedure.** The following appeal and hearing procedure shall be used.

**14.5(1)** When an applicant is denied assistance or believes that the assistance amount was not accurately determined, the applicant has thirty calendar days from the date of the assistance or denial letter to appeal that decision by mailing or delivering the request for appeal to the CAA.

**14.5(2)** If the local administering agency neither approves nor denies the application within thirty calendar days of receipt of a complete application, the applicant may treat the failure to act as a denial. The

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applicant then has thirty additional calendar days to appeal.

**14.5(3)** To appeal, the applicant (claimant) must contact the agency at which the application was made and tell the agency of the wish to appeal, what action the applicant would like taken and any other information which might affect the decision. All appeals must be in writing. Those claimants unable to read or write shall have the CAA assist them in reading, writing, or understanding appeals, hearings, and their associated procedures.

**14.5(4)** The CAA will act on the claimant's request and notify the claimant of the result in writing within seven calendar days of the date an appeal was requested (postmark date if sent in mail).

**14.5(5)** If the claimant does not agree with the decision reached, the claimant may write the CAA again within seventeen calendar days of the decision (postmark date if sent in mail) and request that a state hearing be held. The claimant must explain in writing why the agency's decision is being appealed and include any information which might affect the decision.

**14.5(6)** The agency will then forward all information about the request for a hearing to the state and a hearing will be scheduled. The claimant will receive written notice of a state scheduled hearing from the director of the energy policy council. The notice will include the date, time and place of the hearing. State hearings may be held by telephone at a mutually convenient time. Prior to the hearing the agency will provide an opportunity for the claimant to review the case file and any written evidence that will be used in the hearing. An informal conference with the director or appropriate state staff personnel may be requested for the purposes of discussing actions taken and resolving the issues raised in the request for hearing.

**14.5(7)** The rules of Iowa Administrative Code, 380—Chapter 11, Contested case proceedings, shall govern appeals to the Iowa energy policy council.

**380—14.6(70GA,SF556,PL97-35) Further criteria.** The 1983-84 Low Income Home Energy Assistance Program State Plan, the 1983-84 Low Income Home Energy Assistance Program Procedures Manual and Assistance Award Criteria for 1983-84 are incorporated by reference as part of these rules. These documents as well as delegate agreements and IEPC reporting forms are on file at the above address and are available for public inspection between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Copies of these documents may be obtained at cost by contacting the Energy Assistance Division, Iowa Energy Policy Council, Lucas State Office Building, Des Moines, Iowa 50319, 515/281-3943.

**380—14.7(70GA,SF556,PL97-35) Public information.** All parties interested in further information concerning the Low Income Home Energy Assistance Program should contact the Energy Assistance Division, Iowa Energy Policy Council, Lucas State Office Building, Des Moines, Iowa 50319, 515/281-3943.

These rules are intended to implement the 1983 Iowa Acts, Senate File 556, section 11, and PL 97-35, 45CFR Part 96, subpart h.

[Filed emergency 8/24/83, effective 10/1/83]

[Published 9/14/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/14/83.

## ARC 4033

## INSURANCE DEPARTMENT[510]

Pursuant to the authority of Iowa Code section 505.8, the Iowa Department of Insurance hereby emergency amends Chapter 34, "Nonprofit Health Service Corporations."

As amended, nonprofit health service corporations will be required to submit the annual report required by Iowa Code section 514.9 on the National Association of Insurance Commissioners' annual statement blank. The existing requirement that all items subject to departmental approval be submitted sixty days prior to their intended effective date has been dropped.

In accordance with Iowa Code section 17A.4(2), the department finds that public notice and participation is unnecessary in that these changes are being made at the request of the nonprofit health service corporations affected thereby. 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 August 26, 1983 as it confers a benefit on a segment of the public in that these amendments are being made at the request of the entities subject to these rules. In addition, these rules drop the existing time restriction on making filings with the department.

These rules were adopted by the commissioner of insurance on August 26, 1983.

These rules are intended to implement Iowa Code sections 17A.3(1)"a" and 514.9.

ITEM 1. Rule 510—34.3(514) is amended to read as follows:

**510—34.3(514) Annual report requirements.** Each corporation subject to Iowa Code chapter 514 shall file an annual statement on the ~~most recently available~~ National Association of Insurance Commissioners' annual statement blank ~~in use~~.

ITEM 2. Rule 34.5(514) is amended to read as follows:

**510—34.5(514) Filing requirements.** All matters subject to the department's approval under Iowa Code chapter 514 shall be submitted ~~at least sixty days~~ prior to the intended effective date.

[Filed emergency 8/26/83, effective 8/26/83]

[Published 9/14/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/14/83.

## ARC 4030

### PLANNING AND PROGRAMMING[630]

Pursuant to the authority of Iowa Code section 7A.3, chapter 17A, and Governor's Executive Order 47 (1982) the Office for Planning and Programming adopts amendments to Chapter 19, "Iowa Job Training Partnership Act (JTPA)"; Iowa Administrative Code.

These rules establish a state level complaint resolution procedure and a service delivery area grant recipient procedure to receive, investigate and resolve grievances and conduct hearings to adjudicate disputes under Public Law 97-300.

The agency 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 October 1, 1983 as it confers a benefit on the public to assure full and accurate compliance with the program's requirement for a complaint procedure.

Notice of Intended Action was published in IAB July 20, 1983 as ARC 3914. Changes from such notice are as follows:

19.21(1)"c", deleted "on its own motion or".

19.21(8)"c"(2), discrimination complaint filing procedures were added which are consistent with and required by office of civil rights, department of labor requirements.

19.21(14)"b", added "or when either party objects".

19.21(14)"e", added reference to Iowa Code section 17A.13.

19.21(17), deleted "his".

Subrule 19.11(1) - "Conflict of interest", is deleted to allow additional review of public comments received and to avoid delaying the filing of the complaint procedures.

This rule will be implemented emergency and will become effective October 1, 1983.

