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STATE HOUSE

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PREFACE

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

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

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

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

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

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

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
8	Friday, September 23, 1983	October 12, 1983
9	Friday, October 7, 1983	October 26, 1983
10	Friday, October 21, 1983	November 9, 1983

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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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Grimes State Office Building
Des Moines, IA 50319
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The Administrative Rules Review Committee will hold its regular meeting Tuesday, October 18, 1983, 10:00 a.m. in Committee Room 116, State Capitol, and Wednesday, October 19, 1983, in Committee Room 22, State Capitol. The following rules will be reviewed:

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ARTS COUNCIL[100] 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.
COLLEGE AID COMMISSION[245] 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)	Commission Offices 201 Jewett Building Des Moines, Iowa	October 14, 1983 2:00 p.m.
COMMERCE COMMISSION[250] Information about disconnection, 19.4(15), 20.4(15) IAB 9/14/83 ARC 4048 Public utilities, management efficiency, level of profit IAB 9/28/83 ARC 4101	Commission Hearing Room First Floor Lucas State Office Building Des Moines, Iowa Commission Hearing Room First Floor Lucas State Office Building Des Moines, Iowa	October 26, 1983 10:00 a.m. October 27, 1983 10:00 a.m.
Review of gas procurement and contracting practices, amendments to ch 19 IAB 9/28/83 ARC 4102	Commission Hearing Room First Floor Lucas State Office Building Des Moines, Iowa	October 25, 1983 10:00 a.m.
CONSERVATION COMMISSION[290] Cost-sharing assistance for wildlife habitat projects, amendments to ch 23 IAB 9/28/83 ARC 4071 Camping fees in state parks and recreation areas, 45.4 IAB 9/28/83 ARC 4075	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	October 20, 1983 10:00 a.m. October 19, 1983 10:00 a.m.
Fishing regulations for 1984, 108.2 IAB 9/28/83 ARC 4073	Conference Room Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	October 18, 1983 10:00 a.m.
Commercial fishing regulations, 110.7 IAB 9/28/83 ARC 4072	Southeastern Community College Little Theatre Burlington, Iowa Izaak Walton League Clubhouse Clinton, Iowa	October 18, 1983 7:00 p.m. October 19, 1983 7:00 p.m.
Wild turkey spring hunting; amendments to ch 111 IAB 9/28/83 ARC 4074	City Hall basement Guttenberg, Iowa Wildlife Offices Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	October 20, 1983 7:00 p.m. October 20, 1983 10:00 a.m.
CORRECTIONS DEPARTMENT[291] Operational activities, chs 1-50 IAB 9/28/83 ARC 4088 (See ARC 4087, herein)	Hearing Room 2 First Floor Lucas State Office Bldg. Des Moines, Iowa	October 20, 1983 1:00 p.m.

ENERGY POLICY COUNCIL[380]

Low income home energy
assistance, ch 14
IAB 9/14/83 ARC 4023
(See ARC 4022)
Energy management for state
and local government, ch 17
IAB 9/28/83 ARC 4092

Conference Room
Second Floor
Lucas State Office Building
Des Moines, Iowa
Conference Room
Sixth Floor
Lucas State Office Bldg.
Des Moines, Iowa

October 4, 1983

10:00 a.m.

October 18, 1983

2:00 p.m.

HEALTH DEPARTMENT[470]

Overpayment for vital
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IAB 9/28/83 ARC 4089

Conference Room
Third Floor
Lucas State Office Bldg.
Des Moines, Iowa

October 18, 1983

1:00 p.m.

INSURANCE DEPARTMENT[510]

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.

IOWA DEVELOPMENT COMMISSION[520]

Declaratory rulings, ch 6
IAB 9/28/83 ARC 4078

Conference Room
Development Commission
250 Jewett Building
Des Moines, Iowa

October 19, 1983

2:00 p.m.

PUBLIC SAFETY DEPARTMENT[680]

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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.

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 4104**COMMERCE COMMISSION[250]****TERMINATION OF NOTICE**

The Iowa State Commerce Commission gives notice that on September 12, 1983, the Commission issued an order in Docket No. RMU-83-5, In Re: Procedural Rules Regarding the Filing of Testimony, "Order Terminating Rulemaking." In that order the Iowa State Commerce Commission terminated action to amend Iowa Administrative Code 250—subrule 7.7(1), published July 6, 1983, as ARC 3883.

ARC 4100**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 September 9, 1983, the Commission issued an order in Docket No. RMU-83-25, In Re: Civil Penalties, "Order Commencing Rulemaking." On April 27, 1983, the Seventieth General Assembly passed House File 312, which became effective July 1, 1983. The purpose of this rulemaking is to create a new 250—Chapter 8 to conform to 1983 Iowa Acts, House File 312, section 34. Under the proposed rules, a utility would be subject to a civil penalty levied by the Commission if the utility is found to have willfully violated a provision of Iowa Code chapter 476, a Commission rule, or a provision of an order lawfully issued by the Commission.

Any interested person may file written comments not later than October 28, 1983, by filing an original and six copies of such comments substantially complying with the form prescribed in Iowa Administrative Code 250—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 in this matter may be requested as set forth in Iowa Code section 17A.4(1)"b" and Iowa Administrative Code 250—3.6(17A,474). This rulemaking shall be conducted pursuant to Iowa Administrative Code 250—Chapter 3.

These rules are intended to implement 1983 Iowa Acts, House File 312, section 34.

Create a new Chapter 8 to read as follows:

**CHAPTER 8
CIVIL PENALTIES**

250—8.1(70GA, HF312) Civil penalty for willful violation. The commission may assess a penalty against a public utility upon finding that the utility willfully violated a provision of Iowa Code chapter 476, a commission rule or a provision of an order lawfully issued by the commission.

This rule is intended to implement 1983 Iowa Acts, House File 312, section 34.

250—8.2(70GA, HF312) Procedure. A party in a formal complaint proceeding, the consumer advocate or the commission on its own may file a written motion requesting the commission to impose a civil penalty for a willful violation as defined in rule 8.1(70GA, HF312). A hearing shall be held in accordance with the provisions of rule 250—7.7(476) where there is an issue of adjudicative fact as to the nature of an alleged violation of Iowa Code chapter 476, a commission rule, or a provision of an order lawfully issued by the commission. The utility may waive its right to a hearing. A separate hearing is not required by this rule if the issue of adjudicative fact has been fully litigated by the identical parties as part of a formal proceeding.

This rule is intended to implement 1983 Iowa Acts, House File 312, section 34.

250—8.3(70GA, HF312) Penalties assessed. The commission, in its discretion, may levy penalties of not more than one hundred dollars per violation or one thousand dollars per day of a continuing violation, whichever is greater.

In determining the amount of penalty to be imposed for a willful violation, the commission may consider the following factors, among others, in exercising its statutory discretion to impose civil penalties up to a maximum amount:

1. Gravity of the offense;
2. The utility's prior record of Code, rule or order violations.

This rule is intended to implement 1983 Iowa Acts, House File 312, section 34.

250—8.4(70GA, HF312) Payment of penalty. The remittance shall be made payable and forwarded to Executive Secretary, Iowa State Commerce Commission, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319. Remittance must be made within thirty-five days after final agency action.

This rule is intended to implement 1983 Iowa Acts, House File 312, section 34.

250—8.5(70GA, HF312) Rate-regulated utilities. A penalty assessed by the commission pursuant to this rule against a utility must be recorded by the utility as a below-the-line, miscellaneous deduction from the income account and shall not be included directly or indirectly in the utility's rates or charges to customers.

This rule is intended to implement 1983 Iowa Acts, House File 312, section 34.

ARC 4101**COMMERCE COMMISSION[250]****NOTICE OF INTENDED ACTION**

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

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

The Iowa State Commerce Commission gives notice, pursuant to Iowa Code section 17A.4(1) (1983), that on September 9, 1983, the Commission issued an order in Docket No. RMU-83-17, In Re: Adoption of Standards for Public Utility Management Efficiency, "Order Amending Filing Date and Scheduling Oral Presentation."

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

Any interested person may file a written statement of position containing either general comments or specific proposals pertaining to the adoption of standards for public utility management efficiency. The Commission specifically requests all commenting parties to include with their comment proposed rules designed to accomplish the commenting party's purposes. The statement may be filed no later than October 21, 1983, by filing an original and six copies of the written statement of position or proposals substantially complying with the form prescribed in Iowa Administrative Code, 250—2.2(2).

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

Oral presentation in this docket is scheduled for 10:00 a.m. on October 27, 1983, in the Commission's Hearing Room on the First Floor of the Lucas State Office Building, Des Moines, Iowa.

ARC 4102**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 September 9, 1983, the Commission issued an

order in Docket No. RMU-83-26, In Re: Gas Procurement Rules "Order Commencing Rulemaking". On April 27, 1983, the Seventieth General Assembly passed House File 312 to become effective July 1, 1983. Thus, our rules should be amended to conform to the new legislation. The purpose of this rulemaking is to amend the existing rules to establish an annual review of gas procurement and contracting practices. The natural gas supply and cost review shall be conducted as a contested case pursuant to Iowa Code chapter 17A.

Under these proposed rules, each rate-regulated public utility furnishing gas shall file a natural gas procurement plan each year. The plan will describe the expected sources and volumes of the utility's gas supply and anticipated changes in costs for the next year. The plan shall also specify the major contracts and gas supply arrangements applicable to the next year. The utility shall also file a five-year forecast of expected changes in certain factors pertaining to the furnishing of gas.

Any interested person may file written comments not later than October 18, 1983, by filing an original and six copies of such comments substantially complying with the form prescribed in Iowa Administrative Code 250—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. The commission is waiving subrule 3.4(2) for this proceeding only due to time constraints resulting from House File 312. Oral presentation shall be held on October 25, 1983, in the Commerce Commission Hearing Room, First Floor, Lucas State Office Building, Des Moines, Iowa 50319 at 10:00 a.m. Persons who wish to participate in this oral presentation must file a written appearance within the deadline for written comments. This rule-making shall be conducted pursuant to Iowa Administrative Code 250—chapter 3.

This rule is intended to implement 1983 Iowa Acts, House File 312, section 25.

ITEM 1. Amend subrule 19.1(3) by adding a new definition to be inserted at small letter "l" and relettering the remaining definitions accordingly, to read as follows:

l. "Loss factor" as used in rule 19.10(476,70GA, HF 312) means test-year purchases less test-year sales, or if the loss factor is estimated, a five-year average of purchases less sales.

ITEM 2. Amend 250—19.10(476,70GA, HF 312) to read as follows:

250—19.10(476,70GA, HF 312) Purchased gas adjustments and annual review of gas procurement practices.

Insert the following as 19.10(1) and renumber the remaining subrules accordingly:

19.10(1) A rate-regulated utility's automatic adjustments for the cost of gas purchased shall be based on purchased gas adjustment clauses for each originating pipeline supplier (or for each pipeline supplier zone, if appropriate).

If the purchased gas adjustment clauses for each originating pipeline supplier are estimated, the utility must provide the methodology by which the estimates are derived.

Renumber previous 19.10(1) as new 19.10(2) and amend to read as follows:

19.10(2) Applicability. Unless otherwise ordered by the commission, a rate-regulated utility's purchased gas

COMMERCE COMMISSION[250] (cont'd)

adjustment rate factors may be adjusted upward by the rate-regulated utility, but shall be adjusted downward if costs decrease, as purchased gas costs change and shall recover from customers only the costs of purchased gas, which costs are reflected in a pipeline supplier's tariffed filings which have been allowed to become effective by the Federal Energy Regulatory Commission or its successor entities, or such other costs which are expressly approved for inclusion in purchased gas adjustments on tariff filings with the commission.

In its filing of the proposed purchased gas adjustments, the utility shall file the expenses charged to each account of the Uniform Systems of Accounts, individually.

ITEM 3. Rescind the formulas in newly renumbered 19.10(3)"a" and insert the following:

$$\begin{aligned}
 & \text{NONDIRECTLY ASSIGNED CUSTOMER} \\
 & \text{PGA}_A = \frac{P_C \times R_C + (P_{DA} \times R_{DA}) + (P_{TA} \times R_{TA}) + E_A - K_A}{S - S_B} \\
 & \text{DIRECTLY ASSIGNED CUSTOMER} \\
 & \text{PGA}_{B_n} = \frac{P_C \times R_C + (P_{DB_n} \times (R_{DB_n} - K_{DB_n})) + (P_{TB_n} \times (R_{TB_n} - K_{TB_n}))}{S} \\
 & \quad + E_{B_n} - K_{B_n} \qquad \qquad \qquad S_{B_n}
 \end{aligned}$$

Further amend 19.10(3)"a" by inserting the following definition after the definition of S_{B_n} :

"K - base cost of gas for each PGA class".

ITEM 4. Amend newly renumbered 19.10(3)"c"(1) as follows:

(1) The sales volume S , S_B , S_{B_n} , and their components by account number to be used in calculation of purchased gas adjustments for the prospective twelve-month period beginning September 1, calculated by determining gas sales as defined in 19.10(23)"a" for the prior twelve-month period ending June 30, with necessary degree day adjustments, and further adjusting these sales volumes for anticipated known and measurable changes to gas sales for the prospective twelve-month period beginning September 1.

To determine if degree day adjustments are necessary, use the following process:

A utility shall use a ninety-five percent confidence interval around the annual "heating degree day normal" to determine whether gas operating income should be normalized for test-year weather experience.

A utility shall determine the necessity of an adjustment for each weather station used, and any adjustment necessary shall be made only for the related service territory. A utility shall not make unnecessary adjustments for degree day deficiencies.

In calculating the normalization for test-year weather experience, a utility shall use both normal and actual degree day deficiencies as officially recorded by the National Oceanic and Atmospheric Administration (NOAA). In developing the confidence interval about the normal degree day deficiencies at a weather station, a standard error of the normal heating degree day of 71.3 degree day deficiencies shall be used unless the statistical test of the variance demonstrates that the weather station's actual standard error is significantly different from 71.3 degree day deficiencies using a ninety-five percent confidence interval when the actual standard error may be substituted.

If an adjustment to operating income is necessary according to the confidence interval above, the adjustment shall be computed in the following manner:

1. Compile from NOAA records normal and actual degree day deficiencies for each billing period and location served in a billing period, i.e., a billing month, or a billing cycle for each customer, or for a rate group subject to a common tariff for a location in a billing. Normal and actual degree day deficiencies shall be calculated for the period over which volumes are used and applied to usage in the period in which this usage is billed.

2. Use the normal and actual degree day deficiencies to develop weather normalization factors consisting of the ratio of normal degree day deficiencies to actual degree day deficiencies. The normalization factors are developed for each location for each billing period.

3. The heat load and base load volumes shall be determined. Customer's usage which is not temperature sensitive shall not be adjusted. The base load per customer is computed by dividing the total July, August and September volume by the total July, August and September customers, unless a lower base load, calculated similarly for a different period of three continuous months, is necessary and reasonable.

4. The base load for each billing period is the base load per customer times the number of customers in that billing period. Apply the appropriate weather normalization factor from "2" above to each period's heat load volume resulting in normalized usages, i.e.,

$$\left[\frac{\text{Normal degree day deficiencies}}{\text{actual degree day deficiencies}} \text{ times} \right. \\
 \left. (\text{actual usage less base load usage}) \right] \\
 \text{plus base load usage}$$

or alternatively its algebraic equivalent may be used, i.e., normal degree day deficiencies X (actual usage less base load usage)/actual degree day deficiencies plus [base load usage].

The normalized heat load volumes are added to the actual base load volumes to determine the normalized sales volumes for a billing period.

5. Normalized costs or revenues, or both, are determined by pricing normalized volumes through the applicable rate schedules.

A utility shall not make unnecessary adjustments to degree day deficiencies.

For any degree day deficiency adjustment made by a utility, the utility must include in its filing all documentation, data, and data sources used for weather normalization, including a schedule for each rate code stating the total sales (in units) and number of customers for each month of the year. Each rate code schedule shall state from what weather station(s) the heating degree data is compiled, why a particular weather station site was chosen, and what relationship the site chosen has to the total gas usage in the rate area.

ITEM 5. Amend newly renumbered 19.10(3)"c"(2), (5) and (8) to read as follows:

(2) The purchase volumes, P_C , P_{DA} , P_{TA} , P_{TB_n} , to be used in calculation of purchased gas adjustments for the prospective twelve-month period beginning September 1, calculated by determining anticipated applicable sources of gas defined in 19.10(23)"a" for the prospective twelve-month period which will be necessary to meet sales as determined in 19.10(23)"c"(1).

(5) The calculations of the over or under collection reconciliation adjustment factors E_A and E_{B_n} specified in 19.10 (36)"a".

(8) All worksheets and accompanying data used to determine the purchased gas adjustment volumes and

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factors, including sales and purchase data from bills or internal reports, and contracts for purchases and sales.

ITEM 6. Amend 19.10(476) by inserting the following as 19.10(4) to read as follows:

19.10(4) Gas procurement plan and requirement forecast.

a. Procurement plan. A rate-regulated utility shall prepare and file with the commission between July 1 and August 1 of each year a complete natural gas procurement plan. If any of the information or documents required to be filed under this subrule has been filed previously with the commission, the utility may specifically identify the document or information by reference in lieu of refileing it in its procurement plan.

(1) The plan shall include all contracts and gas supply arrangements entered into by the utility or in effect for obtaining gas during the previous twelve-month period.

(2) The plan shall include a list and description of all other contracts or arrangements for obtaining gas reasonably available to the utility during the previous and prospective twelve-month periods which the utility did not enter into.

(3) The plan shall include all studies or investigation reports considered by the utility before entering into gas purchase contracts.

(4) The plan shall include an explanation of the legal and regulatory actions taken by the utility to minimize cost.

b. Gas requirement forecast. A rate-regulated utility shall prepare and file with its procurement plan a five-year gas requirement forecast. The five-year forecast shall be for the period commencing September 1 as specified in subrule 19.10(3)"c". If any of the information or documents required to be filed under the subrule has been filed previously with the commission, the utility may specifically identify the document or information by reference in lieu of refileing it in its forecast.

(1) The forecast shall include the gas requirements of the utility's customers broken down by PGA clauses, its anticipated sources of supply, and projections of gas costs from each source of supply.

(2) The forecast shall include a description of all relevant contracts and gas supply arrangements entered into or contemplated between the utility and its suppliers and a description of all gas supply arrangements which the gas utility knows have been, or expects will be, entered into between the utility's principal pipeline suppliers and their major sources of gas.

(3) Existing System Capacity in each of five plan-years.

1. System pipeline delivery capacity in volume.

2. Additional capacity in volume through existing or expected interconnection to other systems.

3. Certified storage capacities in volume for underground storage and storage in liquefied form.

c. The utility shall file with its Gas Procurement Plan and Requirement Forecast an application with the commission requesting a determination of the reasonableness and prudence of its gas procurement plans and practices. The utility shall submit at the time its application is filed all factual evidence and written argument in support of its evaluation of the reasonableness and prudence of its decisions to obtain gas in the manner described in its procurement plan and its gas requirement forecast.

ITEM 7. Add new subrules 19.10(5), 19.10(6) and 19.10(7) as follows:

19.10(5) Annual review proceeding. The commission shall annually conduct a proceeding to evaluate the

reasonableness and prudence of a rate-regulated utility's natural gas procurement practice and to evaluate the five-year gas requirement forecast filed by the utility. The commission shall docket the matter as a contested case within thirty days of the utility's filing of its application in accordance with 19.10(4)"c".

a. On or before October 15 each year, the office of consumer advocate and any intervenors shall file prepared direct testimony and exhibits addressing information, testimony, or exhibits filed by the rate-regulated utility supporting its gas procurement plan and five-year gas requirement forecast.

b. On or before November 15 of each year the rate-regulated utility shall file prepared rebuttal testimony and exhibits.

c. The commission will schedule a public hearing to be held within five months after the filing of the application for the purpose of cross-examining all filed testimony. The hearing shall be conducted in accordance with the provisions of rule 250-7.7. The burden shall be on the utility to prove it is taking all reasonable actions to minimize its purchase gas costs, consistent with assuring long-term supply of natural gas.

19.10(6) Reconciliation.

a. The rate-regulated utility shall file with the commission November 1 of each year a purchased gas adjustment reconciliation. This reconciliation shall be the difference between the actual net costs for purchased gas in the prior twelve-month period which began September 1 of the previous year, and the actual revenue collected through its purchased gas adjustment clause (less the adjustment derived from the prior year's reconciliation) for the same period, for each purchased gas adjustment clause. Actual net costs for purchased gas shall be applicable costs associated with the time period of usage, included in accounts 728 and 729 (including only those expenses cleared through account 151) and 800 to 813 of the Uniform System of Accounts less the cost of gas included in the base rates for that same period as defined in 19.10(3)"a". Negative differences in the reconciliation shall be considered over collections by the utility and positive differences shall be considered under collections, for the prior twelve-month period which began September 1 of the previous year. This reconciliation shall be filed with accompanying data and worksheets, under 19.10(3)"c", including a listing of the costs of gas according to accounts 728 and 729 (including only those expenses cleared through account 151) and 800 to 813 of the Uniform System of Accounts and any remainder due to losses. Penalty purchases shall only be includable where the utility clearly demonstrates a cost savings over peak shaving avoided costs.

Any over collections (up to a specified "maximum" limit) or under collections determined from the reconciliation shall be refunded or collected, respectively, through one year adjustments to the particular purchased gas adjustment clauses from which they were generated. The over collection or under collection generated from each purchased gas adjustment clause shall be divided by: The anticipated sales volume for the prospective twelve-month period beginning September 1 for the class of customers or individuals served by that particular purchased gas adjustment clause. The negative or positive quotient, determined to the nearest .001 cent per therm or ccf or on the decimal basis of the rate-regulated utility's tariffed gas rates, shall be added to that particular purchased gas adjustment clause for the prospective twelve-month period beginning September 1.

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If, for a purchased gas adjustment clause, the net over collection from the purchased gas adjustment annual reconciliation exceeds the "maximum" limit amount, the rate-regulated utility shall refund the over collection by bill credit or check, with interest as stated in 19.10(36)"b"(6) for the time period beginning September 1 of the current year to the date of the refund. The "maximum" limit amount shall be two percent of the annual cost of purchased gas subject to recovery.

b. If a utility uses automatic adjustments of rates and charges, the adjustment must be reduced to zero at least once in every twelve-month period, and all appropriate charges collected by the automatic adjustment shall be incorporated in the utility's other rates at that time.

19.10(7) Refunds.

a. The rate-regulated utility shall refund to customers, by bill credit or check, an amount equal to a refund received from a supplier, plus accrued interest, if the refund exceeds one dollar per average pipeline residential customer. The rate-regulated utility may retain undistributed refund amounts in a special commodity, demand, and storage refund accounts, for each pipeline supplier; which shall subsequently be refunded when the balance of a given refund account exceeds the one dollar per average pipeline residential customer refund minimum.

Within thirty days of receipt of a refund from a pipeline supplier, the rate-regulated utility shall file with the commission for its approval a refund plan which shall include the following information:

- (1) The amount of the supplier refund received.
- (2) A statement of the reason for the supplier refund.
- (3) The supplier refund report.
- (4) The intended period of refund distribution; or a statement of intention to retain a refund amount in special applicable commodity, demand, or storage refund accounts, to accrue interest at the rates specified in this subrule, until refunded.
- (5) For refund retentions: The interest accrued to the date of filing (including interest calculations) for both the present refund amount and any applicable refund account amounts.

(6) For refund distributions: The estimated interest accrued through the proposed refund period (including interest calculations) for both the present refund amount and any applicable refund account amounts.

(7) For refund distributions: The total amount to be refunded, and the amount of refund per ccf or therm, to be distributed to nondirectly assigned customers and to each directly assigned customer class.

The supplier commodity refund to each customer shall be calculated by dividing an amount equal to the total amount of the commodity refund, plus any amount from the commodity refund account, by the total ccf or therms of gas consumed by that customer during the same period.

The supplier demand or storage refund(s) to each directly assigned customer shall be calculated by multiplying the total amount of the demand or storage refund(s), plus any amount(s) from the demand or storage refund account(s), by each directly assigned customers' proportion of the total demand quantity sold by the rate-regulated utility during the period for which the refund is applicable or the last twelve months for which records are available.

The demand or storage refund(s) to each nondirectly assigned customer shall be calculated by subtracting the amount of the demand or storage refund(s) to directly

assigned customers from the total refund(s) amount, dividing this remainder by the total ccf or therms of gas consumed by nondirectly assigned customers during the period for which the refund is applicable or the last twelve months for which records are available, and multiplying this resulting quotient by the ccf or therms of gas consumed by that nondirectly assigned customer during the same period.

b. The rate-regulated utility shall refund to customers, by bill, credit or check, an amount equal to an overcollection due to a rate-regulated utility's inability to track the proper cost of gas prior to billing from supplier, plus accrued interest, if the refund exceeds one dollar per average pipeline residential customer. The rate-regulated utility may retain undistributed refund amounts in a special commodity, demand, and storage refund accounts, for each pipeline supplier; which shall subsequently be refunded when the balance of a given refund account exceeds the one dollar per average pipeline residential customer refund minimum. Within thirty days of first knowledge of such an over collection, through receipt of billing from the supplier, the rate-regulated utility shall file with the commission for its approval a refund plan which shall include the following information:

- (1) The amount of over collection.
- (2) A statement of the reason for the over collection.
- (3) Supporting documentation from supplier and rate-regulated utility billing records, showing over collections.
- (4) The intended period of refund distribution.
- (5) The estimated interest accrued through the proposed refund period.
- (6) The total amount to be refunded, and the amount of refund per ccf or therm to be distributed to nondirectly assigned customers and to each directly assigned customer class.

For over collections associated with the rate-regulated utility's inability to track the proper cost of gas, the refund to each customer shall be determined by the amount that customer was overcharged.

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

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

d. Any other refunds from the rate-regulated utility to its customers attributable to purchased gas adjustments (excluding incremental pricing refunds) shall be filed and calculated according to the provisions in 19.10(7)"a".

e. The rate-regulated utility shall make a reasonable effort to forward refunds, by check, to eligible recipients who are no longer customers.

f. The minimum amount to be refunded by check shall be one dollar.

ITEM 8. Renumber old 19.10(4) "Purchased gas adjustments annual reports." as new 19.10(8).

ARC 4103**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 in accordance with Iowa Code section 17A.4(1) that on September 9, 1983, the Commission issued an order in Docket No. RMU-83-27, In Re: Use of Residential Electric Service Limiters, "Order Commencing Rulemaking." Pursuant to the authority of Iowa Code sections 476.2 and 476.6 the Commission intends to consider the adoption of an amendment to Iowa Administrative Code 250—chapter 20, "Service Supplied by Electric Utilities."

The proposed amendments allow electric utilities to adopt a policy for limiting the service of residential customers as an intermediate step before disconnection of service for nonpayment of bills or deposits.

Any person interested in this matter may file written comments on the proposed rules no later than October 28, 1983, by filing an original and six copies of such comment, substantially complying with the form prescribed in Iowa Administrative Code 250—2.2(2).

Oral presentation on this matter may be requested as set forth in Iowa Code section 17A.4(1)"b", and Iowa Administrative Code 250—3.6(17A.474).

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

ITEM 1. Amend subrule 20.1(3) by inserting the following definitions alphabetically as "u" and "v" and relettering the remaining definitions accordingly.

u. "Service limiter" means a circuit breaker device that limits a residential customer's power consumption to 15 amps at 120 volts (or some other level of usage approved by the commission) and that either resets itself automatically or can be reset by the customer.

v. "Service limitation" means the establishment of a limit on the amount of power that may be consumed by a residential customer through the installation of a service limiter on the customer's meter.

ITEM 2. Amend subrule 20.4(15) by inserting the following new paragraph "j" as follows:

j. Without the written twelve-day notice, for failure of a residential customer who has had service limited in accordance with subrule 20.4(22) to pay the full amount due for past service or enter into a reasonable payment agreement, provided that:

(1) The maximum time period set for the service limiter to remain in place, as specified in the tariff, has elapsed;

(2) The requirements of subrule 20.4(15)"h"(3), relating to telephone or posted notice, have been satisfied; and

(3) The requirements of subrule 20.4(15)"h"(4), relating to disputed bills, have been satisfied to the extent applicable.

ITEM 3. Amend rule 20.4(476) by adding the following new subrule:

20.4(22) Limitation of service. The utility shall have the option of adopting a policy for limiting the service of a nonelectric-heating residential customer for nonpayment of a bill or deposit as a measure to be taken prior to disconnection of the customer. The service limitation policy, if adopted by the utility, shall be applied uniformly to all of the utility's nonelectric-heating residential customers.

A service limitation policy, if adopted by the utility, shall be set forth in the tariff and shall specify some minimum time period for the service limiter to remain in place prior to the initiation of the disconnection procedure set forth in subrule 20.4(15)"j".

Notice of a pending service limitation shall be rendered, and electric service limited, as set forth in the tariff.

Upon installing a service limiter, the utility shall post the premises with a notice informing the occupant of the installation of the load limiter, its purpose, how it operates, and how it can be reset by the occupant.

The notice of pending service limitation required by these rules shall satisfy the requirements of subrule 20.4(15).

Service may be limited for nonpayment of bill or deposit, except as restricted by subrule 20.4(16), relating to insufficient reasons for denying service, provided that the utility has satisfied the requirement of subrule 20.4(15)"h". Service may be limited without the written twelve-day notice for failure of the customer to comply with the terms of a payment agreement, provided that the requirements of subrule 20.4(15)"h" have been satisfied, substituting "service limitation" for "disconnection" throughout that subrule.

ARC 4071**CONSERVATION COMMISSION[290]****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 107.24, the State Conservation Commission hereby gives Notice of Intended Action to amend Chapter 23, "Wildlife Habitat Stamp Revenue Cost-Sharing with Local Entities," Iowa Administrative Code.

These rules give the procedures for county conservation boards and other public agencies to obtain cost-sharing assistance for wildlife habitat projects.

Any interested person may make written suggestions or comments on these proposed amendments prior to October 20, 1983. Such written materials should be directed to the Wildlife Superintendent, State Conservation Commission, Wallace State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the wildlife section at 515/281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building. Also, there will be a public hearing on October 20, 1983, at 10:00 a.m. in the

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fourth floor conference room of the Wallace State Office Building, at which time persons may present their views either orally or in writing.

At the hearing, persons will be asked to give their names and addresses for the record, and to confine their remarks to the subject of the rule.

This rule is intended to implement the provisions of Iowa Code chapter 110.

The following amendments are proposed:

ITEM 1. Rule 290—23.4(110) is amended to read as follows:

290—23.4(110) Project limitations. Because of administrative costs, no application for assistance totaling less than ~~\$750 3,000~~ (total project cost—~~\$1,000 4,000~~) will be considered.

This rule is intended to implement the provisions of Iowa Code section 110.3.

ITEM 2. Rule 290—23.5(110) is amended to read as follows:

290—23.5(110) Eligibility for cost-sharing assistance. No project shall be eligible for cost sharing unless it is specifically approved by the commission, or the applicant has received a written waiver of retroactivity from the commission, prior to its initiation. Only the following types of project expenditures will be eligible for cost-sharing assistance.

23.5(1) Acquisition projects. Lands or rights thereto to be acquired in fee or by any other instrument shall be appraised by a competent appraiser and the appraisal approved by the commission staff. The appraisal requirement may be waived when the staff determines that it is impractical for a specific project. Cost sharing will not be approved for more than seventy-five percent of the approved appraised value. Acquisition projects are eligible for either cost sharing by direct payments as described in subrule 23.12(7) or by reimbursement to local entities.

23.5(2) Development projects. Eligible expenditures for development projects shall include, but not be limited to, contracts, the purchase of materials and supplies, rentals, and extra labor hired only for the specific project. Requests to purchase ~~certain~~ equipment ~~to be used solely for habitat improvement~~ may ~~will not~~ be approved. Donated labor, materials and equipment use, and force account labor and equipment use shall not be eligible for cost-sharing assistance. (Force account means the agency's own labor and equipment use.) Development projects are limited to lands legally controlled by the grantee for the expected life of the project. Development projects are eligible only for reimbursement of reasonable costs actually incurred and paid by the public agency.

23.5(3) Enhancement projects. For purposes of this rule "enhancement" shall be considered to be synonymous with "development".

This rule is intended to implement the provisions of Iowa Code section 110.3.

ITEM 3. Rule 290—23.6(110) is amended to read as follows:

290—23.6(110) Application for assistance. Applications shall provide sufficient detail as to clearly describe the scope of the project and how the area will be managed.

23.6(1) Form. Applications shall be submitted on forms provided by the commission.

23.6(2) Time of submission. Applications for funds shall be reviewed and selected for funding during ~~Novem-~~

~~ber of 1979, and during~~ January and July of each ~~succeeding~~ year. Applications must be received in acceptable form by the State Conservation Commission, Wallace State Office Building, Des Moines, Iowa 50319, by the close of business on the last business day of the ~~month preceding the selection month~~ *May for consideration at the July review and the last business day of November for the January review.* Upon timely notice to eligible recipients, additional selection periods may be scheduled if necessary to expedite the distribution of these funds. In emergencies, local entities can obtain a waiver so that acquisition projects may be approved for retroactive payments, provided that funds are available and the project meets all other criteria.

23.6(3) Local funding. An applicant shall certify that it has committed its share of project costs, that these funds are available, and shall state the means of providing for the local share. All necessary approvals for acquisition and financing shall be included with the application.

23.6(4) Development projects. An application for development project assistance may include development on more than one area if the development is of a like nature (e.g., planting trees and shrubs).

This rule is intended to implement the provisions of Iowa Code section 110.3.

ITEM 4. Rule 290—23.7(110) is amended to read as follows:

290—23.7(110) Project review and selection.

23.7(1) Review and selection committee. A review and selection committee, hereinafter referred to as the committee, composed of the superintendent of grants-in-aid as chairman, the wildlife superintendent, the superintendent of planning, the administrator of county conservation board activities, and three persons appointed by the director to represent county conservation boards shall determine which grant applications and amendment requests shall be selected for funding.

23.7(2) Consideration withheld. The committee will not consider any application which, on the date of the selection session, is not complete, or for which additional pertinent information has been requested and not received.

23.7(3) Application rating system. The committee will apply a numerical rating system to each grant application which is considered for fund assistance. The following criteria, with a weight factor for each, will be considered:

Wildlife habitat needs	32
Existing <i>or potential</i> habitat quality	3
Cost effectiveness	2
Agency's financial need	1
Potential habitat quality	3
Project expansion potential	1
<i>Species diversity</i>	1

Each criterion will be given a score of from 1 to 10 which is then multiplied by the weight factor. Three additional criteria will be considered in the rating system:

a. Prior assistance. Any applicant that has never received a prior grant will be given a bonus of five points.

b. Active projects. Any applicant that has one or more active projects at the time of application rating will be assessed five penalty points for each one that has not been completed by the date specified in the project agreement. An active project shall cease to be active when all acquisition or development has been satisfactorily completed and an acceptable final reimbursement billing has been submitted to the commission.

CONSERVATION COMMISSION[290] (cont'd)

c. Urgency. Projects may be given one or two bonus points if there is a strong urgency to acquire lands which might otherwise be lost.

All points will be totaled for each application and those applications receiving the highest scores will be selected for fund assistance to the extent of the allotment for each semiannual period, except that any project scoring a total of not more than sixty-five points will not be funded.

23.7(4) Applications not selected for fund assistance. All applications not selected for fund assistance will be retained on file for consideration and possible funding during subsequent review periods or until a request for withdrawal is received from the applicant. Applications which have been considered and not selected for funding during three consecutive review periods will be returned to the applicant.

23.7(5) Rating system not used. The rating system will not be applied during any semiannual period in which the total grant request, including backlogged applications, is less than the allotment. Applications will be reviewed only to determine eligibility and overall desirability.

This rule is intended to implement the provisions of Iowa Code section 110.3.

ARC 4075

CONSERVATION COMMISSION[290]

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 the Iowa Code sections 107.24 and 111.47, the State Conservation Commission hereby gives Notice of Intended Action to amend Chapter 45, "State Parks and Preserves".

The proposed amendments change the established camping fee in state parks and recreation areas.

Any interested person may make written suggestions or comments on this rule prior to October 19, 1983. Such written materials should be directed to the Director, State Conservation Commission, Wallace State Office Building, Des Moines, Iowa 50319. Persons who wish to convey their views orally may present those views in the Wallace State Office Building, fourth floor conference room, on October 19, 1983, at 10:00 a.m.