Add a new rule to chapter 19 as follows:

#### **630—19.21(7A, 17A, 29 U.S.C. 1501 et seq.) Complaint procedure.**

##### **19.21(1) Applicability.**

a. These rules indicate and specify the minimum procedural requirements for resolving complaints, including audit disputes, arising in connection with the Job Training Partnership Act (JTPA) program operated by the office for planning and programming, the service delivery area (SDA) grant recipients, and other subrecipients alleging a violation of the JTPA, regulations, grant or other agreements under the Act.

b. These rules do not apply to proceedings that determine law or policy of general applicability based on legislative fact nor to automatic grant adjustments for classes of contractors, subcontractors or participants when said adjustments are required by state or federal law.

c. Complaints may be brought by participants, subcontractors, and other interested persons. The office for planning and programming may also initiate complaints as required by statute or constitution in order to determine the legal rights, duties, or privileges of a party which are at issue.

**19.21(2) Definitions.** As used in this complaint procedure the following definitions apply, unless the context otherwise requires:

a. "Complaint" means an alleged injury, injustice or wrong and includes the term grievance.

b. "Contested case" means a proceeding in which the legal rights, duties or privileges of a party are required by constitution or statute to be determined by the office for planning and programming, after an opportunity for an evidentiary hearing.

c. "Director" means the director of the office for planning and programming.

d. "Dismissal" means that a complaint will not be pursued for the following reasons:

(1) The alleged violation is not one that arises in connection with the JTPA regulations, grant, or other agreements, under the Act; or

(2) No useful purpose would be derived in pursuing further action on the complaint.

e. "Final action" means resolution of the complaint by withdrawal, settlement agreement, dismissal, or final decision.

f. "JTPA" means the Job Training Partnership Act of 1982, Public Law 97-300.

g. "Presiding officer" means the person assigned to preside over a hearing or render a final decision whether that be the director or an administrative hearing officer appointed according to Iowa Code chapter 17A.

h. "Settlement agreement" means that a written agreement has been executed which recites the subject of the controversy and the solution mutually agreed upon by the parties, including a statement of the action to be taken, or to be refrained from, by each of the parties.

i. "State" for the purpose of this complaint procedure means the Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319.

j. "Withdrawal" means a complainant has requested prior to a hearing that no further action be taken by the state on the complaint.

**19.21(3) Publication, distribution and notification of complaint procedure.** Service delivery area grant recipients shall provide participants, upon enrollment into employment or training, with a written description of the complaint procedure including notification of their right to file a complaint and instructions on how to do so. Persons not familiar with English shall be provided with a written or oral translation into the language understood by them. When a person is illiterate or semiliterate, such person shall be advised of each right to the satisfaction of that person's understanding. The service delivery grant recipient and the state shall provide a complaint form and filing instructions upon request.

Upon filing a complaint and at each stage thereafter each complainant shall be notified in writing of the next step in the complaint procedure.

**19.21(4) Confidentiality.** The identity of any person who has furnished information relating to, or assisting in, an investigation of a possible violation of JTPA shall be kept confidential to the extent possible, consistent with due process and a fair determination of the issues.

**19.21(5) Each service delivery area (SDA) grant recipient and administrative entity shall establish procedures for resolving any complaint alleging a violation of JTPA, regulations, grant or other agreements under JTPA by the SDA grant recipient or subrecipient. These procedures shall include:**

a. The handling of complaints and grievances arising in connection with JTPA programs operated by each SDA grant recipient and subrecipient;

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b. Procedures for resolving complaints arising from actions such as audit disallowances or the imposition of sanctions, taken as a result of audit findings, investigations or monitoring;

c. The opportunity to file a complaint within one year of the occurrence prompting the complaint; except for complaints alleging fraud or criminal activities, or within one hundred and eighty days for complaints alleging discrimination prohibited under the JTPA, regulation, grant or other agreements under JTPA.

d. An opportunity for a hearing, within thirty days of filing, written notice of the date, time, and place of the hearing, and an opportunity to present evidence;

e. A written decision within sixty days of the filing of the complaint; and

f. Notification of the right to request a review of the complaint by the state where complainant does not receive a decision at the SDA grant recipient level within sixty days of filing or receives a decision unsatisfactory to the complainant.

**19.21(6)** Grievance or complaint procedure at the employer level.

a. SDA grant recipients and other subrecipients shall assure that other employers, including private-for-profit employers of participants under JTPA also have a grievance procedure relating to the terms and conditions of employment available to their participants.

b. Employers under paragraph "a" of this subrule may operate their own grievance system or may utilize the grievance system established by the SDA grant recipient. Employers shall inform participants of the grievance procedure they are to follow.

c. An employer system shall provide for a review, in accordance with subrule 19.21(5), of an employer's decision by the SDA grant recipient upon request by the complainant.

**19.21(7)** State review. If a complainant does not receive a decision at the SDA level within sixty days of filing the complaint or receives a decision unsatisfactory to the complainant, the complainant may request a review of the complaint by the state.

a. To be considered, such a request must be filed with the state within ten days of receipt of the adverse decision or ten days from the date on which the complainant should have received a decision.

b. No complainant subject to the procedure specified in 19.21(5) may file a complaint with the state until the SDA grant recipient level procedures have been exhausted, unless a decision has not been issued within the time period required by 19.21(5), paragraph "e".

c. The request shall be filed as noted in subrule 19.21(8), paragraph "e".

d. The request shall be in writing and shall include:

- (1) The date of filing the appeal;
- (2) The names and addresses of all parties involved;
- (3) The grounds upon which the appeal is based; and
- (4) Any additional evidence which will warrant a review by the state.

**19.21(8)** Filing a complaint with the state.

a. Who may file. Any interested person, organization or agency may file a complaint.

b. Grounds. The sole ground for filing a complaint under this rule is to adjudicate or otherwise resolve an allegation that the governor, the office for planning and programming, the state job training coordinating council, local elected officials or a service delivery area private industry council, consortium, planning grant recipients, administrative entity or subrecipient violated JTPA, the

federal or state regulations, grants, contracts or other agreements under JTPA.

c. Time.

(1) Except for complaints alleging fraud, complaints shall be filed within one year of the alleged occurrence.

(2) Complaints alleging any activity which excludes from participation in, denies the benefits of, subjects to discrimination under, or denies employment in the administration of or in connection with any such program because of race, color, religion, sex, national origin, age, handicap, or political affiliation or belief shall be filed no later than one hundred and eighty days from the date of the alleged activity. When discrimination based complaints are received by the state or SDA grant recipient, they shall be forwarded to the Regional Office of Civil Rights, Department of Labor, (OCR/DOL) 911 Walnut Street, Kansas City, Missouri 64106 for their processing. OCR/DOL complaint forms shall be made available by the state and forwarded to SDA grant recipients for their use.

d. Contents. Complaints shall be clearly portrayed as such by the complainant and shall satisfy the following requirements:

(1) Complaints shall be legible and signed by the complainant or the complainant's authorized representative;

(2) Complaints shall pertain to a single subject, situation or set of facts;

(3) The name, address and phone number (or TTY number) shall be clearly indicated. If the complainant is represented by an attorney or other representative of the complainant's choice, the name, address and phone number of the representative shall also appear in the complaint;

(4) Complaints shall state the name of the party or parties complained against and, if known to the complainant, the address and phone number of the party or parties complained against;

(5) Complaints shall contain a clear and concise statement of the facts, including pertinent dates, constituting the alleged violations;

(6) Complaints shall cite the provisions of JTPA, regulations, grants or other agreements under JTPA believed to have been violated;

(7) Complaints shall state the relief or remedial action(s) sought; and

(8) Copies of documents supporting or referred to in the complaint shall be attached to the complaint;

(9) Complaints shall state whether or not an oral hearing is requested.

e. Where filed. Complaints shall be filed with the Complaint Officer, Division for Human Resources Coordination, Office for Planning and Programming, 523 East 12th Street, Des Moines, Iowa 50319.

**19.21(9)** Acknowledgment of complaint and notice of opportunity for hearing.

a. A complaint shall be deemed filed with the state when it has been received by the complaint officer in a form which satisfies the requirements of subrule 19.21(8).

b. Upon receipt of a complaint in proper form, the office for planning and programming shall send, by personal service or by certified mail, a copy of the complaint and a letter of acknowledgment and notice to the respondent and complainant within seven days. The letter of acknowledgment and notice shall contain the filing date, the docket number, and notice of the following opportunities:

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(1) The opportunity for informal resolution of the complaint at any time before a contested case hearing is convened;

(2) The opportunity to request, within fifteen days of the date of filing, a hearing;

(3) The opportunity for a hearing within thirty days of filing the complaint;

(4) The opportunity to present written evidence on the complaint; and

(5) A state review of the merits of the complaint and a final decision within sixty days of the filing of the complaint;

(6) The opportunity to appeal to the Secretary of the United States Department of Labor should the state fail to issue a decision within sixty days.

The letter of acknowledgment and notice shall also state the requirement that informal settlement efforts take place prior to rendering a final decision or prior to the existence of the right to exercise the opportunity for hearing.

c. A representative designated by the state will be notified concurrently of the filing of a complaint and be required to take action as noted in 19.21(10).

**19.21(10) Settlement.** A controversy may, unless precluded by statute, be informally settled by mutual agreement of the parties any time before or after a controversy is formally identified by the filing of a complaint, notice, or petition, and before a contested case hearing is convened. The settlement shall be effected by a settlement agreement or a statement from the complainant that the complaint has been withdrawn or resolved to complainant's satisfaction. The complaint officer shall acknowledge the informal settlement and notify the parties of the final action. With respect to the specific factual situation which is the subject of controversy, the informal settlement shall constitute a waiver, by all parties of the formalities to which they are entitled under the terms of the Iowa administrative procedure Act, Iowa Code chapter 17A, JTPA and the rules and regulations under JTPA.

Upon receipt of the notice given pursuant to 19.21(9), paragraph "c", the representative shall gather facts relative to the merits of the allegations and immediately attempt to informally resolve the complaint.

a. When an informal resolution has not been accomplished and a hearing has not been requested, the representative designated by the state shall prepare and submit to the complaint officer, within forty-five days of the filing date, a recommendation which shall include:

(1) A summary of the fact-finding and settlement efforts conducted; and

(2) A recommendation supported by documentation and references to the JTPA, regulations, grants, or other agreements under JTPA.

b. The complaint officer shall send by certified mail or deliver by personal service, the recommendation submitted by the representative. The recommendation shall contain a notice of the right to appeal the recommendation if filed within seven days of receipt. On receipt of an appeal filed within seven days of notice, the complaint officer shall notify all parties of the appeal. The appeal shall include:

(1) The grounds upon which the appeal is based; and

(2) Any additional evidence which will warrant a final agency review.

Unless the appeal is filed within seven days of receipt of notice, the appeal shall not be entertained for any reason.

**19.21(11) Procedure for requesting a hearing.**

a. A request for a hearing shall be made in writing within fifteen days of the filing of a complaint and shall include:

(1) The date of filing the complaint;

(2) The names and addresses of all parties involved; and

(3) The date of filing the request for hearing.

b. A request for hearing may be made concurrently with the filing of a complaint and may be initiated by the state on its own motion.

**19.21(12) Notice of hearing.**

a. On receiving a request for hearing which satisfies subrule 19.21(11), the presiding officer shall give all parties at least seven days' written notice of the hearing, either by personal service or certified mail. The notice may be waived in case of emergency, as determined by the presiding officer, or for administrative expediency upon agreement of the interested parties. A person or organization potentially or directly affected by the outcome and who has applied in writing to the state shall also be given written notice.

b. Contents of notice. Notice of hearing shall include:

(1) A statement of the date, time, place, nature, and manner of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes, rules or regulations involved; and

(4) A short, plain statement of the matters asserted. If the state is unable to recite the matters in detail at the time the notice is given, the notice may be limited to a statement of the issues involved.

(5) A statement informing all parties of their opportunities at hearing:

(a) Opportunity for the requesting party to withdraw the request for hearing before the hearing;

(b) Opportunity to request rescheduling of the hearing for good cause;

(c) Opportunity to be represented by an attorney or other representative of their choice;

(d) Opportunity to introduce into the record documentary evidence and bring witnesses to the hearing;

(e) Opportunity to have records or documents relevant to the issues produced by their custodian when such records or documents are kept by or for the state, contractor or its subcontractor in the ordinary course of business and where prior reasonable notice has been given to the presiding officer;

(f) Opportunity to question any witnesses or parties;

(g) The right to an impartial presiding officer; and

(h) A final written decision from the presiding officer to the complainant(s), and any other interested parties, within sixty days of the filing of the complaint.