At the hearing, persons will be asked to give their names and addresses for the record, and to confine their remarks to the subject of the rule.

This rule is intended to implement Iowa Code section 111.47.

The following amendments are proposed:

ITEM 1. Delete last sentence in 45.2(4).

ITEM 2. 290—45.4(111) is amended to read as follows:

290—45.4(111) Camping and electricity fees. Except as provided in 45.2(4), the established fees in state parks and recreation areas are:

45.4(1) Nonmodern area—~~\$3.75~~ \$4.00 per night per basic unit.

45.4(2) Modern area (shower-flush toilet) ~~\$4.50~~ \$5.00 per night per basic unit.

45.4(3) Per person over the basic unit of six—25¢.

45.4(4) Chaperoned, organized youth groups—25¢ per person with a minimum of ~~\$3.75~~ \$4.00 per night in a nonmodern area and ~~\$4.50~~ \$5.00 per night in a modern area.

45.4(5) Electricity—~~\$1.50~~ \$2.00. This fee will be charged if camping on a site where electricity is available, even when the electricity is not utilized.

ARC 4073

CONSERVATION COMMISSION[290]

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 the Iowa Code section 107.24, the State Conservation Commission hereby gives Notice of Intended Action to amend Chapter 108, "Fishing Regulations", Iowa Administrative Code.

This rule establishes season dates, daily catch limits, possession limits, and minimum length limits for the 1984 fishing season.

Any interested person may make written suggestions or comments on this proposed rule prior to November 2, 1983. Such written materials should be directed to the Fisheries Section, State Conservation Commission, Wallace State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the fisheries section at 515/281-5208 or at the fisheries office on the fourth floor of the Wallace State Office Building. Also, there will be a public hearing on Tuesday, October 18, 1983 at 10:00 a.m. in the conference room on the fourth floor of the Wallace State Office Building. Persons may present their views at the public hearing either orally or in writing.

This rule is intended to implement the Iowa Code chapter 109.

The following amendment is proposed:

Subrule 108.2(1) is amended as follows:

108.2(1) Natural lakes. In Lakes West Okoboji, East Okoboji, and Spirit Lake, there shall be a closed season on walleye, muskellunge or tiger muskie, and northern pike from February 15, ~~1983~~ 1984, to ~~May 6, 1983~~ May 4, 1984.

These rules are intended to implement Iowa Code sections 109.39 and 109.67.

ARC 4072**CONSERVATION COMMISSION[290]****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 107.24, the State Conservation Commission hereby gives Notice of Intended Action to amend Chapter 110, "Commercial Fishing", Iowa Administrative Code.

This rule establishes areas, seasons, methods, species, permit and catch report requirements for inland commercial fishing and catfish length limits for the Mississippi and Missouri Rivers.

Any interested person may make written suggestions or comments on this proposed rule prior to November 2, 1983. Such written materials should be directed to the Fisheries Section, State Conservation Commission, Wallace State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the fisheries section at 515/281-5208 or at the fisheries office on the fourth floor of the Wallace State Office Building. Also, there will be public hearings as follows: (1) Tuesday, October 18, 1983, at 7:00 p.m. in Burlington at the Southeastern Community College Little Theatre; (2) Wednesday, October 19, 1983, at 7:00 p.m. in Clinton at the Izaak Walton League Clubhouse; (3) Thursday, October 20, 1983, at 7:00 p.m. in Guttenberg at the City Hall basement meeting room. Persons may present their views at the public hearings either orally or in writing.

This rule is intended to implement the Iowa Code chapter 109.

The following amendments are proposed:

Rule 290—110.7(109) is amended to read as follows:

290—110.7 Catfish length limits. It shall be lawful for any person legally licensed to take with commercial fish gear any catfish not less than ~~thirteen~~ fifteen inches from waters of the Mississippi and Missouri Rivers. *River pools numbered nine through seventeen and the Missouri River effective January 1, 1984. Catfish not less than thirteen inches may be lawfully taken from waters of Mississippi River pools numbered eighteen through twenty until January 1, 1985 at which time the legal length limit shall become fifteen inches.*

This rule is intended to implement Iowa Code section 109.113 as amended by the 1983 Iowa Acts, House File 341.

ARC 4074**CONSERVATION COMMISSION[290]****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 107.24, 109.38, and 109.39 the State Conservation Commission hereby gives Notice of Intended Action to amend Chapter 111, "Wild Turkey Spring Hunting Regulations," Iowa Administrative Code.

These rules give the regulations for hunting wild turkeys and include season dates, bag limits, possession limits, season limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation tag requirements.

Any interested persons may make written suggestions or comments on these proposed rules prior to October 20, 1983. Such written materials should be directed to the Wildlife Section, State Conservation Commission, Wallace State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the wildlife section at 515/281-6156 or at the wildlife offices on the fourth floor of the Wallace State Office Building. Also, there will be a public hearing on October 20, 1983 at 10:00 a.m. in the conference room on the fourth floor of the Wallace State Office Building at which persons may present their views either orally or in writing.

At the hearing, persons will be asked to give their names and addresses for the record, and to confine their remarks to the subject of the rule.

These rules are intended to implement the provisions of Iowa Code chapter 109.

The following amendments are proposed:

ITEM 1. Rule 290—111.1(109) is amended to read as follows:

290—111.1(109) General. Wild turkey may be taken during the ~~1983~~ 1984 spring season subject to the following regulations:

111.1(1) License. All hunters must have in possession a ~~1983~~ 1984 wild turkey license when hunting wild turkey. Licenses will be issued by zone and period and will be valid in the designated zone and for the designated period only. Except as provided in rule 111.4(109), no person shall obtain more than one license per year.

111.1(2) Daily and possession limits. Daily bag limit, one bearded (or male) wild turkey. Possession limit, one

CONSERVATION COMMISSION[290] (cont'd)

bearded (or male) wild turkey per license. Season limit, one bearded (or male) wild turkey per license.

111.1(3) Shooting hours. Shooting hours shall be from one-half hour before sunrise to 12:00 noon, central standard time, each day.

This rule is intended to implement Iowa Code sections 109.38, 109.39, and 109.48.

ITEM 2. Rule 290—111.2(109) is amended to read as follows:

290—111.2(109) Method of take.

111.2(1) Shotgun and bow and arrow. Wild turkey may be taken by shotgun, muzzleloading shotgun, and bow and arrow in ~~ten twelve~~ zones from April ~~2 17, through to~~ May 8 ~~13, 1983~~ 1984.

111.2(2) Zones. Wild turkey, in accordance with the tenure and zone designated on the license issued, may be taken in one of ~~ten twelve~~ zones described as follows:

a. Zone one. Zone one is an area bounded as follows: Beginning at the point where U.S. Highway 169 crosses the Iowa-Missouri state line; thence north on U.S. Highway 169 to State Highway 90; thence east on State Highway 90 to Interstate Highway 35; thence south on Interstate Highway 35 to State Highway 92; thence east on State Highway 92 to State Highway 5; thence south on State Highway 5 to U.S. Highway 34; thence east on U.S. Highway 34 to U.S. Highway 218; thence north on U.S. Highway 218 to State Highway 78; thence west on State Highway 78 to Keokuk County Road W15; thence north on Keokuk County Road W15 to State Highway 92; thence east on State Highway 92 to State Highway 70; thence north on State Highway 70 to State Highway 22; thence east on State Highway 22 to U.S. Highway 61; thence south on U.S. Highway 61 to Louisa County Road H22; thence east on Louisa County Road H22 to State Highway 99; thence east and south on State Highway 99 to Burlington, Iowa the Iowa-Illinois state line; thence south along the Iowa-Illinois state line to the Iowa-Missouri state line; thence west along the Iowa-Missouri state line to the point of beginning, *except this zone does not include those lands described as zones eleven and twelve.*

b. Zone two. Zone two is an area bounded as follows: Beginning at the point where U.S. Highway 59 crosses the Iowa-Missouri state line; thence north on U.S. Highway 59 to State Highway 37; thence west and north on State Highway 37 to State Highway 183; thence north on State Highway 183 to State Highway 141; thence east on State Highway 141 to U.S. Highway 59; thence north on U.S. Highway 59 to U.S. Highway 20; thence west on U.S. Highway 20 to Woodbury County Road L37; thence south on Woodbury County Road L37 to Woodbury County Road D38; thence west on Woodbury County Road D38 to Woodbury County Road K64; thence north on Woodbury County Road K64 to U.S. Highway 20; thence west on U.S. Highway 20 to the Iowa-Nebraska state line; thence south along the state line to the Iowa-Missouri state line; thence east along the state line to the point of beginning.

c. Zone three. Zone three is an area bounded as follows: Beginning at the point where U.S. Highway 20 and U.S. Highway 169 intersect; then east ~~along~~ on U.S. Highway 20 to State Highway 17; thence south ~~along~~ on State Highway 17 to State Highway 210; thence east on State Highway 210 to U.S. Highway 69; thence south on U.S. Highway 69 to Interstate Highway 80; thence west on Interstate Highway 80 to State Highway 141; thence ~~westerly~~ ~~along~~ north and west on State Highway 141 to Dallas County Road F31; thence west ~~along~~ on Dallas

County Road F31 to U.S. Highway 169; thence north ~~along~~ on U.S. Highway 169 to the point of beginning.

d. Zone four. Zone four is an area bounded as follows: Beginning at the intersection of Interstate Highways 80 and 380; thence west along Interstate Highway 80 to Poweshiek County Road V18; thence north on Poweshiek and Tama County Roads V18 U.S. Highway 63; thence north on U.S. Highway 63 to U.S. Highway 30; thence east on U.S. Highway 30 to U.S. Highway 218; thence north on U.S. Highway 218 to Black Hawk County Road D48; thence east on Black Hawk and Buchanan County Roads D48 to Brandon, Iowa; thence east on State Highway 283 to State Highway 150; thence south on State Highway 150 to Cedar Rapids, Iowa; thence south on Interstate Highway 380 to the point of beginning.

e. Zone five. Zone five is an area bounded as follows: Beginning at the intersection of State Highway 13 and U.S. Highway 30; thence north on State Highway 13 to U.S. Highway 20; thence west on U.S. Highway 20 to State Highway 187; thence north on State Highway 187 to State Highway 3; thence east on State Highway 3 to Dubuque, Iowa; thence south along the Iowa-Illinois state line to State Highway 64; thence west on State Highway 64 to Jackson County Road Z34; thence south on Jackson and Clinton County Roads Z34 to State Highway 136; thence south and east on State Highway 136 to the Iowa-Illinois state line; thence south along the state line to Interstate Highway 80; thence west on Interstate Highway 80 to State Highway 38; thence north on State Highway 38 to U.S. Highway 30; thence west on U.S. Highway 30 to the point of the beginning.

f. Zone six. Zone six is an area bounded as follows: Beginning at the point where State Highway 139 crosses the Iowa-Minnesota border; thence south on State Highway 139 to State Highway 9; thence east west on State Highway 9 to U.S. Highway 52 63; thence south on U.S. Highway 52 63 to State Highway 24; thence east on State Highway 24 to State Highway 150; thence south on State Highway 150 to State Highway 3; thence east on State Highway 3 to Dubuque, Iowa; thence north along the Iowa-Wisconsin state line to the Iowa-Minnesota state line; thence west along the state line to the point of beginning, *except this zone does not include those lands described as zone seven.*

g. Zone seven. Zone seven is the Yellow River State Forest in Allamakee and Clayton Counties and the Volga State Recreation Area in Fayette County only.

h. Zone eight. Zone eight is an area bounded as follows: Beginning at Waverly, Iowa; thence north on Bremer and Chickasaw County Roads V14 to State Highway 346; thence east on State Highway 346 to U.S. Highway 18; thence east on U.S. Highway 18 to Chickasaw County Road V56; thence south on Chickasaw and Bremer County Roads V56 to State Highway 3; thence west on State Highway 3 to the point of the beginning.

i. Zone nine. Zone nine is an area bounded as follows: Beginning at the intersection of State Highway 175 and U.S. Highway 65; thence north on U.S. Highway 65 to U.S. Highway 20; thence east on U.S. Highway 20 to Butler County Road T19; thence south on Butler and Grundy County Roads T19 to State Highway 214; thence south on State Highway 214 to State Highway 175; thence west on State Highway 175 to the point of beginning.

j. Zone ten. Zone ten is an area bounded as follows: Beginning at the intersection of State Highways 44 and 25; thence south on State Highway 25 to U.S. Highway 6; thence east and north on U.S. Highway 6 to Redfield, Iowa; thence north on Dallas County Road P46 to State

CONSERVATION COMMISSION[290] (cont'd)

Highway 44; thence west on State Highway 44 to State Highway 4; thence north on State Highway 4 to State Highway 141; thence west on State Highway 141 to Coon Rapids, Iowa; thence south on Carroll and Guthrie County Roads N46 to State Highway 44; thence east on State Highway 44 to the point of beginning.

k. Zone eleven. Zone eleven is the Lucas and White-breast Units of the Stephens State Forest in Clarke and Lucas Counties only.

l. Zone twelve. Zone twelve is the Shimek State Forest in Lee and Van Buren Counties only.

This rule is intended to implement Iowa Code sections 109.38, 109.39, and 109.48.

ITEM 3. Rule 290—111.3(109) is amended to read as follows:

290—111.3(109) Permitted and prohibited weapons and devices.

111.3(1) Permitted weapons. Shotguns and muzzle-loading shotguns not smaller than 20 gauge and shooting shot only, and long bows with broadhead arrows only will be permitted in taking wild turkey.

111.3(2) Prohibited devices. The use of decoys, dogs, horses, motorized vehicles, aircraft, bait, and the use or aid of recorded or electronically amplified bird calls or sounds, or recorded or electronically amplified imitations of bird calls or sounds is prohibited, *except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Paraplegic" means an individual afflicted with paralysis of the lower half of the body with the involvement of both legs, usually due to disease of or injury to the spinal cord.*

This rule is intended to implement Iowa Code sections 109.38, 109.39, and 109.48.

ITEM 4. Rule 290—111.4(109) is amended to read as follows:

290—111.4(109) Application procedure. All applications for wild turkey hunting licenses for the ~~1983~~ 1984 spring wild turkey hunting season must be made on forms provided by the state conservation commission and returned to the state conservation commission office in Des Moines, Iowa, with a remittance of fifteen dollars. Individual applications only will be accepted.

111.4(1) Application periods. Applications for ~~1983~~ 1984 spring wild turkey hunting licenses shall be received and accepted from January ~~17~~ 16 through to February ~~15~~ 14, ~~1983~~ 1984, or if the application form bears a valid and legible U.S. Postal Service postmark during the same period. No person shall submit more than one application. At the end of such period, if applications have been received in excess of the license quota for any hunting zone or period the commission shall conduct a drawing to determine which applicants shall receive licenses. Incomplete or improperly completed applications, applications not meeting the above conditions, or applications received prior to or after the application period shall not be considered valid applications for the drawing. If the quota for any hunting period or zone has not been filled by applications received during the application period, licenses shall then be issued in the order in which applications are received thereafter and shall continue to be issued until the quota has been met or until ~~March 27~~ April 1, ~~1983~~ 1984, whichever first occurs. If licenses are still available after ~~March 22~~ 27, ~~1983~~ 1984, applicants who have already received one license may apply for one additional license, and applications shall be handled in the same manner as other applications

received during that period of ~~March 23~~ 27, through to ~~March 27~~ April 1, ~~1983~~ 1984.

111.4(2) License quotas. A limited number of wild turkey hunting licenses will be issued for each zone for each of three hunting periods. The hunting periods are ~~April 12~~ 17 through to ~~April 18~~ 23, ~~1983~~ 1984; ~~April 19~~ 24 through to ~~April 26~~ May 1, ~~1983~~ 1984, and ~~April 27~~ May 2 through to ~~May 8~~ 13, ~~1983~~ 1984. The maximum number of licenses which will be issued in each zone for each hunting period as follows:

- a. Zone one. Twelve hundred fifty.
- b. Zone two. Two hundred ~~twenty-five~~ fifty.
- c. Zone three. One hundred ~~twenty-five~~.
- d. Zone four. One hundred ~~ten~~ ~~twenty-five~~.
- e. Zone five. ~~One~~ Two hundred ~~seventy~~ ~~twenty-five~~.
- f. Zone six. Five hundred ~~fifty~~ ~~seventy-five~~.
- g. Zone seven. ~~One~~ hundred ~~Eighty~~.
- h. Zone eight. ~~Fifteen~~ ~~Twenty~~.
- i. Zone nine. ~~Ten~~ ~~Fifteen~~.
- j. Zone ten. ~~Thirty-five~~.
- k. Zone eleven. ~~Sixty-five~~.
- l. Zone twelve. One hundred ~~twenty-five~~.

111.4(3) Applications for special turkey hunting licenses, as provided for in Iowa Code section 109.38 as ~~amended by the 1982 Acts, Chapter 1037~~, shall be on forms furnished by the commission, and shall be received at the commission offices no later than ~~March 12~~ 17, ~~1983~~ 1984.

This rule is intended to implement Iowa Code sections 109.38, 109.39, and 109.48.

ARC 4088

**CORRECTIONS,
DEPARTMENT OF[291]
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 1983 Iowa Acts, Senate File 464, the Department of Corrections, created by Senate File 464 effective October 1, 1983, hereby gives Notice of Intended Action to adopt new chapters and revise existing chapters. These rules are intended to explain the mandatory agency activities for the new Department of Corrections as found in Iowa Code sections 17A.3, 17A.4, 17A.5, 17A.7, 17A.9 and 17A.12. These rules further implement the basic operational activities of the department. The following is a synopsis of the chapters being added or the amendments to existing Department of Corrections rules.

Chapter 1 "General Department Procedures" a new chapter covering function and location of the department, responsibilities of the board, the director and the three divisions within the department which are institutions, community services, and administration;

Chapters 2 and 3 are reserved for future use;

Chapter 4 "General Administration" a new chapter covering purchase of service contracts;

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

- Chapter 5 is reserved for future use;
- Chapter 6 "Personnel" a new chapter covering background investigations of employment applicants;
- Chapters 7 to 9 are reserved for future use;
- Chapter 10 "Rulemaking" a new chapter covering the process by which the department of corrections will promulgate administrative rules;
- Chapter 11 "Declaratory Rulings" a new chapter covering the process by which a declaratory ruling is requested and issued;
- Chapter 12 "Contested Cases" a new chapter covering contested cases;
- Chapters 13 to 19 are reserved for future use;
- Chapter 20 "Adult Correctional Institutions", previously chapter 16, which adds institutional restitution rules;
- Chapter 21 "Iowa State Penitentiary", previously chapter 17, which revises the existing furlough rules;
- Chapter 22 "Iowa State Men's Reformatory", previously chapter 18, which adds visiting hours at Luster Heights and the furlough rules;
- Chapter 23 "Iowa Correctional Institution for Women", previously chapter 19, which adds furlough procedures;
- Chapter 25 "Correctional Treatment Unit" a new chapter which covers visiting hours and institutional tours;
- Chapter 26 "North Central Correctional Facility" a new chapter which covers visiting hours and institutional tours;
- Chapter 28 "Riverview Release Center", previously chapter 21, which adds furlough procedures;
- Chapters 29 to 36 are reserved for future use;
- Chapters 38 and 39 are reserved for future use;
- Chapter 40 "Community-Based Corrections Administration" a new chapter;
- Chapter 41 "Pre-Conviction Services" a new chapter;
- Chapter 42 "Probation Services" a new chapter;
- Chapter 43 "Residential Facilities" a new chapter;
- Chapters 47 to 49 are reserved for future use;
- Chapter 50 "Jail Facilities", previously chapter 15, which adds an informal appeal process.

These rules have been filed emergency, effective October 1, 1983. Complete text of these rules is published herein as emergency ARC 4087.

Any interested persons may make oral or written suggestions or comments on these proposed rules not later than 4:30 p.m., October 20, 1983. Such written materials shall be directed to the Director, Department of Corrections, Jewett Building, 10th and Grand, Des Moines, Iowa 50309. A meeting will be held for the purpose of oral presentation at 1:00 p.m., October 20, 1983, in Hearing Room 2, First Floor, Lucas Building, Capitol Complex, East 12th and Walnut, Des Moines, Iowa. Persons who want to convey their views orally should contact the director's office (515) 281-4811. The proposed rules are subject to revisions after the department considers all written and oral presentations.

ARC 4092**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 authority of Iowa Code sections 93.7(10) and 17A.3, and federal regulations under the Energy Policy and Conservation Act, Title III, Part D, the Iowa Energy Policy Council proposes Chapter 17, "Building Energy Management for State and Local Government," Iowa Administrative Code.

U.S. Congress in P.L. 93—377, Sect. 155 (FY1983) and Iowa General Assembly, 1983 Regular Session, Senate Files 548 and 551, provide funds for energy management programs in public buildings. These rules are to provide procedures and requirements for this program.

Any interested person may make written comments or suggestions prior to October 18, 1983 to Roya Stanley, Iowa Energy Policy Council, Lucas State Office Building, Des Moines, Iowa 50319.

A public hearing will be conducted on Tuesday, October 18, 1983 at 2:00 p.m. in Conference Room, 6th Floor, Lucas State Office Building, Des Moines, Iowa. Persons who wish to present their views at this public hearing should contact the Iowa Energy Policy Council one day prior to the hearing.

This rule is intended to implement Iowa Code section 93.7.

The following rules are proposed.

**CHAPTER 17
BUILDING ENERGY MANAGEMENT FOR
STATE AND LOCAL GOVERNMENT**

380—17.1(93) General. The building energy management for state and local government program was established to reduce consumption and associated costs of conventional energy resources in public buildings owned or leased by state of Iowa, board of regents, and units of local government. This objective is to be accomplished through several means, including:

1. Identifying and implementing improved operation and maintenance programs.
2. Identifying and implementing energy conservation measures, including solar energy or renewable resource measures.
3. Conducting training courses in energy management for state and local government personnel.
4. Establish the position of energy management technician in area education agencies.

ENERGY POLICY COUNCIL[380] (cont'd)

17.1(1) Purpose and scope. This chapter establishes requirements for:

- a. The conduct of preliminary energy audits and energy audits, the qualifications of persons conducting them and allowable costs of energy audits.
- b. A technical assistance program and the eligibility criteria to receive a grant.
- c. Eligibility criteria to receive a grant to install energy conservation measures including solar and other renewable resource measures.
- d. Establishing programs and materials to train local government operating personnel in effective methods of energy management specific to their jobs.
- e. Continuing a pilot project in area education agencies to employ energy management technicians who will provide information and assistance to Iowa's public and private schools.

17.1(2) Definitions. For purposes of these rules:

- a. "Average simple payback period" means the total estimated costs of all measures divided by the total estimated annual cost savings.
- b. "Building" means any structure which includes a heating or cooling system, or both.
- c. "Complex" means a closely situated group of buildings on a contiguous site or a closely situated group of buildings served by a central utility plant, such as a college campus or a multibuilding hospital.
- d. "Degree-days" are the sum of heating degree-days and cooling degree-days. An average value, preferably taken from the National Oceanographic and Atmospheric Administration official averages, may be used.
- e. "Eligible application" is an application for financial assistance which has been reviewed by EPC staff and board of regents (when applicable) and found to be complete and correct. It is eligible for ranking and funding.
- f. "Energy audit" means a survey of a building or complex that is conducted in accordance with the requirements of this rule.
- g. "Energy conservation measure" means an installation in a building which is primarily intended to reduce energy consumption or allow the use of an alternative energy source.
- h. "In-kind contribution" means the value of noncash contributions provided by the grantee. In-kind contributions may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefiting and specifically identifiable to the project or program.
- i. "Preliminary energy audit" means a determination of the energy consumption characteristics of a building.
- j. "Simple payback period" means the estimated total costs of the measure (including design, materials and installation) divided by the estimated annual cost savings for the measure. For renewable and coal conversions, savings are based on the fuel replaced.
- k. "Square feet" means the total gross conditioned floor area of the building.
- l. "Unit of local government" means the government of a county, municipality, or township, which is a unit of general purpose government below the state, determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes; the recognized governing body of an Indian tribe which governing body performs substantial governmental functions; libraries owned by any of the foregoing; and public libraries which serve all residents of a political subdivision below the state level, such as a community,

district or region, free of charge and which derive at least forty percent of their operating funds from tax revenues of a taxing authority below the state level.

380—17.2(93) Eligibility. To be eligible to receive financial assistance, an applicant must:

17.2(1) Be a unit of state of Iowa or local governments, and apply for owned or leased buildings, not including schools and hospitals (which are eligible for building energy management grants under Institutional Conservation Program) except buildings owned or leased by board of regents institutions which are eligible.

17.2(2) Give assurance that it has implemented all energy conservation operation and maintenance procedures identified in the energy audit and the technical assistance audit, or provide a written plan and time schedule for implementing specific operation and maintenance procedures so identified;

17.2(3) For technical assistance, an energy audit must be completed in the building for which financial assistance is requested, subsequent to the most recent construction, reconfiguration or utilization change which significantly modified energy use within the building;

17.2(4) For energy conservation measures, a technical assistance audit or its equivalent must be completed in accordance with these rules in the building for which financial assistance is requested; and

a. Have no plan or intention at the time of application to close or otherwise dispose of the building for which financial assistance is requested within the simple payback period of any energy conservation measure recommended for that building. The simple payback period shall be calculated in accordance with 17.1(2)"j"; and

b. Demonstrate that the simple payback period of each energy conservation measure is not greater than seven years, and the estimated useful life of the measure is greater than its simple payback period.

17.2(5) Submit an application in accordance with the provisions of these rules.

380—17.3(93) Auditor qualifications. Energy auditors must be able to comply with the conflict of interest requirement which states the energy auditor shall disclose any interest greater than ten percent in a company that manufacturers or installs devices that may be required as a result of the energy audit.

17.3(1) Energy auditors.

a. All Iowa registered architects and Iowa registered engineers who are Class A energy auditors and associate Class A energy auditors (see 6.1(3)) are qualified as energy auditors for this program.

b. Persons who are certified as having attended an energy audit workshop will be qualified as energy auditors.

c. Reciprocity will be recognized for persons who have attended similar workshops in other states, if those workshops have been approved by the director.

d. Energy auditors must be someone other than the person directly responsible for the day-to-day operations of the building.

e. An energy audit shall include a statement signed by the auditor that the auditor meets the applicable qualifications, the auditor has indicated any financial interests, and the audit was conducted in accordance with the requirements of 17.5(1).

17.3(2) Technical assistance analysts. In order to qualify as a technical assistance analyst, a person must:

a. Be a certified Class A energy auditor as prescribed in chapter 6 of energy policy rules; or

ENERGY POLICY COUNCIL[380] (cont'd)

b. Be a registered engineer, as defined in Iowa Code chapter 114 or in the case of an architect, be registered in accordance with Iowa Code chapter 118 and be a part of an architect-engineer team; and be knowledgeable and experienced in energy conservation matters.

380—17.4(93) Preliminary energy audits—contents. Preliminary energy audits will be completed on all buildings for which grant applications are submitted. A preliminary energy audit shall provide:

17.4(1) A description of the building or complex and its energy-using characteristics, including:

a. The functional use of the building;
b. The size of the building expressed in gross square feet;

c. The date of construction of the building;
d. Approximate daily hours of operation, including periods of partial use, if applicable;

e. An identification of major energy-using systems;
f. Fuel use in physical unit and cost data by type for the most current twelve-month period ending June 30, by month if practicable, using actual data or an estimate if actual figures are unavailable;

17.4(2) A brief description of activities which have been undertaken to conserve energy in the building or complex being audited;

17.4(3) Information regarding site, building, and heating and hot water systems related to solar energy or other renewable resource material.

380—17.5(93) Energy audits. Energy audits will be completed on all buildings for which grant applications are submitted.

17.5(1) Contents of an energy audit. An energy audit shall include a description of:

a. Major changes in functional use or mode of operation planned in the next seven years;

b. Terminal heating and cooling, such as radiators, unit ventilators, fan coil units, or double duct reheat systems;

c. General building conditions;
d. Energy conservation operation and maintenance procedures have been implemented for the building;

e. Recommend appropriate energy conservation operation and maintenance procedures on the basis of an on-site inspection with a general estimate of energy and cost savings, if practicable;

f. The need for the acquisition and installation of energy conservation measures and potential for retrofit;

g. Whether building conditions or characteristics present an opportunity for use of solar heating and cooling systems or solar hot water systems;

h. The need for major changes requiring technical analysis prior to implementation.

17.5(2) Cost of energy audits.

a. Buildings owned or leased by state of Iowa and board of regents may receive funds for the full cost of energy audits, with maximum grants and exceptions as provided in this subrule. Local government buildings may receive grants for the lesser of fifty percent of the actual cost of an energy audit or fifty percent of the maximum grant (as shown in paragraph "b"). Applicant's share of cost may be based on cash and in-kind contribution.

b. Except as provided in paragraph "c" of this subrule, the grant award for an energy audit shall be the actual cost of the audit, or the following:

Building Gross Square Feet	Maximum Grant
Up to 30,000	\$ 800.00
30,000 to 100,000	1,000.00
100,000 and above	1,200.00

Complex: The sum of individual building allowances for the first 150,000 gross square feet and 80 percent of individual building allowances above 150,000 gross square feet but not to exceed \$10,000.

c. Where necessary, the council may increase the allowable cost of an energy audit for:

(1) The amount necessary to provide transportation to perform energy audits of buildings in remote locations; and

(2) The amount necessary to conduct energy audits for a building having an unusually complicated system or configuration.

380—17.6(93) Technical assistance program conducted by qualified analyst.

17.6(1) A technical assistance program shall be conducted by a qualified technical assistance analyst, as set forth in subrule 17.3(2). A technical assistance program shall include a detailed engineering analysis to identify the estimated costs of, and the energy and cost savings likely to be realized from, implementing each identified energy conservation operation and maintenance procedure and from acquiring and installing each energy conservation measure.

17.6(2) Contents of a technical assistance audit. The technical analyst shall prepare a final report which shall include:

a. A description of building characteristics and energy data including the results of the preliminary energy audit and energy audit of the building, the operating characteristics of energy using systems, and the estimated remaining useful life of the building;

b. An analysis of the estimated energy consumption of the building, by fuel type (in total Btu's and Btu/sq. ft. yr.), at optimum efficiency (assuming implementation of all energy conservation operation and maintenance procedures);

c. An evaluation of the building's potential for solar conversion, particularly for water heating systems;

d. A listing of any known local zoning ordinances and building codes which may restrict the installation of solar systems;

e. A listing of energy use and cost data for each fuel type used for the most current twelve-month period ending June 30;

f. An analysis of all recommendations for acquisition and installation of energy conservation measures setting forth a description for each recommended energy conservation measure, including:

(1) An estimate of the cost of design, acquisition and installation;

(2) An estimate of the useful life and simple payback;

(3) An estimate of increases or decreases in operation and maintenance costs that would result, if any;

(4) An estimate of the salvage value or disposal cost, if any;

(5) An estimate of the annual energy and energy cost savings (using current energy prices). In calculating the potential energy cost savings, the technical assistance analysts shall:

ENERGY POLICY COUNCIL[380] (cont'd)

Assume that all energy savings obtained from energy conservation operation and maintenance procedures have been realized;

Calculate the total energy and energy cost savings, by fuel type, expected to result, taking into account the interaction among the various energy conservation measures; and

Calculate that portion of the total energy and energy costs savings attributable to each individual energy conservation measure.

g. Statement signed by the analyst that the analyst meets the applicable qualifications as set forth in subrule 17.3(2), that the analyst has indicated any financial interests in accordance with rule 17.3(93), and that the technical assistance program was conducted in accordance with the requirements of this subrule;

h. The following conversion factors will be used when calculating Btu content of fuels:

Natural gas	1,030 Btu's per cubic foot
Distillate fuel oil	138,690 Btu's per gallon
Residual fuel oil	149,690 Btu's per gallon
Coal	20,000,000 Btu's per standard short ton
LP gases	95,475 Btu's per gallon
Steam	1,050 Btu's per pound
Electricity	3,413 Btu's per kilowatt-hour

380—17.7(93) Energy conservation measures. This program is to fund the design, acquisition, and installation of energy conservation measures to reduce energy consumption or measures to allow the use of solar or other alternative energy resources.

380—17.8(93) Grant applications for technical assistance and energy conservation measures.

17.8(1) Applications for financial assistance shall be submitted for each building and shall include:

- a. The applicant's name and mailing address;
- b. A written statement certifying that the applicant is eligible under 17.2(93);
- c. The results of the preliminary energy audit and energy audit for each building for which financial assistance is requested;
- d. A project budget which stipulates the intended use of all funds, and identifies the sources and amounts of funds, including in-kind contributions, to be used to meet the cost-sharing requirements described in these rules;
- e. A brief description of the proposed technical assistance program and long-term energy conservation goals;
- f. A signed statement that the applicant:
 1. Has satisfied the requirements set forth in this subrule;
 2. Will expend grant funds for the purpose stated in the application and in compliance with requirements;
 3. Has implemented or provided a written plan to implement all energy conservation operation and maintenance procedures;
 4. Will comply with all applicable reporting requirements;
 5. Certifies that the building is not intended for seasonal use and not used primarily as a school or hospital, except board of regents institutions;
 6. Will not enter into any contract, relating to an energy conservation measure which may require expenditure of more than \$5,000 (excluding technical assistance costs), that does not conform to the provisions of the Davis-Bacon Act (40 U.S.C. section 276a to 276a-5) pertaining to

minimum wages for construction in the applicant's locality;

7. Certifies the number and types of permanent and temporary jobs that will result from implementation of this project, if applicable.

g. Identification of each building including the name or other identification and its address, the building category, description of functional use, ownership, and the size expressed in gross square feet;

h. The applicant's organizational chart with identification of the staff member responsible for energy management;

i. A list of the proposed energy conservation measures, indicating the cost, the estimated energy and energy cost savings, the projected simple payback period, and the milestone dates for completion of the design, acquisition, and installation for each measure. Also required is the average simple payback period for all measures proposed for the building;

j. If the applicant is aware of any adverse environmental impact which may arise from adoption of any energy conservation measure, an analysis of that impact and the applicant's plan to minimize or avoid such impact.

17.8(2) Reserved.

380—17.9(93) Evaluation and ranking of applications.

17.9(1) Evaluation. If an application received by the council is found to be in compliance with the provisions of this chapter, and other laws and regulations, then such application will be eligible for financial assistance.

17.9(2) Ranking.

a. All eligible applications for technical assistance and energy conservation measures will be ranked to establish priorities for funding.

b. All applications will be subject to verification. Utility data or energy planning documents may be requested.

c. When steam is an energy source, the council will consider the fuels used to generate the steam prorated by the energy entering the building.

d. Ranking will be determined by the following factors:

(1) The average simple payback period (ASPP) of all energy conservation measures for the building, according to the formula:

$$(7 - \text{ASPP}) \times 10/3 \text{ points,}$$

where ASPP is the total estimated cost of all energy conservation measures divided by the total annual estimated energy cost savings.

For renewable and coal conversions, estimated energy cost savings will be based on the fuel replaced.

The point range for ASPP is 0-20.

(2) Energy savings:

The type of energy source to which conversion is proposed, according to the formulas:

$$\begin{aligned} &(\text{SI} + 20) \times 0.105 \text{ for solar and renewable resources,} \\ &(\text{SI} + 20) \times 0.053 \text{ for coal,} \end{aligned}$$

where SI is the percentage of total annual energy costs that will be saved by conversion. The upper limit for SI is ninety-six percent.

The annual energy savings, according to the formula:

$$\text{QSI} \times 0.116$$

where QSI is the percentage of annual energy consumption (in Btu's) estimated to be saved from all ECMs

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combined. When the percentage is 50% or greater, the value used for QSI will be 50%.

The type of energy saved, according to the sum of the formulas:

Oil	R x 5.80
Gas	R x 4.35
LPG	R x 4.35
Electricity	R x 2.90
Other	R x 1.45

where R is the ratio of the net energy savings of that type to the gross energy savings for the building.

The point range for energy savings is 0 - 20.

(3) Employment impact has a point range of 0 - 30 and is applicable only for state agencies and units of local government:

Temporary jobs: 1 point per job x 15 jobs = 15 points.

Permanent jobs: 5 points per job x 3 jobs = 15 points.

(4) Potential for continuation of energy management program has a point range of 0 - 10:

Reversion of savings to ECMs = 5 points.

Other: _____ = 5 points.

(5) Potential for use as a model has a point range of 0 - 10:

Visibility impact (Ability to cause similar projects to occur) = 5 points.