**19.21(13) Prehearing subpoena and discovery rights and procedures.** The presiding officer shall, upon request, issue subpoenas in accordance with the provisions of Iowa Code section 17A.13.

**19.21(14) Conduct of hearing.**

a. The hearing shall be held within thirty days of the filing of the complaint.

b. Hearings may be conducted in whole or in part by telephone. When it is impractical for the state to conduct an in-person hearing, unless either party objects, a telephone hearing may be scheduled.

c. After the presiding officer has called the hearing to order, the parties may be given opportunity by the

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presiding officer to present opening statements; thereafter the parties shall present their evidence in such sequence as determined by the presiding officer.

d. When a witness is introduced to provide testimony or evidence in a contested case hearing, the witness shall, prior to testifying, be identified by name and address and shall take an oath or affirmation administered by the presiding officer.

e. The rules of evidence, the contents of the record and the functions of the presiding officer shall be as allowed under Iowa Code sections 17A.12, 17A.13, 17A.14, and 17A.17.

**19.21(15) Ex parte communications.**

a. Presiding officer. Where the presiding officer desires to communicate with any party or person with a personal interest in or engaged in prosecuting or advocating in either the case under consideration before them or a pending factually related case involving the same parties, that officer shall notify these persons or parties indicating the time and place at which all affected persons or parties may meet to discuss the matters.

However, without notice and opportunity for all parties to participate, individuals assigned to render a proposed or final decision, or to make findings of fact and conclusions of law in a contested case, may communicate with members of the state and may have the aid and advice of persons other than those with a personal interest in, or those engaged in prosecuting or advocating in, either the case under consideration or a pending factually related case involving the same parties.

b. Parties or their representatives. Where any party or their representative desires to discuss certain matters with the presiding officer, they should notify the presiding officer and the opposing party of the desire to meet with the presiding officer, and the presiding officer, upon notification of the affected persons or parties, may meet to discuss any matters.

c. Sanction. The recipient of a prohibited communication as provided in Iowa Code section 17A.17, may be required to submit the communication, if written, or a summary of the communication, if oral, for inclusion in the record of the proceedings. As sanctions for violations

of any prohibited communication provided in Iowa Code section 17A.17, a decision may be rendered against a party who violates these rules, or for reasonable cause shown the director may censor, suspend, or revoke a privilege to practice before the office, or for reasonable cause shown after notice and opportunity to be heard, the director may censor, suspend, or dismiss any state personnel.

**19.21(16) Decision.** The decision shall conform to the following requirements:

a. Timing. The decision shall be made within sixty days of the filing of the complaint unless the period is extended with the written consent of all parties for good cause.

b. Contents. A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record, and, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings. Each conclusion of law shall be supported by cited authority or by a reasoned opinion. The decision shall include:

(1) Notice of the right to file an appeal to the governor within ten days of the receipt of the decision; or

(2) Notice of the right to file an appeal to the Office of Civil Rights, U.S. Department of Labor, 911 Walnut, Room 100, Kansas City, Missouri 64106 for complaints charging discrimination in accordance with 19.21(8), paragraph "c", subparagraph (2).

**19.21(17) Governor's review.** When requested, the governor or designee shall independently review a complaint and decision. The governor's review shall result in a decision within thirty days of the request and shall be final.

This rule is intended to implement Executive Order 47 and 29 U.S.C. 1501 et seq.

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## ARC 4020

### ARTS COUNCIL[100]

Pursuant to the authority of Iowa Code sections 304A.4 and 304A.6, the Arts Council hereby adopts amendments to Chapter 2, "Policies and Procedures", Iowa Administrative Code.

Notice of Intended Action was published in IAB 19, March 16, 1983, as ARC 3610.

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

This rule will become effective on October 19, 1983.

This rule is intended to implement Iowa Code sections 304A.4 and 304A.6.

ITEM 1. Amend subrule 2.3(2), paragraph "a", subparagraph (3), and add the following new subparagraphs (5) and (6):

(3) Individuals applying for and receiving grant funds from the general grants-in-aid program must be *legal* residents of Iowa ~~for the duration of the grant period.~~

(5) *At the sole discretion of the Iowa arts council, legal residency will be based on evidence presented by the applicant from the following: Valid Iowa voter's registration, proof of Iowa income tax payment, or valid Iowa driver's license.*

(6) *Applicant organizations must be incorporated under the Iowa nonprofit corporation Act.*

ITEM 2. Amend subrule 2.3(6) to read as follows:

**2.3(6)** Mini-grants. Applications may be submitted throughout the year for the mini-grant program. Groups and individuals may apply for matching funds for projects unforeseen or undeveloped at the time of the general grants program, and *must explain why the application could not have been made in time for the general grants program.* The maximum amount awarded in this program is five hundred dollars.

ITEM 3. Amend subrule 2.3(7), paragraph "a", subparagraph (1), to read as follows:

(1) Grants must be matched dollar-for-dollar (in cash) by funds ~~from~~ *allocated directly by* local government. (First-year applicants may request up to one thousand dollars, second-year applicants may request up to two thousand dollars, and third-year applicants may request up to three thousand dollars. Three years of funding is the limit for any applicant and *the applicant is eligible to apply for three successful applications over a period of five years.* ~~only~~ Only one successful community partnership incentive application will be accepted per year from any one council.)

ITEM 4. Amend subrule 2.3(10), paragraph "a", subparagraph (1), to read as follows:

(1) Any nonprofit *tax-exempt* organization may apply for a solo artists program; however funding preference will be given organizations that might not otherwise locate funds to cover expenses of the program. The local sponsor pays one-half of the annually published fee and the Iowa arts council pays the balance.

ITEM 5. Amend subrule 2.3(10), paragraph "a", subparagraph (7), to read as follows:

(7) Sponsors must submit an evaluation form about their solo artists program immediately following the event *and will not qualify for further funding if evaluations are outstanding.* ~~Before an~~ An artist will be paid by the Iowa arts council for a program ~~that has taken place;~~ *this evaluation must be received by the Iowa arts council*

*as soon as it has taken place. The local sponsor's portion of the fee is due on the day of the artist's visit.*

[Filed 8/19/83, effective 10/19/83]

[Published 9/14/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/14/83.

## ARC 4019

### ARTS COUNCIL[100]

Pursuant to the authority of Iowa Code sections 304A.4 and 304A.6, the Arts Council hereby adopts amendments to Chapters 2, "Policies and Procedures," and 3, "Forms," Iowa Administrative Code.

Notice of Intended Action was published in IAB 17, February 16, 1983 as ARC 3568. This rule also filed emergency, ARC 3567.

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

This rule will become effective on October 19, 1983.

ITEM 1. Insert new subrule 2.3(18) which reads as follows:

**2.3(18)** Youth arts alternative program. The youth arts alternative program is administered by the arts council and funded by the council and the juvenile justice advisory council of the criminal and juvenile justice planning agency. The project places professional artists in juvenile facilities, shelter-care facilities, detention centers, group homes, residential treatment centers, or alternative community-based treatment centers for periods of one day to one week. The project provides local sponsors a choice of three programming formats that have proved successful with other arts council sponsors: 2.3(9), Artists-in-schools; 2.3(10), Solo artists program; and 2.3(11), Touring arts team.

a. Program requirement. Local sponsors wishing to participate must complete and return application form P-37. Sponsors must agree to the following:

(1) The sponsor must define local objectives and choose a program format compliant with the artists-in-schools, solo artist program, or touring arts team program of the Iowa arts council.

(2) The sponsor must provide proof of nonprofit, federally tax-exempt status.

(3) The artist chosen to carry out the program must be approved by the Iowa arts council from an approved list of artists the same as stated in 2.3(9)"c".

(4) The sponsor must provide at least fifty percent of the program cost in cash or in-kind matching funds.

(5) The sponsors must provide necessary supplies for the program and adequate space for "arts" instruction.

b. Award of funds. Staff evaluates each application to see if program requirements are met. Applications are reviewed and approved on a first-come-first-served basis. Upon allotment of funds, no more applications will be accepted.

c. Contracts and reports. The sponsor must enter into a legal contract with the arts council using contract P-38. Upon termination of the project, sponsors must complete and return final report form P-36.

d. Evaluation. The staff evaluates all programs on the basis of adherence to guidelines and data contained in

## ARTS COUNCIL[100] (cont'd)

final report form P-36. Eligible applicants may request second programs if all program funds have not been previously allocated.

ITEM 2. Insert new rule 100—3.10(304A) which reads as follows:

**100—3.10(304A) Youth arts alternative forms.** The following are forms used in carrying out the youth arts alternative program.

**3.10(1)** Youth arts alternative application form P-37 requires basic information from the applicant, program choices, assurances of compliance with program guidelines, and a signature from an authorizing official.

**3.10(2)** Youth arts alternative contract form P-38 legally commits the sponsor, the participating artist or artists, and the arts council to fulfill their individual responsibilities as stated in the program guidelines.

**3.10(3)** Final report form P-36 requires fiscal accounting of how project funds were expended.

[Filed 8/19/83, effective 10/19/83]  
[Published 9/14/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/14/83.

**ARC 4037****COMPTROLLER, STATE[270]**

Pursuant to the authority of Iowa Code section 8.6, the State Comptroller hereby adopts the following amendment to Chapter 1, Iowa Administrative Code. The 1983 Iowa Acts, Senate File 527 amends Iowa Code sections 8.15 and 17A.4.

This amendment provides for interest payments by state agencies, after January 1, 1984, on claims that are unpaid after sixty days of receipt by the purchasing agency. It also requires state agencies to send copies of this rule, in the number requested, to all trade and occupational associations that have registered their name and address with the agency.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on July 20, 1983, under ARC 3889. The State Comptroller adopted this amendment on August 26, 1983, after considering any comments received. The adopted amendment is identical to the Notice of Intended Action.

The effective date of this amendment will be January 1, 1984.

This rule is intended to implement Iowa Code sections 8.15 and 17A.4.

The following amendment is adopted:

Rule 1.1(8) is amended by adding the following new subrules and renumbering subrules 1.1(2) to 1.1(4) as 1.1(4) to 1.1(6):

**1.1(2)** Interest on claims. Any claim received after January 1, 1984, for services, supplies, materials or a contract which is payable from the state treasury that remains unpaid after sixty days following the receipt of the claim or the satisfactory delivery; furnishing or performance of the services, supplies, materials or contract whichever date is later, the state shall pay interest at the rate of one percent per month on the unpaid amount of the claim. This paragraph does not apply to claims against the state under chapters 25 and 25A or the claims paid by federal funds. The interest shall be

charged to the appropriation or fund to which the claim is certified.

**1.1(3)** Availability of rules. All state agencies are required to mail the number of copies of the proposed rule as requested to the state office of a trade or occupational association which has registered its name and address with the agency. The trade or occupational association shall reimburse the agency for the actual cost incurred in providing the copies of the proposed rule.

[Filed 8/26/83, effective 1/1/84]  
[Published 9/14/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/14/83.

**ARC 4024****CREDIT UNION DEPARTMENT[295]**

Pursuant to the authority of Iowa Code section 533.4(13), the Credit Union Review Board on August 22, 1983 adopted amendments to Chapter 5 of the IAC relating to small employee groups.

Notice of Intended Action was published as ARC 3855 in the July 6, 1983 Iowa Administrative Bulletin. A public hearing was held on July 27, 1983 and written comments were received which resulted in the board's decision to make the following changes in the proposed amendments:

Subrules 5.1(1) and 5.1(2), remove the phrase "provided such group is not eligible for membership in an existing Iowa state chartered credit union."

Rule 5.2, remove the phrase "that meets the requirements of subrules 5.1(1) and 5.1(2)."

Rule 5.5, reword the requirements for frequency of application.

These amendments are intended to implement Iowa Code section 533.4(13).

The amendments shall become effective October 19, 1983.

ITEM 1. Amend subrule 5.1(2) to read as follows:

**5.1(2)** One hundred ~~one to three hundred seven hundred fifty~~ employees having the common bond of a single employer may apply for designation as a small employee group. The administrator, ~~after notice and hearing~~, shall make such determination based on the following criteria:  
No changes in paragraph "a", "b", "c" or "d".