Other: _____ = 5 points.

(6) Applicant's match has a point range of 0 - 10, is applicable only to units of local government, and includes in-kind contributions:

10% of total cost matched by applicant = 1 point.

380—17.10(93) Energy management training for local government personnel.

17.10(1) This program is to provide opportunities for operations personnel of units of local government to obtain energy management training which is specific to their job functions.

a. Scope of work.

(1) Identify specific energy topic(s) pertinent to Iowa local government personnel.

(2) Identify existing training materials that are appropriate to Iowa's energy circumstances or identify specific types of materials which do not exist and need to be developed.

(3) Identify specific methods of training delivery and timetable for implementation.

(4) Identify plan for making the training available beyond the term of the contract and without continued financial assistance from the Iowa energy policy council.

(5) Identify an evaluation plan which can be implemented by the council to determine the effectiveness of the training program.

17.10(2) Evaluation criteria.

<u>Factors</u>	<u>Point Values</u>
Number of local government employees to receive training	15
Estimated energy savings	25
Working plan for continuing the training beyond the term of this grant	15
Number of different local governments to receive training	<u>5</u>
Total Possible Point Values	60

380—17.11(93) Energy management technician program. The purpose of this program is to continue the pilot program in area education agencies which established

the paraprofessional career of energy management technician.

17.11(1) Energy management technician will:

a. Direct and coordinate building energy management;

b. Demonstrate energy conservation in public and private schools by identifying and demonstrating operation and maintenance improvements;

c. Motivate more effective energy management in Iowa school buildings;

d. Help to reduce schools' utility and energy costs;

e. Provide an energy information resource to Iowa schools.

17.11(2) Evaluation criteria.

<u>Factors</u>	<u>Point Values</u>
Energy saved per dollar invested	35
Number of schools pledging to participate	25
Potential for the position to continue	20
Potential for the project to be a model for others	15
Number of schools served by the agency which have not already received energy audits	<u>5</u>
Total Possible Point Values	100

380—17.12(93) Grant Awards.

17.12(1) Local governments. The grant awards to units of local government from the Iowa energy policy council for technical assistance and energy conservation programs shall be a maximum of fifty percent of the actual cost. The grant recipient must provide the remaining fifty percent from local funds or in-kind contributions, as defined in subrule 17.1(2)"h."

17.12(2) State and regents grants. Grant awards to agencies of state of Iowa or to regents institutions shall be for full cost of energy management programs approved by Iowa energy policy council and, where applicable, board of regents.

380—17.13(93) Records and reports.

17.13(1) Each grant recipient for a technical assistance and energy conservation measure program shall keep all the records required by these rules.

17.13(2) Quarterly performance and financial status report shall be submitted within thirty days following the end of each calendar quarter.

a. The performance report shall discuss milestones accomplished, those not accomplished, status of in-progress activities, problems encountered, and remedial actions planned.

b. Financial status reports shall be completed in accordance with U.S. Department of Energy and Office of Management and Budget requirements. Forms will be provided to meet this requirement.

17.13(3) Within sixty days of concluding a technical assistance energy conservation measure program, the grantee shall submit a final report to the council which shall detail as applicable:

a. A summary of all work accomplished;

b. Problems encountered;

c. Final financial status reports completed in accordance with 17.13(2)"b."

d. A listing and description of energy conservation measures acquired and installed, a final projected simple payback period for each measure and all the measures

ENERGY POLICY COUNCIL[380] (cont'd)

taken as a whole, and a statement that the completed modifications (material, equipment and installation) conform to the technical assistance audit and the approved grant application.

17.13(4) Grantees shall keep all records required by these rules for a minimum of three years after completion of the program for which the grant was awarded.

17.13(5) Grantees shall submit annual reports to the council for three years following the program. Such reports shall identify each building and shall provide data on the actual energy use for the most current twelve-month period ending June 30. Energy use shall be presented on an annual basis consistent with the energy billing cycle for the building. Annual reports shall be submitted within sixty days of the close of each twelve-month period.

ARC 4089**HEALTH DEPARTMENT[470]
NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code sections 135.11(15) and 144.3, the Iowa State Department of Health hereby gives Notice of Intended Action to amend Chapter 96 "Vital Records", Iowa Administrative Code.

This amendment will notify the public of the department's intended policy of not remitting overpayments of less than two dollars for copies of or searches for vital records.

A public hearing on this amendment will be held on October 18, 1983 at 1:00 p.m. in the Lucas State Office Building, third floor conference room, Des Moines, Iowa.

Written comments will be accepted until October 18, 1983. Comments should be directed to Mark W. Wheeler at the Iowa State Department of Health, Lucas State Office Building, Third Floor, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 144.46.

Amend rule 470—96.4(144) by adding the following to the end of the second paragraph:

Any overpayment of less than two dollars received by the department for the copying of or search for vital records shall not be remitted.

ARC 4090**HEALTH DEPARTMENT[470]
MEDICAL EXAMINERS, BOARD OF
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 147A.4, the Iowa Board of Medical Examiners and the Iowa State Department of Health hereby give Notice of Intended Action to amend Chapter 132, "Training and Certification of and Services Performed by Advanced Emergency Medical Technicians and Paramedics," Iowa Administrative Code, to modify the rules for the advanced EMT-D temporary pilot study program.

In early 1981, the Emergency Medical Services Learning Resources Center (EMSLRC), University of Iowa Hospitals and Clinics, Iowa City, Iowa proposed a limited study wherein individuals who were certified as basic EMT-A's and advanced EMT-I's would be trained to recognize ventricular fibrillation and to perform manual cardiac defibrillation on persons suffering from that deadly affliction. The original proposal was based on research completed by the EMSLRC which indicated a zero percent chance of survival for individuals in ventricular fibrillation without definitive care within four to six minutes of the arrest. Survival for the past and proposed study means a patient that is discharged from the hospital at or near their prearrest level of functioning.

The survival rate in the experimental communities for individuals documented to be in ventricular fibrillation increased from zero to nineteen percent. Survival rate in the control communities increased from zero to three percent. Strict requirements were imposed on the experimental group as findings dictated.

Development of the proposed rules is based on the experience gained through the first phase of the pilot program. The rules allow additional communities to be trained and permit other advanced care training programs to provide EMT-D manual training using the course developed by the EMSLRC. Also included in the rules is a provision to allow the EMSLRC to select, train, and monitor twenty service programs which are to be authorized to use automatic defibrillators equipped to monitor and record all occurrences involved in actual cardiac arrest situations.

Statistics from all service programs involved in the EMT-D study are to be collected to determine, among other things, the efficacy of the automatic defibrillator when used by comparative groups.

HEALTH DEPARTMENT[470] (cont'd)

Any interested person may make written comments or suggestions on the proposed rules prior to October 18, 1983. Such written material should be directed to Norman L. Pawlewski, Commissioner of Public Health, Iowa State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319 or Ronald V. Saf, Executive Director, Iowa Board of Medical Examiners, Executive Hills West, Capitol Complex, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact Ronald V. Saf at 515-281-5171 or in the offices at Executive Hills West or Norman L. Pawlewski at 515-281-5605 or in the offices at Lucas State Office Building.

This rule is intended to implement Iowa Code chapter 147A.

ITEM 1. Rule 470—132.12(147A) is amended by deleting the original language and inserting in lieu thereof the following new language.

470—132.12(147A) Temporary pilot program for an advanced EMT-D study.

132.12(1) "Advanced EMT-D" means a currently certified basic EMT-A or advanced EMT-I who has successfully completed a training program as developed and co-ordinated under the auspices of the Emergency Medical Services Learning Resources Center (EMSLRC), University of Iowa Hospitals and Clinics, Iowa City, Iowa, that specifically addresses the recognition and manual or automatic defibrillation of ventricular fibrillation as approved by the board with the advice and assistance of the council. Certification by the board shall permit advanced EMT-D's to perform ventricular defibrillation in accordance with their training while functioning within an advanced EMT-D service program as authorized by the department upon the advice and consent of the council.

132.12(2) Board approved training institutions may conduct training for the advanced EMT-D manual level in accordance with these rules provided that:

a. A written agreement between the training institution and the service program medical director exists which establishes responsibility for the review of actual run tapes;

b. A mechanism exists to ensure that a written review of the actual run tape, the tape, and a copy of the advanced EMT-D run report are forwarded to the EMSLRC for statistical evaluation within one week of each cardiac arrest patient; and

c. The service program medical director agrees in writing to be responsible for the review and documentation of monthly practice tapes completed by all individuals certified at the advanced EMT-D manual level who are associated with the service program.

132.12(3) Individuals who are certified to perform manual defibrillation shall be required to complete a monthly practice tape. When this requirement is not met, the individual shall be suspended from participation in this program until such time as compliance is documented by the service program medical director.

132.12(4) The EMSLRC shall select, train and monitor not more than twenty service programs to be authorized at the advanced EMT-D level who shall use an automatic monitor/defibrillator equipped with a voice/ECG cassette recorder.

132.12(5) In addition to subrule 132.7(3), vehicles used in advanced EMT-D service programs shall have, as a minimum, one manual or automatic portable battery operated monitor/defibrillator equipped with a voice/ECG cassette recorder.

a. Cassette tape recordings shall be made on all runs responded to by advanced EMT-D's where cardiopulmonary resuscitation is performed. These recordings shall commence upon arrival of the advanced EMT-D's at the patient's side and shall not be terminated until care of the patient is directly assumed by a physician or authorized personnel.

b. Reserved.

132.12(6) Advanced EMT-D's shall complete a run report, specifically designed for this pilot program, for each ambulance run involving a patient in cardiac arrest. A copy of that report shall be sent to the advanced care training institution which provided the initial training and the EMSLRC in accordance with these rules.

132.12(7) In addition to this rule, advanced EMT-D's and advanced EMT-D service programs shall be subject to all other applicable requirements and standards as defined in these rules.

132.12(8) This pilot program shall be in effect until December 31, 1984. On that date any individual certification or service program authorization granted under this rule shall be void.

This rule is intended to implement Iowa Code chapter 147A.

ARC 4082**HEALTH DEPARTMENT[470]****BOARD OF OPTOMETRY EXAMINERS
NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 147.80, the Board of Optometry Examiners gives Notice of Intended Action to rescind rule 470—160.4(147) of the Iowa Administrative Code and to adopt a new rule in lieu thereof.

The proposed rule adjusts 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 19, 1983, addressed to Peter J. Fox, Hearing and Compliance Officer, State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rule is intended to implement Iowa Code section 147.80.

Rule 470—160.4(147) is rescinded and chapter 143 is amended by adding the following new rule.

470—143.10(147) Board of optometry examiners. All fees are nonrefundable.

143.10(1) Application for license to practice optometry is one hundred fifty dollars.

143.10(2) Renewal of license to practice optometry for a biennial period is one hundred dollars.

143.10(3) Fee for a certified statement that a licensee is licensed in this state is ten dollars.

143.10(4) Fee for a duplicate license is ten dollars.

ARC 4081**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 258A.4(1)"f", the Board of Hearing Aid Dealer Examiners gives Notice of Intended Action to amend chapter 145 of the Iowa Administrative Code.

The proposed rule adds two items of unethical practice as grounds for disciplinary action for hearing aid dealers.

Any interested person may make written comments concerning the proposed amendments not later than 4:30 p.m., October 19, 1983, addressed to Peter J. Fox, Hearing and Compliance Officer, State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319.

The proposed rule is intended to implement Iowa Code section 258A.4(1)"f".

Subrule 145.212(8) is amended by adding thereto the following new paragraphs:

d. Failure to place in an advertisement, which advertises hearing tests or hearing examinations or free hearing tests or free hearing examinations, qualifying words in the same size type "for the purpose of fitting, selection, adaption, and sale of hearing aids".

e. Advertising that hearing testing or hearing screening is for the purpose of detection of or diagnosis of medical problems or medical screening for referral to a physician.

ARC 4060**HUMAN SERVICES
DEPARTMENT[498]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 239.18, the Department of Human Services has filed emergency

adopted and implemented rules relating to granting assistance (chapter 41), ARC 4059. This rule exempts the retrospective income of the parent or stepparent and thereby assures that only income received during the first two months of eligibility is counted when the person has been in the home two months prior to application.

Although the rules were emergency adopted and implemented, the department is soliciting comments on them and will consider those comments for possible changes.

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 19, 1983.

These rules are intended to implement Iowa Code section 239.2.

ARC 4062**HUMAN SERVICES
DEPARTMENT[498]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code section 239.18, the Department of Human Services has filed emergency adopted and implemented rules relating to unemployed parent (chapter 42), ARC 4061.

This rule eliminates the practice of automatically assuming that a student attending school half time or more does not have time to perform the active search for employment or training for employment required by the ADC-UP program. It allows students to receive ADC-UP benefits as long as they comply with all conditions of eligibility for ADC-UP.

Although the rules were emergency adopted and implemented, the department is soliciting comments on them and will consider those comments for possible changes.

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 19, 1983.

This rule is intended to implement Iowa Code section 239.2.

ARC 4093**HUMAN SERVICES
DEPARTMENT[498]****NOTICE OF INTENDED ACTION**

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

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

Pursuant to the authority of Iowa Code sections 217.6 and 217.34, the Department of Human Services proposes to amend rules relating to collections (Social Services chapter 95).

These rules carry out the legislative direction in 1983 Iowa Acts Senate File 541, section 2, and new Iowa Code section 217.34, [S.F. 464, §160] for the department to adopt rules necessary to assist the Department of Revenue in implementing Iowa Code section 421.17, subsection 21, regarding the collection of child support and foster care obligations.

These rules extend the time period for refunding incorrect federal tax setoffs. The previous thirty-day limit forced the state to use state dollars to perform refunds and this created cash flow difficulties. The proposed forty-five day limit from time of receipt of verification will remove this problem. These rules also allow the absent parent to approve the application of refunds to current obligations.

These rules have also been revised to clarify policy and intent.

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 19, 1983.

These rules are intended to implement Iowa Code section 252B.3.

ITEM 1. Title X catchwords are rescinded and the following inserted:

TITLE X
SUPPORT RECOVERY

ITEM 2. Subrules 95.1(1), 95.1(2) and 95.1(3) are rescinded and the following inserted:

95.1(1) Current. For the purposes of the state income setoff, current support shall mean those payments received in the amount, manner, and frequency as specified by court order or voluntary agreement. Current support as defined here shall also include assessments pursuant to IAC 498—137.1(234).

95.1(2) Current. For the purposes of the federal income tax setoff, current support shall mean those payments received in the amount, manner, and frequency as specified by court order or voluntary agreement.

95.1(3) Delinquent. For the purposes of the state income tax setoff, delinquent support shall mean a payment or portion of the payment not received at the time it was due as specified by court order or voluntary agreement. Delinquent support as defined here shall also include assessments pursuant to IAC 498—137.1(234).

95.1(4) Delinquent. For the purposes of the federal income tax setoff, delinquent support shall mean a payment or portion of a payment not received at the time

it was due as specified by court order and the support payments are assigned to the department.

95.1(5) Prepayment. For the purposes of this chapter, prepayment shall mean a support payment or portion of a support payment designated to apply to a future period of support obligation.

95.1(6) Responsible person. For the purposes of this chapter, a responsible person shall mean a parent, guardian, or any other designated person, declared to be legally liable for the support of a child or children.

95.1(7) Public assistance. For the purposes of this chapter, public assistance shall mean aid to dependent children and the cost of foster care provided by the department.

95.1(8) Department. For the purposes of this chapter, department shall mean the department of human services.

ITEM 3. Rule 770—95.6(252B) is rescinded and the following inserted

498—95.6(252B) Setoff against state income tax refund or rebate. A claim against a responsible person's state income tax refund or rebate will be made by the department when a support payment, assigned to the department, is delinquent as set forth in Iowa Code section 421.17(21). A claim against a responsible person's state income tax refund or rebate shall apply to delinquent support which the department is attempting to collect pursuant to 770—chapter 96.

95.6(1) The department shall submit to the department of revenue by the first day of each month, a list of responsible persons who are delinquent at least fifty dollars in support payments.

95.6(2) The department shall mail a pre-setoff notice, to a responsible person when:

a. The department is notified by the department of revenue that the responsible person is entitled to a state income tax refund or rebate and;

b. The department makes claim to the responsible person's state income tax refund or rebate.

The pre-setoff notice will inform the responsible person of the amount the department intends to claim and apply to delinquent support.

95.6(3) When the responsible person wishes to contest a claim, a written request shall be submitted to the department within fifteen days after the pre-setoff notice is mailed. When the request is received within the fifteen-day limit, a hearing shall be granted pursuant to rules in 770—chapter 7.

95.6(4) The spouse's proportionate share of a joint return filed with a responsible person, as determined by the department of revenue, shall be released by the department of revenue unless other claims are made on that portion of the joint income tax refund. The request for release of a spouse's proportionate share shall be in writing and received by the department within fifteen days after the mailing date of the pre-setoff notice.

95.6(5) Support recovery will make claim to a responsible person's state income tax refund or rebate when all current support payments or regular payments on the delinquent support were not paid for twelve months preceding the month in which the pre-setoff notice was mailed. A regular payment toward delinquent support is defined as making a monthly payment. The state income tax refund of a responsible person may be claimed by the office of inspector general or the college aid program even if no claim for payment of delinquent support has been made by support recovery.

HUMAN SERVICES DEPARTMENT[498] (cont'd)

95.6(6) The department shall notify a responsible person of the final decision regarding the claim against the tax refund or rebate by mailing a final disposition of support recovery claim notice to the responsible person.

This rule is intended to implement Iowa Code section 252B.3.

ITEM 4. Subrule 95.7(1) is rescinded and the following inserted:

95.7(1) A claim against a responsible person's federal income tax refund or rebate will be made by the department when delinquent support is owed and;

a. The department has taken at least one action to collect the delinquency (billing, location or legal action) within the current calendar year; and

b. The amount of delinquent support is:

1. At least \$150.00 when no support payments have been received in the twelve-month period preceding the month of certification or;

2. At least \$500.00 although support payments have been received in the twelve-month period preceding the month of certification.

ITEM 5. Subrule **95.7(2)** is rescinded and the number reserved.

ITEM 6. Subrules 95.7(3), 95.7(4), 95.7(5), 95.7(6) and 95.7(7) are amended to read as follows:

95.7(3) The department shall, by October 1 of each year, submit a notification(s) of liability for ~~past due delinquent~~ support to the federal office of child support enforcement.

95.7(4) Each taxpayer will receive a ~~pre-offset setoff~~ notice in writing, using address information available from the internal revenue service, stating the amount of the ~~past due delinquent~~ support certified for ~~offset setoff~~.

a. Individuals who wish to dispute the ~~offset setoff~~ amount must notify the department within the time period specified in the ~~pre-offset setoff~~ notice.

b. Upon receipt of a complaint disputing the ~~offset setoff~~ amount, the department shall investigate its validity and respond to the taxpayer in writing within ten days.

95.7(5) When the records of the department differ with those of the individual for determining the amount of the ~~past due delinquent~~ support, the individual may provide and the department will accept the amount calculated and certified by the clerk of court as the official pay record for the time period involved.

95.7(6) The department shall notify the federal office of child support enforcement, within time frames established by it, of any decrease in, or elimination of, an amount referred for ~~offset setoff~~.

95.7(7) When an individual does not respond to the ~~pre-offset setoff~~ notice within the specified time even though the department later agrees a certification error was made, the person must wait for corrective action as specified in subrule 95.7(8).

ITEM 7. Subrule 95.7(8) is rescinded and the following is inserted:

95.7(8) The department shall refund the incorrect portion of a federal income tax setoff within forty-five days following verification of the setoff amount. Verification shall mean a listing from the federal office of child support enforcement containing the taxpayer's name and the amount of tax refund to which the taxpayer is entitled. The date the department receives the federal listing will be the beginning day of the forty-five-day period in which to make a refund. The department shall

refund the amount incorrectly set off to the taxpayer unless the taxpayer agrees to apply the refund of the incorrect setoff to any other support obligation due.

This rule is intended to implement Iowa Code section 252B.3.

ARC 4078**IOWA DEVELOPMENT
COMMISSION[520]****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 17A.9, the Iowa Development Commission hereby gives Notice of Intended Action to publish a new Chapter 6, "Declaratory Rulings", Iowa Administrative Code. The purpose of this chapter is to provide a process for resolving disputes regarding applications of rules of the commission. A provision for declaratory rulings is required by Iowa Code section 17A.9.

Any interested person may make written comments on the proposed chapter no later than October 19, 1983, to Dale Braynard, Business and Industry Training Coordinator, Iowa Development Commission, 600 E. Court Avenue, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the business and industry training coordinator at the above address or by phone, (515) 281-8329.

There will be a public hearing on Wednesday, October 19, 1983, at 2:00 p.m. in the conference room of the Commission at 600 East Court Avenue, Des Moines, Iowa. Oral or written comments may be presented at the hearing. Persons wishing to present oral comments at the hearing should contact the business and industry training coordinator prior to the date of the hearing in order to be scheduled.

CHAPTER 6**DECLARATORY RULINGS****520—6.1(17A) Filing of petition.**

6.1(1) Upon petition filed by any individual, partnership, corporation, association, governmental subdivision, public or private organization or state agency present or residing in Iowa, the commission may issue a declaratory ruling as to the applicability of state statutes and rules, policy statements, decisions and orders under the jurisdiction of the commission.

6.1(2) A petition for a declaratory ruling shall be in writing and shall be typewritten or printed.

6.1(3) Petitions shall include at the top of the first page, printed in capital letters, the title: PETITION FOR DECLARATORY RULING.

6.1(4) The petition shall include the name and official title, if any, address and phone number of each petitioner requesting a declaratory ruling. If the request is at the behest or order of a corporation, association, govern-

IOWA DEVELOPMENT COMMISSION[520] (cont'd)

mental subdivision, public or private organization or state agency, it shall be noted in the request.

6.1(5) The body of the petition shall contain:

a. A detailed statement of the facts upon which petitioner requests the commission to issue its declaratory ruling;

b. The statute, rule, policy statement, decision or order for which petitioner seeks a declaratory ruling;

c. The exact words, passages, sentences or paragraphs of statutes, rules, policy statements, decisions or orders which are the subject of inquiry;

d. The specific questions presented for declaratory ruling;

e. A consecutive numbering of each of multiple issues presented for declaratory ruling beginning with number one.

6.1(6) The petition shall be filed with the director of the development commission at their office in Des Moines, Iowa, by personal or mail delivery.

520—6.2(17A) Action on petition.

6.2(1) The director shall acknowledge the receipt of petitions or may return petitions within twenty days of the filing of the petition when not prepared in reasonable compliance with 6.1(17A)

6.2(2) The director may decline to make a declaratory ruling in whole or in part.

a. The reasons the director may decline to fulfill a request for a declaratory ruling include but not necessarily limited to the following:

- (1) Lack of jurisdiction.
- (2) Lack of clarity of the issue presented.
- (3) No clear answer determinable.
- (4) Not in the best public interest.

b. In the event the director declines to make a ruling, the petitioners shall be notified in writing that the request for a declaratory ruling has been declined in whole or in part and the reasons therefor.

6.2(3) The commission may provide an opportunity for interested parties to submit written comments concerning the petition.

6.2(4) When the petition is in proper form and has not been declined, the director shall issue a ruling disposing of the petition within a reasonable time after its filing.

a. Rulings shall be in writing and mailed to petitioner and other parties at the discretion of the director.

b. Rulings shall be indexed for public inspection.

c. Rulings shall be issued within ninety days of filing, except that an additional period of thirty days may be used when extenuating circumstances arise and petitioner is notified.

520—6.3(17A) Effect of declaratory ruling.

6.3(1) A declaratory ruling by the commission shall have a binding effect upon subsequent commission decisions and orders which pertain to the party requesting the ruling and in which the factual situation and applicable law are indistinguishable from that presented in the

petition for declaratory ruling. To all other parties and in factual situations which are distinguishable from that presented in the petition, a declaratory ruling shall serve merely as precedent.

6.3(2) Reserved.

520—6.4(17A) Reconsideration of declaratory ruling.

6.4(1) Any person or organization entitled to petition for a declaratory ruling may, within thirty days following the issuance of a declaratory ruling, petition for a reconsideration of the matter.

6.4(2) A petition for reconsideration shall conform with the rules of this chapter as nearly as applicable and shall contain the specific reasons for the request to reconsider.

6.4(3) A petition for reconsideration of a declaratory ruling shall be deemed to have been denied unless the director grants a reconsideration in writing within twenty days after the filing of the petition for reconsideration.

ARC 4094**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 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 421.14 and 422.68(1), the Iowa Department of Revenue hereby gives Notice of Intended Action to amend Chapter 7, "Practice and Procedure Before the Department of Revenue", Iowa Administrative Code.

Subrule 7.17(5) is amended to provide for cross-appeals. The rationale for allowing a cross-appeal is that a prevailing party, before a hearing officer, may be unsure of whether to appeal a portion of the hearing officer's decision, which could have some adverse impact upon the prevailing party but perhaps not enough to warrant the taking of an appeal to the director of revenue if the losing party does not appeal to the director. If the losing party does appeal to the director, the rule would allow the prevailing party at least five days to file a cross-appeal with the director. The taking of cross-appeals from decisions of trial courts to the Iowa Supreme Court is common practice and is herein adopted into the department's procedural rules.

REVENUE DEPARTMENT[730] (cont'd)

This rule amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any interested person may make written suggestions or comment on this proposed amendment on or before October 28, 1983. Such written comments should be directed to the deputy director, Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319.

Persons who want to orally convey their views should contact the deputy director at (515) 281-3346 or at Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 21, 1983.

This rule is intended to implement Iowa Code section 17A.15(3).

The following amendment is proposed.

Amend subrule 7.17(5) by adding the following new paragraph between the last and the next to the last paragraph of the subrule:

A cross-appeal may be taken within the thirty-day period for taking an appeal to the director of revenue or in any event within five days after the appeal to the director is taken. If a cross-appeal is taken from a revocation order pursuant to rule 730—7.24(17A), the cross-appeal may be taken within the ten-day period for taking an appeal to the director or in any event within five days after the appeal to the director is taken.

NOTICE - USURY

In accordance with the provisions of 1979 Iowa Acts, Chapter 130, the Superintendent of Banking has determined that the maximum lawful rate of interest provided for in Iowa Code section 535.2, as amended, shall be:

December 1, 1981 - December 31, 1981	17.25%
January 1, 1982 - January 31, 1982	15.50%
February 1, 1982 - February 28, 1982	15.75%
March 1, 1982 - March 31, 1982	16.50%
April 1, 1982 - April 30, 1982	16.50%
May 1, 1982 - May 31, 1982	15.75%
June 1, 1982 - June 30, 1982	15.75%
July 1, 1982 - July 31, 1982	15.50%
August 1, 1982 - August 31, 1982	16.25%
September 1, 1982 - September 30, 1982	16.00%
October 1, 1982 - October 31, 1982	15.00%
November 1, 1982 - November 30, 1982	14.25%
December 1, 1982 - December 31, 1982	13.00%
January 1, 1983 - January 31, 1983	12.50%
February 1, 1983 - February 28, 1983	12.50%
March 1, 1983 - March 31, 1983	12.50%
April 1, 1983 - April 30, 1983	12.75%
May 1, 1983 - May 31, 1983	12.50%
June 1, 1983 - June 30, 1983	12.50%
July 1, 1983 - July 31, 1983	12.50%
August 1, 1983 - August 31, 1983	12.75%
September 1, 1983 - September 30, 1983	13.50%
October 1, 1983 - October 31, 1983	13.75%

ARC 4066**CONSERVATION COMMISSION[290]**

Pursuant to the authority of Iowa Code section 107.24, the State Conservation Commission hereby rescinds Chapter 71, "Public Employment Program" of the Iowa Administrative Code. This chapter promulgated rules for the administration of a program for the employment of unemployed persons in positions with the state conservation commission or county conservation boards for the maintenance and development of public lands and waters managed by those agencies. Pursuant to the authority of Iowa Code section 17A.4(2), this action is being taken without notice or public hearing inasmuch as the rules included in Chapter 71 expired on June 30, 1977. A notice and a public hearing are therefore considered to be unnecessary and impractical.

This rule shall become effective upon publication [September 28, 1983] in the Iowa Administrative Bulletin in compliance with Iowa Code section 17A.5(2)"b" (1).

Chapter 71 is hereby rescinded in its entirety and reserved for future use.

[Filed emergency 9/1/83, effective 9/28/83]
[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

107.4(2) Paragraph "f" is deleted as a result of objections by the public, and the following paragraphs redesignated accordingly.

State hunting seasons on migratory birds must be set within frameworks established annually by the Fish and Wildlife Service, U.S. Department of the Interior. These frameworks specify shooting hours, bag limits, and possession limits, as well as season lengths and outside dates. These frameworks were finalized by the Service on August 30, 1983. Therefore, adoption of a final rule by the commission could not take place prior to this date.

The commission gave notice and provided for public participation as required by Iowa Code section 17A.4. The notice informed the public that the final rule establishing these seasons would be filed under the emergency provisions of the Iowa Administrative Procedure Act due to the time constraints.

The commission furthermore finds that these rules confer a benefit and remove a restriction on a segment of the public by becoming effective immediately, and that delaying the effectiveness of these rules would unnecessarily restrict the public by delaying the opening of the waterfowl and coot seasons. Therefore, these rules shall become effective September 2, 1983, upon filing with the office of the Administrative Rules Coordinator as provided in Iowa Code section 17A.5(2)"b"(2).

These rules are intended to implement Iowa Code sections 109.38, 109.39, and 109.48.

ITEM 1. Rule 290—107.1(109) is amended to read as follows:

290—107.1(109) Ducks (split season). Open season for hunting ducks shall be September ~~18~~ 17 to September ~~22~~ 21, 1983, statewide; and October ~~23~~ 15 to December ~~6~~ November 28, ~~1982~~ 1983, in that portion of the state lying north of Interstate Highway 80; and October 22 to December 5, 1983, in that portion of the state lying south of Interstate Highway 80. Shooting hours are one-half hour before sunrise to sunset each day.

107.1(1) Bag limit (point system). The point values for species and sexes taken are as follows: Canvasback and black duck, 100 points; redhead, hen mallard, ~~black duck~~, wood duck, and hooded merganser, 70 points each; blue-winged teal, green-winged teal, pintail, wigeon, gadwall, shoveler, scaup, cinnamon teal, and mergansers (except hooded merganser), 10 points each; all other species and sexes of ducks, 25 points each. The season is closed on canvasback on the Mississippi River from Dam No. 9 near Harpers Ferry to the Minnesota state line and from Dam No. 19 at Keokuk to Dam No. 18 north of Burlington. The daily bag limit is reached when the point value of the last bird taken added to the sum of the point values of the other birds already taken during the day reaches or exceeds 100 points.

107.1(2) Possession limit. The possession limit is the maximum number of birds of species and sexes which could have legally been taken in two days.

ITEM 2. Rule 290—107.2(109) is amended to read as follows:

290—107.2(109) Coots (split season). Open season for hunting coots shall be September ~~18~~ 17 to September ~~22~~ 21, 1983, statewide; and October ~~23~~ 15 to December ~~6~~ November 28, ~~1982~~ 1983, in that portion of the state lying north of Interstate Highway 80; and October 22 to December 5, 1983, in that portion of the state lying south of Interstate Highway 80. Shooting hours are one-half hour before sunrise to sunset each day.

ARC 4067**CONSERVATION COMMISSION[290]**

Pursuant to the authority of Iowa Code sections 107.24, 109.38, 109.39, and 109.48, the State Conservation Commission on September 1, 1983, adopted the following amendments to Chapter 107, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code.

Notice of Intended Action was published in IAB March 30, 1983, as ARC 3653.

The rules establish season dates, bag limits, possession limits, shooting hours, and closed areas for hunting waterfowl and coots for the 1983 season.

Changes from the notice are as follows:

290--107.1(109) Season dates were changed to provide for differential hunting periods north of and south of Interstate Highway 80.

107.1(1) The point value for the black duck is changed from 70 points to 100 points, and a part of the Mississippi River is opened to the taking of canvasback.

290--107.2(109) Season dates were changed to provide for differential hunting periods north of and south of Interstate Highway 80.

107.4(1) A small parcel of land adjacent to the Colyn Area in Lucas County is closed to waterfowl hunting to avoid a firing-line situation.

CONSERVATION COMMISSION[290] (cont'd)

107.2(1) Bag and possession limits. Daily bag limit is fifteen and possession limit is thirty.

107.2(2) Reserved.

ITEM 3. Rule 290—107.3(109) is amended to read as follows:

290—107.3(109) Geese. Open season for hunting geese shall be from October 2 1 to December 10 9, 1982 1983. Shooting hours are one-half hour before sunrise to sunset each day.

107.3(1) Bag limit. Daily bag limit is five including no more than two Canada geese and two white-fronted geese.

107.3(2) Possession limit. Possession limit is ten including no more than four Canada geese and four white-fronted geese.

ITEM 4. Rule 290—107.4(109) is amended as follows:
290—107.4(109) Closed areas. Waterfowl and coots may be hunted statewide except for specific areas.

107.4(1) Waterfowl and coots. There shall be no open season for ducks, coots, and geese on the east and west county road running through sections 21 and 22, township 70 north, range 43 west, Fremont County; three miles of U.S. Highway 30, located on the south section lines of sections 14, 15, and 16, township 78 north, range 45 west, Harrison County; on the county roads immediately adjacent to, or through Union Slough National Wildlife Refuge, Kossuth County; Louisa County Road X61 from the E-W centerline of section 29, township 74 north, range 2 west, on the south, to the point where it crosses Michael Creek in section 6, township 74 north, range 2 west on the north, and also all roads through or adjacent to sections 7, 18, and 19 of this same township; the levee protecting the Green Island Wildlife Area from the Mississippi River in Jackson County wherever the levee is on property owned by the United States or the state of Iowa; certain dikes at Otter Creek Marsh, Tama County, where posted as such; and the NE $\frac{1}{4}$, section 23 and the N $\frac{1}{2}$, section 24, all in township 70 north, range 19 west, Appanoose County, including county roads immediately adjacent thereto; and all privately owned lands in the S $\frac{1}{2}$, section 30, township 71 north, range 20 west, Lucas County, including the county road immediately adjacent thereto.

107.4(2) Canada geese. There shall be no open season on Canada geese in certain areas described as follows:

a. Area one. Portions of Emmet County bounded as follows: Beginning at the northwest corner of section 3, township 98 north, range 33 west; thence east on the county road a distance of five miles; thence south on the county road a distance of five miles; thence west on the county road a distance of five miles; thence north on the county road to the point of beginning.

b. Area two. Portions of Clay and Palo Alto Counties bounded as follows: Beginning at a point about four miles west of Ruthven, Iowa, on Highway 18 where it intersects with Clay County Road N14; thence north on N14 six miles to county road B17; thence east on B17 six miles to county road N26; thence south on N26 ~~four~~ two miles; thence west on the county road ~~three~~ one and one-half miles; thence

south on the county road two miles; thence west on the county road one and one-half miles to county road N18; thence south on N18 to Highway 18; thence west on Highway 18 to the point of beginning.

c. Area three. A portion of Dickinson County bounded as follows: Beginning at a point two miles west of the east junction of Highways 9 and 71; thence north along county roads to the Iowa-Minnesota state line; thence west along the state line seven and one-half miles; thence south along county roads five miles to Highway 9; thence easterly along Highways 9 and 71 to the point of beginning.

d. Area four. Portions of Winnebago and Worth Counties bounded as follows: Beginning at a point two miles west of Northwood on Highway 105; thence west along said highway four and three-quarter miles; thence north one-half mile; thence west to the county line; thence south one-half mile; thence west to Highway 69; thence south and west along said highway to a point two miles south of its north junction with Highway 9; thence east ten miles; thence north one mile; thence east eight and one-half miles; thence north two miles; thence east one-half mile; thence north four miles to the point of beginning.

e. Area five. On any federal or state-owned lands or waters of the Rathbun Reservoir Project in Appanoose, Lucas, Monroe, and Wayne Counties, including all federal, state, and county roads through or immediately adjacent thereto.

f. Area six. On Brown's Slough ~~or~~ and the Colyn Area in Lucas County.

g. Area seven. Portions of Guthrie and Dallas Counties bounded as follows: Beginning at the junction of Highways 44 and 25 in Guthrie Center; thence north along Highway 25 to Highway 141; thence east along Highway 141 to Dallas County Road P46; thence south along P46 to Highway 44; thence west along Highway 44 to the point of beginning.

h. Area eight. A portion of Adams County bounded as follows: Beginning at the intersection of U.S. Highway 34 and State Highway 148 near Corning; thence east along Highway 34 about four and one-half miles to its junction with Adams County Road N55; thence north along N55 about ten miles to its junction with Adams County Road H20; thence westerly along H20 to Highway 148; thence south along Highway 148 about one-half mile; thence west again along H20 about four miles; thence south along unnumbered county roads about eight miles to Adams County Road H34; thence easterly along H34 to Highway 148; thence south along Highway 148 to the point of beginning.

107.4(3) Forney Lake. The entire Forney Lake area, in Fremont County, north of the east-west county road, shall be closed to waterfowl hunting prior to October 2 1, 1982 1983.

[Filed emergency after notice 9/1/83, effective 9/2/83]
[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4087

CORRECTIONS, DEPARTMENT OF[291]

Pursuant to the authority set forth in 1983 Iowa Acts, Senate File 464, which creates a new agency, the Department of Corrections, effective October 1, 1983, the Iowa Department of Corrections hereby emergency adopts and implements new chapters and revisions to existing chapters.

These rules are intended to explain the mandatory agency activities for the new Department of Corrections as found in Iowa Code sections 17A.3, 17A.4, 17A.5, 17A.7, 17A.9 and 17A.12. These rules further implement the basic operational activities of the Department of Corrections. The following is a synopsis of the chapters being added or amendments to existing rules.

Chapter 1 "General Department Procedures" a new chapter covering function and location of the department, responsibilities of the board, the director and the three divisions within the department which are institutions, community services, and administration;

Chapters 2 and 3 are reserved for future use;

Chapter 4 "General Administration" a new chapter covering purchase of service contracts;

Chapter 5 is reserved for future use;

Chapter 6 "Personnel" a new chapter covering background investigations of employment applicants;

Chapters 7 to 9 are reserved for future use;

Chapter 10 "Rulemaking" a new chapter covering the process by which the Department of Corrections will promulgate administrative rules;

Chapter 11 "Declaratory Rulings" a new chapter covering the process by which a declaratory ruling is requested and issued;

Chapter 12 "Contested Cases" a new chapter covering contested cases;

Chapters 13 to 19 are reserved for future use;

Chapter 20 "Adult Correctional Institutions", previously chapter 16, which adds institutional restitution rules;

Chapter 21 "Iowa State Penitentiary", previously chapter 17, which revises the existing furlough rules;

Chapter 22 "Iowa State Men's Reformatory", previously chapter 18, which adds visiting hours at Luster Heights and the furlough rules;

Chapter 23 "Iowa Correctional Institution for Women", previously chapter 19, which adds furlough procedures;

Chapter 25 "Correctional Treatment Unit" a new chapter which covers visiting hours and institutional tours;

Chapter 26 "North Central Correctional Facility" a new chapter which covers visiting hours and institutional tours;

Chapter 28 "Riverview Release Center", previously chapter 21, which adds furlough procedures;

Chapters 29 to 36 are reserved for future use;

Chapters 38 and 39 are reserved for future use;

Chapter 40 "Community-Based Corrections Administration" a new chapter;

Chapter 41 "Preconviction Services" a new chapter;

Chapter 42 "Probation Services" a new chapter;

Chapter 43 "Residential Facilities" a new chapter;

Chapters 47 to 49 are reserved for future use;

Chapter 50 "Jail Facilities", previously chapter 15, which adds an informal appeal process.

In accordance with Iowa Code sections 17A.4(2) and 17A.5(2)"b"(1), the department finds that notice and public participation are impracticable at this time since these rules are statutorily mandated to be effective October 1, 1983, and there is not adequate time to implement the regular rulemaking process and also comply with the 1983 Iowa Acts, Senate File 464, section 9, subsection (1), paragraphs "j" and "k".

These rules are being placed under notice at **ARC 4088** so that there will be opportunity for notice and public participation.

These rules are intended to implement 1983 Iowa Acts, Senate File 464, section 9, subsection (1), paragraphs "j" and "k" and become effective October 1, 1983.

These rules were adopted at the regular meeting of the Iowa Board of Corrections on September 6, 1983.

ITEM 1. New chapters 1 to 19 are added as follows:

TITLE I

GENERAL DEPARTMENTAL PROCEDURES

CHAPTER 1

DEPARTMENTAL ORGANIZATION AND PROCEDURES

291—1.1(70GA,SF464) Definitions.

"Agency or facility" means entities accredited by the department of corrections but not directly administered by the department.

"Department" means the department of corrections.

"Deputy director" means the administrator responsible for an operational division within the department of corrections.

"Director" means the director of the department of corrections.

"Plan of compliance" means a schedule of action to be followed in correcting statute and or rule deficiencies cited by the department of corrections.

291—1.2(70GA,SF464) Function. The department of corrections is mandated by 1983 Iowa Acts, Senate File 464, and consists of a policy board, a director and three operational divisions.

The department is charged with the operation of the state's penal institutions, prison industries, work release centers, training academy and jail inspections and supervision of parolees. It is further charged with accreditation and funding of community-based corrections programs, including, but not limited to pretrial release, presentence investigation, probation, residential facilities, and other duties provided for by law.

291—1.3(70GA,SF464) Location. The department of corrections is located in the Jewett Building, 10th and Grand, Des Moines, Iowa 50309; phone (515) 281-4811. Office hours are 8:00 to 4:30, Monday to Friday.

291—1.4(17A) Board of corrections. The director of the department has, by statute, the advice and counsel of the board of corrections. This seven-member board is appointed by the governor with confirmation by the senate and its powers and duties are policymaking and advisory with respect to the services and programs operated by the department.

1.4(1) A quorum shall consist of two-thirds of the membership appointed and qualified to vote.

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

1.4(2) When a quorum is present, a position is carried by a majority of the qualified members of the board.

1.4(3) Copies of administrative rules and other materials considered are made a part of the minutes by reference.

1.4(4) Copies of the minutes are kept on file in the director's office.

1.4(5) At each meeting the board shall set the date and location of the next meeting.

a. The communications media shall be notified at least one week in advance of such meetings.

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

c. Persons wishing to appear before the board shall submit their request to the department office not less than ten days prior to the meeting. Presentations may be made at the discretion of the chair and only upon matters appearing on the agenda.

d. Persons wishing to submit written material should do so at least ten days in advance of the scheduled meeting to assure board members have adequate time to receive and evaluate the material.

1.4(6) In cases not covered by these rules, Robert's Rules of Order shall govern.

1.4(7) The chairperson may appoint committees of the board as necessary to conduct the business of the board. Committee meetings shall comply with Iowa Code chapter 28A.

1.4(8) The board shall:

a. Investigate the work of the department, and for this purpose, it shall have access at any time to all books, papers, documents and records of the department.

b. Submit to the governor and the general assembly an annual report covering the activities of the department.

291—1.5(70GA,SF464) Director. The governor appoints the director of the department of corrections. The director is responsible for the daily administration of the department. The operations are performed by three divisions. The deputy directors of these divisions report to the director of the department.

1.5(1) The appointment and qualifications of the director are mandated in 1983 Iowa Acts, Senate File 464, section 8.

1.5(2) Duties of the director are prescribed in 1983 Iowa Acts, Senate File 464, section 9.

1.5(3) The director shall have the authority to place on notice, intended administrative action, pursuant to Iowa Code chapter 17A. When "Notice of Intended Action" is filed with the administrative rules coordinator, a copy shall be provided to the members of the board of corrections. A report listing all rules placed under notice during the previous month shall be submitted to the board of corrections at its regular meeting for review. The board of corrections shall review and may adopt rules following the period of public comment.

291—1.6(70GA,SF464) Organization of the department.

1.6(1) The deputy director of the division of institutions shall be responsible for the following institutions and facilities which are generally described herein. These descriptions are in no way binding on the director's authority to transfer inmates between institutions.

a. The Iowa state penitentiary, Fort Madison, which is classified as a maximum security facility.

(1) John Bennett facility, Fort Madison, which is classified as a medium security facility.

(2) Prison farms, Fort Madison, Montrose and Augusta, which are classified as minimum security facilities.

b. The Iowa state men's reformatory, Anamosa, which is classified as a medium security facility.

(1) Luster Heights camp, Harpers Ferry, which is a conservation commission camp administered by the men's reformatory at Anamosa and is classified as a minimum security facility.

(2) Reserved.

c. The Iowa correctional institution for women at Mitchellville, which houses women convicted of aggravated misdemeanors and felonies within the state.

d. The medium security unit, Mount Pleasant, which houses adult males, who are in need of substance abuse treatment, sexual offender treatment and younger offenders who have not been previously incarcerated.

e. The correctional treatment unit, Clarinda, which is classified as a medium security facility and houses inmates determined to be socially inadequate, mentally retarded or in need of substance abuse treatment.

f. The north central correctional facility, Rockwell City, which is classified as a medium security facility and houses low-risk adult males.

g. The Iowa security and medical facility, Oakdale, which conducts psychiatric evaluations for the courts, correctional institutions and the parole board, provides psychiatric care to inmates, houses women classified as maximum security and is the reception and classification center for all of Iowa's newly-confined inmates.

h. The Riverview release center, Newton, which is classified as a minimum security facility and houses inmates nearing completion of sentence and those in need of prerelease training.

i. Prison industries, which is a self-supporting manufacturing/service operation that provides work programs for inmates pursuant to Iowa Code chapter 216.

1.6(2) The deputy director for the division of community services:

a. Shall be responsible for the following service areas:

(1) Work release centers, which house inmates in the process of leaving a correctional institution on work release.

(2) Parole services, which place and supervise individuals being released from correctional institutions by order of the board of parole.

(3) Interstate compact services, which provide for the transfer of parolees and probationers for supervision among states which are members of the compact.

(4) Restitution, which provides payment by the offender to the victim, when ordered by the court at the time of sentencing.

b. The deputy director shall further provide assistance and support to the judicial district departments of correctional services and for periodic review and accreditation of their programs. In each of the eight judicial districts in the state there shall be established a department of correctional services which shall furnish a contract for those services necessary to provide a community-based correctional program which meets the needs of that judicial district. The district department shall be under the direction of a board of directors and administered by a director employed by the board (Iowa Code chapter 905). The following services shall be provided:

(1) Pretrial interviews, which are used to screen individuals detained in jails for the court to determine those

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

acceptable for release prior to court disposition of their criminal case.

(2) Pretrial supervision, which is a condition of release, requiring staff supervision prior to court disposition or sentencing, when ordered by the court.

(3) Presentence investigation, which provides background information to the court on persons convicted of criminal offenses, to assist the court in determining the most appropriate sentence.

(4) Probation, which provides staff supervision following a conviction when ordered by the court.

(5) Residential services, which is a condition of probation or work release and requires by court order or the order of the director that the individual reside in the facility and participate in required programming.

(6) Community service sentencing, which is a condition of probation set by the court requiring that the individual perform unpaid community service for a time not to exceed the maximum period of confinement for the offense of which the individual is convicted.

(7) Restitution, which provides payment by the offender to the victim when ordered by the court as a condition of probation.

1.6(3) The deputy director for the division of administration shall be responsible for the following:

a. Budget development and control, which is used to provide the necessary resources, personnel and support, to run the department of corrections.

b. Personnel and training, which is necessary to provide adequate staff and the related training of those staff to effectively supervise and care for those people placed under the department's control and supervision.

c. The corrections training academy, Mt. Pleasant, which provides a full array of training programs and services for corrections personnel.

d. Planning and development, necessary to meet the future needs of the department, as well as, provide for a structured approach to corrections issues.

e. General administrative support, which is necessary to establish and maintain a viable department organization structure.

f. Fiscal policy and procedures, to ensure proper usage of funds allocated to the department.

g. Evaluations and inspections, which are necessary to monitor activities performed by departmental staff or by contract with the department.

h. Data processing, which is necessary to ensure information is available for the department's use in decision making.

i. Jail inspection, which certifies that holding facilities as described in Iowa Code chapters 356 and 356A, comply with standards contained in chapter 50, Iowa Administrative Code.

These rules are intended to implement 1983 Iowa Acts, Senate File 464, sections 2 to 9.

Chapters 2 and 3 are reserved for future use.

CHAPTER 4

GENERAL ADMINISTRATION

291—4.1(70GA,SF464) Iowa corrections purchase of services agreement. An Iowa corrections purchase of services agreement is a legal agreement between the department and an institution, organization, facility or individual for specified service(s) to clients referred by the department. The agreement establishes the type and quality of service to be provided, the charge, a maximum

number of units of service to be available and other conditions.

291—4.2(70GA,SF464) Cancellation. The Iowa corrections purchase of services agreement may be canceled by either party with or without cause upon thirty days notice in writing.

These rules are intended to implement 1983 Iowa Acts, Senate File 464, section 9.

Chapter 5 is reserved for future use.

CHAPTER 6

PERSONNEL

291—6.1(70GA,SF464) Background investigations. A background investigation will be conducted on individuals applying for employment with the department of corrections. The warden, superintendent or designee will determine the class of employees upon whom a background investigation will be conducted. The following information may be obtained during the investigation. For any specific applicant, the warden, superintendent or designee will determine which information on this list is to be obtained.

1. Physical examination,
2. Division of criminal investigation, department of public safety fingerprint check,
3. FBI fingerprint check,
4. Military records check,
5. Past employment check with one or several previous employers,
6. Character reference check,
7. Credit reference check,
8. Check with law enforcement agencies from locales in which applicant/employee has resided in the past,
9. Check with educational institutions to confirm degree or hours of concentration (for positions requiring degree or speciality hours),
10. Successful completion and acceptable score on the Reid Report test,
11. Test for use of chemical substance.

The investigation need not be completed prior to offering an applicant a position, but any offer of employment is contingent on successful completion of the required tests and checks.

This rule is intended to implement 1983 Iowa Acts, Senate File 464, section 9.

Chapters 7, 8 and 9 are reserved for future use.

CHAPTER 10

RULEMAKING

291—10.1(17A,70GA,SF464) Commencement of rulemaking. The department shall give notice of its intention to adopt, amend or repeal a rule by publishing the text of the proposed change, or a summary of the issues and subject matter to be considered and the time, place and manner in which interested persons may comment upon the proposal, in the Iowa administrative bulletin. The notification shall state either the text of the proposed rule or the subject matter of the proposed rule, a summary of changes from the existing rule, if any, and the location and telephone number where people may obtain the actual text. The notice shall also include the name and address of a person to whom interested persons may present written views and arguments, and the deadline by which these submissions may be submitted.

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

291—10.2(17A) Exemption from rulemaking. The department finds that policies, procedures and statements which relate specifically to inmates of a penal institution shall be exempted from the rulemaking process as provided in Iowa Code section 17A.2(7)“k”.

Policies and procedures governing activities of incarcerated inmates are located in the departmental manual and in institutional manuals.

291—10.3(17A) Copies of proposed rules. A trade or occupational association, which has registered its name and address with the department of corrections, may receive, by mail, copies of proposed rules. Registration of the association's name and address with the department is accomplished by written notification to the Director of Corrections, Jewett Building, 10th and Grand, Des Moines, Iowa 50309. In the written notification, the association must designate the type of proposed rules and the number of copies of each rule it wishes to receive. A charge of fifteen cents per single-sided page shall be charged to cover the actual cost of providing each copy of the proposed rule. In the event the actual cost exceeds fifteen cents for a single-sided page, it will be billed accordingly.

This rule does not prevent an association which has registered with the department in accordance with this rule from changing its designation of types of proposed rules or number of copies of proposed rules which the association desires to receive. If an association makes such change designation, it must do so by written notification to the director of corrections.

This rule is intended to implement Iowa Code section 17A.4 as amended by the 1983 Iowa Acts, Senate File 527.

291—10.4(17A) Oral presentations. When requested by the persons or groups enumerated in Iowa Code section 17A.4(1)“b”, an opportunity for an oral presentation shall be scheduled. The request must be received at the department office within twenty days of the publication of the notice of intended action and must identify the proposed rule subject to the request by ARC number and by the specific citation to the proposed rule upon which presentations are to be made. A separate request shall be made for proposed rule(s) under each notice.

10.4(1) Notice. When so requested under the provisions of rule 10.4(17A) or in the director's discretion, the director shall schedule an opportunity for oral presentations by publishing a notice of the opportunity in the Iowa administrative bulletin, which shall refer to the ARC number and citation of the proposed rule, and which shall give the public not less than twenty days' notice of the date, time and place of the meeting. Additional notice shall be mailed to all persons who have requested the opportunity for an oral presentation and to the news media.

10.4(2) Conduct of meetings. The director or designee shall serve as the presiding officer at the meetings. At the commencement of the meeting, any person wishing to

make an oral presentation shall advise the presiding officer of his or her name, address and affiliation.

a. At the commencement of the meeting the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority and the reasons for the proposed rule. The presiding officer may limit individual presentations to five minutes each.

b. The presiding officer may open the floor to questions or general discussion to facilitate the exchange of information, but is not required to do so.

c. Persons who disrupt or obstruct the meeting either by their behavior or by the use of a camera or recording device shall be requested to cease such behavior or to cease using the camera or device. The presiding officer shall exclude any person who fails to comply with the request.

d. The presiding officer shall, when practical, receive all relevant physical and documentary evidence presented by witnesses. All such evidence becomes the property of the department.

e. A record shall be prepared consisting of the minutes or verbatim record, and all evidence submitted. The presiding officer shall then prepare a summary of the content of all comments received at the meeting. The summary, and when practical the entire record, shall be forwarded to the director for further consideration.

291—10.5(17A) Conferences or consultation. In addition to the required rulemaking procedures, the director or designee may obtain viewpoints or advice concerning proposed rulemaking through informal conferences or consultation as the director or designee may deem desirable.

291—10.6(17A,70GA,SF464) Adoption. At a regularly scheduled meeting held not less than thirty-five days after the publication of notice, the board shall meet to consider final action on the proposed rule. Once the proposed rule has been adopted by the board in final form, it shall be made effective pursuant to the provisions of Iowa Code section 17A.5.

291—10.7(17A) Statement of reasons. If so requested by any interested person, pursuant to the provisions of Iowa Code section 17A.4(1), and upon adoption of any proposed rule, the director shall prepare a statement of principal reasons for and against the proposed rule, containing the reasons for overruling considerations urged against the rule.

291—10.8(17A) Petition for rulemaking. A petition for rulemaking shall be filed in the director's office, Department of Corrections, Jewett Building, 10th and Grand, Des Moines, Iowa 50309. The petition shall either be mailed certified, return receipt requested, or may be delivered in person. An additional copy may be provided if the petitioner wishes to retain a filed stamped copy of the petition. The petition may be either typewritten or legibly printed in ink and must substantially conform to the following form:

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

DEPARTMENT OF CORRECTIONS
JEWETT BUILDING
10TH AND GRAND
DES MOINES, IOWA 50309

Petition by _____ (Name) _____ Petition
to (Amend, Adopt, or Repeal) For Rulemaking
Rules Relating to (state subject matter)

(Petition must state in separate numbered paragraphs)

1. Petitioner's name, address and phone number.
2. The nature of petitioner's interest in the matter.
3. The text or substance of any requested rule adoption, amendment or repeal, including the text and citation for any current rule in effect.
4. The reasons for seeking the requested action, including any statute, rule, data, evidence or arguments which are relevant to the request. Copies of any statute, rule, evidence, etc., shall be attached to the petition.

(Petitioner's Signature)

10.8(1) Procedure after petition is filed. Upon filing of the petition, the director or designee shall inspect the petition to ensure substantial compliance with the recommended form. If the petition does not contain the text or substance of the proposed amendment or any reasons for the proposed amendment or fails to include copies of any cited statute, rule or evidence, the petition may be rejected and returned to the petitioner along with the reasons for the rejection. Petitioner may then correct the reasons for the rejection and refile the petition. A petition in substantial compliance with the recommended form shall be filed and stamped.

10.8(2) Department action. Within sixty days of the filing of a petition, the director shall grant the petition and commence rulemaking, or deny the petition and notify the petitioner in writing of the grounds for the denial.

These rules are intended to implement Iowa Code sections 17A.3, 17A.4, 17A.6, 17A.7 and 1983 Iowa Acts, Senate File 464, section 9.

CHAPTER 11

DECLARATORY RULINGS

291—11.1(17A) General. Any interested person may solicit oral or written advice from the director concerning the application or interpretation of any statute or administrative rule dealing with the department of corrections. However, unless the request is made pursuant to Iowa Code section 17A.9, petition for declaratory ruling, any such advice is not binding upon the department. Petitioners for a declaratory ruling must have a real and direct interest in a specific fact situation which may affect their legal rights, duties or responsibilities under statutes or regulations administered by the department.

291—11.2(17A) Petition for declaratory rulings. A petition for a declaratory ruling shall be filed in the director's office, Department of Corrections, Jewett Building, 10th and Grand, Des Moines, Iowa 50309. The petition shall either be mailed certified return receipt requested

or delivered in person. An additional copy may be provided if the petitioner wishes to retain a filed stamped copy of the petition. The petition shall be typewritten and must substantially conform to the following:

DEPARTMENT OF CORRECTIONS
JEWETT BUILDING
10TH AND GRAND
DES MOINES, IOWA 50309

Petition by _____ (Name) _____ Petition For
For a Declaratory Ruling on _____ DECLARATORY
(state statute, rule citation) RULING
to be ruled on)

(Petition must state in separate numbered paragraphs)

1. Petitioner's name, address and phone number.
2. A clear, concise and complete statement of all relevant facts on which the ruling is requested.
3. A clear and concise statement of the controversy or uncertainty.
4. Reference to the statutory authority or rules in question, along with attached copies.
5. The reasons for prompting the petition and a full disclosure of petitioner's interest.
6. Whether petitioner is currently a party to a contested case, rulemaking or judicial proceeding involving the controversy or uncertainty.
7. The names and addresses, when known, of other persons who may be affected by the declaratory ruling.

(Petitioner's Signature)

291—11.3(17A) Procedure after petition is filed.

11.3(1) Initial review. Upon filing of the petition, the director shall inspect the petition for substantial compliance with the recommended form, and may, in his or her discretion, reject a petition which fails to contain one or more of the required statements. The director may request that the petitioner provide additional facts or provide greater specificity and detail in the questions posed. A request shall be made within five days of the filing of the petition. If the requested information is not provided within thirty days of the receipt of the request, the petitioner will be deemed to have withdrawn the petition.

11.3(2) Declaratory ruling. Within thirty days of the receipt of the petition or additional information, whichever is later, the director shall issue a declaratory ruling or decline to rule. Declination to rule may be based upon one or more of the following grounds:

- a. The issue in question is currently involved in a rulemaking, contested case or judicial proceeding.
- b. The petition does not contain sufficient facts to demonstrate that the petitioner will be aggrieved or adversely affected by failure to issue a declaratory ruling.
- c. The petitioner presents issues or facts which are unclear, overbroad or otherwise inappropriate as a basis upon which to issue a declaratory ruling.
- d. The petition indicates the petitioner seeks to obtain approval to engage in activities so borderline as to be of dubious legality, although perhaps marginally proper.

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e. The issue in question has been rendered moot by a change in circumstances, fact or law.

f. The issue in question depends upon peculiar facts which cannot be predicted or accurately described in advance.

g. Other good and sufficient reasons, which shall be detailed in writing.

11.3(3) Effect of declaratory ruling. A declaratory ruling is binding upon both the department and the petitioner on the questions of law dealt with in the ruling.

These rules are intended to implement Iowa Code section 17A.9.

CHAPTER 12 CONTESTED CASES

291—12.1(17A) Notice of noncompliance. When the appropriate division director of the department of corrections determines that an agency or facility accredited by the department is not in compliance with state standards, or when an order of closure is issued under subrule 50.5(6), the appropriate administrator shall be notified of the noncompliance status. The notice shall specify:

1. The statute(s) and any rule(s) alleged to have been violated.

2. The deficiencies cited.

3. The time period allowed for submission of a plan of compliance if submission of a plan is permitted.

The administrator of the facility or agency may submit the plan of compliance within the appropriate time limitation or may request a hearing pursuant to rule 12.3(17A).

291—12.2(17A) Informal settlement. The director or the respondent may request that an informal conference be held to determine whether the noncompliance matter can be resolved in a just manner in furtherance of the public interest. Neither the director nor respondent is required to use this informal procedure. If the director and respondent agree to negotiate a settlement, the various points of the settlement, including a stipulated statement of facts, shall be set forth in writing and shall be binding on both parties.

291—12.3(17A) The right to request hearing. A hearing shall be granted to any agency or facility aggrieved by action of the department of corrections when the right to a hearing is granted by the state or federal law or constitution except as limited herein. A hearing will not be granted when a state or federal law or regulation provides for a different forum for appeals. A prematurely filed appeal may be dismissed.

291—12.4(17A) Order for hearing. Upon a determination that a plan of compliance is not sufficient to effectuate compliance, or upon request by the agency or facility pursuant to rule 12.3(17A), the department shall issue an order fixing the time and place for hearing. A written notice of hearing together with a statement of the charges shall be mailed to the agency or facility at least ten days prior to the hearing by certified mail with return receipt requested to the administrator of the agency or facility at the business address or may be served as in the manner of original notices. Delivery of personal notice to the agency or facility or refusal by the agency or facility to accept certified mailing may constitute commencement of the contested case proceedings.

291—12.5(17A) Notice of hearing. The notice of hearing shall state:

12.5(1) The date, time and place of hearing.

12.5(2) A statement that the party may be represented by legal counsel at all stages.

12.5(3) A statement of the legal authority and jurisdiction under which the hearing is to be held.

12.5(4) A reference to the statutes and rules involved.

12.5(5) A short and simple statement of the deficiencies cited.

12.5(6) A statement that the respondent has the right to appear at a hearing and be heard.

12.5(7) A statement requiring the respondent to submit an answer, as outlined in rule 12.6(17A).

12.5(8) A statement requiring the respondent within the period of five days after the receipt of the notice of hearing to:

a. Acknowledge receipt of the notice of hearing on the form provided with the notice.

b. State whether the respondent will require an adjustment of the date and time of hearing.

c. Furnish the director with a list of potential witnesses and their current addresses which the respondent intends to have called. The department of corrections shall not pay witness expenses.

291—12.6(17A) Form of answer. The answer shall be captioned "BEFORE THE IOWA DEPARTMENT OF CORRECTIONS", and shall be titled: "ANSWER". The answer shall contain the following information.

1. The name, address and telephone number of the respondent.

2. Specific statements regarding any or all areas of noncompliance which shall be in the form of admissions, denials, explanations, remarks or statements of mitigating circumstances.

3. Any additional facts or information the respondent deems relative to the issue at hand and which may be of assistance in the ultimate determination of the case.

291—12.7(17A) Continuances. A party has no automatic right to a continuance or delay of the hearing procedure or schedule. However, a party may request a continuance no later than ten days prior to the date set for hearing. Within ten days of the date set for hearing, no continuance shall be granted except for extraordinary, extenuating or emergency circumstances. The hearing officer shall have power to grant or deny request for continuances.

291—12.8(17A) Prehearing conference. The hearing officer, either on his or her own motion, or at the request of the respondent, may hold a prehearing conference. The prehearing conference shall be for the purpose of identifying and premarking exhibits and other documents as well as determining stipulations or other means of limiting the issues of the hearing. Neither the department nor respondent shall be required to stipulate to any issues. The prehearing conference, if held, may be done through a telephone conference call, with all parties being involved.

291—12.9(17A) Appearance. The administrator of the agency or facility shall have the right to appear in person and have legal counsel before the hearing officer at the facility or agency administrator's expense.

291—12.10(17A) Subpoena powers. After service of the notice of hearing, the following procedures are available to the parties:

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1. Subpoenas for persons, books, papers, records and other real evidence shall be issued to a party or for a party upon request. Applications should be made to the director and the director shall issue all subpoenas for both parties upon request.

2. Discovery procedures applicable to civil actions are available to the parties in proceedings under these rules.

3. Evidence obtained by subpoena or through discovery shall be admissible at the hearing under rule 12.16(17A) or by statute.

4. The evidence outlined in Iowa Code section 17A.13(2) where applicable and relevant may be available to a party upon request.

291—12.11(17A) Refusal to obey subpoena. In the event of a refusal to obey a subpoena, the director may petition the district court for its enforcement.

The hearing officer may also administer oaths and affirmations, take or order that depositions be taken and grant immunity to a witness from disciplinary procedures initiated by the director which might otherwise result from the testimony to be given by the witness.

291—12.12(17A) Failure of a respondent to appear. If a respondent, upon whom a proper notice of hearing has been served, fails to appear in person at the hearing, the hearing officer may proceed to conduct the hearing and the respondent shall be bound by the results of such hearing to the same extent as if the respondent were present.

291—12.13(17A) Record of proceedings. Oral proceedings shall be recorded either by mechanical or electrical means, or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party at the expense of the requesting party. The recording or the stenographic notes of oral proceedings or the transcription thereof shall be filed and maintained in accordance with the provisions of Iowa Code section 17A.12(7). Any party to a proceeding may record at the party's own expense, stenographically or electronically, any portion or all of the proceedings.

291—12.14(17A) Hearings. A hearing may be conducted before an administrative hearing officer in accordance with Iowa Code section 17A.11. The hearing officer shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and to rule on all motions and objections. The hearing officer has the right to conduct a direct examination of the testimony of a witness at the time the testimony is given or at a later stage during the proceeding. Direct examination and cross-examination by the hearing officer are subject to objections properly raised in accordance with the rules of evidence noted in subrules 12.16(1) and 12.16(2).

291—12.15(17A) Order of proceedings. Before testimony is presented, the record shall show the identity of the hearing officer, the identity of the primary parties and their representatives, and of the fact that all testimony is being recorded. Hearings shall generally be conducted in the following order, subject to the modification at the discretion of the hearing officer conducting the proceedings.

1. The presiding officer or designee may read a summary of the charges and answers thereto, and other responsive pleadings filed by the respondent prior to the hearing.

2. The assistant attorney general or other person representing the state or department interest before the hearing officer shall make a brief opening statement which will be a summary of the charges and the witnesses and documents to support such charges.

3. The respondent or respondents shall each be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desire to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent.

4. Presentation of evidence on behalf of the department.

5. The presentation of evidence on behalf of the respondent(s).

6. Rebuttal evidence on behalf of the state or department, if any.

7. Rebuttal evidence on behalf of the respondent(s), if any.

8. Closing arguments first on behalf of the state or department, then on behalf of the respondent, and then on behalf of the state or department, if any.

291—12.16(17A) Rules of evidence—documentary evidence—official notice.

12.16(1) Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. The hearing officer will ordinarily base the findings upon a ponderance of the evidence, but is not required to do so.

12.16(2) Objections to evidentiary offers may be made and shall be noted in the record. Motions and offers to amend the pleadings may also be made at the hearing and shall be noted in the record together with the rulings thereon.

12.16(3) Subject to above requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be submitted in writing in certified form, e.g., affidavit, sworn statements or certified documents.

12.16(4) Documentary evidence may be received in the form of copies if the original is not readily available. Documentary evidence may be received in the form of excerpts if the entire document is not relevant. Accurate copies of any document should be provided at the time of the hearing. Upon request, the parties shall be given the opportunity to compare the copy with the original, if available.

12.16(5) Witnesses at the hearing, or persons whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

12.16(6) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the department. Parties shall be notified at the earliest practical time, either before or during the hearing or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the hearing officer determines as part of the record or decision that fairness of the

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parties does not require an opportunity to contest such facts.

291—12.17(17A) Proposed decision.

12.17(1) The decision rendered by the administrative hearing officer is a proposed decision and subject to the review provisions of rule 12.19(70GA,SF464).

a. A proposed decision shall be in writing and shall consist of the following parts.

(1) Findings of fact. A party may submit proposed findings of fact and where this is done, the decision shall include a ruling on each proposed finding.

(2) Conclusions of law. The conclusions shall be supported by cited authority or reasoned opinion.

(3) Order. The decision or order which sets forth the action to be taken or the disposition of the case.

b. The decision may include any of the following conclusions.

(1) The plan of compliance is adequate.

(2) The plan of compliance is not adequate, however a specified time period will be allowed for specified conditions to be met.

(3) Compliance is not adequate and the appropriate action is to be taken by the department.

12.17(2) Reserved.

291—12.18(17A) Notification of proposed decision.

All parties to a proceeding herein will be promptly furnished with a copy of any proposed decision or order.

291—12.19(17A) Review of proposed decision — procedures and requirements.

12.19(1) A party dissatisfied with a proposed decision may request the director to review or modify the decision. The department may request review if it is dissatisfied with the proposed decision. The request for review is begun by serving on the director, either in person or by certified mail, a notice of the request for review within ten days after the service of the proposed decision or order on the appealing party.

12.19(2) Within ten days after serving notice of appeal, the requesting party shall serve copies of the exceptions, if any, together with any brief and arguments on the department and all other parties, if any. Other parties shall have ten days after service of exceptions and briefs on the director to file a responsive brief and argument. Except for the request for review, the above time requirements will be extended by stipulation of the parties and may be extended upon application approved by the director.

12.19(3) Oral argument of the request for review is discretionary but may be required by the director upon the director's own motion. At the times designated for filing briefs and arguments, either party may request oral argument. If a request for oral argument is granted or required, the director shall notify all parties of the date, time and place for an oral presentation, if any.

12.19(4) The record on appeal shall be the entire record made before the administrative hearing officer. The director is not bound by any proposed findings of fact, conclusions of law or order but is free to accept, affirm, modify or reject such proposed findings, conclusions or order. The director may consider other evidence or information, with notice to all parties which was not originally presented at the hearing. The director may give such new evidence or information whatever value or weight the director desires.

291—12.20(70GA,SF464) Motion for rehearing.

12.20(1) Within twenty days after issuance of a proposed decision, any party may file an application for a rehearing. The application shall state the specific grounds for rehearing and the relief sought. Within twenty days after issuance of a proposed decision, any party may file an application for a rehearing upon the director and all other parties who are not joining in the application. The application shall state the specific grounds for rehearing and the relief sought.

12.20(2) Upon a rehearing, the director shall consider facts not presented in the original proceeding, if:

a. Such facts arose after the original proceedings; or

b. The party offering such evidence could not reasonably have provided such evidence at the original proceeding; or

c. The party offering the additional evidence was misled by any party as to the necessity of offering such evidence at the original proceeding, except that this subrule shall not relieve any party of its own obligation to control its own evidence and defense.

12.20(3) The decision made upon rehearing may incorporate by reference any and all parts of the decision made upon the conclusion of the original proceeding.

291—12.21(17A) Final decision. The final decision shall be made by the director. The final decision shall be in writing and shall consist of the parts as outlined in subrule 12.17(1). A copy of the decision and order shall immediately be sent by certified mail return receipt requested to the administrator of the facility or agency at the business address or may be served as in the manner of original notices upon the facility or agency. The proposed decision becomes final ten days after issuance if review is not requested.

291—12.22(17A) Judicial review and appeal. Judicial review of the director's action may be sought in accordance with the Iowa Administrative Procedure Act, from and after the date of the director's order.

291—12.23(17A) Ex parte communications—bias. Unless required for the disposition of ex parte matters, specifically authorized by statute, no party to a contested case or person with a personal interest in that case may communicate directly or indirectly with the presiding officer, nor shall the presiding officer communicate directly or indirectly with that party or person, concerning any issues of fact or law in that case. When such a communication occurs, each party shall be given written notice of the communication, containing either the text of a written communication or a summary of an oral communication, and the time, place and means of the communication. After the notice all parties have the right, upon written demand, to respond to the communication at a hearing convened especially for that purpose.

12.23(1) Inclusive in the record. Any ex parte communication prohibited by Iowa Code section 17A.17(2) received by the hearing officer shall be included in the record. If written, the text shall be entered into the record; if oral, the hearing officer shall summarize the communication and enter that summary into the record.

12.23(2) Penalties. If a party knows or reasonably should know that the communication was prohibited by Iowa Code section 17A.17(2), the director may censure that person or suspend or revoke that person's right to practice before that agency. In the case of prohibited

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

communication which has a substantial and adverse impact upon the opposing party's case, the director may enter a decision against the party making the communication. Any hearing officer who violates the provisions of section 17A.17 or of this rule may be censured, suspended or dismissed by the director of the department of corrections.

291—12.24(17A) Emergency action. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates the finding to that effect in the order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

These rules are intended to implement Iowa Code sections 17A.10 to 17A.19.

Chapters 13 to 19 (inclusive) are reserved for future use.

Chapters 20 to 39 will become Title II, Institutions.