ITEM 2. Amend rule 5.2(533) to read as follows:

**295—5.2(533) Application.** A credit union desiring to serve a small employee group shall submit "Application to Serve a Small Employee Group" (C.U.16) which is available from the Credit Union Department, ~~300 Fourth Street, 1st floor, Executive Hills West, 1209 E. Court Avenue, Des Moines, Iowa, 50319.~~

ITEM 3. Amend rule 5.5(533) to read as follows:

**295—5.5(533) Frequency of application.** A credit union may have only ~~one~~ four applications pending at any given time.

[Filed 8/25/83, effective 10/19/83]  
[Published 9/14/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/14/83.

**ARC 4025****CREDIT UNION DEPARTMENT[295]**

Pursuant to the authority of Iowa Code section 533.42 the Credit Union Review Board on August 22, 1983 rescinded IAC Chapter 7, "Credit Union Share Drafts".

Repeal of this chapter is due to the enactment of 1983 Iowa Acts, Senate File 90, which became effective May 11, 1983.

Notice of Intended Action was published as ARC 3856 in the July 6, 1983 Iowa Administrative Bulletin. The public was advised written comments would be received until July 27, 1983. Oral comments were also encouraged. Written comments were received from four interested parties and all four supported repeal of this chapter.

This rescission shall become effective October 19, 1983.

Chapter 7, "Credit Union Share Drafts", is rescinded in its entirety.

[Filed 8/25/83, effective 10/19/83]  
[Published 9/14/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/14/83.

shall include, but not be limited to, the date, time and place of the hearing, the name of the beginning farmer and a general description of the project and the right of individuals to request a local hearing.

The hearing shall be held at the authority's offices in Des Moines or other location stated in the notice unless, at or prior to the time scheduled for the hearing, the authority receives a written request that a local hearing be held. In the event a local hearing is requested, the previously scheduled hearing may be canceled, the secretary or executive administrator of the authority may set a date, time, and place for a local hearing and notice of the hearing in the local area shall be published in the time and manner stated above. The date, time and place for the local hearing shall be reasonably convenient to persons affected by the project.

Public hearings may be held by a staff member, board member of the authority, *an appointee or employee of the authority*, or other qualified hearing officer.

[Filed 8/26/83, effective 10/19/83]  
[Published 9/14/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/14/83.

**ARC 4046****IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523]**

Pursuant to the authority of Iowa Code section 175.6(14), the Iowa Family Farm Development Authority hereby adopts an amendment to Chapter 2, Iowa Administrative Code, regarding the Beginning Farmer Loan Program.

Notice of Intended Action regarding this amendment was published in the IAB on July 6, 1983 as ARC 3845.

The rule proposed in the Notice of Intended Action has been revised to incorporate some changes proposed by the Administrative Rules Committee. This amendment clarifies in what publications the notice of public hearing may be placed and who may conduct the hearing. The adopted amendment retains the necessity of including in the notice the right to request a local hearing.

This rule was adopted in final form on August 17, 1983 and will become effective October 19, 1983.

This rule is intended to implement Iowa Code sections 175.2(11), 175.12, 175.19(2) and 175.33.

The following amendment is adopted.

Amend rule 2.12(175), first and third unnumbered paragraphs, as follows:

**523—2.12(175) Issuance of bond.** The authority will not issue a bond for the purpose of financing a project for a specific beginning farmer unless, prior to the issuance, the authority has conducted a public hearing conforming to the applicable requirements of the United States Internal Revenue Code of 1954 and the regulations promulgated thereunder. Upon receipt of a completed application, in a form prescribed by the authority, the secretary or executive administrator of the authority may set a date, time and place for the hearing. The hearing shall be preceded by a notice thereof published at least fourteen days prior to the date of the hearing in a newspaper of general circulation *and available to residents* in the county where the project is located. The notice

**ARC 4047****IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523]**

Pursuant to the authority of Iowa Code section 175.6(14) the Iowa Family Farm Development Authority hereby adopts an amendment to Chapter 4, Iowa Administrative Code, regarding the Soil Conservation Loan Program.

Notice of Intended Action regarding this amendment was published in the IAB on July 6, 1983 as ARC 3846.

The rule proposed in the Notice of Intended Action has been revised to incorporate some changes proposed by the Administrative Rules Review Committee. This amendment clarifies in what publications the notice of public hearing may be placed and who may conduct the hearing. The adopted amendment retains the necessity of including in the notice the right to request a local hearing.

This rule was adopted in final form on August 17, 1983 and will become effective October 19, 1983.

This rule is intended to implement 1982 Iowa Acts, Chapter 1243.

The following amendment is adopted.

Rule 523—4.4(175) first and third unnumbered paragraphs are amended to read as follows:

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

## IOWA FAMILY FARM DEVELOPMENT AUTHORITY[523] (cont'd)

shall include, but not be limited to, the date, time and place of the hearing, the name of the landowner(s) or operator(s) and a general description of the project and the right of individuals to request a local hearing.

The hearing shall be held at the authority's offices in Des Moines, or other location stated in the notice unless at or prior to the time scheduled for the hearing, the authority receives a written request that a local hearing be held. In the event a local hearing is requested, the previously scheduled hearing may be canceled, the secretary or executive administrator of the authority may set a date, time, and place for a local hearing and notice of the hearing in the local area shall be published in the time and manner stated above. The date, time and place for the local hearing shall be reasonably convenient to persons affected by the project.

Public hearings may be held by a staff member, board member of the authority, *an appointee or employee of the authority*, or another qualified hearing officer.

[Filed 8/26/83, effective 10/19/83]  
[Published 9/14/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/14/83.

## ARC 4036

MERIT EMPLOYMENT  
DEPARTMENT[570]

Pursuant to the authority of Iowa Code section 19A.9, the Iowa Merit Employment Commission adopts an amendment to Chapter 2, "State Service and Its Divisions", Iowa Administrative Code.

Iowa Code Chapter 20 allows employees who occupy positions that are determined to be confidential to be exempt from its provisions. Rule 2.4(19A) addresses how these employees are to be handled in regard to all issues involving pay rather than have specific citations within chapter 4.