ITEM 2. Rule **20.2(218)** is amended as follows:

Remove subrule numbers from the definitions and arrange in alphabetical order.

ITEM 3. Rule **20.2(218)** is amended by adding new definitions as follows:

"Furlough" means any temporary release from custody as granted in accordance with 1983 Iowa Acts, Senate File 464, section 9, subsection 2.

"Furlough residence" means any private dwelling, apartment, house, trailer court, motel or community dwelling place.

"Law enforcement checks" means prescheduled, in person, check-ins at designated law enforcement agencies such as police departments, sheriff's offices and highway patrol offices.

"Plan of payment" means the method by which the inmate is to make restitution. The plan may include financial obligations or performance of community services. The plan is to reflect the offender's present circumstances, such as income, physical and mental health, education, employment and family circumstances.

"Plan of restitution" means a plan stating the amount of restitution and to whom it is paid or the amount and type of public service, as set by the court at the time of sentencing.

"Responsible person" means an individual on the inmate's visiting list of legal age who, in the judgment of the staff, is a person of accountability, who is able to think and act rationally and who is willing to facilitate the inmate's successful completion of furloughs within the furlough rules and facilitate the return of the inmate to the institution. A responsible person shall further mean an individual who is not now under indictment, sentence or convicted of an indictable public offense. Ex-felons will not be permitted to act as responsible persons for furlough until they have demonstrated two years successful adjustment in the community after release from any supervision.

ITEM 4. Amend chapter 20 by adding the following new rule:

291—20.11(910) Restitution.

20.11(1) Every inmate required by a court order to pay restitution shall have a restitution plan of payment developed, unless a court-ordered restitution plan of payment has been completed.

20.11(2) The restitution plan of payment shall consider the present circumstances of an inmate's present income/employment, physical/mental health, education and financial situation.

20.11(3) The deputy director for correctional institutions shall ensure that there are written procedures governing the development and modification of each restitution plan of payment.

20.11(4) The warden/superintendent or designee shall approve each restitution plan of payment or modified plan with a copy sent to the clerk of court and the director. Payments shall be submitted to the appropriate clerk of court as the payment plan directs.

20.11(5) Inmate appeals of restitution plans of payment or modifications may be via the inmate grievance procedure.

20.11(6) Each inmate shall sign, understand and receive a copy of the restitution plan of payment.

20.11(7) The business office may deduct up to fifty percent of an inmate's allowance per pay period. If an inmate is in lockup or other punitive status where an allowance is not granted, the institution may make up missed payments from future earnings by deducting up to seventy-five percent of subsequent allowances.

20.11(8) Payment shall be made to the clerk of court in the county of commitment on a quarterly basis.

These rules are intended to implement Iowa Code sections 910.2, 910.3 and 910.5 as amended by 1983 Iowa Acts, Senate File 464, section 154.

ITEM 5. Subrule **21.6(1)**, paragraphs "f" and "i", relating to minimum security furloughs at John Bennett correctional unit are amended as follows:

f. Inmates serving a class "A" felony ~~are not eligible~~ shall not be eligible for furlough unless his sentence has been commuted to a term of years and unless the parole board recommends the commencement of gradual release. Approval or denial will then be granted on an individual basis.

i. Inmates who escape from the institution, escape while on furlough, or commit a felony on furlough during the present commitment ~~are not eligible for furlough privileges~~ will not be eligible for furloughs for one year from the date the inmate returned to the institution. Inmates who have two instances of escape from the institution or while on furlough or commission of a felony while on furlough may have furlough privileges revoked permanently for the duration of their sentence. An exception to this rule may be made when an inmate is approved by the state work release committee for work release. The inmate could be eligible for work release furlough after six months from the date the inmate returned to the institution.

These rules are intended to implement Iowa Code section 217.8.

ITEM 6. Amend chapter 22 by adding the following new rules:

291—22.4(218) Luster Heights—visiting hours. Unless otherwise specified below, all rules and procedures for the Iowa state men's reformatory also apply to Luster Heights.

1. Visiting hours are from 6:00 p.m. to 9:00 p.m. Monday to Friday and from 1:00 p.m. to 7:00 p.m. Saturday, Sunday, and holidays.

2. A maximum of twelve visits per month are allowed each approved visitor.

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This rule is intended to implement 1983 Iowa Acts, Senate File 464, section 9.

291—22.5(70GA,SF464) Minimum security furloughs at Luster Heights facility. Furloughs may be granted to those inmates who are legally eligible. Furloughs are a privilege earned by overall responsible behavior, subject to the guidelines in these rules. This privilege may be withdrawn at any time for reasons deemed sufficient by the warden or designee. All inmates are not necessarily eligible for furloughs. All furloughs are subject to administrative approval.

22.5(1) Minimum eligibility requirements.

a. Only minimum security live-out inmates are eligible for furloughs.

b. After sixty days at the Luster Heights facility, a furlough can be earned and the inmate is eligible to leave on furlough the sixty-first day.

c. Inmates who escape from the institution, escape while on furlough, or commit a felony on furlough during the present commitment, will not be eligible for furloughs for one year from the date the inmate returned to the institution. Inmates who have two instances of escape from the institution or while on furlough or commission of a felony while on furlough may have furlough privileges revoked permanently for the duration of their sentence. An exception to this rule may be made when an inmate is approved by the state work release committee for work release. The inmate could be eligible for work release furlough after six months from the date the inmate returned to the institution.

d. Must have completed a minimum of six months in the Iowa state prison system before beginning to earn furloughs. Inmates transferred to Luster Heights prior to serving six months in the prison system must complete the six months at the facility and the last sixty days may be counted toward earning a furlough if served at Luster Heights.

e. Inmates serving time for a felony conviction other than a class "A" must have earned a minimum of one-sixth of their sentence from the date of commitment to discharge date. An exception to this rule may be made for an inmate serving a sentence of two years or less. Inmates serving a class "A" felony shall not be eligible for furlough unless the sentence has been commuted to a term of years and unless the parole board recommends the commencement of gradual release. Approval or denial will then be granted on an individual basis.

f. Inmates serving mandatory minimum sentences must complete the mandatory minimum prior to being granted a furlough. The last sixty days of a mandatory minimum sentence may be counted toward earning a furlough if served at Luster Heights.

22.5(2) Furlough eligibility, plan and requirements.

a. Disciplinary action may cancel or delay furlough eligibility.

b. A furlough may not be granted unless the inmate has adequate money on his account and appropriate transportation has been arranged.

c. Performance at the Luster Heights facility and work reports may be assessed in determining an inmate's readiness to meet furlough requirements.

d. The staff shall verify the plan arrangements regarding an inmate's furlough.

e. Inmates are required to have a responsible person check them out if leaving in a private vehicle and this will be so noted on the furlough application form.

f. The inmate may travel with a member of the immediate family, meaning parents, wife, brother, sister, grandparents, aunt, uncle, or any individual who has acted in the capacity of a parent. The member of the immediate family must be at least eighteen years old and must be on the inmate's approved visiting list.

g. Inmates will not be allowed to hitchhike on furlough. Driving will only be allowed in specific cases with the approval of the camp supervisor.

h. The inmate must check in with law enforcement personnel when the inmate arrives at the furlough destination and have a law enforcement person sign the furlough form and put the date and time that the form is signed.

i. The inmate must be in the place of residence (in Iowa) of the member of the immediate family where the home furlough is being taken from the hours of 11:00 p.m. to 6:00 a.m. Only exception will be for travel time as approved by staff and scheduled on the furlough form.

j. During each furlough, there will be no more than five hours total time, excluding travel time, when the inmate will not be reached by telephone. The five hours must be consecutive.

k. Random phone checks will be made to assure that the inmate is in the designated place of assignment.

l. Long furloughs can be followed when there is a holiday on Friday or on Monday. In this case, the furlough may begin after work on the last work day prior to the three-day weekend and ending by 8:00 p.m. on the last nonworking day of the three-day weekend. Exceptions to this practice can be made only with the approval of the camp supervisor or designee.

m. Emergency furloughs are allowed for death-bed visits or for attending the funeral of a member of the immediate family. Immediate family is defined as mother, father, sister, brother, wife, son, and daughter. The inmates are also able to attend grandparents' funerals if the grandparent was considered a substitute parent. The same is true for stepparents or foster parents.

22.5(3) Plan arrangements. All arrangements for furloughs should include the following:

a. Complete transportation plan, including the means of transportation.

b. Schedules, estimated arrival time, and any other information required by the staff.

c. Name, address, telephone number and relationship of person.

d. Purpose of the furlough.

e. Furlough destination, including complete address and telephone number.

f. Furlough may not be granted unless the inmate has adequate money in the inmate's institutional account to assure staff that transportation can be obtained.

22.5(4) The warden or designee shall review each furlough application and make the final decision to approve or deny furlough. When the furlough is denied, the inmate will be informed of the reason in writing.

This rule is intended to implement 1983 Iowa Acts, Senate File 464, section 9.

ITEM 7. Chapter 23. Iowa Correctional Institution for Women, is amended by adding new rules as follows:

291—23.5(70GA,SF464) Furloughs. The furlough program at the Iowa Correctional Institution for Women is designed to provide the inmates an opportunity to maintain family relationships, obtain training programs

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or services not available in the institution, and to seek housing and employment pursuant to release. Criteria for furlough participation shall emphasize community safety, positive institutional performance, and future release planning.

Furloughs are a privilege earned by overall responsible behavior and are subject to all rules governing furloughs. Furloughs may be withdrawn at any time for reasons identified by the superintendent or designee. Reasons for withdrawal will be given to the inmate in writing.

23.5(1) Types of furloughs.

a. Emergency furloughs. Emergency furloughs will be considered in the event of a death in the immediate family (father, mother, brother, sister, son, daughter, husband, foster parent or someone who acts in the capacity of a parent), hospitalization of an immediate family member if it is determined that the situation is of a critical nature. Inmates returning from emergency furloughs must return to the institution no later than 4:30 p.m. on their final furlough day. Inmates may apply for up to three days for emergencies.

b. Community visit furloughs. Community visit furloughs may be granted to provide inmates the opportunity to maintain family relationships, to participate in civil court proceedings, or to reestablish contact within the community and prepare for release.

c. Community service furloughs. Inmates may apply for a community service furlough not to exceed fourteen days to participate in educational and vocational training and human service opportunities not available at the institution. Community service furloughs may be eligible for renewal at the end of the fourteen-day period based on a positive performance evaluation of the inmate.

d. Community placement furloughs. Inmates may apply for a community placement furlough to be taken within one month of expected release by parole, work release, or expiration of sentence. Inmates must have two verifiable job interviews for each day on furlough and must leave no earlier than 8:30 a.m., Monday, and must be back at the institution no later than 4:30 p.m. on Friday. Inmates are exempt from minimum live-out custody requirement for community placement furloughs.

23.5(2) Eligibility requirements.

a. Inmates serving a class "A" felony shall not be eligible for furlough unless the sentence has been commuted to a term of years and unless the parole board recommends the commencement of gradual release. Approval or denial will then be granted on an individual basis.

b. Inmates with detainers are ineligible for furloughs unless the detaining authority provides authorization in writing for furlough privileges.

c. Inmates under pending/effective disciplinary action, including Notice of Restrictions are ineligible for furloughs.

d. Inmates must have minimum live-out custody classification and have been in that status for forty-five days.

e. Inmates returning on probation revocation, work release, or parole revocation will be ineligible for furlough consideration for an additional four-month period beyond minimum requirements.

f. Inmates who escape from the institution, escape while on furlough, or commit a felony on furlough during the present commitment, will not be eligible for furloughs for one year from the date the inmate returned to the institution. Inmates who have two instances of escape from the institution or while on furlough or commission of

a felony while on furlough may have furlough privileges revoked permanently for the duration of their sentence. An exception to this rule may be made when an inmate is approved by the state work release committee for work release. The inmate could be eligible for work release furlough after six months from the date the inmate returned to the institution.

g. Receipt of one major, two minor discipline reports, or three notice of restrictions will result in loss of furlough privileges for four months from receipt of the determining report.

h. Major discipline reports can result in loss of furlough privileges as a part of the disciplinary process.

i. Inmate must have maintained 2.75 ratings or above on institutional performance and participation during previous four-week period before submitting application. Dropping below 2.75 after submission will result in the furlough being canceled.

j. Furlough may not be granted unless the inmate has adequate money in the inmate's institutional account to assure staff that transportation can be obtained.

23.5(3) Furlough sequence for community visit furlough.

a. Inmates may apply for one eight-hour furlough once initial eligibility requirements are met. This furlough must be taken on Saturday or Sunday. Inmates may apply for eight-hour furloughs every other week.

b. Inmates may apply for one forty-eight-hour furlough on Saturday or Sunday six weeks after meeting the initial eligibility requirements and once per month following. These furloughs are in addition to the eight-hour furloughs.

c. In addition, inmates may apply for one seventy-two-hour furlough every two months, sixteen weeks after meeting the initial eligibility requirements.

23.5(4) Furlough plan and requirements.

a. Inmates may furlough to a member of their immediate family or to a responsible person if it is verified by staff that the inmate cannot furlough to immediate family. Anyone requesting to be a responsible person for purposes of the furlough policy must meet requirements to be placed on the inmate's visiting list, must have three letters of reference from persons in their community submitted to the institution, and in addition, may be requested to come to the institution for a personal interview prior to the proposed furlough date.

b. Law enforcement agencies in the community to which the inmate plans to furlough will be notified with a request for approval. If not approved, the furlough will be denied.

c. Inmates must check in at the law enforcement agency upon arrival at the furlough community. Inmates must report in person. This will be included in each furlough plan.

d. Inmates are to be at their designated furlough site between the hours of 11:00 p.m. and 6:00 a.m.

e. Unspecified time on furlough is not permitted. Inmates on furlough must be available for telephone checks. A maximum of five hours at one time will be considered for activities during which the inmate is unavailable to telephone. All telephone calls will be logged.

f. Disciplinary reports for unauthorized absence and violation of a condition of leave will be written if an inmate cannot be reached by phone check in a thirty-minute period. If the inmate is not located and has not

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contacted the institution within two hours of the first phone call, an escape notice will be issued.

g. A discipline report for violation of a condition of leave and unauthorized absence will be written if an inmate fails to return to the institution by the stated return time. An escape notice will be issued two hours after the furlough return time if no word is received from the inmate.

h. An inmate must call the institution to request permission for any change in her furlough plan. Calls received collect to the institution will be charged to the inmate's account.

i. All persons listed as a part of the furlough plan are required to be on the inmate's visiting list.

j. Inmates are not permitted to drive while on furlough without consent of the superintendent.

k. Transportation plans can only include public transportation, institutional staff, immediate family, or responsible person.

l. Furloughs for federal offenders are subject to any additional rules and policies as outlined in the Federal Manual.

m. Two inmates may not furlough to the same furlough site unless those two inmates are immediate family members.

n. Counselor will verify with the person listed as the family member or responsible person that the application has been submitted.

o. Furlough check-out time will be after 8:30 a.m. with check-in time by 4:30 p.m. unless it is verified that no transportation will be available to return the inmate by that time. In no case will the inmate exceed the total furlough hours limit.

p. If an inmate returns to the institution from furlough during visiting hours, a visit may be arranged provided all visiting requirements are met.

23.5(5) Plan arrangements.

a. The inmate will complete form letter to local and county law enforcement agencies advising of the furlough request and return with stamped envelope to program manager.

b. Inmate will complete furlough application in detail. Applications will include:

1. Purpose of furlough.
2. Furlough destination with complete address and telephone number.
3. Complete transportation plans.
4. Activity schedule, departure and arrival times, and telephone numbers to include check in with local law enforcement agencies.
5. Name, address, telephone number and relationship of the responsible person.
6. Names and inmate's relationship to all persons the inmate will be in contact with.

23.5(6) Verification of plan. The program manager will review and make recommendations to approve or disapprove furloughs based upon:

- a. Verification of sufficient time served.
- b. Identification and verification of responsible person accepting supervision of applicant; verification must minimally include three letters of reference from persons in the community in which the applicant resides. The person must be on the inmate's approved visiting list. A personal interview may be required.
- c. Verification that inmate has notified community law enforcement agencies of their intention to apply for a

furlough. Community input will be reviewed and considered in the recommendation.

d. Verification that sufficient money is on account to cover furlough costs and emergencies. The inmate must have twenty dollars to cover cost of public transportation for all but eight-hour furloughs.

e. Verification of positive performance evaluation to include earned rating and level requirements from inmate's work supervisor, residential supervisor, and other program unit supervisors.

f. Staff may impose community counseling requirements for inmates while on furlough, or may require check-in(s) with law enforcement or community corrections personnel.

g. A list of telephone checks noting time the call will be placed must be included before submission to the superintendent.

h. The institution shall send weekly to the appropriate law enforcement agencies a list of all inmates with approved furloughs.

23.5(7) Final decision. The superintendent or designee shall review each furlough application and make the final decision to approve or deny the furlough. When the furlough is denied, the inmate will be informed of the reason in writing.

These rules are intended to implement 1983 Iowa Acts, Senate File 464, section 9.

ITEM 8. Add new chapters 25 and 26 as follows:

CHAPTER 25

CORRECTIONAL TREATMENT UNIT

291—25.1(70GA,SF464) Visiting.

25.1(1) Visitors shall not give any article to inmates during a visit. This does not apply to purchases from vending machines in the visiting room, which must be consumed during the visit.

25.1(2) Money will not be accepted at the correctional treatment unit on behalf of an inmate, but may be left at the mental health institute business office during business hours.

25.1(3) Visiting hours are Monday and Thursday, 8:00 a.m. — 4:00 p.m.; Friday, Saturday, Sunday and all holidays from 12:00 noon — 8:00 p.m. Inmates will be permitted a three-hour visit on any day that the visiting room is open. To avoid overcrowding, an inmate will be allowed a maximum of five visitors in the visiting room at a time. Visits between an attorney and inmate will be permitted during normal visiting hours or during nonvisiting hours with authorized appointments.

291—25.2(70GA,SF464) Tours.

25.2(1) Tours of the institution will be limited to persons eighteen years of age or older; exceptions may be made by the deputy superintendent.

25.2(2) Prior approval from the deputy superintendent is required for relatives or close friends of inmates wishing to tour the facility.

25.2(3) Evening tours for the general public are conducted, and shall be scheduled through the deputy superintendent's office. Daytime tours will be limited to professional groups in work related to corrections or school groups.

25.2(4) Tours will be approved by the deputy superintendent or the assistant to the deputy superintendent.

These rules are intended to implement 1983 Iowa Acts, Senate File 464, section 9.

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CHAPTER 26

NORTH CENTRAL CORRECTIONAL FACILITY

291—26.1(70GA,SF464) Visiting.

26.1(1) Visitors shall not give any article to inmates during a visit. Money may be left at the facility's business office during normal business office hours.

26.1(2) Visiting hours are 8:30 a.m. — 3:30 p.m. Monday, Thursday, Friday, Saturday, Sunday and all recognized holidays. There is no visiting on Tuesday and Wednesday. Inmates are permitted three-hour visits with no limits on the number of visits. A maximum of five persons may visit with one inmate at any one time.

26.1(3) Inmates housed in disciplinary detention area may have visits modified as to length of time and location, depending on conduct which caused placement in disciplinary status.

26.1(4) A maximum of two inmates can be visited by a visitor at any one time. In such cases, both inmates must be a member of the visitor's immediate family.

291—26.2(70GA,SF464) Tours.

26.2(1) Scheduled evening tours for the general public are conducted and shall be scheduled through the superintendent's office. Daytime tours are limited to professional groups or school groups.

26.2(2) All tours require the superintendent's or designee's approval.

These rules are intended to implement 1983 Iowa Acts, Senate File 464, section 9.

ITEM 9. Chapter 28, Riverview release center, is amended by adding new rules as follows:

291—28.5(70GA,SF464) Furloughs. As established in the Code of Iowa, furloughs may be granted to those inmates who are legally eligible. Furloughs are a privilege earned by overall responsible behavior. Since furloughs are a privilege, they may be withdrawn at any time for reasons deemed sufficient by the superintendent or his designee. Circumstances not covered in the furlough rules will require approval by the superintendent or designee. The following definitions apply:

28.5(1) Eligibility.

a. Inmates in the following categories are not eligible for Riverview release center furloughs:

1. Inmates serving a class "A" felony shall not be eligible for furlough unless the sentence has been commuted to a term of years and unless the parole board recommends the commencement of gradual release. Approval or denial will then be granted on an individual basis.

2. Inmates with active detainers, unless permission is received from detaining authority.

3. Inmates with pending class I disciplinary reports.

4. Inmates with valid class I disciplinary reports during any appeal process.

5. Inmates with pending transfer referrals.

6. Inmates with pending state work release revocation or rescission hearings.

7. Inmates who are suspended from their work assignment or confined to their bunk area.

8. Inmates who are appealing valid class II reports which have resulted in restriction from furloughs.

9. Inmates who escape from the institution, escape while on furlough, or commit a felony on furlough during the present commitment, will not be eligible for furloughs for one year from the date the inmate returned to

the institution. Inmates who have two instances of escape while on furlough or from the institution or commission of a felony while on furlough may have furlough privileges revoked permanently for the duration of their sentence. An inmate approved by the state work release committee for work release could be eligible for work release furloughs after six months from the date the inmate returned to the institution.

10. Inmates with more than one year remaining on mandatory minimum sentences.

b. Inmate must be approved by the classification committee for furlough participation prior to taking any community visit furloughs. Prior to classification approval inmates must have served four months or one-sixth of their sentence, whichever is greater.

c. Inmates of the Riverview release center may earn furloughs according to their success in meeting the entrance criteria in the Riverview release center furlough level system.

28.5(2) Minimum requirements.

a. Except for treatment furloughs, inmates taking furloughs are required to be under the supervision of a responsible person. Between the hours of 11:00 p.m. and 6:00 a.m., the inmate must be residing with the "responsible person" at the furlough residence as designated in the furlough plan. Travel to and from furlough destinations is not permitted between the hours of 11:00 p.m. and 6:00 a.m.

b. Persons requesting to be approved as responsible persons for furlough must be placed on the inmate's visiting list. Criminal record inquiries are required for persons asking to be placed on an inmate's visiting list.

c. Inmates will not be permitted to have married females (other than immediate family members) as responsible persons unless both husband and wife are listed as responsible persons. Married inmates will not be permitted to have any females (other than immediate family) as responsible persons.

d. While on furlough no more than one inmate is permitted at a particular residence at any given time. Inmates are prohibited from participating in activities together on furlough unless specifically authorized by staff.

e. Transportation to and from the furlough destination must be:

(1) With anyone on the inmate's visiting list;

(2) With another inmate and someone on that inmate's visiting list; or

(3) By public transportation.

f. Inmates on furlough must be available for telephone checks.

g. Unspecified time on furlough is not permitted. Inmates may be permitted up to a maximum of five hours per furlough day away from a phone. Time away from a phone may be used to go to private businesses, churches, make law enforcement check-ins, etc., but these activities and their location must be listed on the furlough activities. Time away from a phone will not be permitted until at least one half hour after arrival at the destination. Time away from a phone will not be permitted any later than one half hour prior to departure from the furlough destination to Riverview release center.

h. When a furlough residence is equipped with call forwarding, this must be indicated on the furlough application. Inmates on furlough are not permitted to use call forwarding devices.

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

i. Inmates on furlough are required to check in with a local law enforcement agency. Inmates are expected to schedule law enforcement check-ins. Staff may alter or add law enforcement check-ins.

j. Inmates on furlough must return to the facility at the time designated on the furlough plan.

k. Inmates must abide by all laws and institution rules while on furlough. Inmates may not enter establishments whose primary business is the sale of alcoholic beverages.

l. Inmates are not permitted to drive while on furlough unless they have the written consent of the superintendent.

m. Out-of-state furloughs are not permitted except in a verified emergency, and only with the approval of the director of the division of adult corrections and the governor's office.

n. Inmates may participate in holiday furloughs as directed by the superintendent.

28.5(3) Furlough level system.

a. Treatment furloughs.

(1) Purpose: Inmates may apply for furloughs to obtain verified needed service or treatment specified in the individual's treatment plan that is not provided by Riverview release center, and cannot be completed by phone or mail. This includes: Education, driver's license, medical, family, marital and premarital counseling, psychological treatment and legal matters of a civil nature.

(2) Frequency: As needed to complete treatment or legal matter.

(3) Duration: As needed to complete treatment or legal matter.

(4) Criteria:

1. Needed services not provided by Riverview release center.

2. Needed services documented in treatment plan.

3. Civil court action.

b. Family emergency furloughs.

(1) Purpose: A verified death or serious illness within the inmate's immediate family.

(2) Frequency: As needed.

(3) Duration: Maximum seven days.

(4) Criteria: Documented death or serious illness in the inmate's immediate family.

c. Community placement furloughs.

(1) Work release. Inmates who have been approved for work release may be granted a furlough, up to a maximum of seven calendar days, to the prospective work release residence for the purpose of locating employment. These furloughs will take place only after the Riverview release center staff have been informed that space is available at the work release residence. This furlough may be extended for an additional seven days at the request of the house supervisor. While residing in the halfway house on furlough, the inmate is to follow the direction of the halfway house staff.

(2) Parole. Inmates approved for parole may be granted a furlough, up to a maximum of seven calendar days, to the prospective parole location for the purpose of locating employment, housing, etc. These furloughs must be initiated by the parole officer assigned to the case. This furlough may be extended for an additional seven days at the request of the parole agent.

(3) Discharge. Inmates within two weeks of discharge may be granted job-seeking furloughs. Inmates must have at least two verified job interviews each day while on furlough. Duration: Maximum four days.

d. Community visit furloughs. Purpose: Consistent with the gradual release philosophy of Iowa's criminal justice system, the purpose of community visit furloughs is twofold:

1. By being permitted the time to be with family and friends, the inmate is able to re-establish family and community relationships; and

2. By having the opportunity to examine the inmate's capacity to abide by the guidelines of the furlough policy and establish productive relationships, this facility is able to assess the inmate's ability to function in a less restrictive setting such as parole or work release.

(1) Level 1.

Inmates in this level are eligible to work on offgrounds assignment and treatment furloughs.

Entrance criteria:

1. Twenty-one days at Riverview release center;

2. Two consecutive satisfactory or above weekly performance evaluations;

3. Fourteen days since any valid disciplinary report other than a reprimand; and

4. Approval by classification committee for entry into the furlough level system.

(2) Level 2.

Type of furlough: Weekend community visit up to forty-eight hours' duration between 4:00 p.m. Friday and 11:00 p.m. Sunday.

Frequency: Two per twenty-eight-day cycle.

Time scheduled away from phone: Three hours per furlough day.

Entrance criteria:

1. Forty-five days in minimum live-out custody;

2. Twenty-one days at Level 1 since any valid report other than a reprimand; and

3. Three of the last four weekly performance evaluations at Level 1 have been satisfactory or above.

4. The classification committee may approve inmates to enter the furlough level system at Level 2 if the inmate has transferred to Riverview release center from a program where he has been participating in furloughs.

(3) Level 3.

Type of furlough: Weekend community visit up to fifty-five hours' duration between 4:00 p.m. Friday and 11:00 p.m. Sunday.

Frequency: Three per twenty-eight-day cycle.

Time scheduled away from phone: Four hours per furlough day.

Entrance criteria:

1. Twenty-eight days at Level 2;

2. Three consecutive satisfactory or above weekly performance evaluations in Level 2; and

3. Freedom from valid disciplinary reports other than reprimand for the past twenty-eight days.

(4) Level 4.

Type of furlough: Weekend community visit up to fifty-five hours' duration between 4:00 p.m. Friday and 11:00 p.m. Sunday.

Frequency: Every weekend.

Time scheduled away from phone: Five hours per furlough day.

Entrance criteria:

1. Ninety days at Riverview release center;

2. Freedom from any valid disciplinary report other than reprimand for the past fifty-six days;

3. Four consecutive satisfactory weekly performance evaluations in Level 3; and

4. Residency in Level 4 house.

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These rules are intended to implement 1983 Iowa Acts, Senate File 464, section 9.

ITEM 10. Add new chapters 40 to 43 as follows:

TITLE III
COMMUNITY-BASED CORRECTIONS

CHAPTER 40
COMMUNITY-BASED
CORRECTIONS ADMINISTRATION

291—40.1(905) Definitions.

40.1(1) "Accreditation" shall mean certifying that a judicial district department of correctional services is in compliance with applicable state and federal laws and with applicable portions of the Iowa Administrative Code, which compliance is determined by the department of corrections reviewing the bylaws, policies, procedures and practices of the judicial district department of correctional services.

40.1(2) "Board of directors" shall mean the same as district board as defined in Iowa Code section 905.3.

40.1(3) "Deputy director" shall mean the deputy director of the division of community services of the department of corrections.

40.1(4) "Conditions of probation" shall mean the same as defined in Iowa Code section 907.6.

40.1(5) "Deferred judgment, deferred sentence or suspended sentence" shall mean the same as defined in Iowa Code section 907.3.

40.1(6) "District department" shall mean the judicial district department of correctional services as defined in Iowa Code section 905.1, as amended by 1983 Iowa Acts, Senate File 464, section 134.

40.1(7) "District director" shall mean the director of a judicial district department of correctional services.

40.1(8) "Executive committee" shall mean the same as defined in Iowa Code section 905.3(2).

40.1(9) "Presentence investigations" shall mean the same as defined in Iowa Code sections 901.2 and 901.3.

40.1(10) "Pretrial release" shall mean the same as defined in Iowa Code section 811.2.

40.1(11) "Probation" shall mean the same as defined in Iowa Code chapter 907.

40.1(12) "Probation service" shall mean the same as defined in Iowa Code section 907.2.

40.1(13) "Residential services" shall mean an alternate jail facility established pursuant to Iowa Code chapter 356A or a community corrections residential treatment facility as identified in Iowa Code section 905.7(1) as amended by 1983 Iowa Acts, Senate File 464, section 139.

40.1(14) The "plan of restitution and the restitution plan of payment" shall mean the same as defined in Iowa Code chapter 910.

40.1(15) "Team review" shall mean a semiannual review of overall program, policies and procedures for compliance with the Code of Iowa and the Iowa Administrative Code by one or more persons designated by the deputy director.

40.1(16) "Ongoing site visits" shall mean any visit by the deputy director, his designee or representatives of the office of the state auditor which shall be to assure continuing compliance with the Code of Iowa and the Iowa Administrative Code, and which may be conducted at any time during the two-year interim following the most recent team review.

40.1(17) "Supervision" shall mean supervision during the probationary period as defined in Iowa Code section 907.8.

40.1(18) "Contraband" shall mean weapons, alcohol, drugs, money, obscene materials, or materials advocating disruption of or injury to clients, employees, programs, or physical facilities. It shall also include anything which is illegal to possess under the law, or materials which are used in the production of drugs or alcohol or used in conjunction with the taking of illicit drugs.

40.1(19) "Community service" shall mean unpaid public service as a condition of probation established pursuant to Iowa Code chapter 907 or in lieu of restitution as authorized in Iowa Code chapter 910.

This rule is intended to implement Iowa Code section 905.7 as amended by 1983 Iowa Acts, Senate File 464, section 139.

291—40.2(905) Accreditation.

40.2(1) The deputy director of the department of corrections shall be the accrediting authority. The decisions of the deputy director shall be final except as provided in Iowa Code chapters 17A and 905.

40.2(2) The deputy director shall conduct or assign staff the responsibility to conduct the semiannual team review for accreditation purposes.

40.2(3) The deputy director shall make or assign staff to make ongoing site reviews during the two-year interim following the most recent team review.

40.2(4) The semiannual team review shall include a complete review of the following:

a. Department structure as provided in Iowa Code chapter 905.

b. Bylaws, policies and procedures of the board and the district department.

c. Programs mandated by the Code of Iowa and any special programs approved by the department of corrections.

d. Business practices of the district department including the use of acceptable accounting procedures and the receipt and expenditure of funds. Any reports of the office of the state auditor and recommendations contained in those reports, as well as evidence of compliance with those recommendations.

e. Any regular or special evaluations of the services provided by the district department.

The semiannual review shall be conducted as provided in the "accreditation standards for community-based corrections" which shall be open for public inspection at the offices of the department of corrections. The accreditation standards and any changes in the standards, shall be made available to the district departments at least thirty days before the semiannual review.

40.2(5) The results of any semiannual team review will be reported to the deputy director who shall review the results and when a district is in adequate compliance with the Code of Iowa, the Iowa Administrative Code and the accreditation standards, the deputy director shall issue a certificate of accreditation for the following two years. When a district is not in adequate compliance as provided in the accreditation standards, the deputy director will notify the chairperson of the district board and the district director of the specific deficiencies and allowable time frames for correcting the deficiencies. At the end of the period of time for bringing the deficiencies into compliance, the deputy director shall award a certifi-

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cate of accreditation or shall notify the district board and proceed as provided in Iowa Code section 905.9 as amended by 1983 Iowa Acts, Senate File 464, section 141.

40.2(6) The ongoing site review shall include periodic assessments of the district departments and its programs as set out in 40.2(4) and shall be designed to provide evidence of continuing compliance. If at any time during the two-year period, following the most recent team reviews, the deputy director, through information gathered in ongoing site reviews, concludes that the district department is no longer in adequate compliance may conduct or order an interim team review. If in the team review the evidence indicates serious noncompliance, the deputy director may proceed as provided in 40.2(5).

This rule is intended to implement Iowa Code sections 905.7 and 905.9 as amended by 1983 Iowa Acts, Senate File 464, sections 138, 139 and 141.

291—40.3(905) District board of directors.

40.3(1) The board of directors shall adopt bylaws as prescribed in Iowa Code section 905.4(1).

40.3(2) The board of directors shall establish minimum qualifications for the position of the district director which shall include, but not be limited to, those set out in Iowa Code section 905.6 as amended by 1983 Iowa Acts, Senate File 464, section 137.

40.3(3) The board of directors shall select the district director of the overall community-based corrections program, who shall serve at the board's pleasure and the board shall set the director's salary consistent with Iowa Code section 905.4(2) as amended by 1983 Iowa Acts, Senate File 464, section 135.

40.3(4) The board of directors shall set policies and ensure procedures are developed governing the expenditures of funds which are in compliance with the requirements of the department of corrections and the Code of Iowa.

40.3(5) The board of directors shall set policies and ensure procedures are developed governing the personnel employed by the judicial district department of correctional services.

40.3(6) The board of directors shall establish policies and ensure procedures are developed governing formal communications between the board and the staff.

40.3(7) The board of directors shall establish policies and ensure procedures are developed governing the training of staff.

40.3(8) The board of directors shall approve a table of organization reflecting current staffing of the judicial district department of correctional services.

40.3(9) The board of directors shall annually approve the budget and action plan of the judicial district department of correctional services which shall include the projected expenditures by program and identify the following source of revenue: (a) State purchase of services contract, (b) federal and local grants or contracts, (c) residential client fees, (d) county support, (e) interest, (f) other miscellaneous revenues.

40.3(10) One or more project advisory committees shall be established in accordance with Iowa Code chapter 905. The functions of the advisory committee(s) shall include but need not be limited to participation in and review of the district department's planning and program activities.

291—40.4(905) District director.

40.4(1) The department shall have procedures governing the personnel employed by the judicial district,

and a system of fiscal accountability which assures compliance with the requirements of the department of corrections and the Code of Iowa.

40.4(2) The director shall acquire current copies of the Code of Iowa, the Iowa Administrative Code, and applicable federal regulations and shall prepare and maintain current a department of correctional services manual which shall include, but not be limited to, the following:

a. The written bylaws of the board of directors of the department of correctional services,

b. All departmental policies and procedures,

c. Written standard operating procedures governing the staff in the provision of services to clients,

d. A table of organization reflecting all positions employed within the department of correctional services,

e. Job descriptions of all positions employed within the department of correctional services,

f. A current pay plan.

40.4(3) The department shall ensure that an employee manual is readily accessible to all employees and shall include information which provides necessary guidance for the performance of the duties outlined in the employee's job description, personnel policies and procedures, and employee rights and responsibilities.

40.4(4) Written procedures shall exist concerning the security, maintenance, accessibility and destruction of case records.

40.4(5) The director shall ensure that there are written procedures governing the handling and dissemination of client file information, including access by the client, and the confidentiality of client records which comply with applicable state and federal laws.

40.4(6) The director shall maintain current documentation of inspection reports for all buildings under his or her purview which shall include when applicable, fire, building and health reports.

40.4(7) All reports required by the department of corrections shall be prepared and submitted on time in accordance with Iowa Code section 905.7 as amended by 1983 Iowa Acts, Senate File 464, sections 138 and 139.

40.4(8) The department shall establish fiscal procedures in accordance with guidelines established by the department of corrections to ensure that funds generated from programs financed with state moneys or moneys collected by the use of state allocations, be identified and expended to offset program costs as described and approved in the state purchase of service contract. Funds so generated and not expended during the fiscal year will be utilized by the judicial district department of correctional services to reduce budget requests for the subsequent fiscal year.

These rules are intended to implement Iowa Code chapter 905 as amended by 1983 Iowa Acts, Senate File 464.

CHAPTER 41

PRECONVICTION SERVICE

291—41.1(811,905) Pretrial services.

41.1(1) The district department shall designate the staff responsible for providing pretrial interviews and release with services programs.

41.1(2) The district department shall establish a system of communications with law enforcement and the judiciary regarding the availability of pretrial services throughout the entire districts.

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41.1(3) The district department shall have policies and procedures assuring daily staff contact with all jails in the district for the purpose of determining the presence of persons eligible for a pretrial interview and shall have policy assuring that all eligible persons are provided an interview without unnecessary delay.

41.1(4) The district department shall have written policies establishing criteria for screening pretrial release candidates which requires consideration of those items contained in Iowa Code section 811.2.

41.1(5) The district department shall have written policies and procedures which ensure that a case record is maintained on each active case under supervised release.

41.1(6) The district department shall have written policies and procedures which establish criteria for reporting violations of conditions of release to the court.

41.1(7) The district department shall have written policies and procedures governing the supervision of persons released to assure that no more supervision or services are provided than are needed.

41.1(8) The district department shall have written policies and procedures governing the notification of the agent or agencies responsible for correctional clients who receive pretrial interviews.

41.1(9) The district department shall have written policies which establish a grievance procedure for all clients under supervision.

291—41.2(905) Presentence investigation.

41.2(1) The agency shall be responsible for conducting all presentence investigations ordered by the court.

41.2(2) The agency shall have written policies and procedures which ensure that all information required by the Code of Iowa is included in the presentence investigation report.

41.2(3) The agency shall have written policies and procedures which ensure that the presentence investigation report includes an identification of client needs.

41.2(4) The agency shall have written policies and procedures which ensure the timely transmittal of the presentence report to the appropriate court official.

41.2(5) The agency shall have written policies and procedures which ensure the confidentiality of the presentence report in accordance with the Code of Iowa and state regulations, insofar as department handling of the report is concerned.

These rules are intended to implement Iowa Code section 811.2, chapter 901 and section 905.7 as amended by 1983 Iowa Acts, Senate File 464, sections 124 to 126, 138 and 139.

CHAPTER 42

PROBATION SERVICES

291—42.1(907,908,910) Probation.

42.1(1) The district department shall have written policies and procedures which ensure the delivery of probation services throughout the district.

42.1(2) The district department shall have written policies and procedures which ensure that a case record is maintained on each client under supervision.

42.1(3) The district department shall have written policies and procedures governing the classification and supervision of probationers which is in compliance with the classification system established by the eight district departments and approved by the department of corrections.

42.1(4) The district department shall have written policies and procedures which ensure that an individual case plan is developed on each client under supervision which includes an assessment of client needs and resources utilized to meet those needs.

42.1(5) The district department shall have written policies and procedures which establish grievance procedures for all clients under supervision and details a method which ensures that all clients are notified of the procedure.

42.1(6) The district department shall have written policies and procedures for reporting violations of probation and recommending revocation of probation to the court.

42.1(7) The district department shall have written policies and procedures for requesting a discharge from probation and shall require a recommendation for discharge when it is clear that the client has met court obligations, is no longer a threat to the community or cannot benefit substantially from further supervision.

42.1(8) The district department shall have written policies and procedures to assist staff to determine under what circumstances an arrest may be made or a client should be taken into custody.

42.1(9) The district department shall have written policies and procedures governing the searching of probationers or the searching and seizure of their property which meet the requirements of the court.

42.1(10) The district department shall have written policies and procedures governing the preparation, submission, review and modification of the restitution plan of payment in accordance with Iowa Code chapter 910.

42.1(11) The district department shall have written policies and procedures governing the preparation, submission, review and modification of the plan of community service in accordance with Iowa Code chapters 907 and 910.

42.1(12) The district department shall establish conditions of probation which meet the approval of the chief judge of the judicial district, which apply to each person under probation supervision, and shall have written procedures for assuring that each client receives those conditions in writing which include written documentation of receipt by the probationer.

This rule is intended to implement Iowa Code chapter 907, section 908.11 and chapter 910 as amended by 1983 Iowa Acts, Senate File 464, section 154.

CHAPTER 43

RESIDENTIAL FACILITIES

291—43.1(905,907,908,910) Residential facilities.

43.1(1) The facility shall admit residents only on an order of the court or in accordance with a contract with the department of corrections, federal correctional agencies or a county board of supervisors.

43.1(2) At the time of intake, the facility staff shall discuss with each resident, program goals, services available, rules governing conduct in the facility, disciplinary procedures, client fiscal management and residents' rights and communication privileges and shall obtain written documentation from the resident that these matters were discussed.

43.1(3) The facility shall have written policies and procedures governing when and how a resident's prop-

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erty is inventoried and recorded and the same shall be utilized for all residents.

43.1(4) The facility shall have written policies and procedures which ensure a case record is maintained on each resident of the facility.

43.1(5) The facility shall have written policies and procedures which ensure that an individual case plan is maintained on each resident which includes an assessment of client needs, and resources utilized to meet those needs.

43.1(6) The facility shall have written policies which establish facility rules, possible sanctions and appeal procedures for all residents.

43.1(7) The facility shall have written policies which establish a grievance procedure for residents which applies to activities other than disciplinary action.

43.1(8) The facility shall have written policies and procedures establishing criteria governing the use of and reporting of the use of physical force by facility staff which conforms to appropriate statutes or regulations.

43.1(9) The facility shall have written policies and procedures for searching residents and their property and for seizure of resident property or contraband.

43.1(10) The facility shall have a written policy which ensures that at least one staff member is awake, dressed, in the facility and readily available to residents twenty-four hours a day. Facility staff shall know the whereabouts of all residents.

43.1(11) The facility staff shall assure the provision and maintenance of a safe environment for the residents, including compliance with fire, building, health and safety regulations or standards applicable in the local jurisdiction.

43.1(12) The facility shall provide for a medical examination of any resident suspected of having a communicable disease which safeguards both residents and employees. Employees who contract a communicable disease, except common colds, should not be permitted to work in a facility until the danger of contagion is ended.

43.1(13) The facility shall have written policies and procedures which govern the medical care of residents in case of emergencies, sudden illnesses or accidents.

43.1(14) The facility shall have written policies and procedures governing the method of handling prescription and nonprescription drugs.

43.1(15) The facility shall have policies and procedures which assure that all residents have access to three meals a day during the week and two meals on weekend days and that meals provided at the facility meet recognized minimum daily nutritional requirements.

43.1(16) The facility shall have written policies which ensure that if food service is provided, all facilities including kitchen equipment and food handlers comply with applicable health and safety laws and regulations as evidenced by a certificate of rating from the Iowa department of agriculture or local restaurant inspection unit.

43.1(17) The facility shall have written policies and procedures for recommending the revocation of resident status at the facility.

43.1(18) The facility shall have written policies and procedures for discharge from the facility and which require a recommendation for discharge when it is clear that the resident has met the requirements of the court, is no longer believed to be a threat to the community or cannot benefit substantially from further supervision.

This rule is intended to implement Iowa Code section 907.3 and chapters 905, 908 and 910 as amended by 1983 Iowa Acts, Senate File 464.

Title IV, Jail Facilities, will begin with chapter 50.

ITEM 11. Subrule 50.5(4) is deleted and new subrules added as follows:

50.5(4) Notice of department action regarding variances. Whenever the determination is made that a jail or other holding facility is not in compliance with published state jail standards, the chief administrator of the governmental facility concerned will be notified by letter of personal delivery of the need to bring the facility into compliance. In the event immediate closure is required, emergency action shall proceed pursuant to IAC, 291—12.24(17A), emergency action.

a. The letter shall contain the statute(s) and rule(s) which are violated, a brief description of the deficiencies and the deadlines for receipt of an acceptable plan of correction.

b. Reserved.

50.5(5) Appeal. A party wishing to appeal must notify the department of intent to appeal within fifteen days from notification of deficiencies. The day after the department notification is mailed is the first day of the time period within which an appeal must be filed.

a. All appeal requests are submitted to the chief jail inspector at Fifth Floor, Midtown Office Building, Newton, Iowa 50208. The chief jail inspector shall forward such requests to the chairperson of the appeals committee.

b. The appeals committee shall consist of two representatives from the department of corrections and one representative from the jail standards committee of the sheriff's association.

c. The chairperson shall arrange for a time, place and date for an informal hearing and shall notify all parties concerned. The notification shall include:

(1) A statement of the time and place of the hearing.

(2) A reference to the particular sections of the statutes and rules involved.

(3) A short and plain statement of the deficiencies.

d. If a party fails to appear at the informal hearing, the chair of the appeals committee may proceed with the informal hearing and make a recommendation in the absence of the party.

e. The fifteen-day time limit for submission of a request for an informal hearing is not affected by any attempts at settlements.

f. Recording of the hearing. If a party wants to transcribe the discussion, it must be at their own expense.

50.5(6) The appeals committee shall report their findings to the appropriate department of corrections central office administrator, who shall make the final decision and inform the appealing party of said decision in writing.

a. The written notification shall grant the variance if the appeal is upheld.

b. If the appeal is denied, the written notification shall contain the statute(s) and rule(s) in noncompliance, a brief description of the deficiencies and the time frame allowed for submission of an acceptable plan of compliance.

c. Upon reinspection, should the facility not be found in compliance on the cited items and a decision to close is made, an order of closure shall be issued. The order shall contain the following:

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- (1) Statute(s) and rule(s) violated.
- (2) A brief description of the deficiencies.
- (3) A time period for submission of a plan of compliance.

d. This order shall be the notice of noncompliance pursuant to Iowa Code section 356.36 as amended by 1983 Iowa Acts, Senate File 464, section 114, and Iowa Administrative Code, 291—chapter 12, contested cases. The matter shall then proceed in accordance with chapter 12, IAC.

These rules are intended to implement Iowa Code sections 17A.10, 17A.12 and 356.43 as amended by 1983 Iowa Acts, Senate File 464, section 115.

[Filed emergency 9/9/83, effective 10/1/83]

[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4059**HUMAN SERVICES
DEPARTMENT[498]**

Pursuant to the authority of Iowa Code section 239.18, rules of the Department of Human Services relating to granting assistance in the ADC program (chapter 41) are hereby amended.

Through an oversight the current rules adversely affect some eligible persons. When a parent or stepparent has been in the home but not included in the eligible group for two months preceding application for ADC, the current rules require that income be counted both retrospectively and prospectively for the first two months that this person receives assistance. This has resulted in some eligible persons being denied any eligibility for ADC and therefore medical assistance, and other eligible persons have received a smaller grant.

The Department of Human Services finds that notice and public participation is impracticable and contrary to the public interest. These rules exempt retrospective income of the parent or stepparent and thereby assure that only income received during the first two months of eligibility is counted when the person has been in the home two months prior to application. Therefore, this rule is filed pursuant to Iowa Code section 17A.4(2).

The Department of Human Services finds that this rule confers a benefit on the public by correcting an adverse affect on parents or stepparents applying for ADC and, therefore, this rule is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted this rule on August 30, 1983.

This rule is also being filed as a Notice of Intended Action, ARC 4060.

This rule is intended to implement Iowa Code section 239.5. This rule shall become effective on September 1, 1983.

Subrule 41.7(7) is amended by reserving paragraphs "r" and "s" and adding a new paragraph "t" as follows:

t. The retrospective income of individuals who are prospectively added to an eligible group for the initial two months of eligibility unless retrospective budgeting is required by 41.7(9)"a"(5). The benefit of this exemption shall also apply to the incomes of persons who made application for assistance for July or August 1983 provided the family is currently eligible for assistance.

[Filed emergency 9/1/83, effective 9/1/83]
[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4061**HUMAN SERVICES
DEPARTMENT[498]**

Pursuant to the authority of Iowa code section 239.18, rules of the Department of Human Services relating to unemployed parents (chapter 42) are hereby amended.

This rule is being changed based on a letter from the federal Department of Health and Human Services which revised interpretation of our current policy.

This rule eliminates the practice of automatically assuming that a student attending school half time or more does not have time to perform the active search for employment or training for employment required by the ADC-UP program. It allows students to receive ADC-UP benefits as long as they comply with all conditions of eligibility for ADC-UP.

The Department of Human Services finds that notice and public participation is contrary to the public interest because the eligibility of the persons affected by this rule would further be delayed. Therefore, this rule is filed pursuant to Iowa Code section 17A.4(2).

The Department of Human Services finds that this rule confers a benefit on students who apply and meet the active search requirements for ADC. Therefore, this rule is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted this rule August 30, 1983. This rule is intended to implement Iowa Code section 239.2.

This rule is to become effective September 1, 1983.

This rule is also being filed as a Notice of Intended Action, ARC 4062.

ITEM 1. Subrule 42.1(7) is rescinded and the space reserved.

ITEM 2. Paragraph 42.4(1), paragraph "b" is amended to read as follows:

b. The parent who is out of work due to a labor dispute ~~or is attending school at least half time;~~ shall not be considered unemployed. ~~Students not eligible during the school year shall remain ineligible during vacation periods.~~

[Filed emergency 9/1/83, effective 9/1/83]
[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4058
PUBLIC SAFETY
DEPARTMENT[680]

Pursuant to the authority of Iowa Code chapters 80 and 321B, the Iowa Department of Public Safety emergency adopts an amendment to subrule 7.6(1) in Chapter 7, "Devices and Methods to Test Blood for Alcohol or Drug Content", Iowa Administrative Code.

In compliance with Iowa Code section 17A.4(2), the department finds that public notice and participation is impracticable and contrary to the public interest in that the rule amendment terminates a sentence in the subrule which stipulates that in addition to standards adopted by the department for preliminary breath screening devices; that such devices would also be subject to guidelines published and accepted by the National Highway Traffic and Safety Administration which have not at this time been adopted.

The department also finds, pursuant to section 17A.5(2)"b"(2) that the normal effective date of this rule thirty-five days after publication should be waived and the rule be made effective upon filing with the Administrative Rules Coordinator on August 29, 1983, as it confers a benefit upon the public by removing a restriction. This rule implements Iowa Code chapter 321B.

The following amendment is adopted:

Subrule 7.6(1) is amended to read as follows:

7.6(1) A peace officer desiring to perform preliminary screening tests of a person's breath shall use an Iowa department of public safety division of criminal investigation criminalistics laboratory approved device. Such devices are approved for accuracy and precision using a Nalco Standard or breath simulating device. Requirements for accuracy and precision shall be set by the D.C.I. criminalistics laboratory on an ad hoc basis. Such standards shall include the fact that in all cases where the level is over .12% BAC, the device shall so indicate and in all cases when the level is under .08% BAC, the device shall so indicate. ~~When available, devices shall meet the guidelines published and accepted by the National Highway Traffic and Safety Administration (NHTSA).~~ Devices must be a type that can be calibrated on a monthly basis by officers in the field.

The division of criminal investigation criminalistics laboratory shall maintain a list of devices approved by the commissioner for use as preliminary breath screening devices. The list is available without cost by writing or contacting the Iowa Department of Public Safety, Division of Criminal Investigation Criminalistics Laboratory, Wallace State Office Building, Des Moines, Iowa 50319 or calling (515)281-3666.

[Filed emergency 8/29/83, effective 8/29/83]
[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4077**COLLEGE AID COMMISSION[245]**

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

The amendment more clearly defines the Guaranteed Student Loan personal interview policy.

Notice of Intended Action was published in IAB Volume VI, Number 3, August 3, 1983, as ARC 3941.

This rule was adopted in final form on September 7, 1983, and will become effective on November 2, 1983.

Rule 245—10(261) is adopted to read as follows:

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

A. Application and Insurance Commitment (Guarantee)

2. Recommended Procedures

d) The lender must complete Section C of the IGSL application. ~~If feasible, the lender must hold an interview with the borrower to ensure that he/she understands the Truth-In-Lending disclosure, terms of repayment, deferments, and the summary of Rights and Responsibilities. The interview may be held individually with each borrower or with groups of such borrowers. If a personal interview is impossible or presents a hardship would be a hardship to the borrower because of distance the location of borrower's residence or other unusual circumstances, it may be waived by the lender or conducted by telephone or waived by the lender with appropriate notation on the application. Lenders may not make a regular practice of waiving the personal interview.~~

This rule is intended to implement Iowa Code chapter 261.

[Filed 9/8/83, effective 11/2/83]
[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4083**COMMERCE COMMISSION[250]**

The Iowa State Commerce Commission gives notice, pursuant to Iowa Code section 17A.4, that on August 31, 1983, the Commission issued an order in Docket No. RMU-83-7, In Re: Lengths of Briefs Filed Iowa Administrative Code 250—subrule 7.7(13), "Order Adopting Rule."

Notice of Intended Action was published in the June 8, 1983, Iowa Administrative Bulletin as ARC 3802.

The adopted rule requires that the original brief of any party shall contain a maximum of ninety pages and that subsequent briefs filed by any party shall not exceed forty pages. These page limitations are exclusive of the table of contents and list of legal authorities. In addition, the proposed rule states that the Commission may grant a waiver of these page limits for good cause shown. The adopted rule contains no changes from the rule published in the Notice of Intended Action.

The amendment to Iowa Administrative Code 250—subrule 7.7(13), paragraph "d" is intended to implement

Iowa Code section 476.1. The rule will become effective November 2, 1983, pursuant to Iowa Code section 17A.5.

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

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

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

[Filed 9/9/83, effective 11/2/83]
[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4085**COMMERCE COMMISSION[250]**

Pursuant to the authority of Iowa Code sections 17A.4 and 476.2, the Iowa State Commerce Commission gives notice that on September 6, 1983, the Commission issued an order in Docket No. RMU-83-10, In Re: Inside Wiring, "Order Adopting Rules" amending 250—chapter 22 "Rates Charged and Service Supplied by Telephone Utilities" and 250—chapter 16, "Accounting", of the Iowa Administrative Code. Notice of Intended Action was published in the June 22, 1983, Iowa Administrative Bulletin as ARC 3832.

The adopted amendments to commission rule 250—chapter 22 delete any apparent designation of responsibility for inside wiring. The commission is without authority to dictate whether a landlord or a tenant is responsible for inside wiring. Accordingly, the commission adopted amendments to several definitions in 250—chapter 16 related to inside wiring.

The amendments to Iowa Administrative Code 250—chapters 22 and 16 are intended to implement Iowa Code section 476.1. The rule will become effective November 2, 1983, in accordance with Iowa Code section 17A.5.

ITEM 1. Amend the following definitions of subrule 16.5(5) to read as follows:

"Existing inside station wiring" means wiring located on ~~the customer's~~ a premise beyond the demarcation point which is in existence prior to the transition date.

"New inside station wiring" means wiring, in whole or in part, installed on ~~the a customer's~~ a premise beyond the demarcation point by a telephone utility or other supplier on and after transition date.

"Transition date" means any date selected by a utility as the effective date for implementation of its tariff, subject to commission acceptance, which ~~requires customers to provide;~~ the utility will not be responsible for providing, repairing, and maintaining ~~repair and maintain~~ new inside station wiring and ~~repairing and maintaining repair and maintain~~ existing inside station wiring as a regulated function.

COMMERCE COMMISSION[250] (cont'd)

ITEM 2. Amend the following paragraphs in subrule 22.1(3) to read as follows:

u. "Demarcation point" means the point of connection provided and maintained by the telephone utility to which the telephone utility owned existing inside station wiring or customer provided new inside station wiring becomes dedicated to an individual customer's use. For an individual customer dwelling, this point of connection will generally be immediately adjacent to, or within twelve inches of, the protector on the dwelling customer's side of the protector. The drop and block, including the protector, will continue to be provided by and remain the property of the telephone utility.

aa. "Existing inside station wiring" means wiring located on the customer's a premise beyond the demarcation point which is in existence prior to the transition date.

ap. "New inside station wiring" means wiring, in whole or in part, installed on the a customer's premise beyond the demarcation point by a telephone utility or other supplier on and after transition date.

au. "Premises" means the space occupied by an individual customer in a building, in adjoining buildings occupied entirely by the customer, or on contiguous property occupied owned by the customer separated only by a public thoroughfare, a railroad right of way, or a natural barrier.

bo. "Transition date" means any date selected by a utility as the effective date for implementation of its tariff, subject to commission acceptance, which requires customers to provide; the utility will not be responsible for providing, repairing, and maintaining of repair and maintain new inside station wiring and repairing and maintaining repair and maintain of existing inside station wiring as a regulated function.

ITEM 3. Amend subrule 22.11(1), paragraphs "b" and "d", to read as follows:

b. Each telephone utility shall be responsible for making all connections at the protector or providing a facility to permit customer connection with new inside station wiring at the demarcation point. Nothing contained in these rules shall require or necessitate changes or modifications to telephone utility connections with existing inside station wiring.

d. Each telephone utility shall within one hundred twenty days after the effective date of these rules file a revised tariff which provides the utility will not be responsible for providing, repairing, and maintaining new inside station wiring and repairing and maintaining existing inside station wiring requires customers to provide; repair, and maintain new inside station wiring and repair and maintain existing inside station wiring.

ITEM 4. Amend subrule 22.11(2) to read as follows:

22.11(2) Suppliers. Customers may secure Nnew inside station wiring may be secured from their a telephone utility if new inside station wiring is offered, or from any other supplier. Customers may secure Rrepair or maintenance for existing or new inside station wiring may be secured from their a telephone utility, if repair or maintenance is offered, or from any other supplier.

[Filed 9/9/83, effective 11/2/83]
[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4086

COMMERCE COMMISSION[250]

The Iowa State Commerce Commission hereby gives notice pursuant to Iowa Code section 17A.4(1983) that on September 2, 1983, the Commission issued an order in Docket No. RMU-83-6, In Re: Mandatory Participation in Pilot Projects, "Order Adopting Rules," amending Iowa Administrative Code 250—Chapters 19 and 20. Notice of Intended Action was published in the June 8, 1983, Iowa Administrative Bulletin as ARC 3803.

The Commission has adopted language for both Chapter 19 and 20 amendments to ensure that mandatory participation in pilot projects will be required only in limited circumstances. The adopted rules contain minor language changes from the rules as adopted April 13, 1983, in Docket No. RMU-82-21, "In Re: Participation in Pilot Projects."

The amendments to 250—Chapters 19 and 20 are intended to implement Iowa Code section 476.1. The rule will become effective November 2, 1983, pursuant to Iowa Code section 17A.5.

ITEM 1. Amend subrule 19.9(4) by deleting the following language from the second sentence of unnumbered paragraph two: ", and may participate if the commission determines that voluntary participation is not inconsistent with the purposes of the project" and adding the word "Only" to precede the first sentence in unnumbered paragraph three.

ITEM 2. Amend subrule 20.10(9) by deleting the following language from the second sentence of unnumbered paragraph two: ", and may participate if the commission determines that voluntary participation is not inconsistent with the purposes of the project" and adding the word "Only" to precede the first sentence in unnumbered paragraph three.

[Filed 9/9/83, effective 11/2/83]
[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4084

COMMERCE COMMISSION[250]

The Iowa State Commerce Commission hereby gives notice, pursuant to Iowa Code section 476.2 that on September 2, 1983, the Commission issued an order in Docket No. RMU-83-8, In Re: Energy Conservation Standards for New Structures, "Order Adopting Rules," amending Iowa Administrative Code 250—chapters 19 and 20. Notice of Intended Action was published in the Iowa Administrative Bulletin on June 8, 1983. [ARC 3804]

The adopted rules contain several changes from the rules published in the Notice of Intended Action. In the rules as adopted, the utilities must obtain certification of compliance with certain energy conservation standards before service may be provided. The standards adopted are those promulgated by the Iowa Department of Public Safety under Iowa Administrative Code 680—subrule 16.800(3), as amended by subrule 16.800(4), sometimes

COMMERCE COMMISSION[250] (cont'd)

known as the "State Building Code Thermal and Lighting Efficiency Standards."

Further details in the rules as adopted are discussed in the Commission's "Order Adopting Rules" issued September 2, 1983.

These rules as amended will become effective January 1, 1984.

ITEM 1. Chapter 19 is amended by adding new subrule 19.9(5) to read as follows:

19.9(5) New structure energy conservation standards. Each utility providing gas service shall not provide such service to any structure completed after January 1, 1984, unless the owner or builder of the structure has certified to the utility that the building conforms to the energy conservation requirements adopted under Iowa Administrative Code subrule 680—16.800(3) as amended and updated by subrule 680—16.800(4). If this compliance is already being certified to a state or local agency, a copy of that certification shall be provided to the utility. If no state or local agency is monitoring compliance with these energy conservation standards, the owner or builder shall certify that the structure complies with the standards by signing a form provided by the utility. No certification will be required for structures that are not heated or cooled by gas service.

ITEM 2. Chapter 20 is amended by adding a new rule 20.12(476) to read as follows:

250—20.12(476) New structure energy conservation standards. Each utility providing electric service shall not provide such service to any structure completed after January 1, 1984, unless the owner or builder of the structure has certified to the utility that the building conforms to the energy conservation requirements adopted under Iowa Administrative Code subrule 680—16.800(3) as amended and updated by subrule 680—16.800(4). If this compliance is already being certified to a state or local agency, a copy of that certification shall be provided to the utility. If no state or local agency is monitoring compliance with these energy conservation standards, the owner or builder shall certify that the structure complies with the standards by signing a form provided by the utility. No certification will be required for structures that are not heated or cooled by electric service.

This rule is intended to implement Iowa Code section 476.1.

[Filed 9/9/83, effective 1/1/84]
[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement; 9/28/83.

ARC 4068**CONSERVATION COMMISSION[290]**

Pursuant to the authority of Iowa Code section 107.24, the State Conservation Commission at their regular meeting on September 1, 1983, adopted a new chapter, Chapter 42, "Keg Beer Regulations".

Notice of Intended Action was published in IAB April 27, 1983, as ARC 3707.

These rules describe the policy and procedures to be followed by the public in holding keg beer parties in state

parcs, recreation areas, or state forests.

Changes from the Notice of Intended Action are as follows:

290—42.5(111) Add the words "in advance".

42.5(1) and 42.5(2) Language changes which eliminate confusing phrases and to clarify the procedure.

42.5(3) Change "per 200 persons" to "per 100 persons". Also addition of language allowing the officer to designate the area in which the kegger is to be held.

42.5(5) Add language which clarifies that a kegger could be stopped if it interferes with other area uses.

Add 42.5(6) which requires the designated agent to notify the area officer when the kegger is concluded to allow inspection of the area utilized.

Rephrased 42.6(1) to eliminate former (3)— which is replaced by language which indicates that the \$100 deposit is not the limit of liability for damage to state property.

290—42.7(111) The responsibility agreement content is revised to reflect the requirement of the kegger not interfering with other area uses.

These rules implement Iowa Code section 111.3.

These rules become effective November 3, 1983.

**CHAPTER 42
KEG BEER REGULATIONS**

290—42.1(111) Purpose. This chapter governs the use of state park and recreation areas and designated state forests for consumption of beer dispensed from a keg or other container larger than one gallon. The purpose is to enhance public enjoyment of state areas through regulation of an activity which can be disruptive.

290—42.2(111) Applicability. This chapter is applicable to all state parks and recreation areas managed by the state parks section of the conservation commission and to the state forests containing designated campground areas listed in 290—41.1(111).

290—42.3(111) Definitions.

42.3(1) "Beer" is as defined in Iowa Code section 123.3(9).

42.3(2) "Beach" or "beach area" means that portion of state parks or recreation areas designated for swimming activity including the water area contiguous to the beach.

42.3(3) "Campground" means that portion of state parks or recreation areas designated for camping activity including parking areas contiguous to the campground and designated camp areas of state forests.

42.3(4) "Person" is as defined in Iowa Code section 4.1(13).

42.3(5) "Kegger" means a gathering of two or more persons at which beer is dispensed from a keg or other container larger than one gallon.

290—42.4(111) Prohibited areas. Keggers shall not be conducted in beach areas, in campgrounds, or in parking areas or immediately adjacent to those areas.

290—42.5(111) Procedure. Any person wishing to conduct a kegger in any area to which this chapter applies shall notify the commission officer in charge of the area in advance and comply with the following procedure:

42.5(1) A designated agent shall be named who shall sign a responsibility agreement. The content of the responsibility agreement shall be as stated in 290—42.7(111).

42.5(2) The designated agent shall be available for personal contact by commission personnel at all times during the kegger.

CONSERVATION COMMISSION[290] (cont'd)

42.5(3) The agent shall pay a deposit of \$100.00 per 100 persons or portion thereof at the kegger, to be held by the commission officer as a damage deposit. The commission officer may designate the area in which the kegger is to be conducted. If the kegger takes place in an enclosed shelter for which a rental fee and deposit is charged, the \$100.00 shall be waived in lieu of the usual deposit for that facility.

42.5(4) The agent shall assume responsibility to assure that all state laws are complied with in the conduct of persons attending the kegger and that the area used for the kegger is left in a clean, uncluttered condition and no state property damaged beyond the extent of normal wear and tear.

42.5(5) Conducting or continuation of the kegger shall be contingent on the persons involved complying with all applicable state laws including but not limited to section 123.47, chapter 111, and rules promulgated under those chapters and as long as the activity does not interfere with other uses of area facilities.

42.5(6) The agent shall inform the commission officer when the kegger is concluded and attendees have left the area.

290—42.6(111) Deposit disposition.

42.6(1) The \$100.00 deposit required by 42.5(3) shall be refunded within three days in full or on a prorated basis computed according to 42.6(2) depending on the condition in which the site is left after the kegger is held.

42.6(2) If it is necessary for commission personnel to clean up the area or repair any damage beyond ordinary wear and tear, a log of the time spent in such cleanup or repair shall be kept. The damage deposit refund shall be reduced by an amount equivalent to the applicable hourly wage of the employees for the time necessary to clean the area or repair the damage.

42.6(3) The \$100.00 is not to be construed as a limit of liability for damage to state property. The commission may take any legal action necessary to recover additional damage.

290—42.7(111) Responsibility agreement. The agreement required by 42.5(1) shall contain the following information:

RESPONSIBILITY AGREEMENT

I/We, the undersigned, being of 19 years of age or older and desiring to entertain ourselves and others at:

Area: _____

Date: _____

agree to leave the site used in the same condition as found, agree to clean up what debris and litter may be deposited during our stay, within the time period agreed to, agree to be responsible for any damages done to property within the area by ourselves or our guests, agree to ensure compliance with Iowa Code section 123.47 respecting the possession of beer by persons under the legal age, agree not to interfere with other use of park facilities, and finally, agree to abide by all rules and regulations and all laws of this state.

Dated this _____ day of _____, 19_____.

Signature of Group Leaders (agents):

Identification Information:

<u>Agents</u> <u>(Name & Address)</u>	<u>Phone No.</u>	<u>Driver's</u> <u>License No.</u>	<u>Vehicle</u> <u>License</u>
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[Filed 9/1/83, effective 11/3/83]
[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4069

CONSERVATION COMMISSION[290]

Pursuant to the authority of Iowa Code section 107.24, the State Conservation Commission adopted, at their regular meeting on September 1, 1983, Chapter 76, "Public-Owned Lakes Program Eligibility List," Iowa Administrative Code.

Notice of Intended Action was published in IAB June 22, 1983, as ARC 3816 and also published as an emergency adopted and implemented rule in IAB June 22, 1983, as ARC 3815.

These rules describe the policy and procedures to be followed and the procedures to be utilized by the State Conservation Commission to establish and maintain a priority list of watersheds above publicly owned lakes and reservoirs that shall be eligible to receive cost-share funding under the public-owned lakes program.

Changes from the Notice of Intended Action are as follows.

76.2(6) This added subrule defines the term "adjusted siltation index" referred to under subrule 76.3(3).

76.2(7) This added subrule defines the term "public benefit" referred to under subrule 76.3(3).

76.2(8) Numbering change, formerly 76.2(6).

76.3(2) Additional language to set forth a specific time schedule for changing or renewing the list and to allow for improved public awareness of the list status.

76.3(3) Additional language to set forth and explain the formula used to rank watersheds to determine their eligibility for inclusion on the list of watersheds participating in the public-owned lakes program.

These rules will become effective on November 3, 1983.

CHAPTER 76

PUBLIC-OWNED LAKES PROGRAM
ELIGIBILITY LIST

290—76.1(70GA, HF638) Purpose. The purpose of this chapter is to set forth the policy and procedures to be followed and the criteria to be utilized by the state conservation commission to establish and maintain a priority list of watersheds above publicly owned lakes and reservoirs that shall be eligible to receive cost-sharing for seventy-five percent of approved permanent soil conservation practices from funds set aside in appropriations for the Iowa department of soil conservation.

CONSERVATION COMMISSION[290] (cont'd)

290—76.2(70GA, HF638) Definitions.

76.2(1) "Commission" means state conservation commission.

76.2(2) "Director" means the director of the state conservation commission.

76.2(3) "List" means the priority list of watersheds above publicly owned lakes and reservoirs eligible to receive cost-share funding under the public-owned lakes program.

76.2(4) "Tolerance level" means a level of soil erosion where seventy-five percent of a watershed is below a tolerable level of soil erosion as established by the local soil conservation district in which a watershed is located.

76.2(5) "Nonpoint pollution" means water pollution resulting from precipitation, natural flooding, or snow melt where the pollution itself is not traceable to a discreet, identifiable source.

76.2(6) "Adjusted siltation index" means a method of quantitative analysis of the impact of soil erosion within the watershed of a lake calculated as follows:

$$AI = [(WA/SA)ER] (1 - [.5(SC/100)])$$

Where WA is the watershed area, SA is the lake surface area, ER is the erosion rate for the region where the lake is located, and SC is the percent of the watershed farmed under approved soil conservation practices.

76.2(7) "Public benefit" means a numerical ranking of a watershed derived from records of actual use of the lake in the watershed and the local population within fifty miles of the lake.

76.2(8) "Mean lake depth" means water depth calculated by dividing the lake volume, determined by adding the volumes between consecutive depth contours, by the lake surface area.

290—76.3(70GA, HF638) Eligibility review and selection procedures. The following procedures shall be followed by the commission to establish and maintain a list of eligible watersheds under the public-owned lakes program.

76.3(1) Review and selection committee. A review and selection committee composed of the land management supervisor as chairman and one staff member from the fisheries, wildlife, parks, and forestry sections, as appointed by the director, shall determine the watersheds that shall be recommended to the conservation commission for inclusion on the list.

76.3(2) Periodic review. The review and selection committee shall meet a minimum of once each year to review the status of the list. A report of the list status and its recommendations for continuing or amending the list shall be submitted annually to the conservation commission and to each county soil conservation district conservationist prior to the regularly scheduled conservation commission meeting in the month of April.

76.3(3) Rating system. The review and selection committee shall consider the following criteria to determine its recommendations for the list, based on information determined by the commission.

Ratio of watershed area to lake surface area.

Nonpoint pollution, expressed as the adjusted siltation index.

Length of time to attain the tolerance level, based on current funding.

Public benefit.

Mean lake depth.

The watersheds shall be ranked according to the following formula:

$$\text{Rank} = 3R + 3\text{ASI} + 3\text{Ti} + 2\text{PB} + \text{D}$$

Where: R = an assigned value based on the ratio of the watershed area to the lake surface area, weighted and determined as follows:

Greater than 101/1 =	Eliminated
51 - 101/1 =	1
41 - 50/1 =	2
31 - 40/1 =	3
12 - 30/1 =	4
Less than 12/1 =	2

ASI = an assigned value based on the adjusted siltation index, weighted and determined as follows:

2.0 - 60.0 =	0
61.0 - 149.9 =	1
150.0 - 199.9 =	2
200.0 - 299.9 =	3
300.0 - 399.9 =	4
400.0 - =	5

Ti = an assigned value based on the time in years to reach the tolerance level, weighted and determined as follows:

More than 30 years =	0
26 - 30 years =	1
20 - 25 years =	2
11 - 19 years =	3
1 - 10 years =	4

PB = an assigned value based on public benefit, weighted and determined as follows:

81 - 107 =	0
56 - 80 =	1
41 - 55 =	2
26 - 40 =	3
1 - 25 =	4

D = an assigned value based on mean lake depth, weighted and determined as follows:

Less than 4 feet =	0
4.1 - 6.0 feet =	1
6.1 - 9.0 feet =	2
9.1 - 15.0 feet =	3
Greater than 15.0 feet =	4

290—76.4(70GA, HF638) Commission review. All watersheds on the list must be approved by the conservation commissioners. The commissioners may reject any watershed recommended to be included on the list, approve any watershed for inclusion on the list, or delete any watershed from the list.