Revised rule 2.4(19A) gives employees who occupy positions that have been determined to have confidential status to be paid the same as employees who are covered by a collective bargaining agreement. Employees not only would be paid according to the pay plan for their particular class, but would also be paid overtime, compensatory time, standby and any other pay provisions in accordance with the bargaining agreement.

Notice of Intended Action—Hearing was published in the Iowa Administrative Bulletin on July 20, 1983 as ARC 3902. The substance of this rule was submitted as an emergency adopted and implemented rule, ARC 3901, published in the Iowa Administrative Bulletin on July 20, 1983, and was effective on July 1, 1983. The Iowa Merit Employment Commission adopted this rule at a public hearing on August 11, 1983. This rule is identical to that published on July 20, 1983.

This rule is intended to implement Iowa Code section 19A.9.

This rule will become effective on October 19, 1983. The following amendment is adopted.

Rule 570—2.4(19A) is amended to read as follows:

**570—2.4(19A) Confidential ~~classified~~ employees.** An ~~classified~~ employee whose position, within a class covered by a collective bargaining agreement, is determined to be confidential *in accordance with Iowa Code section 20.4*, shall be exempt from the collective bargaining agreement covering the class. *However, the confidential employee shall, be paid within the same salary grade range as is provided by the collective bargaining agreement covering the class, but for purposes involving pay and other fringe benefits, be administered as provided for in the agreement in accordance with current policies of the department. For all other purposes the employee shall be governed by these rules the applicable merit rules for covered noncontractual employees.*

[Filed 8/26/83, effective 10/19/83]

[Published 9/14/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/14/83.

## ARC 4034

## REAL ESTATE COMMISSION[700]

Pursuant to the authority of Iowa Code section 117.9, the Iowa Real Estate Commission adopted the amendment to Chapter 1 "Brokers and Salespersons" on August 12, 1983, Iowa Administrative Code.

Notice of Intended Action was published in IAB, July 6, 1983, as ARC 3858.

This rule is for the purpose of increasing the penalty fee for filing a late renewal application.

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

This rule becomes effective October 20, 1983.

This rule is intended to implement Iowa Code section 117.28.

Rule 1.7(117) is amended as follows:

**700—1.7(117) Renewal procedures following expiration.** Failure to apply for renewal of a license before expiration shall terminate licensee's authority thereunder but the license may be renewed if application for renewal is filed on or before the January 30 following the effective year with a penalty of ~~twenty~~ *ninety* dollars for each broker's license renewal and a penalty of ~~ten~~ *forty-five* dollars for each salesperson's license renewal. If the former licensee does not file for renewal by January 30 following the effective year of the license, the licensee shall be required to file an original application and be examined before a license shall be issued. A renewal application shall be made on forms furnished by the commission and shall include the appropriate renewal fee.

[Filed 8/26/83, effective 10/20/83]

[Published 9/14/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/14/83.

**ARC 4028****REVENUE DEPARTMENT[730]**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue hereby adopts amendments to Chapter 41, "Determination of Taxable Income", Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume VI, Number 2, on July 20, 1983, as ARC 3905.

The Acts of the Sixty-ninth General Assembly, 1982 Regular Session, Senate File 2305 [422.9(2)"g"], initiate an income tax itemized deduction for expenses incurred for caring for certain disabled relatives in the home of the taxpayer. Present rules do not presently cover this itemized deduction.

This subrule is identical to the one published under Notice of Intended Action. The amendment will become effective October 19, 1983, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

This subrule is intended to implement Iowa Code section 422.9(2)"g".

The following amendment is adopted.

Rule 730—41.5(422) is amended by adding the following new subrule and amending the implementation clause at the end of the rule.

**41.5(4)** Deduction for expenses for the care of certain disabled relatives.

a. For tax years beginning on or after January 1, 1983, a deduction from net income may be taken for expenses incurred by a taxpayer for care of a disabled person who is unable to live independently. Such care must be provided in the home in which the taxpayer resides throughout the year. A person is considered to be incapable of living independently if as a result of a physical or mental defect, the person is incapable of caring for his or her hygienical or nutritional needs or requires full-time attention of another person for his or her own safety or the safety of others. The fact that an individual, by reason of a physical or mental defect, is unable to engage in any substantial gainful activity, or is unable to perform the normal household functions of a homemaker or to care for minor children, does not of itself establish that the individual is physically or mentally incapable of self-care. An individual who is physically handicapped or is mentally defective, and for such reason requires constant attention of another person, is considered to be physically or mentally incapable of self-care.

To qualify for the deduction, in addition to being disabled, the person must be the grandchild, child, parent or grandparent of the taxpayer or the taxpayer's spouse, and

(1) Be receiving medical assistance benefits under Iowa Code chapter 249A; or

(2) Be eligible to receive such benefits under the income and resources levels established in Iowa Code chapter 249A; or

(3) Would be eligible to receive such benefits if living in a health care facility licensed under Iowa Code chapter 135C.

Expenses incurred for a taxpayer's disabled spouse do not qualify for the deduction.

b. The deductible amount is limited to \$5,000 for each disabled person cared for in the taxpayer's home and the

expenses must not be otherwise deductible as a deduction from net income under Iowa Code section 422.9.

c. Qualifying expenses include a proportionate share of food expenses as well as amounts spent directly on the disabled person for such items as clothing, medical care, dental care and transportation.

Medical expenses incurred for a disabled relative which are eliminated from federal itemized deductions because of the federal adjusted gross income percentage limitation, may be included in the deduction for expenses incurred for the care of the disabled relative providing the other requirements are met. Following are examples to illustrate the portion of medical expenses incurred which would be deductible.

**EXAMPLE 1.** Mr. and Mrs. Smith care for Mrs. Smith's mother in their home. Mrs. Smith's mother is physically unable to live independently and qualifies for medical assistance benefits under Iowa Code chapter 249A. Mr. and Mrs. Smith paid medical expenses of \$1,500 for themselves and \$500 for Mrs. Smith's mother. The medical expenses for Mrs. Smith's mother are includable as federal itemized deductions. Mr. and Mrs. Smith's federal adjusted gross income is \$20,000. For 1983, the federal deduction for medical expenses would be \$1,000 (\$2,000-5% of \$20,000). Since the deductible amount for federal tax purposes is \$1,000 or fifty percent of the total medical expenses of Mr. and Mrs. Smith and Mrs. Smith's mother, there remains fifty percent of the \$500 expense for Mrs. Smith's mother (or \$250) which can be included in the Iowa deduction for a disabled relative.