All actions affecting the list shall become effective July 1, following their approval by the conservation commissioners.

These rules are intended to implement 1983 Iowa Acts, House File 638, section 7, subsection 1.

[Filed 9/1/83, effective 11/3/83]

[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

**ARC 4070
CONSERVATION COMMISSION[290]**

Pursuant to the authority of Iowa Code sections 107.24, 109.38, and 109.39, the State Conservation Commission on September 1, 1983, adopted the following amendments to Chapter 103, "Pheasant, Quail, and Gray (Hungarian) Partridge Hunting Seasons", Iowa Administrative Code.

Notice of Intended Action was published in IAB March 30, 1983, as ARC 3646.

The rule establishes season dates, shooting hours, daily bag limits, possession limits, and areas open to hunting for pheasants, quail, and gray (Hungarian) partridge for the 1983-1984 hunting seasons.

There are no changes from the notice.

These rules implement Iowa Code sections 109.38, 109.39, and 109.48, and shall become effective November 2, 1983.

ITEM 1. Rule 290—103.1(109) is amended to read as follows:

290—103.1(109) Pheasant season. Open season for hunting pheasants shall be November 6 5, ~~1982~~ 1983, to January 2 1, ~~1983~~ 1984. Bag limit three cock birds daily; possession limit six cock birds. Shooting hours shall be from 8:00 a.m. to 4:30 p.m. Entire state open.

ITEM 2. Rule 290—103.2(109) is amended to read as follows:

290—103.2(109) Gray (Hungarian) partridge season.

103.2(1) Open season. Open season for hunting gray partridge shall be November 6 5, ~~1982~~ 1983, to January 31, ~~1983~~ 1984. Bag limit six birds daily; possession limit twelve birds. Shooting hours shall be from 8:00 a.m. to 4:30 p.m.

103.2(2) Closed portion of state. Closed portion of state shall be south of Interstate Highway 80.

ITEM 3. Rule 290—103.3(109) is amended to read as follows:

290—103.3(109) Quail season. Open season for hunting quail shall be November 6 5, ~~1982~~ 1983, to January 31, ~~1983~~ 1984. Bag limit eight birds daily; possession limit sixteen birds. Shooting hours shall be from 8:00 a.m. to 4:30 p.m. Entire state open.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

**ARC 4099
ENGINEERING EXAMINERS,
BOARD OF[390]**

Pursuant to the authority of Iowa Code section 114.6 and Iowa Code chapters 17A and 258A, the Iowa State Board of Engineering Examiners adopts the following amendments to IAC 390—Chapter 3 of the Board's administrative rules, "Professional Development".

Notice of Intended Action was published in IAB Vol. VI, Number 3, August 3, 1983, as ARC 3942.

The Iowa State Board of Engineering Examiners adopted these amendments on September 9, 1983.

Changes from the noticed rules are as follows:

Item 1 - Rule 390—3.1(114), words "for professional development" are not deleted.

Item 4 - Rule 390—3.4(114), words "appropriate in-house programs conducted by corporations or other organizations;" are added in last unnumbered paragraph after word "research".

Item 9 - Rule 390—3.8(114), title is amended to read as follows: "Reinstatement to active registration."

The purposes of the amendments are to clarify the board's requirements for professional development or continuing education and to simplify the procedure regarding reinstatement of licensed status by those who have been inactive or have allowed their registration to lapse.

These amendments to rules are intended to implement Iowa Code section 258A.2.

These rules will become effective on November 2, 1983.

ITEM 1. Rule 390—3.1(114) is amended to read as follows:

390—3.1(114) General statement. Each registrant is required to meet the *continuing education* requirements of this chapter for professional development as a condition of registration renewal.

Continuing education is education obtained by a registrant in order to maintain, improve, or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge.

ITEM 2. Rule 390—3.2(114) is amended to read as follows:

390—3.2(114) Units. The unit for the professional development requirements is the Professional Development Hour (PDH). The conversion to this unit from other units is:

- 1 Hour of an acceptable professional development activity 1 PDH
- 1 Semester hour of university credit 45 PDH
- 1 Quarter hour of university credit 30 PDH
- 1 CEU (Continuing Education Unit)..... 10 PDH

All activities must contribute directly to the professional competency of the registrant.

ITEM 3. Rule 390—3.3(114) is rescinded and the following inserted in lieu thereof:

390—3.3(114) Biennial requirement. The continuing education requirement for biennial registration renewal is thirty professional development hours for an active registrant in engineering or land surveying. The requirement must be satisfied during the biennium prior to registration renewal except for the carryover permitted. The number of professional development hours which may be carried forward into the next biennium shall not exceed fifteen.

ITEM 4. Rule 390—3.4(114) is amended to read as follows:

390—3.4(114) Formal Professional development requirement. *Continuing education* activities which satisfy the ~~formal~~ professional development requirement are college and university courses, courses which are awarded continuing education units (CEU's), and those portions of technical meetings, seminars, tutorials, and short courses, and correspondence courses that are related to engineering or land surveying practice or management.

ENGINEERING EXAMINERS, BOARD OF [390] (cont'd)

These activities must meet the following criteria:

1. There is a clear purpose and objective for each activity.
2. The content of each presentation is well organized and presented in a sequential manner.
3. There is evidence of preplanning which should include the opportunity for input by the target group to be served.
4. The presentation will be made by persons who are well-qualified by education or experience.
5. There is a provision for individual participant registration which will include information for record-keeping and reporting.

Other activities which may be used to satisfy all or part of the formal professional development continuing education requirements are: Sabbatical or leave for study or research; appropriate in-house programs conducted by corporations or other organizations; published papers and articles, published or books, presentations at technical meetings, and instruction of continuing education courses. Continuing education credit will be granted for the time required for preparation of published material, presentations at technical meetings, and for the first-time preparation of continuing education courses.

ITEM 5. Rule 390—3.5(114) is rescinded.

ITEM 6. Rule 390—3.6(114) is renumbered as rule 390—3.5(114) and is amended to read as follows:

~~390—3.6(114)~~ **390—3.5(114) Inactive registrants.** Registrants who are not engaged in engineering or land surveying practice which requires registration in Iowa may upon application to the board be granted inactive status. No inactive registrant on inactive status may practice in Iowa unless otherwise exempted in Iowa Code chapter 114. Inactive registrants are exempt from the professional development continuing education requirements in this chapter but shall satisfy the appropriate requirements for reinstatement.

3.6(1) Inactive status for 0-7 years and inactive status for longer than seven years with eight hundred hours or more per year of engineering or land surveying employment.

a. Satisfaction of the annual requirement (rule 3.2(114) or 3.8(114) multiplied by the number of years on inactive status up to three years, but not less than one year, within the three year period immediately prior to application for reinstatement; or

b. Successful completion of the Principles and Practice examination within one year immediately prior to application for reinstatement.

3.6(2) Inactive status for longer than seven years with less than eight hundred hours per year of employment in engineering or land surveying.

a. Satisfaction of the annual (rule 3.2(114) or 3.8(114) requirement multiplied by three; and

b. Successful completion of the Principles and Practice examination within one year immediately prior to application for reinstatement.

ITEM 7. Rule 390—3.7(114) is renumbered as rule 390—3.6(114) and is amended to read as follows:

~~390—3.7~~ **3.6(114) Multiple branch registrants.** Professional development Continuing education requirements for registrants registration in more than one engineering branch are satisfied by the requirements in rule 3.2(114) or 3.8(114) the same as for registration in a single branch of engineering.

ITEM 8. Rule 390—3.8(114) is rescinded and the following inserted in lieu thereof:

390—3.7(114) Engineer-land surveyor registrants. The continuing education requirement for biennial registration renewal for active registration in both engineering and land surveying is twenty professional development hours in engineering and twenty professional development hours in land surveying. The requirement must be satisfied within the biennium prior to registration renewal except for the carryover permitted. The number of professional development hours which may be carried forward into the next biennium shall not exceed ten hours for each profession.

A registrant may have active status in one profession and inactive status in the other. In that case, the registrant shall meet the continuing education requirements for registration in the profession in which active registration is maintained.

ITEM 9. Rule 390—3.9(114) is renumbered as rule 390—3.8(114) and is amended to read as follows:

~~390—3.9~~ **3.8(114) Reinstatement of lapsed to active registration.** A person who wishes to reinstate a lapsed or inactive registration of one year or more must satisfy one of the following requirements: the requirements for inactive registrant reinstatement given in rule 3.6(114).

a. Satisfaction of one-half the biennial requirement multiplied by the number of years of lapsed or inactive status. The minimum continuing education requirement shall be one-half the biennial requirement. The maximum continuing education requirement shall be one and one-half times the biennial requirement. The requirement shall be satisfied within the biennium prior to reinstatement.

b. Successful completion of the Principles and Practice examination within one year immediately prior to application for reinstatement.

ITEM 10. Rule 390—3.10(114) is renumbered as rule 390—3.9(114) and is amended to read as follows:

~~390—3.10~~ **3.9(114) Exemptions.** The foregoing continuing education requirements may be reduced in proportion to the following:

1. Periods of time exceeding one hundred twenty consecutive days that the registrant serves honorably on active duty in the military services.

2. Periods of time that the registrant is registered in another state or district having continuing education requirements for professional engineering or land surveying, equal to or more stringent than the requirements of these rules and meets all requirements of that state or district for practice therein.

3. Periods of time exceeding one hundred twenty consecutive days that the registrant is an employee working as a professional engineer or land surveyor, and assigned to duty outside of the United States of America.

ITEM 11. Rule 390—3.11(114) is renumbered as rule 390—3.10(114) with no change in the text.

ITEM 12. Rule 390—3.12(114) is renumbered as rule 390—3.11(114) and is amended to read as follows:

~~390—3.12~~ **3.11(114) Noncompliance.** A registrant who in the opinion of the board does not satisfy the continuing education requirements for registration renewal stated in this chapter will be placed on probationary status and notified of the fact within ninety days after before April 1 following the renewal date. Within ninety days after the notification, the registrant must submit evidence to the

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board demonstrating show that the deficiencies have been satisfied before July 1 following the renewal date. If the deficiencies are not made up within the specified period of time, the individual's registration will shall be classified as lapsed without further hearing.

An individual who applies for registration renewal after registration has lapsed and has not satisfied the continuing education requirements will be notified of the fact within thirty days of receipt of the renewal. The registrant must show that the deficiencies have been satisfied before July 1 following the renewal date unless granted additional time by the board due to extenuating circumstances.

ITEM 13. Rule 390—3.13(114) is deleted in its entirety and the following rule concerning new registrants is substituted.

390—3.12(114) New registrants. *A new registrant shall satisfy one-half the biennial continuing education requirement at the first renewal following initial registration.*

ITEM 14. Rule 390—3.14(114) is renumbered as rule 390—3.13(114) with no change in language.

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[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4091**HEALTH DEPARTMENT[470]****MEDICAL EXAMINERS, BOARD OF**

Pursuant to the authority of Iowa Code sections 17A.22, 147.76 and 258A.5, the Iowa Board of Medical Examiners hereby adopts amendments to Chapter 135, "Medical Examiners", Iowa Administrative Code.

These rules set out the procedures and requirements for reinstatement of lapsed licenses when the physician who in the past was licensed in this state by examination or endorsement. The rules set a maximum requirement for reinstatement for both the renewal fee and continuing medical education. They also allow the board to deny or conditionally reinstate a license. One portion would require individuals to report final actions taken in other states within thirty days of such action.

The rules also allow the board on its own motion to review a proposed decision or order issued by a hearing officer or three-person panel of board members provided all parties are notified within thirty days of such action. The rules extend the period of time to appeal a proposed decision or order when rendered by a three-member panel or hearing officer from seven to thirty days.

Notice of Intended Action was published in IAB, August 3, 1983, as ARC 3957.

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

These amendments become effective on November 2, 1983 and are intended to implement Iowa Code chapters 17A, 147, 148 and 258A.

ITEM 1. 470—Chapter 135 is amended by adding a new rule as follows.

470—135.110(147) Reinstatement of lapsed license.

135.110(1) Licensees who allow their license to lapse by failing to renew such license may be reinstated without examination by submitting the following.

a. A completed application for reinstatement of a license to practice medicine and surgery or osteopathic medicine and surgery.

b. Payment of the renewal fees due provided that such fees shall not exceed two hundred dollars as computed by the board.

c. Evidence of twenty category I hours of continuing medical education for each lapsed year in accordance with rule 135.502(258A). Such hours shall not exceed eighty for reinstatement except when there is a demonstrated need for specialized education as determined by the board through a personal interview with the applicant.

1. The board may grant an extension of time of up to one year to allow compliance with continuing education requirements for reinstatement.

2. An exemption from the required reporting of continuing medical education for the purpose of reinstatement of an active practitioner may be granted by the board in accordance with rule 135.510(258A).

135.110(2) The board may require a licensee applying for reinstatement to successfully complete the federation licensing examination (FLEX) and attain a minimum weighted average of seventy-five percent or the completion of the clinical competency portion of that examination with a minimum score of seventy-five percent in lieu of 135.110(1)"c" when, through a personal interview with the licensee, the board finds reason to doubt the licensee's ability to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy with reasonable skill and safety.

135.110(3) When the board finds that a practitioner applying for reinstatement is or has been subject to disciplinary action taken against a license held by the applicant in another state of the United States, District of Columbia, territory, or foreign country and the violations which resulted in such actions would also be grounds for discipline in Iowa in accordance with rule 135.204(258A), the board may deny reinstatement of a license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy in Iowa or may impose any applicable disciplinary sanction as specified in rule 135.202(258A) as a condition of reinstatement.

ITEM 2. Subrule 135.204(10) is amended to read as follows.

135.204(10) Failure to report a license revocation, suspension, or other disciplinary action taken by a licensing authority of another state, territory, or country: *within thirty days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement.*

ITEM 3. Subrule 135.301(28) is amended to read as follows. Further, existing paragraphs "b", "c", and "d" are relettered to "c", "d", and "e" and a new paragraph "b" is added.

135.301(28) Proposed decision - appeal to board - procedures and requirements. A proposed decision as defined in subrule 135.301(25) becomes a final decision unless appealed in accordance with the following procedure:

a. A proposed decision may be appealed to the board or a quorum thereof by a party to the decision who is adversely affected thereby. An appeal is commenced by

HEALTH DEPARTMENT[470] (cont'd)

serving on the executive director, either in person or by certified mail, a notice of appeal within ~~seven~~ *thirty* days after service of the proposed decision or order on the appealing party. The appealing party shall be the appellant and all other parties to the appeal shall be the appellee.

b. *The board may review a proposed decision or order on its own motion by serving notice on all parties within thirty days of a proposed decision or order rendered in accordance with subrule 135.301(25).*

Reletter existing paragraphs "b", "c", and "d" as "c", "d", and "e" and change the first word in existing paragraph "b" (new "c") from "With" to "Within".

These rules are intended to implement Iowa Code sections 17A.15, 147.2, 147.4, 147.11, 148.1, 150.1, 150A.1, 258A.2 and 258A.3.

[Filed 9/9/83, effective 11/2/83]

[Published 9/28/83]

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ARC 4063

HUMAN SERVICES
DEPARTMENT[498]

Pursuant to the authority of Iowa Code section 239.18, the Department of Human Services adopted these rules relating to application for aid and granting assistance in the ADC program (chapters 40 and 41). These rules were adopted by the Council on Human Services August 30, 1983.

Notice of Intended Action regarding these rules was published June 22, 1983 as ARC 3833.

These rules relate to the requirements of the monthly reporting and retrospective budgeting process.

These changes add specificity to improve the direction for workers, establish specific time frames to assure equal treatment of clients and improve program consistency with the food stamp program.

40.4(1) has been reworded to clarify intent.

40.4(3) has been reworded to clarify intent.

40.7(1) has been reworded to clarify intent.

40.7(5) has been edited to correct errors.

41.7(2)"d"(2) has been edited to correct errors.

41.7(7) has been reworded to clarify intent and paragraph "t" has been deleted.

These rules are intended to implement Iowa Code section 239.6.

These rules will become effective November 2, 1983.

ITEM 1. Subrule 40.1(14) is amended to read as follows:

40.1(14) Initial two months. "Initial two months" means the first two *consecutive* months for which assistance is paid. This may include a month for which a partial payment is made.

ITEM 2. Rule 770—40.1(239) is amended by adding the following subrules:

40.1(18) Applicant. "Applicant" means a person for whom assistance is being requested, parent(s) living in the home with the child(ren), and the nonparental relative as defined in 41.2(3) who is requesting assistance for the child(ren).

40.1(19) Recipient. "Recipient" means a person for whom assistance is paid, parent(s) living in the home with the eligible child(ren) and nonparental relative as defined in 41.2(3) who is receiving assistance for the child(ren).

ITEM 3. Subrule 40.4(1) is amended to read as follows:

40.4(1) The decision with respect to eligibility shall be based primarily on information furnished by the applicant. The applicant shall ~~promptly~~ report no later than at the time of the face-to-face interview any change as defined in 40.7(4)"e" which occurs ~~during the application process~~ after the application was signed. Any change which occurs after the face-to-face interview shall be reported by the applicant within five days from the date the change occurred. The ~~county~~ local office shall notify the applicant in writing of additional information or verification that is required to establish eligibility for assistance. Failure of the applicant to supply the information or verification, or refusal by the applicant to authorize the local office to secure the information or verification from other sources, shall serve as a basis for denial of assistance. Five working days shall be considered as a reasonable period for the applicant to supply the required information or verification. Any time taken beyond the five days shall be considered a delay on the part of the applicant, unless the local office extends the deadline because the applicant is making every effort to secure the information or verification but is unable to do so.

ITEM 4. Subrule 40.4(3) is renumbered to **40.4(4)** and the following inserted in lieu thereof:

40.4(3) The applicant who is subject to monthly review as described in 40.7(1) shall become responsible for completing the form PA-2140-0, Public Assistance Eligibility Report, after the time of the face-to-face interview. This form shall be issued and returned according to the requirements in 40.7(4)"b". The application process will continue as regards the initial two months of eligibility, but eligibility and the amount of payment for the third month and those following is dependent on the proper return of these forms. The local office shall explain to the applicant at the time of the face-to-face interview the applicant's responsibility to complete and return this form.

ITEM 5. Subrule **40.7(1)**, paragraph "a" is amended to read as follows:

a. The following eligibility ~~units~~ groups shall be exempt from monthly review; ~~provided a waiver is granted by the secretary of health and human services:~~ Those with no income, or only very constant unearned income, and no recent work history; or those with no earned income or recent work history whose adult members are sixty years old or older, or are receiving disability or blindness payments under Titles I, II, X, XIV, or XVI of the Social Security Act; and those with no earned income and no recent work history, whose adult member(s) receives supplemental security income. Those cases shall be reviewed at least every six months. When the source or amount of the nonexempt unearned income, such as social security benefits, is not expected to change more often than annually, the income shall be considered very constant unearned income. An individual who has been unemployed for six *full calendar* months or longer shall be considered to have no recent work history. Income disregarded in accordance with 41.7(2)"e" shall not be considered earned income for ~~this~~ the purpose of exemption. *Otherwise, any month in which income, including income in kind, is received as compensation for services shall be considered as a month of employment.*

HUMAN SERVICES DEPARTMENT[498] (cont'd)

(1) *The exempt status which relates to recent work history shall be attained in the sixth month of unemployment.*

(2) *A Public Assistance Eligibility Report, form PA-2140-0, shall be required for the budget month in which exempt status is lost.*

(3) *The eligibility group shall be exempt from submitting a Public Assistance Eligibility Report, form PA-2140-0, for the budget month following the budget month in which exempt status is attained.*

ITEM 6. Subrule 40.7(1), paragraph "b" is deleted and reserved.

ITEM 7. Subrule 40.7(4), paragraph "b," is amended to read as follows:

b. The recipient shall complete form PA-2140-0, Public Assistance Eligibility Report, when requested by the local office in accordance with these rules. The form will be supplied as needed to the recipient by the department ~~or local office~~. The department shall pay the cost of postage to return the form. *When the form is issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the local office by the fifth calendar day of the report month. When the form is not issued in the department's regular end-of-month mailing, the recipient shall return the completed form to the local office by the seventh day after the date it is mailed by the department.* The local office shall ~~give~~ supply the recipient with a form PA-2140-0, Public Assistance Eligibility Report, on request. Failure to return a completed form shall result in cancellation of assistance. A completed form is a form with all items answered, signed, dated *no earlier than the last day of the budget month* and accompanied by verification as required in 41.7(1)"i" and 41.7(2)"q".

ITEM 8. Subrule 40.7(5), paragraphs "a" and "b" are amended to read as follows and new paragraphs "f" to "h" are added:

a. When the recipient timely reports, as defined in 40.4(1) or 40.7(4), a new person entered the home the preceding month, and that person meets eligibility requirements, a payment adjustment shall be made for the month the recipient reports the change.

b. When income ended during *one of the second* initial two months of eligibility and a grant adjustment could not be made effective the first of the following month in accordance with 41.7(9)"b"(1), a payment adjustment shall be made.

f. *When the recipient timely reports, as defined in 40.4(1) or 40.7(4), a change in income or circumstances during the first initial month of eligibility, prospective eligibility and grant amount for the second initial month shall be determined based on the change. A payment adjustment shall be made when indicated. Recoupment shall be made for any overpayment regardless of when the change is reported.*

g. *When an individual included in the eligible group becomes ineligible, that individual's needs shall be removed prospectively effective the first of the next month. When the action must be delayed due to administrative requirements a payment adjustment or recoupment shall be made when appropriate.*

h. *When specifically indicated otherwise in these rules, such as in 41.5(5) and 41.7(9)"c"(2).*

ITEM 9. Subrule 41.7(1), paragraph "h" is amended to read as follows:

h. Support payments in cash shall be considered as unearned income in determining initial and continuing eligibility.

(1) ~~When child support has been assigned, any cash child support paid to the recipient after the date of decision to approve assistance until the assignment is implemented by the clerk of court shall be refunded to the child support recovery unit. This applies only when the child is a member of the eligible group.~~

(1) *Any nonexempt cash support payment, for a member of the eligible group, made while the application is pending shall be treated as unearned income and deducted from the initial assistance warrant(s). Any nonexempt cash support payment, for a member of the eligible group, received by the recipient after assistance has been approved shall be refunded to the child support recovery unit.*

(2) Support ~~income~~ payments shall be considered as unearned income in the month in which the local office receives an official written report of the payment from the child support recovery unit.

The amount of income to consider shall be the actual amount paid or the monthly entitlement, whichever is less.

(3) *Support payments reported by child support recovery during the budget month shall be used to determine prospective and retrospective eligibility for the corresponding payment month.*

(4) *When the reported support payment, combined with other income, creates ineligibility the case shall be canceled. Eligibility may be re-established for any month in which the countable support payment combined with other income meets the eligibility tests.*

ITEM 10. Subparagraph 41.7(2)"d"(2), is amended to read as follows:

(2) ~~An applicant/recipient is not eligible for the standard work expense, care expense, or the \$30.00 plus one-third disregard for any month in which the individual failed, without good cause, to timely report a change in earned income or to timely report earned income on the Public Assistance Eligibility Report. Good cause for not timely returning a Public Assistance Eligibility Report or timely reporting a change in earned income shall be limited to circumstances beyond the control of the individual, such as, but not limited to, a failure by the local office or department to provide needed assistance when requested, to give needed information, or to follow procedure resulting in a delay in the return of the Public Assistance Eligibility Report, or when conditions require the form to be mailed other than with the regular end-of-the-month mailing. Good cause shall also include, but not be limited to, circumstances when the individual was prevented from reporting by a physical or mental disability, death or serious illness of an immediate family member; or other unanticipated emergencies; or mail was not delivered due to a disruption of regular mail delivery. The applicant/recipient who returns the Public Assistance Eligibility Report, listing earned income, by the thirteenth day of the report month shall be considered to have good cause for not timely returning the Public Assistance Eligibility Report.~~

ITEM 11. Subrule 41.7(7) is amended by adding new paragraphs:

r. *Retrospective income received by an individual, whose needs are prospectively removed from the eligible group or who is no longer a member of the household, except nonrecurring lump sum income that causes a period of ineligibility and the income of a parent or stepparent who remains in the home.*

HUMAN SERVICES DEPARTMENT[498] (cont'd)

s. Income of a nonparental relative as defined in 41.2(3) except when the relative is included in the eligible group.

ITEM 12. Subrule 41.7(9), paragraph "e" is amended to read as follows:

e. In any month for which an individual is determined eligible to be added to a currently active aid-to-dependent-children case, the individual's needs shall be included prospectively. When adding an individual to an existing eligible group, any income of that individual shall be considered prospectively for the initial two months of that individual's eligibility and retrospectively for subsequent months. Any income considered in prospective budgeting shall be considered in retrospective budgeting only when the income is expected to continue. *The needs of an individual determined to be ineligible to remain a member of the eligible group shall be removed prospectively effective the first of the following month.*

ITEM 13. Subrule 41.7(9), paragraph "j" is amended to read as follows:

j. Payment for a special need as defined in 41.8(3) shall be made when documentation of the special need is received by the local office. When the special need continues, ~~it~~ payment shall be included, prospectively, in each month's aid-to-dependent-children grant ~~thereafter for as long as the special need exists. When the special need ends, payment shall be removed prospectively. Any overpayment for a special need shall be recouped.~~

Any documentation of a special need received during a month of suspension shall be considered in determining eligibility and the amount of payment for the month following the month of suspension.

This rule is intended to implement Iowa Code section 239.5.

[Filed 9/1/83, effective 11/2/83]

[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4064**HUMAN SERVICES DEPARTMENT[498]**

Pursuant to the authority of Iowa Code section 234.6(7), the Department of Human Services adopted these rules relating to the food stamp program (chapter 65). These rules were adopted by the Council on Human Services August 30, 1983.

Notice of Intended Action regarding these rules was published in IAB July 20, 1983 as ARC 3894.

Currently ADC rules provide that the Public Assistance Eligibility Report (PAER), form PA-2140-0, will serve as

a monthly report form and a review form for public assistance households. These rules provide that PAER, form PA-2140-0, will also serve as a monthly report form and a recertification form for food stamp households. The form will be mailed, each month, to all food stamp households which are required to complete and submit monthly reports and, beginning with the implementation of the Automated Benefit Calculation (ABC) System, to all nonmonthly reporting households whose Public Assistance review is nearly due. The department believes that it would be equitable and a convenience for food stamp households to receive a "recertification form" in the mail and that this form can also serve to give prior notice to the household of the expiration of its certification period. This will occur with the implementation of the ABC System. Combining the monthly report/recertification and the Notice of Expiration will give the household a single explanation of its rights and options, reduce confusion, and save postage dollars.

Nonpublic assistance food stamp households will begin receiving the PA-2140-0 for use as a monthly report form with the implementation of the ABC System. Food stamp households which are not subject to monthly reporting will receive their PA-2140-0's for use as recertification forms from Central Office with the implementation of the ABC System. Implementation of this rule will occur first with the implementation of the ABC System in a pilot county or local office.

Implementation of these rules statewide will be no later than March 31, 1984.

These rules are identical to those placed under notice.

These rules are intended to implement Iowa Code section 234.12.

These rules will be effective November 2, 1983.

ITEM 1. 498—65.1(234) is amended by adding a new subrule.

65.1(8) "Notice of expiration" means either a message printed on an application for continued program participation, PAER form PA-2141-0, which is automatically issued to the household, or form FP-2310-0.

ITEM 2. Chapter 65 is amended by adding a new rule. **498—65.20(234) Notice of expiration issuance.**

65.20(1) Issuance of the Automated Notice of Expiration will occur with the monthly mailing of Public Assistance Eligibility Reports, form PA-2140-0, from Des Moines.

65.20(2) Issuance of the Notice of Expiration, form FP-2310-0, will occur from the local office at the time of certification if the household is certified for one month, or for two months, and will not receive the Automated Notice of Expiration.

This rule is intended to implement Iowa Code section 234.12.

[Filed 9/1/83, effective 11/2/83]

[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4076

RAILWAY FINANCE AUTHORITY[695]

Pursuant to the authority of Iowa Code subsection 307B.7(2), the Iowa Railway Finance Authority on August 31, 1983, adopted an amendment to 695—chapter 4 entitled "Projects". The board also rescinded, effective on November 2, 1983, an identical amendment which has been in effect since June 29, 1983, under emergency rulemaking provisions. The emergency amendment was published in the July 20, 1983, Iowa Administrative Bulletin as ARC 3892.

A Notice of Intended Action for this rule amendment was published in the July 20, 1983 Iowa Administrative Bulletin as ARC 3893.

This amendment substitutes for a paragraph containing the misunderstood term "nonquantifiable benefits" and, at the request of the Administrative Rules Review Committee, inserts a clarification of the term and examples of its application.

This rule amendment is identical to the one published under notice.

This rule amendment is intended to implement Iowa Code chapter 307B.

This rule amendment is to be published as adopted in the September 28, 1983 Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective November 2, 1983.

Pursuant to the authority of Iowa Code subsection 307B.7(2), rules 695—chapter 4 entitled "Projects" are hereby amended.

Amend subrule 4.3(3) by rescinding paragraph "a" and inserting in lieu thereof:

a. The net present value of the proposed project is positive, or the benefits to the public, shipper(s), and carrier(s) which have no determinable precise monetary value are judged by staff to outweigh a negative calculation. The benefits with no determinable precise monetary value may include, but are not limited to, the following:

(1) Safety impacts; e.g., reduced likelihood of accidents involving personal injury or hazardous cargoes.

(2) Economic development impacts; e.g., increase in employment opportunities or increase in industrial development.

(3) Environmental impacts; e.g., changes in ambient noise levels or air quality.

[Filed 9/6/83, effective 11/2/83]
[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4095

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 12, "Filing Returns, Payment of Tax, Penalty and Interest", Chapter 13,

"Permits", Chapter 15, "Determination of a Sale and Sale Price", Chapter 18, "Taxable and Exempt Sales Determined by Method of Transaction or Usage", Chapter 19, "Sales and Use Tax on Construction Activities", Chapter 30, "Filing Returns, Payment of Tax, Penalty and Interest-Use", and Chapter 34, "Vehicles Subject to Registration", Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume VI, Number 3, on August 3, 1983, as ARC 3933.

The amendments were made to implement 1983 Iowa Acts, Senate File 56, Senate File 184, Senate File 538, House File 69 and House File 527.

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

These rules are identical to those published under Notice of Intended Action. The amendments will become effective November 2, 1983, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code chapters 422 and 423 as amended by 1983 Iowa Acts, Senate File 56, Senate File 184, Senate File 538, House File 69 and House File 527.

The following amendments are adopted:

ITEM 1. Amend rule 730—12.9(422) by adding after the first unnumbered paragraph the following new paragraph:

Claims for refund for sales tax filed after January 1, 1983 where the tax was voluntarily paid, will not be allowed if the claim is based upon an alleged mistake of law regarding the validity or legality under the laws or Constitution of the United States or under the Constitution of the State of Iowa of the tax.

ITEM 2. Amend rule 730—12.9(422) at the implementation paragraph to read as follows.

This rule is intended to implement *Iowa Code* section 422.73(4), as amended by 1983 Iowa Acts, Senate File 538 ~~The Code~~.

ITEM 3. Amend rule 730—13.1(422) to read as follows.
730—13.1(422) Retail sales tax permit required. When used in this chapter or any other chapter relating to retail sales the word "permit" shall mean "a retail sales tax permit".

A person shall not engage in any Iowa business subject to tax until ~~he~~ *the person* has procured a permit except as provided in 13.5(422). ~~The fee for each permit shall be one dollar and shall accompany the application. There is no charge for a retail sales tax permit.~~ If a person makes retail sales from more than one location, each location shall be required to hold a permit. *Retail sales tax permits are issued to retailers for the purpose of making retail sales of tangible personal property or taxable services. Persons shall not make application for a permit for any other purpose.*

This rule is intended to implement *Iowa Code* section 422.53, as amended by 1983 Iowa Acts, House File 527 ~~The Code~~.

ITEM 4. Amend rule 730—13.2(422) by striking the fourth unnumbered paragraph which reads "The one dollar permit fee shall not be refunded." and amend the implementation section to read as follows.

This rule is intended to implement *Iowa Code* section 422.53, as amended by 1983 Iowa Acts, House File 527 ~~The Code~~.

REVENUE DEPARTMENT[730] (cont'd)

ITEM 5. Amend rule 730—13.6(422) to read as follows.

730—13.6(422) Reinstatement of canceled permit. A person who previously held and canceled a permit and wishes to re-engage in business in the same county shall apply to the department for reinstatement of the permit. Upon receipt of the ~~one dollar fee and a~~ proper clearance for previous tax returns, a new permit shall be issued.

This rule is intended to implement *Iowa Code* section 422.53(6), as amended by 1983 Iowa Acts, House File 527 ~~The Code~~.

ITEM 6. Amend rule 730—13.7(422) by striking the first paragraph which reads "A permit holder making application to the department for reinstatement of a revoked permit shall be charged the one dollar fee." and amend the implementation section to read as follows.

This rule is intended to implement *Iowa Code* section 422.53(5) as amended by 1983 Iowa Acts, House File 527 and section 422.58(2); ~~The Code~~.

ITEM 7. Amend rule 730—13.9(422) to read as follows.

730—13.9(422) Loss or destruction of permit. When it becomes necessary to replace an active permit by reason of loss or destruction of ~~said permit, the applicable form furnished by~~ the department *will furnish a duplicate permit shall be used without additional permit fee.*

This rule is intended to implement *Iowa Code* section 422.53(4), as amended by 1983 Iowa Acts, House File 527 ~~The Code~~.

ITEM 8. Amend rule 730—13.10(422) to read as follows:

730—13.10(422) Change of location. When a ~~permit holder~~ *retailer* changes his business location, the permit shall be canceled and an application shall be made for another permit at the new location. ~~A one dollar fee shall be required for the new permit.~~

This rule is intended to implement *Iowa Code* section 422.53(3); ~~The Code~~ as amended by 1983 Iowa Acts, House File 527 ~~The Code~~.

ITEM 9. Amend rule 730—13.11(422) to read as follows.

730—13.11(422) Change of ownership. A ~~person~~ *retailer* changing his *their* business entity shall apply for a new permit under the name of the new entity. This is required but not limited to such entity changes as proprietorship to partnership, partnership to corporation or any combination thereof. ~~The one dollar permit fee shall accompany the application.~~

This rule is intended to implement *Iowa Code* section 422.53(3); ~~The Code~~ as amended by 1983 Iowa Acts, House File 527.

ITEM 10. Amend rule 730—13.13(422) at the first paragraph to read as follows.

730—13.13(422) Trustees, receivers, executors and administrators. By virtue of their appointment, trustees, receivers, executors and administrators who continue to operate, manage or control a business involving the sale of tangible personal property or taxable services or engage in liquidating the assets of a business by means of sales made in the usual course of trade shall ~~hold a permit and~~ collect and remit tax on *inventory and noninventory items. These officers are liable for the collection and remittance of the tax, even though they may have been appointed by a state or federal court. In Re Hubs Repair Shop, Inc. 28 B.R. 858 (Bkrtcy. 1983).*

ITEM 11. Amend subrule 15.4(3) by adding the following at the end of the subrule.

Effective March 1, 1983 the sales and use tax rate increased from three percent to four percent.

Bad debts which occurred prior to March 1, 1983 and are charged off after March 1, 1983 may be charged off at the tax rate of four percent. Bad debts which have been charged off prior to March 1, 1983 and all or any part of the bad debt which is recovered after March 1, 1983 will be subject to tax at the rate of four percent. All the provisions of this rule and rule 15.5(422,423) apply.

ITEM 12. Amend subrule 15.12(4) to read as follows.

15.12(4) The federal excise tax on *certain* trucks, buses, trailers, chassis, bodies and parts is a ~~manufacturer's~~ *retailer's* tax and *the provisions of subrule 15.12(2) shall apply. shall be computed on the full sale price, including the excise tax.*

ITEM 13. Amend rule 730—15.19(422,423) by adding the following as subrule 15.19(3) and renumbering the remaining subrules.