**EXAMPLE 2.** Mr. and Mrs. Smith's medical expenses were \$400 and Mrs. Smith's mother's expenses were \$200. None of the \$600 in expenses would be deductible as a federal itemized deduction but the mother's \$200 in expenses would be includable in the Iowa deduction for expenses incurred for a disabled relative.

d. Expenses not directly related to care of a disabled relative are not deductible. This category includes rent, mortgage interest, utilities, house insurance and taxes. Such expenses would be incurred without the disabled relative in the home and unless an expense can be directly attributed to the disabled relative, it may not be deducted.

e. In the event that the person being cared for is receiving assistance benefits under Iowa Code chapter 239, the expenses qualifying for deduction shall be the net difference between the expenses actually incurred in caring for the person which are not otherwise deductible as a deduction to net income and the assistance benefits under chapter 239. Chapter 239 covers aid to dependent children payments.

f. In order to claim a deduction for expenses for care of a disabled relative, a schedule of qualifying expenses must be provided with the tax return as well as a statement from a qualified physician certifying that the disabled individual is unable to live independently. Such certification must be filed with the tax return in the initial year for the deduction and every third year thereafter.

This rule is intended to implement Iowa Code section 422.9(2) "g". and 1982 Iowa Acts, chapter 1023, section 9.

[Filed 8/25/83, effective 10/19/83]

[Published 9/14/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/14/83.

## ARC 4029

### REVENUE DEPARTMENT[730]

Pursuant to the authority of Iowa Code section 428A.11, the Iowa Department of Revenue hereby adopts amendments to Chapter 79, "Real Estate Transfer Tax and Declarations of Value", Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume I, Number 2, on July 20, 1983, as ARC 3906.

Amended subrules 79.1(1), 79.1(2), 79.1(3), 79.1(4), and 79.1(5), are adopted to implement the provisions of the 1983 Iowa Acts, Senate File 354.

Amended subrule 79.5(5) is adopted to provide authorization and procedures for recording real estate conveyance instruments by the party completing the declaration of value for situations in which he or she is unable to obtain the social security number or federal identification number from the other party to the sales transaction.

These rules are identical to those published under Notice of Intended Action. The amendments will become effective October 19, 1983, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code chapter 428A.

The following amendments are adopted.

ITEM 1. Rule 730—79.1(428A) is amended to read as follows:

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

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

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

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

*a. Effective for tax collections commencing July 1, 1983, the department of revenue shall provide each county recorder with a device to be used to evidence real estate transfer tax payment. Such devices shall imprint on the document or instrument presented for recording or presented for tax payment, a standard information format on which the recorder shall enter the actual tax payment, date of payment, and initials of the recorder or authorized employee of the recorder. The department of revenue shall be responsible for repair or replacement of these devices.*

*b. It shall be the responsibility of each county recorder to ensure that proper security measures are taken to safeguard the use and storage of the devices utilized to evidence real estate transfer tax payment provided in subrule 79.1(3)"a".*

*c. County recorders shall accept for recording any documents or instruments for which the correct amount of real estate transfer tax had been paid prior to July 1, 1983, as evidenced by real estate transfer tax stamps issued by equipment formerly provided to county recorders by the department of revenue.*

*d. Upon approval by the department of revenue, county recorders may elect to continue to use equipment issued by the department prior to July 1, 1983, which issued stamps to evidence tax payment. If approved for use, stamps evidencing tax payment shall be used in lieu of tax payment evidence devices provided in subrule 79.1(3)"a", and shall be used only by affixing such stamps to documents or instruments presented for recording or tax payment. Each stamp shall be initialed by the recorder or authorized employee of the recorder.*

*e. County recorders who have been authorized by the department to continue using real estate transfer tax equipment issued by the department of revenue prior to July 1, 1983, as provided in subrule 79.1(3)"d", shall be responsible for all supplies, maintenance and repair of such equipment. However, to ensure uniformity of tax payment evidence, county recorders shall request approval from the department of revenue prior to use of any product producing the actual real estate transfer tax stamp.*

*f. This rule shall not be construed to prevent payment of the real estate transfer tax for conveyances in which the documents or instruments are not actually recorded provided that evidence of tax payment as required by subrules 79.1(3)"a" and 79.1(3)"d" is placed on such documents or instruments.*

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

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

**79.1(6)(5) Refunds.** County recorders shall not refund any overpayment of a real estate transfer tax liability. The grantor of the real property for which the real estate transfer tax has been overpaid shall petition the state appeal board for a refund of seventy-five percent of the overpayment amount. A refund of the remaining twenty-

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

five percent of the overpayment shall be petitioned from the board of supervisors of the county in which the tax was paid.

This rule is intended to implement ~~chapter 428A of the Code~~ Iowa Code chapter 428A, as amended by the 1983 Iowa Acts, Senate File 354.

ITEM 2. Subrule 79.5(5) is amended to read as follows.

**79.5(5)** Recording refused. The county recorder shall refuse to record any document for which a real estate transfer-declaration of value is required if such form is not completed accurately and completely by the buyer or seller or the agent of either. *The declaration of value shall include the social security number or federal identification number of the buyer and seller and all other information required by the director of revenue. (Iowa Association of Realtors et al v. Iowa Department of Revenue, CE 18-10479, Polk County District Court, February 4, 1983.) However, if having made good faith effort, the person or person's agent completing the declaration of value is unable*

*to obtain the social security or federal identification number of the other party to the transaction due to factors beyond his or her control, a signed affidavit stating that such effort was made and the reasons why the number could not be obtained shall be submitted with the incomplete declaration of value. The declaration of value with attached affidavit shall be considered sufficient compliance with Iowa Code section 428A.1 and the affidavit shall be considered a part of the declaration of value subject to the provisions of Iowa Code section 428A.15.*

This rule is intended to implement Iowa Code sections 428A.1, 428A.2 and 428A.4; as amended by Acts of the Sixty-ninth General Assembly, Senate File 217.

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