15.19(3) Trade-ins. For period commencing after June 30, 1983.

When tangible personal property is traded toward the purchase price of other tangible personal property the gross receipts shall be only that portion of the purchase price which is payable in money to the retailer if the following conditions are met.

a. The tangible personal property is traded to a retailer, and the property traded is the type normally sold in the regular course of the retailer's business; and

b. The tangible personal property traded to a retailer is intended by the retailer to be ultimately sold at retail and taxed under section 422.43 when sold. In addition, if property is traded under circumstances in which the transaction would be subject to Iowa use tax, then the property traded to the retailer will be subject to tax under either section 422.43 or chapter 423, when sold; or

c. The tangible personal property traded to a retailer is intended to be used by the retailer or another in the remanufacturing of a like item.

Examples 1, 2, 3 and 4 in subrule 15.19(2) apply to this subrule.

EXAMPLE.

"ABC" Auto Supply is in the business of selling various types of automobile and farm implement supplies. The normal selling price for a car generator is \$80.00. "ABC" Auto Supply will allow a \$20.00 trade-in credit to any customer who wishes to trade in an unworkable generator. At the time "ABC" accepts the unusable generator it knows that the generator will not be sold at retail and subject to tax, however "ABC" Auto Supply does know that the generator will be sold to "XYZ" Company who is in the business of rebuilding generators by using existing parts plus new parts. In this example the trade-in provision would apply since conditions "a" and "c" are met.

ITEM 14. Amend rule 730—15.19(422,423) at the implementation paragraph to read as follows:

This rule is intended to implement *Iowa Code* sections 422.42(6)"b" and 423.1(3) as amended by 1982~~3~~ Iowa Acts, Senate File 574 56.

ITEM 15. Amend rule 730—18.4(422) to read as follows:

730—18.4(422) Mortgages and trustees. Pursuant to the provisions of a chattel mortgage, the receipts from the sale of tangible personal property at a public auction shall ~~not~~ be taxable *even* if the sale is made by virtue of a court decree of foreclosure by an officer appointed by the court

REVENUE DEPARTMENT[730] (cont'd)

for that purpose, or if the property is bid in by the mortgagee. Sales tax applies to receipts from other foreclosure sales when goods and chattels are sold at retail.

The tax applies to inventory and noninventory goods provided the owner is in the business of making retail sales of tangible personal property or taxable services. In Re Hubs Repair Shop, Inc. 28 B.R. 858 (Bkrcty. 1983).

This rule is intended to implement 1983 Iowa Code sections 422.42, 422.43, 423.1 and 423.2; ~~The Code.~~

ITEM 16. Amend chapter 18 of the rules by adding the following new rule as 730—18.13 now marked reserved.

730—18.13(422) Sales by the state of Iowa, its agencies and instrumentalities.

The state of Iowa, its agencies and instrumentalities, are required to collect and remit tax on the gross receipts from taxable retail sales of tangible personal property and taxable services.

This rule does not apply to sales made by cities and counties in the state of Iowa which are specifically exempted from collecting tax by 1983 Iowa Code section 422.45(20).

This rule is intended to implement Iowa Code (1983) chapters 422 and 423.

ITEM 17. Amend rule 730—19.12(422,423) at the last paragraph, to read as follows:

In addition, under the provisions of Iowa Code section 422.45(7); ~~The Code,~~ the contractor is required to provide the governmental unit or private nonprofit educational institution with a statement before final settlement of the contract, showing the amount of sales of goods, wares or merchandise or services rendered, furnished or performed and used in the performance of such contract, and the amount of sales and use taxes paid on said items. The department provides form number 35-002 (ST-172) for this purpose. The governmental unit or private nonprofit educational institution has six months after final settlement to file a claim for refund on form 35-003 (ST-173) for sales and use taxes paid by the contractor. The failure of a contractor to remit taxes on materials, supplies and equipment used in the performance of a construction contract does not relieve the contractor of liability even though the refund was not or cannot be claimed. See Dealers Warehouse Co. Inc. v. Department of Revenue, Jasper County District Court, 90-3910936, December 6, 1978. Contracts financed by industrial bonds provided under the provisions of Iowa Code chapter 419; ~~The Code,~~ are not eligible for the special refund provisions provided in Iowa Code section 422.45(7); ~~The Code,~~ unless when the bond issue was or will have been approved by a municipality prior to July 1, 1968 November 1, 1982, and upon completion of the project the property becomes public property or is devoted to educational uses. The refund applies only to taxes paid on goods, wares, or merchandise purchased after November 1, 1982.

This rule is intended to implement Iowa Code section 422.45(7) as amended by 1983 Iowa Acts, House File 69.

ITEM 18. Amend rule 730—30.11(423) by adding after the first unnumbered paragraph, the following new unnumbered paragraph:

Claims for refund for use tax filed after January 1, 1983, where the tax was voluntarily paid, will not be allowed if the claim is based upon an alleged mistake of law regarding the validity or legality under the laws or Constitution of the United States or under the Constitution of the state of Iowa of the tax.

ITEM 19. Amend rule 730—30.11(423) at the implementation paragraph, to read as follows:

This rule is intended to implement Iowa Code sections 422.73(1) and 423.23 ~~The Code.~~ as amended by 1983 Iowa Acts, Senate File 538.

ITEM 20. Amend rule 730—34.3 now marked "Rescinded" by adding the following new rule:

730—34.3(423) Returned vehicles. When a vehicle subject to registration is sold and later returned to the seller with the entire purchase price refunded, the purchaser is entitled to a refund of the use tax paid. To obtain a refund the purchaser must be able to show that the entire purchase price was returned and provide proof that the use tax had been paid. See rule 30.11(423) for details on claims for refund.

This rule is intended to implement 1983 Iowa Code sections 423.1 and 423.7.

[Filed 9/9/83, effective 11/2/83]

[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4096

REVENUE DEPARTMENT[730]

Pursuant to the authority of the Iowa Code sections 421.14 and 422.68(1), the Iowa Department of Revenue hereby adopts amendments to Chapter 64, "Motor Fuel", Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume VI, Number 3, on August 3, 1983, as ARC 3934.

The rule amendments are made to implement 1983 Iowa Acts, Senate File 14, which provides that the state of Iowa, its agencies and political subdivisions may purchase motor fuel tax-free when the motor fuel is placed into bulk storage of any size and will be used for public purposes. The amendments further reflect the tax increase on gasohol from 8 cents per gallon to 10 cents per gallon which is effective July 1, 1983. The tax increase is reflected in Iowa Code section 324.3. The amendments also reflect an error in the existing rule relating to gasohol blending errors. The blending error provision is applicable until June 30, 1986, at which time the tax rate on gasohol will be the same as the tax rate of motor fuel unless there is a legislative change.

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

These rules are identical to those published under Notice of Intended Action. The amendments will become effective November 2, 1983, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code sections 324.3 as amended by 1983 Iowa Acts, Senate File 14, 324.35 and 324.57.

The following amendments are adopted:

ITEM 1. Amend rule 730—64.3(324) by adding the following as item 4 and renumbering the present item 4 as item 5.

REVENUE DEPARTMENT[730] (cont'd)

4. Motor fuel sold to the state, any of its agencies, or to any political subdivision of the state, which is used for public purposes and delivered into any size storage tank owned or used exclusively by the state, any of its agencies, or a political subdivision of the state is exempt from the excise tax.

When purchasing motor fuel tax-free, the state, its agencies, and political subdivisions of the state, shall furnish the distributor or dealer an exemption certificate, furnished by the department, specifying the number of gallons delivered into storage and stating that all of the motor fuel will be used for public purpose.

ITEM 2. Amend rule 730—64.3(324) the last unnumbered paragraph and the implementation paragraph to read as follows:

All other motor fuel not exempted by categories 1, 2, 3 or 4 or 5 above or subrule 64.4(1) below is subject to tax in the first instance by the person who receives it. If the motor fuel is later used for some other exempt purpose or otherwise not to be subject to the tax, the tax previously paid will be subject to credit or refund. (See rules 63.25(324), 64.4(324), 64.7(324), 64.8(324) and 64.15(324).

This rule is intended to implement *Iowa Code* sections, 324.3 as amended by 1983 Iowa Acts, Senate File 14, 324.35 and 324.57 of the Code.

ITEM 3. Amend subrule 64.4(3) the second unnumbered paragraph to read as follows:

For periods after April 30, 1982 and to July 1, 1983 an excise tax of eight cents per gallon is imposed on gasohol. For periods after June 30, 1983 and to July 1, 1984 an excise tax of ten cents per gallon is imposed on gasohol. The following procedure will be followed to report tax on gasohol.

ITEM 4. Amend subrule 64.4(4) the first sentence which reads "For periods beginning July 1, 1978 to June 30, 1983" to read as follows:

For periods beginning July 1, 1978 to June 30, 1983.

ITEM 5. Amend rule 730—64.5(324), paragraph "b" to read as follows:

(b) DEDUCT: The number of invoiced gallons sold for export or exported out of state, sold to a licensed Iowa urban transit system, sold to the state, any of its agencies, or to any political subdivision of the state, (See subrule 64.3(4)), sold to the federal government and used by the distributor for producing gasohol (these deductions will not be allowed without the appropriate supporting documents, i.e., export schedules, exemption certificates, or statements). (See rule 64.4(324) for the procedure for deducting motor fuel used to produce gasohol.)

ITEM 6. Amend rule 730—64.15(324) to read as follows:
730—64.15(324) State of Iowa or political subdivision.

64.15(1) For periods prior to July 1, 1983. When motor fuel is sold directly to the state of Iowa, its agencies, or a political subdivision of the state, it shall be sold tax-paid. This tax will then be refundable to the exempt body purchasing such fuel.

64.15(2) For periods after June 30, 1983. When motor fuel is sold directly to the state of Iowa, its agencies, or to a political subdivision of the state, is used for public purposes, and is placed into a storage tank, of any size, the motor fuel may be sold tax-free. (See subrule 64.3(4). Any motor fuel sold to the state of Iowa, its agencies, or to a political subdivision of the state, which is not placed into storage shall be sold tax-paid and the refund provisions apply.

64.15(3) The refund is not available to agencies or instrumentalities of a political subdivision, but rather, only to the state of Iowa, agencies of the state of Iowa, and political subdivisions of the state of Iowa. The general attributes and factors in determining if an entity is a political subdivision of the state of Iowa are: (1) The entity has a specific geographic area, (2) the entity has public officials elected at public elections, (3) the entity has taxing power, (4) the entity has a general public purpose or benefit, and (5) the foregoing attributes, factors or powers were delegated to the entity by the state of Iowa. (1976 O.A.G. 823). The refund is also not available to employees of an exempt governmental unit who purchase fuel individually and are later reimbursed by the exempt unit. The name of the exempt governmental unit must appear on the invoice as the purchaser of the fuel or the refund will not be allowed. *Alabama v. King & Bozer*, 314 U.S. 1 (1941). These refunds may be obtained by filing a quarterly report (calendar quarter) with the department setting out (1) the name of the exempt body, (2) the amount of fuel purchased tax-paid, (3) the amount of tax subject to refund, and (4) the registration number of the exempt body. The claim for refund must be filed with the department, as determined by rule 63.6(324), within one year of the time the tax was due, therefore, if in any one quarter, the exempt body has no refund coming, or a very small refund coming, they need not file. The exempt body so filing must retain the invoice, or other evidence of purchase meeting the same requirements, for a period of three years. (See rule 63.13(324) for requirements as to form.) And such documents shall be available for inspection by the department upon request. The request of all taxes paid on special fuel shall be reported at the same time, in the same manner, and subject to the same requirements.

This rule is intended to implement *Iowa Code* sections 324.3 and 324.35 of the Code as amended by 1983 Iowa Acts, Senate File 14.

[Filed 9/9/83, effective 11/2/83]

[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4097

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 81, "Cigarettes and Tobacco-Administration", Chapter 82, "Cigarette Tax", and Chapter 84, "Unfair Cigarette Sales", Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume VI, Number 3, on August 3, 1983, as ARC 3935.

The tobacco industry is presently starting to market cigarettes in packages containing 25 cigarettes to a pack and 9 packs to a carton. The department is supplying stamps for this new product in sheets containing 135 stamps. The amendments to rule 81.1(98) and subrule 82.5(2) authorize the director to provide stamps in quantities other than books containing 1,000 stamps or rolls containing 30,000 stamps.

REVENUE DEPARTMENT[730] (cont'd)

The amendment to subrule 82.4(1) implements 1983 Iowa Acts, Senate File 543, section 1, which makes the cigarette tax permanent after July 1, 1981, at the rate of 9 mills per cigarette.

The amendment to rule 82.7(98) implements 1983 Iowa Acts, Senate File 543, section 2, which provides that cigarette stamps will be sold to holders of state distributor permits at a discount of two percent.

The amendments made to subrules 84.2(1) and (2) implement 1983 Iowa Acts, Senate File 543, sections 3, 4 and 5, which provide how the basic cost and minimum selling price of cigarettes will be computed. Wholesalers shall include $\frac{1}{2}$ of the face value of stamps to compute basic cost; the cost of doing business is presumed to be 3% instead of 4%. The cost of doing business by the retailer is presumed to be 6% instead of 8% and $\frac{1}{2}$ of the state tax shall be included in computed basic cost of cigarettes to a retailer.

The amendments also include an illustrative example as to how basic cost and the minimum selling price of cigarettes is computed.

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

These rules are identical to those published under Notice of Intended Action. The amendments will become effective November 2, 1983, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code sections 98.8, 551A.2, 551A.3, 551A.5, 551A.6, and 551A.9 as amended by 1983 Iowa Acts, Senate File 543.

The following amendments are adopted.

ITEM 1. Amend rule 730-81.1(98), numbered paragraph 12, to read as follows.

12. "Stamps" shall refer to Iowa Fusion stamps, 30,000 to a roll, and Iowa hand stamps, 1,000 to a book, or other quantities authorized by the director, to be applied to packages of cigarettes and little cigars.

ITEM 2. Amend subrule 82.4(1), paragraph "b", to read as follows.

b. For periods beginning after June 30, 1981, and ending June 30, 1983. The cigarette tax is imposed upon all cigarettes used or otherwise disposed of in this state for any purpose at the rate of nine mills per cigarette (18¢/20 cigarette pack).

ITEM 3. Amend subrule 82.5(2), first paragraph, to read as follows.

82.5(2) Purchase of stamps from the department. Stamps may be purchased from the department in unbroken books of 1,000 stamps or unbroken rolls of 30,000 stamps, or other quantities authorized by the director. Meter settings may be purchased from the department in increments of one thousand. Stamps may be purchased from authorized banks in unbroken rolls of 30,000. Meter settings may be purchased from banks in increments of 1,000. The stamps may be purchased only by persons holding an unrevoked distributor's permit or an unrevoked manufacturer's permit.

ITEM 4. Amend rule 730-82.7(98) to read as follows.

730-82.7(98) Purchase of cigarette tax stamps—discount. Upon the purchase of cigarette tax stamps or meter settings, the distributor or manufacturer, beginning July 1, 1981 and ending June 30, 1983, shall be

entitled to a discount of two percent from the face value of the stamps or meter settings.

This rule is intended to implement Iowa Code section 98.8, The Code as amended by 1983 Iowa Acts, Senate File 543.

ITEM 5. Amend subrule 84.2(1) by deleting it in its entirety and inserting in lieu thereof the following new subrule.

84.2(1) Wholesaler's cost of cigarettes. The statutory method for determining the wholesaler's cost of cigarettes is as follows:

a. "Basic cost of cigarettes" equals the lowest of true invoice cost, or lowest replacement cost, less trade or cash discounts plus $\frac{1}{2}$ of the state cigarette tax.

b. "Cost to wholesalers" equals the basic cost of cigarettes plus 3 percent of the basic cost plus the $\frac{1}{2}$ of the state cigarette tax not already included.

ITEM 6. Amend subrule 84.2(2) by deleting it in its entirety and inserting in lieu thereof the following new subrule.

84.2(2) Retailer's cost of cigarettes. The statutory method for determining the retailer's cost of cigarettes is as follows:

a. "Basic cost of cigarettes" equals the lower of either true invoice cost exclusive of state cigarette tax or lowest replacement cost exclusive of state cigarette tax, minus trade or cash discounts plus $\frac{1}{2}$ of the state cigarette tax.

b. "Cost to retailers" equals the basic cost plus 3 percent of the basic cost, to the extent the retailer is allowed discounts ordinarily allowed wholesalers, plus 6 percent of the basic cost, plus the $\frac{1}{2}$ of the state cigarette tax not already included.

For purposes of determining the basic cost of cigarettes for wholesalers or retailers, trade or cash discounts may be deducted, if available, even though not taken.

The following example will demonstrate the application of this rule.

Manufacturer's list price	\$26.70/1,000
Minimum cost to wholesaler:	
Invoice price	\$26.70
Less: 2% discount	.5340
Plus $\frac{1}{2}$ of the tax per M.	4.50
	<hr/>
Basic cost of cigarettes	\$30.6660
Plus 3% of basic cost	.9199
	<hr/>
	\$31.5859
Plus $\frac{1}{2}$ of the tax per M.	4.50
	<hr/>
Minimum cost to wholesaler	\$36.0859/1000
	7.217/carton
	(7.22 to nearest ¢)
Wholesaler's minimum price to retailers per carton	\$ 7.22
Less state tax	1.80
	<hr/>
Invoice price exclusive of tax	\$ 5.42
Plus $\frac{1}{2}$ of state tax per carton	.90
	<hr/>
Basic cost of cigarettes	\$ 6.32
Plus 6% of basic cost	.38
Plus $\frac{1}{2}$ of state tax	.90
	<hr/>
Minimum retail	\$ 7.60/carton
	.76/pack

REVENUE DEPARTMENT [730] (cont'd)

This rule is intended to implement Iowa Code sections 551A.2, 551A.3, 551A.5, 551A.6, and 551A.9 as amended by 1983 Iowa Acts, Senate File 543.

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[Published 9/28/83]

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ARC 4098

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 91, "Games of Skill, Chance, Bingo and Raffles—Administration", and Chapter 94, "Qualified Organization", Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume VI, Number 3, on August 3, 1983, as ARC 3936.

The amendment to rule 91.4(99B) provides that reports are not considered late when the due date falls on Saturday, Sunday or a legal holiday if the report is postmarked and mailed on the first business day following the Saturday, Sunday or legal holiday. This represents the department's present position regarding reports, but was inadvertently left out of this rule.

Rule 91.6(99B) was amended to implement 1983 Iowa Acts, House File 176. Candidate committees and political party organizations may secure a gambling license and need not meet the 501(c) status for federal income tax purposes. The rule amendment also defines political party organization. The amendments to rule 91.6(99B) also provide that the department shall provide short form gambling application for the public school districts. The amendment implements 1983 Iowa Acts, House File 317.

Rule 94.1(99B) was amended to implement 1983 Iowa Acts, House File 176, and provides that political party organizations may conduct gambling activities to support the party or an entire slate of candidates. Candidates' campaign committees may conduct gambling activities and the proceeds may be used to support the individual candidate.

The amendments made to rules 94.2(99B) and 94.3(99B) were made to implement 1983 Iowa Acts, House File 317. The amendments provide that school boards may not expend public funds to purchase a gambling license, and also provide the reporting procedure for licensed school districts who allow school groups and parent support groups to use the public school district's license to conduct gambling activities.

The amendments to rule 94.5(99B) were made to implement 1983 Iowa Acts, House File 176 and House File 317.

The first paragraph of this rule was amended to reflect House File 176 which allows political party and political party organizations holding a license to contract with other licensed qualified organizations to conduct games for the benefit of the political organization.

The second paragraph of this rule is amended to reflect House File 317 which provides that the board of directors of a public school may get a gambling license. The board

of directors may upon written approval authorize school groups and parent support to use its license to conduct gambling, however the same group may not use the license more than two times in a twelve-month period.

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

These rules are identical to those published under Notice of Intended Action. The amendments will become effective November 2, 1983, after filing with the administrative rules coordinator and publication in the Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code sections 99B.1, 99B.2, 99B.7 and 99B.14 as amended by 1983 Iowa Acts, House Files 176 and 317.

The following amendments are adopted:

ITEM 1. Amend rule 730—91.4(99B), third unnumbered paragraph, to read as follows.

Each licensee required to maintain records shall submit quarterly reports to the department on forms furnished by the department. Quarterly reports will be submitted on a calendar quarter basis. The first quarter will be January 1 to March 31 each year; the second quarter will be April 1 to June 30 each year; the third quarter will be July 1 to September 30 each year; and the fourth quarter will be October 1 to December 31 each year. Quarterly reports will be due no later than the last day of the month following the end of each quarter. *When the due date falls on Saturday, Sunday or a legal holiday, the report will be due the first business day following the Saturday, Sunday, or legal holiday. If a report is placed in the mails, properly addressed and postage paid, and postmarked on or before the due date for filing, the report will be considered timely even though received after the due date. Quarterly reports received by the department after the due date will be considered delinquent.* However, upon a proper showing of good cause, the department is authorized to grant an extension in time in which to file a report. See rule 91.7(99B). The extension shall not be granted for a period longer than thirty days. The request for extension must be received in writing on or before the original due date of the quarterly report.

This rule is intended to implement Iowa Code 1983, sections 99B.1 and 99B.2, as amended by 1981 Iowa Acts, chapter 44.

ITEM 2. Amend subrule 91.6(1), paragraph "j", subparagraph (2) to read as follows:

(2) ~~Subsection~~ ~~Subparagraph~~ (1) above does not apply to political ~~parties organizations~~ or nonparty political organizations that have qualified to place a candidate as its nominee for statewide office, or to a candidate committee. Political parties and nonparty political organizations must attach to their application verification of their status from the secretary of state. *A candidate committee must provide verification of their status from the Iowa campaign finance disclosure commission if the candidate is seeking a statewide office or verification from the county auditor if the candidate is seeking a local government office. Political party organizations are also excluded from subparagraph (1) above. A political party organization is an organization affiliated with and authorized by a political party as defined in Iowa Code section 43.2, such as; state, county or district central committee or auxiliary groups such as young democrats or republicans; or committees appointed for a special purpose, i.e., fund raising committees.*

REVENUE DEPARTMENT[730] (cont'd)

ITEM 3. Amend subrule 91.6(1) by adding the following new unnumbered paragraph at the end of the subrule.

Public school districts need not comply with subrule 91.6(1)"a" (1), "b" (3), "c", and "j".

ITEM 4. Amend rule 730—91.6(99B) at the implementation paragraph to read as follows:

This rule is intended to implement Iowa Code sections 99B.1, 99B.2, 99B.7, and 99B.14 as amended by 1981-3 Iowa Acts, chapter 44 House Files 176 and 317.

ITEM 5. Amend rule 730—94.1(99B), fourth unnumbered paragraph, to read as follows:

"Public uses" specifically includes dedication of net receipts to political parties as defined in Iowa Code section 43.2; The Code. Gambling receipts earned or received by a political party or political party organization shall not be used to benefit an individual candidate. The gambling receipts may be used to benefit the political party as an organization or to benefit an entire slate of candidates in the general election. Gambling receipts earned by a licensed candidate's campaign committee may be used to support that individual candidate's campaign. "Charitable uses" includes uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm and the loss is uncompensated by insurance, and uses benefiting a definite number of persons suffering from seriously disabling disease or injury, causing severe loss of income or incurring extraordinary medical expense, which is uncompensated by insurance. If gambling net receipts are disbursed in noncompliance with the law and these rules, the department shall require the licensee to dedicate matching funds to a qualified recipient. The department shall also revoke the gambling license.

ITEM 6. Amend rule 730—94.1(99B) at the implementation paragraph to read as follows:

This rule is intended to implement Iowa Code sections 99B.1 and 99B.7, The Code as amended by 1983 Iowa Acts, House File 176 of the Sixty-ninth General Assembly, Senate File 519.

ITEM 7. Amend subrule 94.2(1) by adding the following new unnumbered paragraph at the end of the subrule.

A board of directors of a public school shall not spend or authorize the expenditure of public funds for the purpose of purchasing a gambling license.

ITEM 8. Amend the implementation paragraph of rule 730—94.2(99B) to read as follows:

This rule is intended to implement Iowa Code sections 99B.2 and 99B.7, The Code as amended by 1983 Iowa Acts, House File 317. of Sixty-ninth General Assembly, Senate File 519.

ITEM 9. Amend rule 730—94.3(99B) by adding the following new paragraph at the end of the rule and amending the implementation clause at the end of the rule.

The board of directors of a public school district who authorizes a school group or parent support group to use their license must include all of the transactions of the school group or the parent support group when filing the quarterly report.

This rule is intended to implement Iowa Code sections 99B.1 and 99B.7, The Code as amended by 1983 Iowa Acts, House File 317. of the Sixty-ninth General Assembly, Senate File 519.

ITEM 10. Amend rule 730—94.5(99B) to read as follows:

730—94.5(99B) Renting or contracting to or from qualified organizations. Games of skill, games of chance, raffles and bingo may be conducted on premises owned or leased by the licensee. If the premises are rented from a qualified organization licensee, then the lessor must dedicate the net receipts from rent unless the lessor usually carries out a lawful business on the rented premises other than operating games of skill, games of chance or raffles. The licensee may also rent from other than a qualified organization licensee provided rent is a fixed amount and not on a percentage related to the amount of receipts. The qualified organization may terminate any rental agreement at any time without penalty and without forfeiture of any sum, and the lessor shall not be a liquor control licensee or beer permittee with respect to those premises or with respect to adjacent premises. A political party or political party organization holding a qualified organization gambling license may contract with another licensed qualified organization to conduct games for the benefit of the political party or political party organization. The fee imposed cannot be a percentage of or otherwise related to the amount of the receipts generated by the game.

Schools, public and nonpublic, when authorized by an appropriate policymaking body, may conduct games of skill, games of chance, raffles and bingo if they acquire a proper license. For periods after July 1, 1983 Each school ~~must~~ may have its own license. A school ~~cannot~~ can conduct gambling using a license held by the board of directors of the public school district upon written approval by the board of directors. All student groups may operate under the school or board of directors license on school premises. Parent and teacher support groups ~~must obtain their own license but~~ may conduct games on school premises if authorized to do so by the school policy making body using a license held by the board of directors of the public school district upon written approval by the board of directors. However the board of directors shall not authorize an individual school group or individual parent support group to use the license more than twice in twelve months.

This rule is intended to implement Iowa Code section 99B.7, as amended by 1983 Iowa Acts, House File 317.

[Filed 9/9/83, effective 11/2/83].

[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4079
TRANSPORTATION,
DEPARTMENT OF[820]

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of 1983 Iowa Acts, Senate File 207, the Transportation Commission on August 30, 1983, adopted an amendment to 820—[07,A] chapter 1 entitled "Designated Highway System".

A Notice of Intended Action for this rule amendment was published in the July 20, 1983 Iowa Administrative Bulletin as ARC 3895.

This rule amendment is identical to the one published under notice except for the following: Paragraph 1.6(1)"c" has been changed because alterations to the system require federal approval. Subrule 1.6(3) has also been added specifying that the requester and the public be notified of the official actions taken.

This rule amendment is intended to implement Iowa Code chapter 321 and 1983 Iowa Acts, Senate File 207.

This rule amendment is to be published as adopted in the September 28, 1983 Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective November 2, 1983.

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of 1983 Iowa Acts, Senate File 207, rules 820—[07,A] chapter 1 entitled "Designated Highway System" are amended by adding the following new rule.

820—[07,A]1.6(321) Changes to designated system. A change to the designated highway system for the movement of vehicles of the specified lengths and widths shall be processed as follows:

1.6(1) Addition.

a. Persons requesting an addition shall submit a written request to: Director, Motor Vehicle Division, Iowa Department of Transportation, 5268 N.W. 2nd Ave., Des Moines, Iowa 50313. The request shall specify the additional route being requested and the reasons for the request.

b. Within fifty days after receipt of the request, the staff of the department shall prepare a recommendation and present the recommendation to the transportation commission.

c. If the transportation commission approves an addition to the system, the route shall be submitted to the secretary of the United States Department of Transportation for review and possible incorporation into the designated system.

1.6(2) Deletion. A request for the deletion of a route from the Iowa designated system shall be processed according to the procedure in subrule 1.6(1). However, if the commission approves the deletion, notice of the commission action shall be forwarded to the secretary of the United States Department of Transportation for review and possible deletion by the secretary.

1.6(3) Notification.

a. The department shall notify the requester of the action taken by the transportation commission on the request for an addition or a deletion.

b. If applicable, the department shall also notify the requester of the action taken by the secretary of the United States Department of Transportation.

c. The department shall publish additions and deletions to the designated system in a newspaper with

statewide circulation and the department's "NewsRig" publication.

This rule is intended to implement Iowa Code sections 321.454 and 321.457 and 1983 Iowa Acts, Senate File 207.

[Filed 9/8/83, effective 11/2/83]

[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

ARC 4080
TRANSPORTATION,
DEPARTMENT OF[820]

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of Iowa Code section 307.10, the Transportation Commission, on August 19, 1983, adopted an amendment to 820—[07,E] chapter 1 entitled "Motor Vehicle Lighting Devices and Other Safety Equipment".

A Notice of Intended Action for this rule amendment was published in the July 20, 1983 Iowa Administrative Bulletin as ARC 3916.

This rule establishes the minimum safety standards for the movement of implements of husbandry on Iowa highways by manufacturers and retail sellers.

This rule amendment is identical to the one published under notice.

This rule amendment is intended to implement Iowa Code chapter 321.

This rule amendment is to be published as adopted in the September 28, 1983 Iowa Administrative Bulletin and Supplement to the Iowa Administrative Code to be effective November 2, 1983.

07 MOTOR VEHICLE DIVISION

Pursuant to the authority of Iowa Code section 307.10, rules 820—[07,E] chapter 1 entitled "Motor Vehicle Lighting Devices and Other Safety Equipment" are hereby amended.

Rule [07,E] chapter 1 is amended by adding rule [07,E]1.6(321) as follows:

820—[07,E]1.6(321) Safety requirements for the movement of implements of husbandry by retail sellers and manufacturers. The following standards are minimum safety requirements for the movement of implements of husbandry by the retail seller between the retail seller and a farm purchaser, or the movement of indivisible implements of husbandry by the manufacturer or retail seller between the place of manufacture and a retail seller or farm purchaser.

1.6(1) Towing standard. No power unit operated by a retail seller or manufacturer shall tow more than one implement of husbandry from the manufacturer to the retail seller, from the retail seller to the farm purchaser, or from the manufacturer to the farm purchaser.

1.6(2) Equipment standards.

a. Braking. The towing unit or self-propelled implement of husbandry operated upon a highway shall be equipped with a braking device(s) which can control the movement of and stop the vehicle(s). When the vehicle is

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

traveling twenty miles per hour, the braking device shall be adequate to stop the vehicle or vehicles within thirty feet if the gross weight is less than five thousand pounds and fifty feet if the gross weight is five thousand pounds or more.

b. Rearview mirror. The towing vehicle or self-propelled implement of husbandry shall be equipped with a rearview mirror that reflects to the operator a view of the highway for a distance of at least two hundred feet to the rear of the vehicle(s). The rearview mirror equipment standard may be met by the use and installation of a temporary rearview mirror.

c. Lighting. The towing or towed vehicle or self-propelled implement of husbandry shall be equipped with at least one rear taillight which exhibits a red light plainly visible from a distance of five hundred feet to the rear. The rear taillight equipment standard may be met by the use and installation of a temporary rear taillight. If an implement of husbandry is being towed by a vehicle which is equipped with brake lights, the towed unit must also have brake lights, constructed and located on the implement of husbandry so as to give a signal of intention to stop. The light shall be red or yellow in color. The signal shall be plainly visible in normal sunlight and at night from a distance of one hundred feet to the rear and may be met by the use and installation of a temporary light.

d. Turn signal. The towing or towed vehicle or self-propelled implement of husbandry shall be equipped with a turn-signal device that operates in conjunction

with or separately from the rear taillight. The signal shall be plainly visible and understandable from a distance of one hundred feet to the rear. The turn-signal device equipment standard may be met by the use and installation of a temporary turn-signal device.

e. Tires. Pneumatic tires shall not be used if any part of the ply or cord is exposed; if there is any bump, bulge, or separation; if there is a tread design depth of less than one-sixteenth inch; if there is marking "not for highway use" or "unsafe for highway use."

f. Warning devices. A towing vehicle or self-propelled implement of husbandry shall be equipped with flares, red reflectors or reflective triangles if operated after sunset and before sunrise.

g. Drawbar. When one vehicle is towing another vehicle, the drawbar shall be of sufficient strength to pull the weight towed and shall be fastened to the frame of the towing unit so as to prevent sidesway. In addition to the principal connection there shall be safety chain which shall be fastened so it is capable of holding the towed vehicle if the principal connection fails.

This rule is intended to implement Iowa Code section 321.383.

[Filed 9/8/83, effective 11/2/83]

[Published 9/28/83]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/28/83.

EFFECTIVE DATE DELAY**[Pursuant to §17A.4(5)]**

AGENCY	RULE	EFFECTIVE DATE DELAYED
Water, Air and Waste Management Department[900]	23.2(4) [IAB 8/17/83, ARC 3970]	Seventy days from effective date of September 21, 1983.



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 4

WHEREAS, economic conditions in Iowa are reflecting a slower recovery than originally anticipated; and

WHEREAS, these factors generated a decline in actual state revenues compared to earlier estimates for fiscal year 1984; and

WHEREAS, state fiscal experts have concluded that without revisions to the state budget in fiscal year 1984, the shortfall in revenues will result in a general fund deficit on June 30, 1984 of \$91 million; and

WHEREAS, Article VII of the Iowa Constitution prohibits state budget deficits; and

WHEREAS, Section 8.31, the Iowa Code, provides a procedure for uniform and prorated reductions of state appropriations by the Governor to avoid overdrafts and deficits; and

WHEREAS, without implementing these uniform, prorated reductions in state appropriations, the state will face a \$91.0 million deficit in the general fund on June 30, 1984.

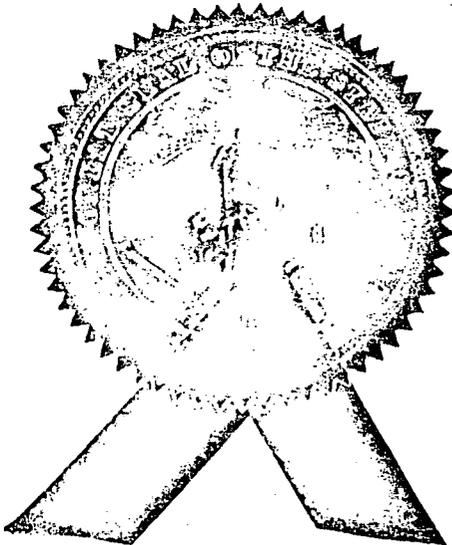
NOW THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, by the power and authority invested in me by the Constitution and the laws of Iowa, do hereby make the following findings and orders:

1. I find that the estimated budget resources during fiscal year 1984 are insufficient to pay all appropriations in full as required by Section 8.30, the Code, to wit:

General fund balance, June 30, 1983	<u>\$1.5 million</u>
Fiscal year 1984 receipts (net)	<u>\$1,938.0 million</u>
Fiscal year 1984 appropriations and standing estimated appropriations	<u>\$2,030.5 million</u>
TOTAL	<u>(\$91 million)</u>

2. I further find that a 2.8 percent reduction in appropriations subject to Section 8.31, the Code, is necessary to prevent an overdraft or deficit in the general fund of the state at the end of this fiscal year.
3. I hereby direct the implementation of Section 8.31, the Code, requiring the uniform modification of allotment requests filed pursuant to that section for each of the remaining three-quarters of the fiscal year to achieve an annual 2.8 percent fiscal year reduction in each respective appropriation unless subsequent projections provide good reason to alter these findings.
4. I further direct the State Comptroller to prepare such modified allotments for the second quarter of fiscal year 1984, which commences October 1, with the exception of appropriations excluded by Section 8.2(1), the Code, pertaining to the courts, the legislature, constructive trust funds such as tax refund allocations, federal highway matching funds, and obligated, encumbered or contracted capital items, the provisions of Senate File 551, (Section 7, Division I Capitals) Acts of the 70th General Assembly, and those appropriations that by law have been distributed 100 percent to date.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 3rd day of September in the year of our Lord one thousand nine hundred and eighty-three.



Attest:

Terry E. Branstad
Governor

Mary Jane Odell
Secretary of State

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